

Bigu Oraon and Ors Vs. Rajo Oraon and Ors

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Court : Jharkhand

Decided On : Aug-19-2016

Appellant : Bigu Oraon and Ors

Respondent : Rajo Oraon and Ors

Judgement :

1 IN THE HIGH COURT OF JHARKHAND AT RANCHI ---- S.A. No. 47 of 1996
----- Against the judgment and decree dated 27.04.1996 and 25.05.1996
respectively passed in Title Appeal no.99 of 1991 by the learned Second Addl.
Judicial Commissioner, Ranchi. ----- 1. Bigu Oraon.

2. Ludu Oraon 3. Manga Oraon @ Manga Oraon, All sons of late Bandhu Oraon,
r/o village Hinoo, P.S.Dorasnda, District- Ranchi.Appellants -Versus- 1. Rajo
Orain, w/o Bigu Oraon.

2. Uday Oraon @ Orain, s/o Bigu Oraon.

3. Poko Orain, d/o Bigu Oraon.

4. Suresh Kumar 5. Most. Mati Oraon, w/o late Ghasia Oraon 6. Mostt. Basanti
Orain,w/o late Bhukhle Oraon 7. Bigu Orain, d/o late Bhukhle Oraon 8. Satrudhan
Orain,s/o late Bhukhle Oraon 9. Maido Oraon, W/o Late Dhanub Oraon 10. Bati
Orain, D/o Late Dhemna Oraon 11. Bamia Oraon, D/o Late Dhemna Oraon 12.
Bandhan Oraon, S/o Dehmna Oraon 13. Kurti Oraon, D/o Late Dhemna Oraon 14.
Most. Chandua Orain, W/o Late Mangla Oraon 15. Sania Orain, W/o Late Bjukhla

Oraon 16. Most. Chandu Oraon, W/o Late Mangra Oraon 17. Gunchi Oraon, D/o Late Mangra Oraon 18. Raghu Nandan Tirkey, W/o Late Bhukha Oraon, All residents of village Hinoo, P.S. Doranda, District RanchiRespondents. -----
For the Appellant : M/s. V.K. Prasad, Advocate For the Respondents : M/s. S.N.Gupta, Advocate. ----- PRESENT HON'BLE MR. JUSTICE AMITAV K. GUPTA ----- Amitav K. Gupta, J: This appeal has been preferred against the judgment and decree dated 27.4.1996 and 25.5.1996 respectively passed in Title Appeal no.99 of 1991 by the Addl. Judicial Commissioner, IInd, Ranchi, reversing the judgment and decree passed by the Sub-Judge,IV, Ranchi in Partition Suit no. 280 of 1996.

2. The plaintiffs instituted Partition Suit No.280 of 1996, alleging therein that they are the sons of the late Bandhu Oraon, the adopted son of the recorded tenant namely Late Dhemna Oraon. That late Bandhu Oraon was recognized and treated as the adopted 2 son of Dhemna Oraon by the society at large and he performed the last rites of Dhemna Oraon, who died in the year 1949. It is averred that as per customary right of the Oraon, Bandhu Oraon as adopted son inherited the suit land and other lands of Dhemna Oraon and remained in possession thereof. That a proceeding under Section 145 Cr.P.C. was initiated with regard to plot no. 687 and 689 and the possession of Bandhu Oraon was confirmed on the said plot. Against the said order, the predecessors- in-interest of the defendants filed Title Suit no. 33 of 1954 which was dismissed as withdrawn and again Title Suit no. 142 of 1955 was instituted by the defendants' predecessors-in-interest which was dismissed for default. Thereafter, another Title Suit no. 214 of 1956 was instituted in the court of Munsif, Ranchi, by the predecessors-in-interest of the defendants, alleging that they were the agnates of late Dhemna Oraon and Bandhu Oraon was not the adopted son of Dhemna Oraon. The said suit was decreed in terms of judgment dated 28.11.1958 whereafter, Bandhu Oraon preferred Title Appeal no. 3 of 1959, before the Court of Judicial Commissioner, Ranchi and in the said appeal, a compromise petition was filed wherein the defendants- predecessors-in-interest admitted and accepted that Bandhu Oraon was the adopted son of Dhemna Oraon. It is averred that late Bandhu Oroan, as an adopted son, was entitled to the entire land of R.S. Khata no. 65 recorded in the name of Dhemna Oraon, however, he agreed to part with 10(ten) annas share of the aforesaid land

in favour of the defendants/ predecessors-in-interest, and accepted 6(six) annas share in order to put quietus to the domestic quarrel and litigation and Title Appeal no. 3 of 1959 was decreed in terms of the compromise and settlement arrived at between the parties.

3. It is averred that the plaintiffs, as sons of late Bandhu Oraon, succeeded to the share and interest of Bandhu Oraon in the suit land and remained in joint possession with the defendants in terms of the compromise decree passed in Title Appeal no. 3 of 1959 and the said compromise decree is conclusive and binding upon the defendants. It is alleged that the plaintiffs made repeated request to the defendants to amicably partition the suit property in terms of the compromise and decree but the defendants did not agree neither they paid any heed to the plaintiff's request accordingly, Partition Suit no. 280 of 1986 was instituted by the plaintiffs for declaring their 6 annas share over the suit land.

4. The defendants contested the suit and filed their written statement challenging the maintainability of the suit on the grounds of limitation, waiver and estoppel, acquiescence and also pleaded 3 that the suit was barred by principle of res judicata. It is averred that the recorded tenant Dhemna Oraon died issueless and he had never adopted Bandhu Oraon as his son, hence, Bandhu Oraon neither inherited nor succeeded to the suit property after the death of Dhemna Oroan. It is stated that the plaintiffs have no right, title and interest over the suit land and the compromise decree in Title Appeal no. 3 of 1959 amounts to transfer of the suit property which is hit by the provision of Section 46 of the Chhotanagpur Tenancy Act, accordingly, the compromise decree is void in law.

5. The learned Trial Court framed 5 issues viz,:

1. Is the suit of the plaintiffs maintainable? 2. Have the plaintiffs valid cause of action for the suit? 3. Whether the plaintiff is entitled to a decree for partition, if so, to what extent? 4. Is the suit of the plaintiff barred by the principle of res Judicata and adverse possession? 5. To what other relief/reliefs, the plaintiffs are entitled? On the basis of the pleadings and evidence adduced, the learned Trial Court held that the compromise decree in Title Appeal no. 3 of 1959 was legal and valid since it was not set aside by any competent court hence it would operate as res judicata

against the defendants. It also held that the decree was not in contravention of Section 46 of the Chhotanagpur Tenancy Act. The Court below held that since the defendants-predecessors-in-interest accepted the factum of adoption of Bandhu Oraon as son of Dhemna Oraon and agreed to the 6(six) annas share in the suit land in terms of the compromise, therefore, the defendants could not retract from their own admission accordingly, the learned court below decreed the suit. Against the said judgment and decree of the learned Trial Court, the contesting defendants -Bigu Oraon and Samra Oraon (defendant no. 10 and

11) preferred Title Appeal No.99 of 1991. During the pendency of the appeal the original appellant died and their legal heirs and successors were substituted and they are the respondents herein. The appellants assailed the impugned judgment on the ground that the trial court had erred in holding that the compromise decree in Title Appeal no.3/59 is not hit by Section 46 of the C.N.T Act because the trial court failed to appreciate that by the said compromise decree the interest in immovable property, of a tribal, governed by C.N.T. Act which was subject matter of Title Suit 4 no.214/56, could not be transferred and the compromise decree was void as being hit by the provision of Section 46 of C.N.T. Act.

6. On the contention of the parties, the lower appellate court formulated the following points for determination: (I) Is the compromise decree in Title Appeal no.3/59 legal, valid, enforceable and binding upon the parties? (II) Whether the judgment and decree in Title Suit no.214/1956 been affected by the compromise decree in Title Appeal no.3/59? (iii) Is the impugned judgment and decree fit to be set aside and the appeal fit to be allowed? On the basis of the evidence on record, the lower appellate court held that the compromise decree in Title Appeal no.3/59 was illegal, void, unenforceable and not binding upon the defendants/appellants as it was hit under Section 46 of the C.N.T. Act and also held that it was not necessary to discuss the point whether Bandhu Oraon was the adopted son of Dhemna Oraon or not.

7. In the background of the above facts and judgment of the lower appellate court this second appeal has been preferred by the plaintiff/appellants. By order dated 28.8.1997, this second appeal has been admitted after formulation of the following

substantial questions of law:- (A). Whether Ex.2, the compromise decree is hit by Section 46 of the Act as per sub-clause (b) of Section 46(1) of the Act? (B). Whether the compromise decree(Ext.2) is invalid as a whole or not for the lack of registration as extraneous lands were also included in the decree itself? (C). Even if the decree is not to be acted upon, the admission regarding adoption of Bandhu Oraon would be a valid analogy in favour of the plaintiffs/Respondents? 8. Learned counsel for the appellant, while assailing the impugned judgment and decree of the lower appellate court, has contended that the finding of the lower appellate court that the compromise decree(Ext.2) was hit by the provisions of Section 46(1) (b) of C.N.T Act, is an error in law as the said compromise did not create any interest in the suit land. It is argued that there was a partition between the parties with respect to the immovable 5 property amongst the agnates and it does not create or declare, assign, limit or extinguish any right, title or interest in the immovable property. In support of the contention, learned counsel has relied on the decision reported in AIR 1974 SC1912 and AIR 1966 SC432. It is also contended by the learned counsel that in terms of the compromise, the defendants/predecessors-in-interest have admitted the factum of adoption, then they cannot challenge the same, as it is barred under Article 59 of the Limitation Act. In support of the contention he has also relied on the decisions reported in AIR 2011 SC2496 2011(ii) SCC402 and 2008(7) SCC85. Learned counsel has canvassed that once the compromise decree was passed in T.A.NO.3/59, the same had attained finality and the lower appellate court has erred in law by setting aside the said compromise decree by the impugned order/ judgment passed in T.A.NO.99 of 1991.

9. Per contra, learned counsel for the respondent has supported the judgment and decree of the lower appellate court. It is contended that the compromise entered into by the plaintiff/appellant amounted to a transfer and creation of interest in the suit property which is in contravention to the provisions of Section 46(1)(b). It is argued by the learned counsel for the respondent that even if Bandhu Oraon is presumed to be the adopted son, then there is no reasonable explanation as to why he did not claim the entire suit land of the recorded tenant Dhemna Oraon. The fact that Bandhu Oraon agreed to accept 6(six) annas share in terms of the compromise amounted to relinquishment of the right, title and interest over his

remaining 10(ten) annas share and such relinquishment is a transfer of the right, title and interest which is hit by the provisions of Section 46 of the Chotanagpur Tenancy Act(hereinafter to be referred as 'CNT Act'). Learned counsel for the respondents has also relied on the decisions reported in Supreme Appeals Reporter(CIVIL) 1996(29); 2008 Supreme Appeals Reporter(CIVIL) 692 and AIR1933 Patna 264. It is contended by the learned counsel that when the compromise decree has been obtained in contravention of law then such a decree is a nullity and it can be challenged in any court of law. That the lower appellate court has rightly held that the compromise decree amounted to a transfer of right consequently it was hit under the provisions of Section 46(1)(b) of the C.N.T.Act. To buttress his 6 argument he has relied on the decisions reported in 2007(2) JLJR SC183 PLJR1975446; 2009(4) JCR384 2003(4) JCR206 10. Learned counsel for the respondents has further submitted that the compromise decree created a right in the immovable property valued at more than Rs.100 and it should have been registered under Section 17(1)(B) of the Registration Act. Since it is not registered the same is not admissible in evidence. It is argued that it would be evident from the compromise decree that some plots of land which were not the subject matter of the suit land were also transferred or allotted to the share of the parties. It is argued that the impugned judgment/order does not suffer from any illegality hence the appeal is fit to be dismissed.

11. It is pertinent to point out that the decisions cited by the learned counsel for the appellants are not applicable to the facts of the instant case. In view of the arguments advanced by the counsel it is noticed that the moot question which falls for determination is whether the compromise decree was hit by the provisions of Section 46 of the CNT Act. For better appreciation of the matter it would be profitable to refer to the provisions of section 46 of Chotanagpur Tenancy Act, which reads as follows:-

46. Restrictions on transfer of their rights by raiyat- - (1) No transfer by a raiyat of his right in his holding or any portion thereof- (a) by mortgage or lease, for any period expressed or implied which exceeds or might in any possible event exceed five years, or (b) by sale, gift or any other contract or agreement, shall be valid to any extent: Provided that a raiyat may enter into a 'bhugut bandha' mortgage of his

holding or any portion thereof for any period not exceeding seven years or if the mortgagee be a society registered or deemed to be registered under the Bihar and Orissa Co-operative Societies Act, 1935 for any period not exceeding fifteen years. (2) A transfer by a raiyat of his right in his holding or any portion thereof under sub-section (1) shall be binding on the landlords, unless it is made with his consent in writing. (3) No transfer in contravention of sub-section (1), shall be registered or shall be in any way recognized as valid by any Court, whatever in exercise of civil, criminal or revenue jurisdiction.

12. On plain reading of the provisions of Section 46 it is explicit that the section stipulates and enumerates the circumstances whereby restrictions are placed on transfer of rights by raiyats in the land situated in Chottanagpur division. On perusal of the substantial questions of law formulated at serial (C), the factum of admission of adoption of Bandhu Oraon as the son of the recorded tenant-Dhemna Oraon has been formulated. In this context it is relevant to take notice of the fact that the lower appellate court while analysing the evidence on record in para-9 of the judgment has arrived at the finding, the extract is as follows:- Para 9.....by the compromise decree in Title Appeal no. 3/1959 it was arrived at between the parties that Bandhu Oraon is the adopted son of Dhemna Oraon and 6 annas share in 8.73 acres of land under R.S. Khata no. 65 (which is also the subject matter of the present suit) was allotted to Bandhu Oraon while 10 annas share was allotted to defendant/predecessor-in-interest. It may be mentioned here that Title suit no. 214 of 1956 and Title Appeal no. 3 of 1959 was with regard to only two plots bearing no. 687 and 689 measuring 9 decimals and 7 decimals respectively, but the compromise was arrived at with regard to entire 8.73 acres of raiyati land of Khata no.

65. Thus, it is apparent that the title and interest to the extent of 6 annas share was created in favour of Bandhu Oraon. Extinction of title by one person and creating a title in favour of the other in any immovable property is nothing but a transfer of that immovable property and if that is affected by a compromise clause, it is a transfer by agreement which is restricted by Section 46 of the CNT Act. This finding has been arrived at by the lower appellate court on the basis of the evidence and the provisions of law.

13. For proper appreciation of the matter it is necessary to discuss the compromise decree which is in two parts as hereunder:- (a) The respondent therein admitted that the appellant was the adopted son of Dhemna Oraon and the respondents were the agnates of Dhemna Oraon. (b) The appellant and respondent agreed to a 6(six) annas and 10(ten) annas share in the property of late Dhemna Oraon. 8 It is evident that the first part of compromise is a pure question of fact as to whether the appellant-Bandhu Oraon was the adopted son of late Dhemna Oraon or not which has not been controverted and has been decreed on admission by the respondents predecessors-in-interest in terms of the compromise. It is necessary to reiterate that once the respondents predecessors-in-interest have admitted the factum of adoption then the respondents are estopped from challenging the validity of such adoption. It is apparent that the second part involves question of law as once it is held that Bandhu Oraon was the adopted son of late Dhemna Oraon, then the predecessors-in-interest of the respondents herein could not and cannot succeed to the property as agnates of Dhemna Oraon, in presence of an adopted son of late Dhemna Oraon. Thus, the second part of the compromise regarding allotment of 6(six) annas and 10(ten) annas share in the property of late Dhemna Oraon is hit by the provisions and restrictions contemplated under Section 46 of the C.N.T Act.

14. Admittedly the plaintiffs/appellants had inherited the interest of Bandhu Oraon, who was accepted as the adopted son of the recorded tenant Dhemna Oraon, as noticed above, by the respondents/defendants-predecessors-in-interest, in terms of the compromise arrived at in Title Appeal no. 3 of 1959. The argument advanced by the learned counsel for the appellant that there was no transfer of land effectuated by the said compromise decree in Title Appeal no. 3 of 1959 and was a partition of the joint family property, is rather misconceived as the appellants have pleaded and made out a case that when the defendants- predecessors-in-interest accepted Bandhu Oraon to be the adopted son of the recorded tenant-Dhemna Oraon, then the defendants- predecessors-in-interest did not have jointness or unity in title and possession of the land in respect of the land which was inherited by Bandhu Oraon in the capacity of an adopted son. Hence, the allotment of 10(ten) anna share in favour of a person, who does not have any claim or antecedent title over the property amounts to relinquishment of a right and

interest and creation of interest by transfer which is impermissible in terms of the statutory provisions of Section 46 of the CNT Act. It is also relevant to point out that Section 46 (3) creates a bar or prohibits the Courts in exercise of civil, criminal or revenue jurisdiction to take cognizance of such transfers accordingly, it is held that the allotment of 10 (ten) annas share in terms of the compromise decree is a transfer as it creates 9 right, title and interest in favour of a party, which is hit under Section 46 of the CNT Act. The contention of the learned counsel that the lower appellate court had no jurisdiction to set aside the compromise decree passed in Title Appeal no. 3 of 1959 by usurping the power of appellate court is not tenable, as the transfer effected by the compromise decree is a fraud under the statute as it is in contravention of the provisions of the statute hence such a transfer cannot be held to be valid being a fraudulent transfer consequently such fraudulent transaction can be looked into by any court in appeal, revision or review thus, the contention of the learned counsel that the lower appellate court has committed a jurisdictional error by setting aside the compromise decree is without merit in the light of the discussions as made above.

15. In the backdrop of the discussions and the provisions of law, the questions so formulated are responded to accordingly in terms of the discussions made above. It is therefore held that:- (i) The compromise decree to the extent of admitting the status of the Bandhu Oraon to be the adopted son of Dhemna Oraon is legal and valid. (ii) The Compromise decree to the extent of allotment of 10(ten) annas share to the respondent is void being hit by Section 46 of the C.N.T Act.

16. The judgment of the lower appellate court is set aside and the appeal is allowed to the extent as discussed and indicated above.

17. Office is directed to prepare the decree accordingly. (Amitav K. Gupta,J) High Court of Jharkhand.Ranchi Dated: the 19 th August, 2016. Biswas.

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