

IN THE HIGH COURT OF JHARKHAND AT RANCHI

C.M.P. No. 63 of 2019

1. Shankar Tiwary
2. Karesh Tiwary
3. Amresh Tiwary
4. Kamlesh Tiwary
5. Ganga Tiwary
6. Ashok Tiwary

... ... Petitioners

Versus

1. Amerika Mahto
2. Most. Kaushilya Kuer
3. Jagatu Mahto
4. Rajeshwar @ Rajeshe Mahto
5. Sudheshar Mahto
6. Most. Manyu Kuer
7. Anil Mahto
8. Sunil Mahto
9. Smt. Rajmati Devi
10. Punam Kumari
11. Basanti Devi
12. Monmati Devi
13. Sheo Kumar Mahato
14. Jugeshwar Mahto
15. Mahendra Mahto
16. Brahmdeo Singh
17. Rameshwar Tiwary
18. Rameshar Tiwari
19. Pravesh Tiwari
20. Prabhawati Devi
21. Chandrawati Devi
22. Sharja Devi
23. Usha Devi

... ... Opp. Parties

CORAM: HON'BLE MR. JUSTICE RAJESH KUMAR

For the Petitioners : Mr. R.N. Prasad, Adv.
For the Opp. Parties :

The matter was taken up through Video Conferencing. Learned counsel for the parties had no objections with it and submitted that the audio and video qualities are good.

05/10.09.2021: Present civil miscellaneous petition has been filed for restoration of S.A. No.306 of 2016 which has been dismissed for non-prosecution vide order dated 31.10.2018.

From perusal of the record, it appears that present petitioners, who are the suiters, have filed a suit being Title Suit No.49 of 1993 for declaration of right, title and interest along with confirmation of the possession of the plaintiffs over the suit land of Khata Nos.10 and 13 containing various plots as mentioned in the schedule of due plaint having an area of 10.72 acres and 9.51 acres respectively of village Semari district Palamau.

From the pleadings, it appears that the property in question has been purchased by the predecessor of the plaintiffs in the year 1936-37 and thereafter, partition took place in the year 1945 among three brothers and it is claimed by the plaintiffs that they were allotted all the said property and they are in continuous possession of the suit land. The said suit land has wrongly been sold by one of the defendants namely, late Bhageshwar Tiwari in the year 1952 to Rampado Ghosh, who is not the party in the present suit. It has been claimed that Rampado Ghosh has never in possession of the land and he has abandoned the same. Thereafter, again Bhageshwar Tiwari sold the land to the defendant Nos. 1 to 5 in the year 1973 through registered sale deed. Thereafter, dispute has arisen between the parties in the year 1992 and accordingly, proceeding under Section 144 Cr.P.C. has been initiated. Subsequently, instant suit being Title Suit No.49 of 1993 has been filed.

The court below has framed the following issues for consideration:-

- I. *Is the suit maintainable in its present form?*
- II. *Have the plaintiffs any valid cause of action for this suit?*
- III. *Have the plaintiffs subsisting right, title and possession over the suit land by virtue of adverse possession and whether their possession is liable to be confirmed?*
- IV. *Has Bhageshwar Tiwari any right, title and possession over the suit land to execute the sale deed in favour of defendants after he sold the suit land to Rampado Ghosh?*
- V. *Are the plaintiffs entitled for reliefs claimed?*
- VI. *To what relief or reliefs if any the plaintiffs are entitled to?*

Counsel for the petitioners has assailed the issue Nos.III and IV and submitted that the court below has specifically given finding regarding the Issue No.III, which is quoted herein below:-

Considering the oral and documentary evidence adduced by the parties and submissions made by learned counsels for the parties, I find and hold that the plaintiffs have no right, title and possession over the suit land by virtue of adverse possession, so their possession cannot be confirmed. From the discussion made herein above, it is also clear that Bhageshwar Tiwari had already executed a sale deed in respect of suit land in 1952 in favour one Rampado Ghosh. Accordingly, I find and hold that Bhageshwar Tiwari had no right, title to execute sale deed in favour of defendants after he sold the suit lands to one Rampado Ghosh. Hence, both these issues are hereby decided accordingly.

Being aggrieved with that, the petitioners have filed Title Appeal being Title Appeal No.61 of 2003. Learned Appellate Court has framed two points for consideration, which is quoted hereinbelow:-

- Point No.I-** *Is the suit maintainable in its present form?*
Point No.II- *Have the plaintiffs any valid cause of action for suit?*

Both the points have been decided against the suiters.

Being aggrieved with that, a Second Appeal being S.A. No.306 of 2016 has been filed by the suiters/appellants before this Court and ultimately it has been dismissed, as not pressed vide order dated 31.10.2018.

For restoration of S.A. No.306 of 2016, present civil miscellaneous petition has been filed.

Heard counsel for the petitioners on the point of substantial question of law in the present second appeal.

The only point raised before this Court is that the Issue No.III has not been decided properly and that cannot be a substantial question of law.

Since there is no substantial question of law involved in the present second appeal, restoring the same will not serve any purpose.

Accordingly, this civil miscellaneous petition is hereby, dismissed.

Pending I.A., if any, also stands dismissed.

(Rajesh Kumar, J.)