IN THE HIGH COURT OF JHARKHAND AT RANCHI
S.A. No.418 of 2016

1(i) Shanti Devi, Widow of Late Butnu Oraon
1(ii) Vindhyanchal Oraon, S/o Late Butnu Oraon (aged 16 years)
1(iii) Vindyani Kumari, D/o Late Butnu Oraon (aged 10 years)
1(ii) and 1(iii) represented through their mother Shanti Devi.
All R/o vill –Butti, P.O. –Senha, P.S. –Senha, District –Lohardaga.

.... …. Defendant/Respondent/Appellant

Versus

1. Fakira Oraon, Son of Late Piyo Mahto
2. Jog Oraon, Son of Late Piyo Mahto
3. Banua Oraon, Son of Late Piyo Mahto
   All are residents of Village-Butti, Domartoli, P.O. & P.S. –Senha, District –Lohardaga.

…. .... …. Plaintiffs/Appellants/Respondents

For the Appellants : Mr. Rajeev Ranjan Tiwary, Advocate
: Mr. Ranjit Kumar Tiwari, Advocate

PRESENT
HON'BLE MR. JUSTICE ANIL KUMAR CHOUDHARY

By the Court:- Heard the learned counsel for the appellants.

2. No one turns up on behalf of the respondents in-spite of repeated calls; though notice has been validly served upon the respondents. Hence, this appeal is heard *ex-parte*.

3. This second appeal has been preferred under Section 100 of Code of Civil Procedure against the judgment and decree of reversal dated 25.05.2016 passed by the learned Additional District Judge-I, Lohardaga in Title Appeal No.22 of 2013 whereby and where under, the learned first appellate court has allowed the appeal and set aside the judgment and decree passed by the learned Civil Judge (Senior Division) –I, Lohardaga in Title Suit No. 10 of 2001 dated 18.07.2013.

4. The plaintiffs filed Title Suit No. 10 of 2001 with a prayer for declaration that the defendant no.1 has got no right, title and

interest over the suit land and his possession over it is illegal. The plaintiff claimed the further relief that a decree for evicting the defendant no.1 from the suit land and that the plaintiffs be put in khas possession over the same through the process of the court. The plaintiffs further made prayer for declaration that Partition Deed dated 04.04.1973 executed and registered between Piyo Mahto and Bandhnu Oraon be declared null and void and the same be cancelled. The plaintiffs also made the prayer to declare that the present Survey Record of Rights in respect of Khata No. 114 village Booti, Lohardaga, finally prepared and published in the name of the defendant no.1 is incorrect, illegal and has no legal force.

5. The case of the plaintiff in brief is that the father of the plaintiff namely Piyo Oraon developed intimacy with the father of the defendant no.1 –Bandhnu Oraon. The father of the defendant Bandhnu Oraon with ulterior motive and in order to trap the father of the plaintiff namely Piyo Oraon used to provide him wine and Bandhnu Oraon secretly without the knowledge of the family members of Piyo Oraon took Piyo Oraon to Lohardaga and managed to transfer the suit land in his favour by virtue of the Partition Deed dated 04.04.1973. To overcome the restriction imposed by Section 46 of the Chota Nagpur Tenancy Act which requires prior sanction of the Deputy Commissioner for transfer of any land belonging to the Scheduled Tribes community, he got a partition deed executed between Piyo Oraon and Bandhnu Oraon on 04.04.1973 even though Bandhnu Oraon the father of the

defendant no.1 were neither co-sharer nor co-owner of the plaintiffs or their ancestors and Bandhnu Oraon has no share in the land appertaining to Khata No. 51 of village Booti. It is claimed by the plaintiffs that thus the said partition deed is *void-ab-initio* and no right title and interest accrued to Bandhnu Oraon by virtue of the said partition deed. After the death of both Piyo Oraon and Bandhnu Oraon, the defendant no.1 with the help of his mother and maternal grandfather dispossessed the plaintiffs from the suit land in the year 1976 on the strength of illegal and void deed of partition. The plaintiff no.1 filed a petition under Section 71A of the Chota Nagpur Tenancy Act for restoration of the suit land in S.A.R Case No. 7 of 1979-80. The same was rejected. The plaintiff no.1 preferred an appeal before the Deputy Commissioner, Lohardaga vide Appeal No. 79 of 1979-80. The Deputy Commissioner, Lohardaga set aside the order dated 11.10.1979 passed by the Special Officer in S.A.R. Case No. 7 of 1979-80 and remanded the case for fresh hearing and decision. The LRDC-cum-Special Officer, Lohardaga vide order dated 23.07.1992 restored the suit land to the plaintiffs and delivery of possession was given to the plaintiffs on 04.08.1992 by due process of law. The defendant no.1 came up with a false plea that the father of the plaintiff namely Piyo Oraon has two other brothers namely Laxman Oraon and Banuwa Mahto. The defendant no.1 tried to justify the deed of partition. The mother of the defendant no.1 Most. Kariyo Orain preferred an appeal in the court of Additional District Collector, Lohardaga vide Land Restoration Appeal No. 5 of 1992-93. The

Additional Collector allowed the appeal and set aside the order passed by the L.R.D.C., Lohardaga dated 23.07.1992 and directed the party to get the matter adjudicated by the competent civil court. Against the order dated 17.03.1993, passed by the Additional Collector, Lohardaga in Land Restoration Appeal No. 5 of 1992-93, the plaintiff no.1 filed Revenue Revision Case No. 196 of 1993 before the Commissioner, South Chota Nagpur Division, Ranchi. The Commissioner, South Chota Nagpur Division, Ranchi also observed that the parties may adjudicate the matter before the competent court of law; as the matter of title is involved. The plaintiff asserted that the defendant no.1 has no right, title and interest and prayed for the reliefs.

6. The defendant no.1 challenged the maintainability of the suit on various technical grounds including that the suit is barred by limitation. The father of the plaintiffs namely Piyo Oraon has accepted the right, title and interest of Bandhnu Oraon. A deed of partition is not a document of transfer as envisaged in Section 46 of the Chota Nagpur Tenancy Act. The defendant no.1 claimed that Laxman and Gahnu are brothers. The suit land was in possession of Bandhnu Oraon since the life time of Piyo Oraon. A settlement was arrived at between the plaintiffs and the defendant no.1 and it was decided in the meeting that the plaintiff no.1 will withdraw the case and in future, he will not bring any case, proceeding or suit with respect to the suit land. A *Panchnama* was prepared and signed.

7. On the basis of rival pleadings of the parties, the learned

trial court settled the following ten issues:-

(I) *Is the suit as framed maintainable?*
(II) *Have the plaintiffs got any valid cause of action for the suit?*
(III) *Is the suit bad for non-joinder of necessary parties?*
(IV) *Is the suit barred by limitation, waiver and estoppel?*
(V) *Whether the plaintiffs entitled to decree of declaration of right, title and interest over the suit property in their favour?*
(VI) *Whether the plaintiffs are entitled to get the recovery of possession of the suit property from the defendant no.1?*
(VII) *Whether the registered partition deed dated 04.04.1973 is invalid, illegal and liable to be cancelled?*
(VIII) *Whether the defendant no.1 or his ancestors is/was not the co-sharer or co-owner of the plaintiffs as defendant no.1 is not related to the plaintiffs in any manner?*
(IX) *Whether the present survey record of right in respect of khata no. 114 of village –Buti, P.S. –Lohardaga thana no. 166, District –Ranchi finally prepared and published in the name of the defendant no.1 is incorrect, illegal and without legal force?*
(X) *What other relief or reliefs the plaintiffs are entitled for?*

8. In support of his case, the plaintiffs examined altogether four witnesses and proved the documents which have been marked Ext. 1 to Ext.10A. On the other hand, from the side of the defendants, the defendant examined altogether three witnesses and proved the documents which have been marked Ext. A to Ext. G.

9. The learned trial court first took up issue nos. V, VI, VII and VIII together and after considering the evidence in the record came to the conclusion that the deed of partition clearly indicates that the defendant is the descendant of Laxman Oraon, who was the brother of Bhunwa Mahto and Gahnu Mahto and came to the conclusion that deed of partition executed by Piyo Oraon in favour of Bandhnu Oraon, father of the defendant no.1 is illegal and invalid and the claim of the plaintiffs for cancellation of the deed of partition is not tenable. The learned trial court next held that there

is no right, title and interest of the plaintiffs over the suit land and the plaintiffs are not entitled to get recovery of the suit land from the defendant no.1 and decided the issues against the plaintiffs and in favour of the defendant no.1. The learned trial court next took up issue no. IX and considering the materials in the record came to the conclusion that the entry of the name of defendant no.1 in the present Survey Khatiyan is a valid one and decided the issue against the plaintiffs. The learned trial court next took up issue nos. II, III & IV together and held that the suit land was in possession of Bandhnu Oraon since the lifetime of Piyo Oraon and that Kairo Orain ought to have been made party in the suit. Hence, the suit is bad for non-joinder of necessary parties and decided the issue nos. II, III & IV against the plaintiffs and in favour of the defendant no.1. Lastly, the learned trial court took up issue nos. I & X together and held that the suit is not maintainable in its present form and dismissed the suit on contest.

10. Being aggrieved by the judgment and decree passed by the learned trial court, the plaintiffs filed Title Appeal No.22 of 2013 in the court of Principal District Judge, Lohardaga which was ultimately heard and disposed of by the learned first appellate court by the impugned judgment and decree.

11. The learned first appellate court on the basis of the materials in the record and submissions made before it, made independent appreciation of the evidence in record and held that the burden of proving the title is upon the plaintiffs and also made independent appreciation of the evidence put forth by the D.W.1 and D.W. 3

came to the conclusion that Laxman Oraon the father of the defendant no.1 was not the son of Suna Mahto, who was the father of Gahnu Mahto. It is also observed by the learned first appellate court that had Laxman Mahto been the son of recorded tenant, Laxman Mahto would be entitled to half share in R.S. Khata No. 51 measuring 13.74 acres and went on to find fault with the learned trial court, that the learned trial court has failed to properly appreciate the evidence in the record and came to the erroneous finding that defendant is the legal heir and successor of Laxman Oraon. The learned first appellate court next took up issue no. VII as framed by the learned trial court. The learned first appellate court considered that since Laxman Oraon was alive in the year 1973, the deed of partition also creates a doubt as to when Laxman Oraon was alive, why deed of partition was executed in favour of his son Bandhnu Oraon. On the basis of the recitals of the partition deed, the learned first appellate court held that the partition deed was actually a deed of transfer of land and the same having been executed without any sanction of the Deputy Commissioner, the same is an invalid one. The learned first appellate court held that since the suit was filed after the Commissioner, South Chota Nagpur Division observed that that the parties may get their dispute adjudicated by the competent civil court, hence the suit is not barred by limitation. Further the learned first appellate court held that the period of limitation for filing of the suit for recovery of immovable property belonging to Scheduled Tribes was enhanced to 30 years, hence the suit of the plaintiffs is not barred

by law of limitation and set aside the judgment and decree of the learned trial court.

12. The learned predecessor Judge in roster vide order dated 03.10.2018 formulated the following three substantial questions of law: -

> *"I. Whether the learned Lower Appellate Court has committed error of law in holding that onus lies on the defendant to prove that Laxman Oraon was brother of the recorded tenant whereas in Partition Deed the recorded tenant has himself accepted the said fact?*
> *II. Whether the Learned Lower Appellate Court has committed error in construing the partition deed and holding that the same is Deed of Transfer?*
> *III. Whether the Learned Lower Appellate Court has rightly appreciated the law of limitation as applicable in the facts of the present case?"*

13. It is submitted by the learned counsel for the appellants that the learned first appellate court has committed a gross illegality by overlooking the fact that as the partition deed which was marked Ext. B from the side of the defendants and Ext.9 from the side of the plaintiffs, has in no uncertain manner goes to show that the same was out and out a deed of partition; it was not open for the descendants of the executant of the said sale deed to challenge its validity. So far as the second substantial question of law is concerned, it is submitted that the lower appellate court committed an error in construing the partition deed by holding that the same is a deed of transfer and that resulted in all the confusions arising in the suit. It is next submitted that the undisputed fact being that the deed of partition came into force in the year 1973 and all concerns were also aware about the same, so certainly the first appellate court failed to consider that the suit is barred by limitation having been filed after several years and for the first

time challenged the genuineness of the said partition deed. Hence, it is submitted that the said substantial question of law be answered in favour of the appellant and the judgment and decree passed by the learned first appellate court be set aside and the judgment and decree passed by the learned trial court be restored.

14. Having heard the submissions made at the Bar and after carefully going through the materials in the record, it is pertinent to mention here that the main difference between a partition deed and a deed of transfer is that a partition deed divides a jointly owned property between co-owners; whereas a deed of transfer conveys the title of a property from one person to the other person. Now coming to the facts of the case, the Ext.9 and Ext. B which are the Exhibits in respect of the same document, the perusal of the said Ext.9 and Ext. B reveals that in the recital of the same, it has been mentioned that the deed in question is a deed of partition and therein, it has been also mentioned that the deed in question is a deed of partition and therein it has been also mentioned that the Piyo Mahto and Bandhnu Mahto are brothers and the property in question in respect of which partition was effected belongs to them jointly. This Court do not find any material in the record to support the observation of the learned first appellate court that the recital of the Ext.9 and Ext.B goes to show that the same is a deed of transfer. So certainly, the learned first appellate court has committed a grave error by holding that Ext. 9 and Ext. B is not a partition deed, rather it is a deed of transfer. So once it is accepted that Ext.9 which has also been marked as Ext. B is a deed of

partition, which undisputedly bears the recital that Piyo and Bandhnu were brothers, this Court has no hesitation in holding that the learned first appellate court committed a grave error by deciding otherwise, as it was upon the defendants to prove that Laxman Oraon was brother of the recorded tenant in view of the admission by both Piyo and Bandhnu Oraon that they are the brothers. Hence, the point for determination nos. I & II are answered in the affirmative.

15. So far as the third substantial question of law is concerned, perusal of the record reveals that the cause of action as pointed out by the plaintiffs in the suit goes to show that the parties were aware about the partition deed marked Ext. 9 & B respectively from 04.04.1973 and the same could have been declared null and void only by a competent civil court and not by any revenue court. So the suit for declaring the same null and void having been filed as *void ab initio* and illegal document for the first time on 22.05.2001, in the considered opinion of this Court makes the suit hopelessly barred by limitation. Similarly, the cause of action for the prayer to declare the defendant no.1 or their ancestors were not the co-sharers or co-owners of the plaintiffs and the defendant no.1, arose with the execution and registration of the partition deed marked Ext.9 and Ext. B respectively. So, the said relief is also barred by limitation. Now the prayer at serial no. D of the plaint, for declaration that the present Survey Record of Right be finally prepared and published in the name of the defendant no.1 is incorrect, illegal and got no legal force and is also barred by

limitation as in para-16 of the trial court judgment dated 18.07.2013 in Title Suit No. 10 of 2001, it has categorically been mentioned that the admitted case of the parties is that the present Survey was published in the year 1992 and the suit was filed in the year 2001. Hence, this prayer is also barred by limitation and the learned first appellate court committed a grave illegality by overlooking that the prayers as already indicated above made in the suit are barred by limitation. So, the point for determination no. III is also answered in the affirmative.

16. In view of the discussions made above, as all the three substantial questions of law have been answered in the affirmative, this Court is of the considered view that the impugned judgment and decree passed by the learned first appellate court is not sustainable in law.

17. Accordingly, the judgment and decree passed by the learned first appellate court is set aside and the judgment and decree passed by the learned Civil Judge (Senior Division) –I, Lohardaga in Title Suit No. 10 of 2001 is restored.

18. Accordingly, this second appeal is allowed *ex-parte.*

Let the copy of the Judgment along with the Lower Court Records be sent to the learned court below forthwith.

(Anil Kumar Choudhary, J.)

High Court of Jharkhand, Ranchi
Dated the 16th December, 2024
AFR/ Sonu-Gunjan/-