
(1926) 06 PAT CK 0027
In the Patna High Court

Ajodhya Prasad and Others

APPELLANT

Vs

Ramkhelawan Singh and Others and Daulat Singh and Others

RESPONDENT

Date of Decision : 09-06-1926

Acts Referred:

Estates Partition Act, 1897 — Section 119
Limitation Act, 1908 — Article 14

Citation : AIR 1926 Patna 421 : 96 Ind. Cas. 632

Hon'ble Judges : Bucknill, J;Adami, J

Bench : Division Bench

Judgement

Bucknill, J.—This was a second appeal from a decision of the Additional District Judge of Patna, dated the 30th July, 1923, by which he confirmed a judgment of the Munsif of Barh, dated the 29th June, 1922.

2. The facts of the case so far as they are before this Court appear to have" been very simple.

3. The plaintiffs brought a suit on the 20th October, 1921, against three sets of defendants; the second party and third party defendants need not be considered as of importance for the purposes of this appeal.

4. The allegation put forward by the plaintiffs was that they had been dispossessed of two pieces of land known as Plots" Nos. 2242 and 2735 which properly appertained to Mauza Marachi Bhagat Ekhtiyarpur; that this dispossession had come about owing to the fact that in a partition of an adjoining mauza known as Marachi Bariar, the first party defendants had been wrongly allotted these two plots of land which in fact did not belong to Mauza Marachi Bariar at all. It may be convenient here to say that the tauzi number of the village Marachi Bhagat Ekhtiyarpur was 86 and that of Marachi Bariar 641. The plaintiffs claimed the following principal reliefs:

(1) hat on adjudication of their title the Court might be pleased to declare that the two plots in question lay in Mauza Marachi Bhagat Ekhtiyarpur; that they

were the plaintiffs' bakasht lands in that mauza and that the defendants had no right or title in connection therewith; and

(2) that the Court should be pleased to award the plaintiffs direct possession of the two plots on ouster of the first party defendants.

5. Now, for a number of years a slow partition--a Collectorate butwara?had been taking place in the Mauza Marachi Bariar; it would appear that these partition proceedings had commenced so long ago as 1906; they did not end until 1915. It will be seen that, as a result of this partition proceeding, Plots Nos. 2242 and 2735 were in some way or other allotted as if they appertained to Mauza Marachi Bariar to the defendants first party delivery of possession appears to have taken place on the 31st May and 11th June, 1915, respectively. During the period occupied by this partition proceeding it would appear that a Cadastral Survey took place sometime in or about 1910 or 1911 and there seems no doubt that in the Cadastral Survey the two plots seem to have been entered as part of Tauzi No. 641; but it is contended by the plaintiffs that that entry was wrong and wrongly obtained. On the 17th July, 1912, the plaintiffs filed a petition in the butwara proceedings asking that Plot No 2242 should be included in their takhta, because they (the plaintiffs) were in possession thereof; however, somewhat later, that is to say, on the 8th September, 1913, another petition was filed by the plaintiffs pointing out that their previous petition had been discovered to be completely in error and that, as a matter of fact, both Plots Nos. 2242 and 2735 did not belong to Tauzi No. 641 at all, but should be excluded therefrom. It is not clear that any notice of any sort was taken of the petition. At a later stage of this judgment I will refer in some detail to the manner in which the learned Additional District Judge has dealt with what is supposed to have taken place at the butwara proceedings with regard to these two plots of land. It is sufficient to state that, as I have already mentioned, these two plots were allocated to the first party defendants as if they did appertain to Tauzi No. 641, Mauza Marachi Bariar. The suit was then brought by the plaintiffs some years afterwards for the reliefs which I have already named.

6. The Munsif of Barh found in favour of the plaintiffs and his decision was affirmed by the Additional District Judge of Patna.

7. Now, there are only two points raised by the learned Advocate, who appeared for the appellants, here. The first of these points is that the period of limitation which applies to a suit of this kind is governed by Article 14 of the Schedule to the Limitation Act, 1808, that is to say, that under that Article a suit such as this must be brought within one year of the date of the act or order of an officer of Government in his official capacity not otherwise expressly provided for by other Articles of the Schedule or by the Act itself. In this case, however, there was no act or order, in my opinion, which could be regarded as bringing the period of limitation within the purview of this Article 14.

8. The second point which was put forward by the learned Advocate who

appeared for the appellants was that u/s 119 of the Estates Partition Act, it was not possible for the plaintiffs to bring a suit to set aside anything which had taken place under the partition unless they did so under the proviso to that section which proviso, however, could not be brought into effect under the circumstances of the present case. The material provisions of this section read thus:

Section 119.--No order (a) refusing to admit an application for partition, or to carry out a partition, on any of the grounds mentioned In Section 11; or (b) made u/s 20, Section 30, Oh. V, Ch. VII, Ch. VIII, Ch. IX (except Section 81), Ch. X, Section 107 or Section 117, shall be liable to be contested or set aside by suit in any Court, or by any means other than those expressly provided in this Act: Provided that (i) any person claiming a greater interest in lands which were held in common tenancy between two or more estates than has been allotted to him by an order u/s 84 or Section 86; or (n) any person who is aggrieved by an order made u/s 88, may bring a suit in a Court of competent jurisdiction to modify or set aside such order.

6. The learned Advocate contends that there has been no order u/s 88 of the Act which is the only possible section which could apply to what took place in this case; and that by the very allocation by the Collectorate of these two plots of land to the defendants first, party, the plaintiffs have no recourse to or remedy in any Civil Court. I must admit that I think that this, is a fallacious argument. If, as is contended here, property which did not fall in any way within the estate which was being partitioned was allocated to one of the persons who was a party to the partition proceedings, it seems to me incredible to suggest that the person to whom that property so allocated rightly belonged could not within 12 years from the date when his right of action accrued bring a suit for a declaration of his title and, if necessary for recovery of possession of that land in question; and, indeed, I would go a step further and say that it matters not whether such claimant was an outsider, that is to say, a person who was not a party to the partition proceedings, or a person who was a party to the partition proceedings.

7. In the case of Janaki Nath Chowdhry v. Kali Narain Roy Chowdhry 7 Ind. Cas. 881 : 37 C. 662 : 15 C.W.N. 45 this proposition is clearly laid down by Mookerjee and Teunon, JJ. Their Lordship's there-observed that if in the course of a partition proceeding any question arose as to the extent or otherwise of the tenure, the tenure-holder not being a party to the proceedings, he was not affected in any manner by the decision which might be arrived at by the Revenue Authorities for the purpose of partition between the proprietors and that it would be unreasonable to hold that a party who appeared before the Revenue Authorities in his character as a proprietor should be finally concluded by a decision upon a question of title, which would not have been binding upon, him, if he had been a stranger to the proceedings.

8. Now, the learned Advocate, who has appeared for the appellants here has quoted to us a considerable number of cases of which the general trend has been

to insist upon the importance of the bar presented by Section 119 of the Estates Partition Act. The case which perhaps most strongly supports this proposition is perhaps that of Gurbaksh Proshad Tewari v. Kali Prasad Narain Singh 32 Ind. Cas. 167 : 19 C.W.N. 1322 In that case, where a party to a partition proceeding objected during the proceedings only to the mode in which the partition was being made but never took any objection that land outside the limits Of the property which was being partitioned was being included wrongly in the estate and where the final order for partition was made without such objection, that party was precluded, under the provisions of Section 119 of the Estates Partition Act, from bringing a suit for a declaration of title in his favour and, for recovery of possession of land which in the suit for the first time he declared belonged to him and did not appertain to the estate which alone should have rightly been partitioned. In the other-cases, which were quoted by the learned Advocate we find that the party seeking to bring a suit which would affect the final partition award is generally found to have brought forward his objections during the course of the butwara proceedings and in effect to have had a substantive adjudication thereupon.

9. Now, it is, therefore, I think at this stage important to ascertain, so far as is possible, whether there really was any adjudication upon this question of the plaintiffs' claim with regard to these two plots of land, I do not think that I can do better than quote on this point from the decision, of the Additional District Judge. He says: "As to the form of the suit, it was one for declaration of right and for recovery of possession of the two plots of land in suit, on the ground that it appertained to Tavzi No. 86 {Mauza Maraehi Bhagat Ekhtiyarpur) lakheraj and had been in the possession of the plaintiffs on private partition with defendants third party, co-owners of the 2-annas patti to which the lands in suit had been allotted on a previous Civil Court partition effected in a suit (another suit with regard to that mauza). I fail to see how on the suit as framed, the suit would not lie in the Civil Courts, or how Section 119 of the Estates Partition Act would oust the Civil Courts of their jurisdiction. Nor do I see how Article 14 of the Limitation Act would apply to the facts of the present case. The suit was not one brought to set aside the order of the Collector nor is there anything to show that any orders had, as a matter of fact, been passed u/s 88 or any action under the provisions of the said section (with regard to these two plots of land) had been as a fact taken by the Collector."

10. All that the appellants could produce is Ex. A, petition with raibandi put in on behalf of the plaintiffs during the Collectorate butwara proceedings on the 17th July, 1912, praying for being allotted a iakhta to contain Plot No. 2242 amongst others as plaintiffs were in possession thereof. This petition and raibandi were, however, discovered to have been a mistake and the plaintiffs put in a petition on the 8th September, 1913, Ex. 5, stating that Plot No. 2242 really appertained to their lakheraj property No. 86 and never formed a part of the revenue-paying estate which was being partitioned.

11. The appellants did not put in any further evidence to show that any action of the several kinds laid down in Section 88 were thereupon taken by the Collector or that any inquiry was made, or any report submitted by the Deputy Collector mentioning the existence of any dispute or doubt; apparently no serious notice of the petition had been taken as it (seems to have been) filed after the Deputy Collector had proceeded u/s 57; so that the result is that no orders had at all been passed under Ch: IX to come, within the bar referred to in Section 119, Clause (6) or within sub Clause (ii) of the proviso of that section. Then again in Collectorate butwara proceedings based mainly on the previous Cadastral Survey, questions of title relating to lands could not be gone into. Having regard to the facts of the present case, I am of opinion that the Court below was justified in holding that Section 119 of the Estates Partition Act was no bar to the maintainability of the present suit, nor the special limitation provided under Article 14 of the Limitation Act had any application.

12. It is quite clear, I think, that the authorities indicate that if there had been any adjudication upon this question raised by the plaintiffs during the course of the but were proceedings (i.e., that Plots Nos. 2242 and 2735 did not at all lie within the estate, which was in the course of being; partitioned), the relative provisions of the Estates Partition Act would undoubtedly have affected adversely their position. But it must also be admitted that, where there has been no adjudication upon such a claim, the mere fact that there has been in the final partition award an allocation of the land which the objectors have contended was not properly capable of inclusion in the estate which was being partitioned, cannot operate to prevent the claimants from bringing a suit for a declaration of their title and, if necessary, recovery of possession. If we look at what took place here, it certainly appears, as it has appeared to both the lower Courts, that there was no sort of enquiry or adjudication upon the claimants' claim. That being so, it does not appear to me that there was any bar to the right of the plaintiff's to bring the suit in the manner and in the time at which they have so done.

13. In my view, therefore, both the lower Courts were correct in their decision and this appeal must be dismissed with costs.

Adami, J.

14. I agree.