IN THE HIGH COURT OF JHARKHAND, RANCHI
S.A. No.366 of 2015
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1. Nihar Bala Mishra

2. Shakti Pada Mishra

3. Sasanka Sekhar Mishra

Appellant No.1 is the wife and appellant No.2 and 3 are the sons of Late Tara Pada Mishra,

All are resident of Ward No.2, PO and PS – Seraikella, District – Seraikella- Kharsawan

4. Minati Panigrahi, wife of Sri Dilip Panigrahi, daughter of Late Tara Pada Mishra, resident of RIT Adityapur, PO and PS – Adityapur, District – Seraikella – Kharsawan

.... Appellants

-- Versus --

1. Prabodh Kumar Sahu, wrongly written as Pramod Kumar Sahu in certified copy of judgment in T.A. No.34 of 2007 but correctly written in certified copy of decree of T.A. No.34 of 2007, son of Late Bindeshwari Prasad Sahu

2. Subode Kumar Singh, son of Late Bindeshwari Prasad Sahu

3. Ambica Charan Sahu, wrongly written as Ambica Chara Sahu in certified copy of decree of TA No.34 of 2007 but correctly written in certified copy of judgment of TA No.34 of 2007, son of Late Bindeshwari Prasad Sahu

4. Rati Lal Sahu, son of Late Bindeshwari Prasad Sahu

5. Jyoti Lal Sahu, son of Late Bindeshwari Prasad Sahu

6. Sakuntala Sahu, daughter of Late Bindeshwari Prasad Sahu

7. Arti @ Asha Sahu, daughter of Late Bindeshwari Prasad Sahu, resident of C/o Late Bindeshwari Prasad, Ward No.5, Seraikella, PO and PS – Seraikella, District – Seraikella-Kharsawan

8. Sushim Kumar Sahu, son of Late Bindeshwari Prasad Sahu

Appellate No.1 to 5 and 8 are the residents of Ward No.5,

Seraikella, PO and PS -Seraikella, District – Seraikella-Kharsawan, and appellant No.6 is the resident of Bhuneshwar, PO and PS – Bhuneshwar, District – Bhuneshwar (Orissa), appellant No.7 is the resident of New Delhi (Full address has not been given either in certified copy of judgment or in certified copy of decree) **.... Respondents**

CORAM: HON'BLE MR. JUSTICE SANJAY KUMAR DWIVEDI

For the Appellants :- Mr. Ram Chandra Prasad Sah, Advocate
For the Respondents :-

11/***29.04.2026*** This second appeal has been preferred against the judgment and decree dated 20.04.2015 (decree signed on 01.05.2015) passed by learned District Judge-1st, Seraikella in Title Appeal No.34 of 2007 dismissing the appeal and affirming the judgment and decree dated 29.09.2007 (decree signed on 09.10.2007) passed by learned Munsif, Seraikella in Title Suit No.07 of 2003 whereby the suit was allowed and decreed.

2. Mr. Ram Chandra Prasad Sah, learned counsel appearing for the appellants submits that law point is there with regard to res-judicata for admitting the second appeal and in view of that this second appeal may kindly be admitted.

3. From the judgments of learned Courts, it transpires that the case of plaintiffs/respondents was that the plaintiffs son was running his Huller Machine business over the land purchased from Mitrabhanu Khandwal and since plot No.92, the vacant area of plot was lying unused, the plaintiffs constructed a Challa which was being used by the plaintiffs son for business purpose to keep his

article and also for rest of the customers and to keep Bullock Carts etc. in the case of emergency. During the year 1983, sometime the defendants who is a resident of village Ramchandrapur and finding the said portion of the plot No.92 lying vacant wanted to erect the wall and since the plaintiffs was occupying the said area from earlier as a started above. Ratilal Sahu son of plaintiff protested to such act of defendant and admittedly a proceeding U/S 144 Cr.P.C. in between Ratilal Sahu and defendant was instituted. There was a 107 Cr.P.C. case also. Bindeshwari Prasad Sahu filed a suit for eviction on ground of land-lord and tenant since after 1983-84. The said eviction suit was filed numbered as Title Eviction Suit No. 03/90. The said suit was decided by then Sub-Judge, Seraikella, and the suit was dismissed as because no relationship was established as landlord and tenant. The Court of learned Sub-Judge in his judgment had given observation that parties may file suit on the basis of their respective title. A title appeal No. 08/83 was filed the title appeal No.08/93 was decided on 2002 by the then Addl. District Judge with some observation then the plaintiffs filed the present suit in 2003. In the meantime, a title suit No.51/85 was filed in the Court of Sub- Judge, Seraikella pronounced and delivered his judgment with respect to land of khata No.22 plot No.92 sold by Raja Satyabhanu Singhdeo in favour of the present plaintiffs and others. Said title suit No. 52/85 was dismissed on contest. All issues were decided in favour of the defendants Satyabhanu Singhdeo and others. There by right, title of the original owner khewatdar of

khata No.22 and the sales and alienation of the property in plot No.92 had to be held to be legal and rightful. The plaintiffs have got his village right, title and interest over the suit house and properties as per valuable decision of the two successive Court decision. On the other hand, the defendants have in no manner having any right, title and interest what so ever and his possession is of mere occupied the permissive possession. His plea of adverse possession has been turned down by the decisions of the Court of Sub-Judge, Seraikella, Court. The defendant has no right to continue his legal possession in the said suit land and house. The cause of action arose in month of August 2002 and January 2003 at Seraikella within the jurisdiction of this Court. The suit was valued at Rs.28,500/- for the purpose of Court and Jurisdiction the Court fee is paid here in. And pray for following reliefs :-

a) for declaration of plaintiff's right, title, interest over the suit land and house situated thereon on the basis of Title deeds and other documents and decisions of the Court.

b) for a declaration that defendant has absolutely no right, title and interest in the suit land and house.

c) for recovery of khas possession by evicting the defendant from the suit house and area of suit land by the process of law.

d) for cost of this suit.

e) for any other relief or reliefs to which the plaintiffs

is found to be entitled.

SCHEDULE.

Mauza Seraikella, Municipal Town Ward No.2, Indratandi, Thana No.301. Khata No. 22, plot No.92 portion area 0.09 dec. only bounded By :-

North - portion of plot No.92.

South - portion of plot No. 92.

East - Makan of plaintiff.

West - Portion of plot No. 92.

Total area as stated with a bricks built khapraposh house in portion of the said area. Corresponding to old plot No.611 of Survey Records of 1925-27.

4. The case of the defendants was in view of the judgment of learned Court that if any such sale deed executed and registered by Satyabhanu Singhdeo in favour of plaintiffs and his wife Jasoda Devi as alleged in para-4 of the plaint causing an area of 0.22 dec. in plot No.92/Andar are null and void and not valid under the law of land as the sevyat has got no power to sale the property of Indradeo. The plaintiffs and his wife are actual physical possession of the purchased land are also false and baseless, All mutation proceeding have been done by the Municipality of the aforesaid deed in that case those mutations are also invalid in the eye of law. The actual case of the defendant is that defendant stepped into possession of the 10 dec. of land in the Western extremely of the said of the plot No.92 which is morefully described in the Schedule

of the written statement in the year 1971 adversely and openly to the knowledge of all including the Sevayat Satyabhanu Singhdeo and constructed a residential house there in over 0.03 dec. and used to possess the rest 0.07 dec. as Angan and the entire area was covered by fence which is still in existence. And in that contents defendant acquired title by prescription and adverse possession and both parties are involved in proceeding U/S 144 Cr.P.C. And further stated that earlier plaintiffs filed a suit Under B.B. (L.R.& E.) Control Act, in the Court of Sub-Judge-II which is registered as title eviction suit No. 03/90 on false allegation that the defendant was the monthly tenant under the plaintiffs for the house situated in the suit premises. And the defendant used to pay Rs.10 per month as rent to the plaintiffs and the aforesaid suit was dismissed on 30/09/93. And after that plaintiffs filed an appeal before the District Judge, Seraikella and the same was dismissed on 27/06/02. Both the lower Court in eviction suit 03/90 and also the appellate Court in eviction appeal No. 08/93 give their respective verdict on the point of law and also decided option for filing a regular title suit subject to law of limitation. And the same is this suit is barred by law of limitation. The plaint will not help the plaintiffs to succeed in the present suit by taking the advantage of the decree passed in T.S. No.52/85 and the claim of the plaintiffs is also barred by res-judicata and law of limitation. And pray that the suit of the plaintiffs is liable to be dismissed with cost.

SCHEDULE.

Ward No. 2, Seraikella Municipality, P.S. Seraikella, Anchal Seraikella, District -Sereikella-Kharsawan, khata No. 22. plot Ho.92/A measuring an area of 0.10 dec. in the eastern extremity of plot No.92 having a residential house therein over 0.03 dec. of land bounded by North-South, East and West-Nij and 0.07 dec. of land used as Angan by the defendant bounded by North and South Remaining portion of plot No.92, east-plot No.84 and Went-remaining portion of plot No.92.

5. The learned trial court has framed altogether 17 issues to decide the said suit. Issue Nos.5, 6, 7, 8, 10 and 11 were interlinked and in view of that those issues have been taken simultaneously by the learned trial court.

6. After discussing the oral and documentary evidence, the trial court further found that the defendants have taken the plea on adverse possession against two owners was not proved and it was submitted that in Title Suit No.52/85, the Court of Sub-Judge pronounced and delivered his judgment with respect to the land of Khata No.22 and plot No.92 which was sold by Raja Satyabhanu Singhdeo in favour of the plaintiffs and the said Title Suit No.52/85 was dismissed on contest and all issues were decided in favour of the defendants Satyabhanu Singhdeo and Others and those judgments have been brought as Ext. 5 and 5/1 and also sale deed has been filed by the plaintiffs and proved by the plaintiffs which is marked as Ext.1 and 1/1.

7. Learned trial court considering the entire materials, the

argument for admitting the second appeal advanced by Mr. R.C.P. Sah, learned counsel appearing for the appellants has taken care of by learned trial court and after perusal of the entire materials available on the record and considering Section 11 of CPC, the learned Court has found that defendants stated in paragraph No.6 of their written statement that Eviction Suit was filed by the plaintiffs against the defendants and the suit was dismissed. The subsequent appeal filed by the plaintiffs was also dismissed by learned 1st Additional District Judge, Seraikella and hence the present suit was barred by constructive res-judicata. In this regard, the learned Court has opined that eviction suit was filed and the same was dismissed with observation that the landlord and tenant relationship had not been proved. The learned Court noted that the plaintiff was directed to file a regular title suit then after title appeal was filed and the same was dismissed with the same observation. Thereafter, the plaintiff filed the title suit. In view of these facts the learned Court has held that the claim of the defendant that the case is barred by res-judicata as not maintainable because the appeal is the continuous of the suit. In view of the observation made in the earlier suit, the plaintiff has filed the regular title suit and further thereafter discussing the evidences the said issues have been decided in favour of the plaintiff. The adverse possession aspect has also been dealt with by the learned trial court elaborately and thereafter the learned trial court has been pleased to decree the suit on contest with cost which has been challenged by the

appellants herein in Title Appeal No.34 of 2007 which was dismissed by the judgment dated 20.04.2015 affirming the judgment of learned trial court. Learned appellate court has further framed the point to decide the said appeal and has answered the same by way of discussing the evidences on the record.

8. In the course of argument further no perversity has been shown to interfere with the concurrent findings of two courts. It is well settled that in the second appeal the High Court is not required to deal with the evidences and only on the substantial question of law the second appeal can be admitted.

9. What has been argued by Mr. Sah, learned counsel appearing for the appellants for admitting the second appeal have been dealt with by both the courts and cogent reason has been given of not accepting the said plea of res-judicata.

10. There is no illegality in the finding of both the Courts. Accordingly, this Second Appeal is hereby dismissed.

(Sanjay Kumar Dwivedi, J.)

Dated 29.04.2026
Sangam/