

Dwarika Sonar and ors. Vs. Most Bilguli and ors.

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Court : Jharkhand

Decided On : Jan-28-2003

Reported in : [2003(2)JCR134(Jhr)]

Judge : M.Y. Eqbal, J.

Acts : [Code of Civil Procedure \(CPC\) , 1908](#) - Sections 100; [Limitation Act, 1963](#) - Schedule - Article 65; Chotanagpur Tenancy Act, 1908 - Sections 84(3), 87(1) and 258; [Specific Relief Act, 1963](#) - Sections 64

Appeal No. : A.F.A.D. No. 162 of 1990

Appellant : Dwarika Sonar and ors.

Respondent : Most Bilguli and ors.

Advocate for Def. : Ramawatar Sharma and; Kavita Sharma, Advs.

Advocate for Pet/Ap. : B.V. Kumar and; Prakash Chandra, Advs.

Disposition : Appeal allowed

Judgement :

M.Y. Eqbal, J.

1. The defendants are the appellants. The appeal is against the judgment of reversal. The plaintiffs-respondents filed a suit for declaration of title over the suit

land and also for declaration that the revisional survey entry of the name of defendant no 1 in respect of the suit land is wrong and erroneous. The suit was dismissed by the Munsif, Koderma being title suit No. 27/84 holding that the plaintiff is not entitled to any relief.

2. The appellate court reversed the judgment in Title appeal. No. 42/88, set aside the judgment and decree of the trial court and decreed the suit.

3. Plaintiff's case is that he is the settled raiyait of village Jainagar having ancestral land and house. The suit land under khata No. 222 stands in the name of Guli Sonar and Meghan Sonar, father and uncle of the plaintiff which was duly recorded in the cadastral survey record of rights. The recorded tenant, Meghan Sonar died issueless and the entire property of khata No. 222 devolved upon his brother, Guli Sonar, the father of the plaintiff. After the death of the father of the plaintiff the land of khata No. 222 alleged to have devolved upon him being the sole and rightful owner and he is in possession of the said land. Plaintiff's further case is that the land of plot No. 1120 having an area of 3 decimals, plot No. 1125 having an area of 2 decimals and plot No. 1126 having an area of 8 decimals and plot No. 225 having an area of 2.20 acres appertain to khata No. 222. It is stated that plot Nos. 1120 and 1125 were recorded as Makan in the records of rights in which the ancestors of the plaintiff were residing and after their death the plaintiff is residing. Further case of the plaintiff is that revisional survey was held in the year, 1996 and in that survey new plots have been carved out from the old plot Nos. 1120, 1125 and 1126 and have been recorded as new khata No. 686. The defendants had their house in village, Jainagar on their raiyaiti land which fell down and, as such, the defendant, Chaman Sonar approached the plaintiff and requested him to let out the suit house on rent. The plaintiff let out his two rooms in his house to defendant No. 1 on monthly rent of Rs. 80/- in the year, 1960. When the revisional survey started and final publication was made in 1966 the suit house was illegally and wrongly recorded in the name of Laxman Sonar as one share and Chaman Sonar as one share. Plaintiff's case is that the revisional survey record of rights is apparently wrong and erroneous.

4. Defendants' case, on the other hand, is that the suit is barred by limitation, acquiescence and estoppel. Besides other defences, it is stated that the land of khata No. 22 of village Jainagar was recorded in the cadastral survey in the name of Guli Sonar and Meghan sonar but they were not the exclusive owner nor they were in exclusive possession. In fact, said khata belonged to Mama Sonar, the common ancestor of the plaintiff and the defendants. Mama Sonar had four sons, Jagarnath Sonar, Daulat Sonar, Manik Sonar and Khosi Sonar. Jagarnath Sonar died issueless and then the three brothers formed joint family of which Daulat Sonar, the eldest brother, was the karta. After Daulat Sonar, his son, Churu Sonar and then Guli Sonar and Meghan Sonar began to manage the property and, accordingly, their names were entered in the records of rights as in spite of survey entry the other members of the joint family including the defendants' ancestors continuously exercised their right, title, interest and possession over the suit property. After the cadastral survey there was disruption in the joint family and in family partition a portion of the residential house along with a portion of other property came in the share of the defendants' father who continuously lived in the said land and property and after the death of their father, the defendants have been residing. That being the situation the revisional survey record was rightly prepared in the name of the defendants.

5. On the basis of the pleadings of the parties, the trial court framed the following issues for consideration:

- (i) Is the suit as framed maintainable?
- (ii) Is the suit barred by law of limitation, waiver and acquiescence.
- (iii) Has the plaintiff got valid cause of action for the suit.
- (iv) Whether the plaintiff has got right, title over the suit land.
- (v) Whether the revisional survey entry of the name of the defendants in respect of the suit land under khata No. 686 is wrong and erroneous.
- (vi) Whether the plaintiff is entitled for the relief claimed.

(vii) To what relief or reliefs, the plaintiff is entitled?

6. The trial court after considering the entire evidence, came to the finding that the plaintiff has failed to prove his title over the suit property. The court further came to the conclusion that the plaintiff failed to establish that the entry of the name of defendant No. 1 in the revisional survey record of right was wrong and erroneous. The trial court further came to the conclusion that the suit is not barred under Section 258 of the Chotanagpur Tenancy Act but the plaintiff is not entitled to any relief.

7. The appellate court reversed the finding of the trial court and held that the plaintiff has led trustworthy and reliable evidence in support of his title and possession over the suit property. The appellate court further held that the entry in the revisional survey records of rights can be challenged in a suit and, therefore the suit cannot be hit by the provisions of Section 34 of the Specific Relief Act.

8. This court admitted the instant appeal on the following substantial questions of law.

'(i) What will be the effect in law of the two different entries made in the two different survey settlement of records of right under Section 84(3) of the Chotanagpur Tenancy Act.

(ii) Whether Ext. 7 and 7/A being merely draft purchases, the same could have been looked into for the purpose of arriving at a finding with regard to the title of the respondent.'

9. I have heard Mr. Bhैया Vishwajeet Kumar, learned counsel for the appellants and Mr. Ramawatar Sharma, learned counsel appearing on behalf of the respondents.

10. As noticed above, the admitted fact is that the revisional survey records of rights was finally published in the year, 1966 and the records of right in respect of the suit property was published in the name of the defendants. The question, therefore, that falls for consideration is as to what will be the effect in law of the two different entries made in the two different survey settlement of records of right,

namely, cadastral survey and revisional survey records of right. It is well settled that if there is conflict between two entries in the records of right then the latter records or right will prevail. A similar question arose before the Supreme Court in the case of Sri Raja Durga Singh of Solon v. Tholuand Ors., AIR 1963 SC 361 where their lordships held that where there is such conflict in two entries, it is the latter entry which must prevail. It was further observed that where new entry takes the place of the old one, there shall be presumption of correctness of the new entry until and unless it is established to be wrong or substituted by another entry.

11. Besides the above, Section 84 (3) of the Chotanagpur Tenancy Act provides that if records of right is finally published, it shall be a conclusive evidence that the record has been duly made according to law. First question of law, therefore, is answered accordingly.

12. From perusal of the judgment it appears that the lower appellate court, ignoring the finally published revisional survey records of right, based his finding on Exts. 7 and 7/A which are the draft purchas prepared in the name of the plaintiffs in respect of the suit plot. From the discussion made hereinbefore it is well settled that it is the finally published records of right which is admissible in evidence and a presumption is attached to that entry in the finally published records of right. The court of appeal below, therefore, committed serious error of law in arriving at a finding with regard to title on the basis of draft purchas instead of finally published records of right.

13. The court of appeal below has further committed error of law in deciding the maintainability of the suit and holding that the suit is not barred under Section 258 of the CNT Act. The finding of the trial court on this issues is reproduced hereinbelow:--'Issue No. II. The plaintiff has brought the suit in the year. 1984. According to the plaintiff final publication of revisional survey was done in the year, 1966. The learned lawyer for the defendant has submitted that the suit is barred by limitation under Section 258 of the CNT Act because there is ground of playing fraud and want of jurisdiction in the suit. The learned lawyer for the plaintiff has submitted that the limitation does not arise in view of the Full Bench decision reported in 1987 Bihar Law Times page 131. In my opinion the suit is not barred

by limitation under Section 258 of the CNT Act in view of the findings laid down of the above reported case. This issue is, therefore, decided in favour of the plaintiff.'

14. The maintainability of a suit for declaration of title and confirmation of possession may not be barred under Section 258 of the CNT Act but even if the suit is maintainable, it may be barred by limitation. This aspect of the matter has not been correctly appreciated by the court below. Section 258 of the CNT Act reads as under :

'258. Bar to suits in certain cases.--Save as expressly provided in this Act, no suit shall be entertained in any court to vary, modify or set aside, either directly or indirectly, and [decisional], order or decree of any Deputy Commissioner or Revenue officer in any suit, application or proceeding under Section 20, Section 32, Section 35, Section 42, Section 46,' Sub-section (4), Section 49, Section 50, Section 54, Section 61, Section 63, Section 65, Section 73, Section 74A, Section 75, Section 85, Section 86, Section 87, Section 89 [***] or Section 91 (proviso), or under chapter XIII, XIV, XV, XVI, or XVII, except on the ground of fraud or want of Jurisdiction [and every such decision, order or decree shall have the force and effect of a decree of a Civil Court in a suit between the parties and, subject to the provisions of this Act relating to appeal, shall be final]'

15. The aforesaid provision came for consideration before a Full Bench of the Patna High Court in the case of Paritosh Maity v. Ghoshi Ram Maity and Anr. reported in 1988 BLJR 34 where it was held that the question relating to title and interest in land are matters of civil nature and the jurisdiction of the Civil Court can only be barred if it is expressly excluded or if it is so done by necessary implication. Where the jurisdiction of the Civil Court is excluded by a Statute, the question is to be examined with reference to the provisions of that Statute, Their lordships, In this context, observed as under :

'The stage is now set for a consideration of Section 582 which bars suits in certain cases. What, however, deserves notices at the very outset is that even this section is not creating an absolute bar of jurisdiction against the civil courts, but merely a conditional bar applicable in certain cases specified therein. If one may say so, it is a limited bar which would be elaborated hereinafter. What deserves pinpointing

herein is that this section does not employ the unequivocal phraseology noticed earlier in Section 57 of the Bihar and Orissa Co-operative Societies Act or of Section 139-A of this very Act itself. It is true that it bars the jurisdiction of any other court including a civil court, to entertain a suit but such a prohibition is limited only to a suit either to vary, modify or set aside directly or indirectly any decision, order or decree of any Deputy Commissioner or a revenue officer in a suit or application or proceeding under the section mentioned therein including Section 87. Thus the pre-condition for the applicability of Section 258 is the existence of an earlier order or a decree of a Revenue Officer or a Deputy Commissioner in a prior proceeding. From perusal of these sections it is manifest that if earlier any decision has been made by a revenue court in any suit under Section 87 then only the other court or the Civil Court have no jurisdiction to entertain any suit either to vary, modify or set aside the decision. It also makes it clear that the aforesaid decision or order will have the force or effect of a decree of a Civil Court in a suit between the parties. However, if there is no order or decision under the sections specified in Section 528 including therein Section 87 the jurisdiction of the Civil Court will not be barred and specially so in a suit for declaration of title and confirmation or possession or recovery of possession. What further calls for notice is the fact that even where Section 258 would be attracted the bar is not absolute, and if the orders, decision or decree are challenged on the ground of fraud or want of jurisdiction, such a suit can still be entertained by the Civil Court. It would thus be manifest that the sine qua non for the applicability of Section 582 in the present context would be the existence of an order or decree in a previous suit under Section 87. If there has been no previous suit for the same lis, no question of any varying, modifying or setting aside the same either directly or indirectly can arise. Thus in the absence of an earlier suit under Section 87 in this context, the provision of Section 258 would not be applicable or attracted at all'.

Their Lordships further observed:--

'The true legal effect of a harmonious reading of Sections 87 and 258 may therefore be noticed. Chapter XII provides for the record of rights and Section 83 therein deals with the preliminary publication, the amendment and the final publication of the records of right whilst Section 84 creates certain rebuttable

presumptions in favour of the correctness of the entries in the records of rights. However, Section 87 provides a remedy by way of a suit before the Revenue Officer for resolving any dispute with regard to such an entry of rights or an omission therefrom, in essence, such a suit is thus directed as a challenge to the entry or omission in such a record but Section 87 further provides that this can be raised even where such a dispute be with regard to matters specified in Clause (a to f) of Section 87. In a way, therefore, Section 87 provides a special and additional remedy pertaining to entries in the revenue records as soon as they are finally published and certified. That is why the Legislature has chosen to provide a narrow limitation of three months from the date of the certificate of the final publication of the record of rights for bringing such a suit. To my mind this remedy is not in any way in derogation of the civil rights of the parties, but indeed is a special and additional remedy which may be availed of within a limited period of three months if a party feels aggrieved by any of the entries in the record of rights. However, if such a remedy is availed of by the party then the Statute now provides an appeal and even a Second Appeal to the High Court itself in the very forum of Sub-section (2) of Section 87 which inevitably would achieve finality. Thus, if actual resort has been made to a suit under Section 87 then for an identical case Section 258 would bar a further resort to the civil court except on the ground of fraud or want of jurisdiction. Obviously enough to bring in even this limited bar the facts would have to be identical. However, as already noticed and it bars repetition that, if no resort has been earlier made to a suit under Section 87 by the parties the very precondition of the application of Section 258 would be absent and it cannot come into play in such a situation.'

16. A very important and interesting question was neither raised nor decided by the Full Bench is as to what will be the limitation for filing such a civil suit for declaration of title by challenging the entries made in the revenue records. The only question before the Supreme Court was whether a civil suit for declaration of title and confirmation of possession, challenging, inter alia, the entries in the revenue records would still be maintainable after the insertion of Clause (ee) in Section 87 of the Chotanagpur Tenancy Act. It is therefore necessary to go into this question and to decide the same. Section 87 of the CNT Act lays down institution of suit before Revenue Officer. The said section reads as under.

'Institution of suits before Revenue-Officer.--(1) In Proceedings under this Chapter a suit may be instituted before a Revenue Officer, at any time within three months from the date of the certificate of the final publication of the records-of-rights under Sub-section (2) of Section 83 for the decision of any dispute regarding any entry which a Revenue-officer in, or any omission which he has made from, the record [except an entry of a fair rent settled under the provisions of Section 85 before final publication of the record-of-rights] whether such dispute be-

(a) between landlord and tenant, or

(b) between landlords of the same or of neighbouring estate, or

(c) between tenant and tenant, or

(d) as to whether the relationship of landlord and tenant exists, or

(e) as to whether land held rent free is properly so held, or

(ee) as to any question relating to the title in land or to any interest in land as between the parties to the suit; or]

(f) as to any other matter;

and the Revenue-officer shall hear and decide the dispute :

Provided that the Revenue officer may, subject to such rules as may be made in this behalf under Section 264, transfer any particular case or class of cases to a competent Civil Court for trial:

Provided also that in any suit under this section the Revenue-officer shall not try any issue which has been, or is already, directly and substantially in issue between the same parties or between parties under whom they or any of them claim in proceedings of the settlement of rent under this Chapter, where such issue has been tried and decided or is already, being tried by a Revenue-officer under Section 86 in proceedings instituted after the final publication of the record of-rights.

(2) An appeal shall lie, in the prescribed manner and to the proscribed officer from decision passed under Sub-section (1) [and a second appeal to the High Court shall lie from any decision on appeal of such officer as if such decision were an appellate-decree passed by the Judicial Commissioner under Chapter XVI.]'

17. From perusal of the foresaid provision it is clear that a special and additional remedy has been provided by way of filing a suit before the Revenue Officer within three months from the date of certificate of the final publication of the record of rights. In the instant case the plaintiff filed the suit for the following reliefs.'

(a) That, plaintiff's title over the suit land be declared

(b) That it be declared that the revisional entry of the name of the defendant No. I in respect of the suit lands Khata No. 686 is wrong and erroneous.

(c) That the cost of the suit be awarded to the plaintiff

(d) That any relief or relief to which the plaintiff be found in title be given to him.

18. In the body of the plaint the plaintiff has pleaded that defendant was allowed to remain in possession of the suit land much before the revisional survey settlement i.e. in 1960. Admittedly in the year 1966 the revisional survey record of right was finally published in the name of the defendant in respect of the suit plot. The instant suit has been filed in the year 1984 i.e. 18 years after the final publication of record of right. In view of these admitted facts can it be held that there is no period of limitation for filing a suit for declaration that the entries made in the revenue record of right is wrong or for declaration of title and recovery of possession.

19. Under the general law of limitation the maximum limitation for instituting a suit for declaration of title and recovery of possession is 12 years from the date when the possession of the defendant becomes adverse to the plaintiff as provided under Article 65 of the limitation Act 1963.

20. Admittedly the revisional survey record of right in respect of the suit property was finally published in the name of the defendant in the year 1966. It is not the

case of the plaintiff that he was not aware or he had no knowledge about the publication of record of right in the name of the defendant, rather it is the specific case of the plaintiff that the record of right was published in the year 1966 in the name of the defendant. The instant suit has been filed after 18 years i.e. in 1984. In my considered opinion therefore, such a suit is barred by limitation. I have no hesitation in holding that the maximum period of limitation for filing a suit for declaration of title and recovery of possession and for challenging the entry made in the survey record of right will be 12 years from the date of final publication of record of right. The court of appeal below, therefore, committed grave error of law in holding that the suit is not barred by limitation.

21. For the reasons aforesaid this appeal is allowed and the impugned judgment and decree passed by lower appellate court is set aside and the judgment and decree passed by the trial court is restored.

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