

(1999) 08 PAT CK 0054

In the Patna High Court

Case No : Appeal from original Decree No. 24 of 1979 (R)

Ashwani Ojha and Others

APPELLANT

Vs

Devendra Nath Ojha and Others

RESPONDENT

Date of Decision : 25-08-1999

Acts Referred:

Citation : (2000) 1 BLJR 269

Hon'ble Judges : D.N. Prasad, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

D.N. Prasad, J.—This First Appeal has been filed against the judgment and decree passed by Shri D. Topno, the then Ist Additional Subordinate Judge, Dhanbad in Title Suit No. 8/11 of 1976-78, whereby and whereunder the learned Sub-Judge decreed the suit declaring the 2/3rd share of the plaintiffs in the money described in the Schedule of the plaint.

2. The case of the plaintiffs/respondents in brief is that one Lachman Ojha along with one Dwarka Nath Mishra acquired Darpattani right of entire Mouza Asansol and half of mouza Kairakandi. Later on, Dwarkanath Mishra executed deed of release in favour of Lachman Ojha, who became exclusive Darpattandar. Lachman Ojha died leaving behind five sons, namely, Jagat Ojha, Saddananda Ojha, Mahendra Ojha, Bimalanda Ojha and Baglananda Ojha who inherited his Darpattani right. It is further claimed that Lachman Ojha died before Survey Settlement Operation and he died leaving behind them Bimalanand Ojha alone so he used to manage the entire property as Karta and as such Khewat No. 6 of Mouza Asansol had been prepared in his exclusive name. The mother of the plaintiff brought a Title Suit No. 103 of 1925 claiming 1/4th share therein and the said suit was decreed ex parte. The mother of the plaintiffs again brought a Title Suit No. 384 of 1975 which was also decreed on contest in favour of the plaintiffs. Mouza Asansol and Kairakaundi were being possessed by the plaintiffs. Bimlandana Ojha and Upendra Nath Ojha jointly. It is further claimed that Pattani

interest of Mouza Asansol was sold which was purchased by Smt. Kumudbati Devi wife of Sri Rajendra Prasad Singhdeo of Raghunathganj. Thereafter by registered patta dated 19th July, 1949 the plaintiffs and Tupumani alias Lakhimani Devi, mother of the defendants had taken Darpattani settlement of their previous Darpattani property along with Khewat Nos. 7 to 13 of Mouza Asansol and Khewat No. 10, 11, 12 and 13 of Mouza Kairakundi. The settlement was not taken by Bimalandana and widow of Manhananda as they died issueless. The plaintiffs and defendants were in possession of their Darpattani property of the lands described in Schedule-II of the plaint and the said lands have been acquired by the Lands Acquisition Department, but the award has been made in favour of defendant No. 1 alone whereas the plaintiffs are also entitled for the award as being a 2/3 share over the same. The plaintiffs came to know that the learned Land Acquisition Judge has awarded a sum of Rs. 8,29,196/- in favour of defendant No. 1 in the Land Acquisition Reference Case No. 553 of 1971. It has also come in knowledge that State Government, although, preferred an appeal against that Order in the Hon''ble High Court and the plaintiffs are entitled 2/3rd share in the said award, hence the suit.

3. The defendant No. 1 also filed written statement claiming inter alia that the suit as framed is not maintainable and it is barred by limitation and res-judicata. It is further pleaded that Bimalananda Ojha was the only owner of the suit land and the plaintiffs and other defendants have got no interest over the land in question. The defendants took raiyati settlement from Bimalananda Ojha on 2nd day of March, 1351 B.C. corresponding to 4-2-1945 through Hukumnama and the defendant No. 1 is the only owner of the suit land. It is also claimed that defendants had reclaimed the land and converted the said lands into paddy field in its own expenditure. The plaintiffs all along attending the proceedings of the case but did not raise any protest against the claim of the defendant No. 1 and the plaintiffs have got no right, title and interest in the compensation money and they have got no cause of action for the suit and it is fit to be dismissed.

4. On the basis of the pleadings of the parties, the learned Court below framed as many as ten issues, which are as follows:

- (1) Has the plaintiff any cause of action for the present suit ?
- (2) Is the suit bad for non-joinder of parties?
- (3) Is the suit maintainable in its present form ?
- (4) Is the Court fee paid in suit sufficient ?
- (5) Is the suit barred by limitation ?
- (6) Is the suit barred by res-judicata ?
- (7) Is the suit barred under the provisions of Specific Relief Act ?
- (8) Is the suit barred under the provisions of L.A. Act ?

(9) Have the plaintiffs any interest in the property described in Schedules 2 and 3 of the plaint ?

(10) Are the plaintiffs entitled to a decree as claimed ?

5. Both parties adduced oral as well as documentary evidence in the lower Court and after considering the evidence on record, the learned Sub-Judge decreed the suit by the impugned judgment.

6. On being dissatisfied with the judgment and decree, the appellants/defendants preferred this appeal by assailing the impugned judgment on the ground that the plaintiffs have got no title or any right over the land in question. It is also claimed that the defendants had taken the lands in question on the basis of settlement through Hukumnama by the sole owner Bimalananda and since then he has been coming in exclusive possession over the same. The learned Court below committed error in decreeing the suit and the Court below should have held that Ext. 2 and Ext. 7 are inadmissible in evidence and both documents are forged documents which cannot be relied upon. The learned Court below also failed to appreciate the document, i.e. Ext. C and F as well as the plaintiffs never raised any objection in course of a proceeding of L.A. case as they have already waived their claim over the land in question and as such the impugned judgment and award are fit to be set aside.

7. Admittedly, Lachman Ojha, was the Common ancestor and he died leaving behind five sons, namely, Jagat, Sadanand Ojha Mahendra Ojha, Bimlananda Ojha and Baglanand Ojha. It is also an admitted position that Mahananda Ojha and Bimalanand Ojha died issueless.

In order to appreciate the relationship between the parties, the genealogical table as described in Schedule-1 runs as follows:

Lachman Ojha		-----	
		Jagat Sadananda Mahananda Bimalananda Bagalananda	
Upendra Rampada Ojha	P. 1 =	Tukumoni P. 2 alias Lakhi Moni	

Prafulla Amulya Ambuj Bibhuti Bhusan Habibala Nabibala	Def. No. 1		

8. The defendants/appellants claimed the right and title over the land in question by virtue of Hukumnama by which the settlement was made by late Bimlananda Ojha on 22nd day of March, 1351 B.C. corresponding to 4-2-1945 in respect of the land in question. But, it is worth to mention here that the alleged Hukumnama: has not been produced from the side of the appellants/defendants to substantiate the story of settlement as claimed whereas the plaintiffs/respondents alleged to have acquired the title and possession over the lands! in question having 2/3rd share by virtue of registered Patta dated 21-7-1949 (Ext. 1). It has also been claimed by the plaintiffs/respondents that Lachman Ojha, the common ancestor died before the Survey Settlement operation and Bimalanand Ojha being the Karta alone used to manage the entire properties and as such

Khewat No. 6 of Mouza Asansol was recorded in his name. P.W. 1, the plaintiff admitted to have got the right. Title and possession over the land in question by virtue of the said registered patta which was also executed in favour of the mother of the defendants. He further deposed that a Title Suit No. 103 of 1925 was filed by the mother of the plaintiffs and it was decreed in her favour. Another Title Suit was also filed by the mother of the plaintiffs being Title Suit No. 384 of 1925, which was also decreed. According to him, the Hukumnama as alleged by the defendants is forged document and has been created with a purpose to defeat the claim of the plaintiffs. According to him, he had not filed any objection before the Land Acquisition Officer and they used to settle the land in favour of the raiyati of the village.

9. On behalf of the defendants/appellants also a single witness has been examined. D.W. 2, the defendant claimed to have got the land in question by virtue of settlement through Hukumnama, but admittedly, the said Hukumnama was not brought on the record. He further stated that he had reclaimed the lands in question, but it may be noted here at this stage that no other witness has been examined on this score, nor any corroboration has been made to this effect. He further admitted that he does not remember, if any Salami money was paid in respect of the settlement of the land in question, He cannot say as to whether the rent was paid jointly in respect of Khewat No. 6. Other witnesses are formal in nature.

10. Obviously, the registered Patta, Ext. 1, executed in favour of plaintiff Nos. 1 and 2 and the mother of the sole defendant as back as in the year 1949. It is also clear, as discussed above, that the defendant/appellant claimed the land in question by virtue of Hukumnama executed in the year 1945 has not been brought on record, nor it has been proved as exhibited and so the story as alleged by virtue of Hukumnama has not been established.

11. The learned Counsel appearing for the appellant submitted before me that the appellant has claimed title and possession over the lands in question by virtue of Hukumnama executed by Bimalanand Ojha who was the owner of the land in question and the said Khewat was standing in his name. It is also submitted that the appellant/Defendant had reclaimed the land in question as well as there was prevalent in the family of the parties for settling the land by virtue of Hukumnama. But, in absence of Hukumnama, such story cannot be entertained. I have already discussed above that not any witness has been examined on the point of reclamation as claimed by the defendant/appellant, nor any document produced on this score. Thus, the submission of the learned Counsel for the appellant does not appear to be sustainable.

12. The certified copy of the judgment of Title suit No. 384 of 1925, Ext. 4, has been filed, from which it is clear that the suit was decreed. The certified copy of the decree passed in Title Suit No. 103/1925 has also been filed and the said suit was also decreed in favour of the plaintiffs. One Kabuliyat dated 27-5-1933, Ext. 7 has been filed on behalf of the plaintiffs and on perusal of this Kabuliyat, it is

clear that the said Kabuliyat was executed by Kashi Koiry and others in favour of Ramananda Ojha, Debendra Nath Ojha, Prafulla Kumar Ojha (defendant No. 1) and others in which there is mention that Bimalanand Ojha was dead whereas minor Kashi Nath Ojha has been shown as son of late Bimlanand Ojha. In the same way, one unregistered Kabuliyat dated 4-6-1941 (Ext. 2) executed by Smt. Mudrika Devi and others in favour of Ramananda Ojha, Debendra Nath Ojha, Prafulla Kumar Ojha (defendant No. 1) and others in which Kashi Nath Ojha has been described as son of late Bimalanand Ojha. The defendant, Prafulla Kumar Ojha claimed to have got the Hukumnama in the year 1945 whereas in the said Kabuliyat, Ext. 2 and Ext. 7 he himself to be one of the parties where it has been described that Bimalanand Ojha was no more and he died prior to the execution of the said Kabuliyat. In this way, the alleged Hukumnama, on the basis of which the defendant claims the land in question, appears to be very suspicious document upon which no title or interest can be created. Some documents have also been filed from the side of the defendant/appellant.

The said deed executed by Janki Koiry in favour of Tupumani Devi (Ext. B) which is in respect of other lands.

13. Thus, considering the above facts, it is clear that both the plaintiffs acquired the right and title over the land in question also by virtue of registered patta dated 21-7-1949 which was executed by Smt. Kumudbati Devi wife of Rajendra Narayan Singhdeo and the said patta was registered in favour of plaintiff Nos. 1 and 2 and mother of the defendant No. 1 and as such the learned Court below has rightly decided the matter in favour of the plaintiffs for a share of 2/3rd over the land in question, whereas the defendant has entitled to get 1/3rd share in the properties in suit.

14. The learned Counsel for the appellant also raised a point in course of argument that, the plaintiffs/respondents kept a mum for about 10-15 years and they have never raised any objection in the land acquisition proceedings and as such plaintiffs have waived their right and title over the land in suit.

It is settled position that the possession of one co-sharer will amount to possession of other co-sharer over the joint family property. Moreover, it has been specifically pleaded that the defendant No. 1 assented that the money would be divided into three shares but later on it was refused. In this way, there appears no substance in the submission of the learned Counsel for the appellant.

15. Having regard the whole facts and circumstances of the case, I find that the learned Court below has rightly decreed the suit which does not require to be interfered with which is accordingly affirmed.

In the result, I do not find any merit in the appeal, which is accordingly dismissed, but without costs.