

**Banamali Mahato
Vs.
Ram Singh Sardar & Ors.**

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Mr. Uttiya Ray
Mr. Arnab Mondal
... For the Appellant

The appellant is not represented, nor any accommodation is prayed on his behalf.

The appeal was presented in the year 2006. Thereafter, it was registered as SA 24 2022.

The appeal initially appeared in the list on 1st October, 2021 when the appellant was not represented and the then coordinate bench directed for listing the matter on 7th October, 2021 for dismissal.

Thereafter, this matter appeared on 9th September, 2022 and is appearing in the list since then.

Today, an adjournment is prayed for on behalf of the appellant. However, we are not inclined to grant such relief. We invite the appellant to argue the matter. Learned advocate appearing for the appellant, however, expresses his inability to proceed with the appeal. Therefore, We propose to decide the question of admission of the present second appeal on the basis of the materials available on record.

The judgment and decree of affirmation dated March 28, 2006 passed by the learned Additional District Judge, 1st Court, Purulia, in Title Appeal No. 44 of 2001 arising out of judgment and decree dated February 22, 2001 passed by the learned

Civil Judge(Junior Division), Purulia, in Title Suit No. 303 of 1991 is the subject matter of challenge in this appeal.

The plaintiffs' case is that the schedule 1 properties belonged to one Sonatan Singh Sardar, the father of the present plaintiffs in exercising his raiyati right cultivated in the suit properties and the said properties were duly recorded in R.S.R.O.R in the name of Sonatan Singh Sardar. During the lifetime of Sonatan he was in exclusive possession of schedule 1 properties along with other properties and after his death, the plaintiffs as heirs have inherited the suit properties and other properties.

The plaintiffs asserted that they have been cultivating the suit properties for more than 30 years openly as raiyat in assertion of their raiyati right adversely by denying the title and to the knowledge of all including defendant no. 1. On such basis, the plaintiffs claimed title.

On 1st May, 1991 the defendant no. 1 resisted the plaintiffs in cultivating the land and threatened to dispossess the plaintiffs from the suit properties. The plaintiffs contended that the defendant no. 1 has no right, title and interest in respect of schedule 1 property. Sonatan Singh Sardar never executed any deed in favour of defendant no. 1 in respect of schedule 1 property.

The defendant no. 1 and the defendant nos. 1 to 4 contested the suit by filing separate written statement. The defendant no. 1 contended that the plaintiffs are not in possession of any portion of the suit land within 12 years, prior to the filing of the suit. They have raised issue like the suit is barred by law under the provisions of Section 34 of Specific Relief Act and the suit is under valuation of the suit property.

It is stated by the defendant no. 1 that the suit land described in the plaint previously belonged to Sonatan Singh Sardar in tenure right and about 52 years back Sonatan settled the suit land to the father of the defendant no. 1, namely, Haripada Mahato. Sonatan alleged to have delivered the suit land to Haripada and since then Haripada was in possession thereof in exercising raiyati right. After the death of Haripada, his son, defendant no. 1, Sripati Mahato, Jyoti Mahato came over in ownership and possession of the suit land but during the time of such R.S operation, the suit land was erroneously recorded in the name of Sonatan Singh Sardar. As there were no document in favour of defendant no. 1, the defendant no. 1 along with his brother requested to execute a sale deed in their favour and for that they paid Rs.8,000/- to Sonatan and after receiving the said amount Sonatan registered a sale deed on 25.9.1970 in respect of the suit land and another land. According to defendant no. 1, Sonatan being misguided by some enemies, he filed an application before the Additional Deputy Commissioner, Purulia, under Section 46A(2) of the Chotonagpur Tenancy Act against the defendant no. 1 and his brother and subsequently Additional Deputy Commissioner was pleased to hold that the transaction was made beyond the mischief period of the said Act and dropped the said proceeding on the prayer thereby admitting right, title and interest of the defendant no. 1 and his brothers.

During the time of revisional settlement operation under the provisions of West Bengal Land Reforms Act, the land were recorded in the name of defendant no. 1 and his brother under R.S Khatian no. 127, 150 and 165. R.S.R.O.R was finally

published according to their respective shares. However, the plaintiffs did not prefer any appeal under Section 51A of the W.B.L.R Act against such finally published of record of right.

The defendant nos. 2 to 4 contended that the plaintiffs have no cause of action to file the suit and the same is barred by limitation.

It is the case of the defendants that the land in question originally belonged to predecessors of the plaintiffs vide case no. 32/84-85, the owner of the property by obtaining permission from Additional Deputy Commissioner, Purulia to sold the suit property in favour of defendant no. 1. During the initial stage of R.S operation, the property in question was recorded in the name of Sonatan. Banamali Mahato and others filed an objection under Section 51A(1) of the W.B.L.R Act for correction of record-of-rights and objection case no. 1 was started and after hearing both the parties passed an order in the said proceeding in the name of Banamali Mahato in place of Sanatan Singh Sardar. The present R.S Khatian no.127 of mouza Madhuban has been prepared in the name of Banamali. Therefore, the defendant no. 1 as well as the defendant nos. 2 to 4 have prayed for dismissal of the suit with cost.

In contesting the said matter both the parties adduced oral and documentary evidence. On the basis of the aforesaid evidence and the plaintiffs having failed to prove their right, title and interest in respect of the property in question and also having regard to the fact that the father of the plaintiffs have sole the property after the mischief period was over, the suit was dismissed.

The first appellate court has affirmed the said decree passed by the trial court with a modification

that the plaintiffs shall have their right to reagitate the matter before the Revenue Officer as per the provision of Section 14D read with Section 14E of the W.B.L.R Act regarding the alleged transfer dated 25th September, 1970 alleged to have been executed by Sanatan in favour of Banamali Mahato and others.

The reason for giving such right to the plaintiffs was that the learned Judge after considering all the facts including the order of the learned Additional Deputy Commissioner vide Exhibits B and C and also the impugned deed, Exhibit-A found that the Commissioner acted illegally because the impugned deed was executed on 25th September, 1970 after the W.B.L.R Act came into operation within Purulia district and admittedly there is a mandatory provision of Section 14D read with Section 14E of the W.B.L.R Act for determination regarding any transfer made by any schedule tribe person in favour of any non-tribal person.

In terms of the aforesaid provision, the Additional Deputy Commissioner of Purulia ought to have referred the matter to B.L & L.R.O as per provision of Section 14D read with Section 14E of the W.B.L.R Act, as the time of filing application by Sanatan in the year 1984-85 Chotonagpur Tenancy Act was not in operation in Purulia district but W.B.L.R Act already came into operation. It was a clear mistake that was noticed by the first appellate court in modifying the decree passed by the trial court.

Based on such consideration, we do not find any merit in the second appeal.

The second appeal is, therefore, summarily dismissed under Order XLI Rule 11 of the Code of Civil Procedure.

There will be no order as to costs.

(Uday Kumar ,J.)

(Soumen Sen, J.)