

IN THE HIGH COURT OF JHARKHAND AT RANCHI

S.A. No.494 of 2015

1. Brajendra Nath Mahto

2. Bhushan Mahto

..... Appellants

Versus

1. Raghunath Singh Munda

2. Gour Singh Munda

3. Jagarnath Singh Munda

4. Balram Singh Munda

5. Deputy Commissioner, Ranchi

..... Respondents

CORAM: HON'BLE MR. JUSTICE RAJESH KUMAR

For the Appellants

: M/s A.K.Mehta, Nikhil Ranjan

For the Respondents

: Mr. Atanu Banerjee, Advocate

06/Dated: 27/08/2018

I.A. No.5264 of 2015

The present interlocutory application has been filed for condoning the delay of 88 days in preferring the appeal.

The reason for condonation of delay has been explained in paragraphs 3 to 7.

Learned counsel for the private respondent has objection to such prayer, however, learned counsel for the State has no objection.

In view of the above submission and reason assigned in the I.A., the delay in filing the present appeal is condoned.

I.A. No.5464 of 2015 stands allowed.

I.A. No.6940 of 2017

Heard learned counsel for the parties.

From the findings recorded by both the courts below, it is evident that the defendants-appellants are in possession of the suit land since 1938. Some portions of the land are under cultivation and some are for residential purpose.

In view of the above factual position, possession of defendants has to be protected because there is prima facie case, balance of convenience are in favour of appellant and further if no protection is given, irreparable loss and injury will be caused to the defendants.

In view of the above facts, let the status quo as of today be maintained during pendency of the present appeal, so far as possession is concerned.

I.A. No.6940 of 2017 is disposed of.

S.A. No.494 of 2015

Heard learned senior counsel for the appellants.

Concurrent findings has been recorded by both the courts below that the appellants-defendants are in possession of the suit land since 1938.

In that view of the matter, the present second appeal is **admitted** on following substantial question of law.

1. *Whether both the learned courts below have committed an error in law in holding that the suit of ejectment filed by the plaintiff/respondent/respondent was not barred by limitation?*
2. *Whether the entry in the record of right is a conclusive proof of what it states in the light of the provisions contained in Section 256 of the Chotanagpur Tenancy Act, 1908 and in absence of any entry in the records of rights that the suit lands are Mundari Khutkatti lands, no contrary oral evidence would be tenable and therefore both the courts have erred in decreeing the suit wrongly?*
3. *Whether the view of the fact that the suit lands falling under Khata No.38, R.S. Plot No.2035, measuring an area of 38 Decimals in Mouza-Ulilohar, which are continuously coming in possessions of the defendants since 1938 upon settlement by Sada Hukumnama and on payment of rent (Ext. C to C/15), the learned courts below are justified in law to hold that the occupation of the defendants is illegal being contrary to law?*
4. *Whether both the courts below have erred in law in having failed to take into consideration that the suit filed by the plaintiffs is hit by the principles of Res-Judicata/*
5. *Whether the suit filed by the plaintiffs in the year 2007 for declaration of title and confirmation/recovery of possession of possession from the defendants in respect of lands on which defendants are coming in possession since 1938 is barred by limitation under Article 65 & 65 of the Limitation Act, 1963.*
6. *That the appellant reserves his rights to raise further grounds at the time of hearing of the appeal.*

All the respondents have appeared, therefore, no notice is required to be issued.

Call for LCR.

(Rajesh Kumar, J.)

Shahid/