
(2004) 07 JH CK 0024
In the Jharkhand High Court
Case No : A.A.D. No. 166 of 1991 (R)

Bajrang Prasad Chourasia

APPELLANT

Vs

Sanjay Garg

RESPONDENT

Date of Decision : 22-07-2004

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 100
Specific Relief Act, 1963 — Section 38

Citation : (2004) 4 JCR 739

Hon'ble Judges : Vikramaditya Prasad, J

Bench : Single Bench

Advocate : M.K. Dey, for the Appellant; Jitendra Kumar Pasari, for the Respondent

Final Decision : Dismissed

Judgement

Vikramaditya Prasad, J.—The substantial question of law to be answered in this second appeal is as follows :-

"Whether in absence of any finding that the plaintiff is not in a possession of the suit lands, his suit for a decree for permanent injunction could have been, dismissed only on the ground that he has, failed to prove his title, in view of the decision of the Supreme Court in Kishanlal Biharilal Maheshwari and Others Vs. Ramrao Hanumant Rao Patil and Another, ?"

2. The question aforesaid arose out of the following facts: The plaintiff brought a suit praying for the following reliefs :-

(a) A decree for permanent injunction restraining the defendant from encroaching, upon the plaintiffs land of Schedule B and disturbing in any way the possession of the plaintiff either by defendant or through his men, agent and representtives.

(b) Decree for all costs of the suit.

(c) Decree for any other "relief or reliefs to which the plaintiff is entitled under the law and equity.

3. The ease of the plaintiff runs as follows that the land bearing plot No. 1366 appertaining to Khata No" 53 measuring an area 1.25 acres beling to the ex-landlord of Sarnanbhpur Estate, namely Janki Kumari and Chandan Kumari, wives of late Jagat Narayan Singh and they were in possession of the aforesaid land along with other lands of Mauja Deoli within Police Station Govindpur, District Dhanbad. The Ex- landlord settled large number of plots along with the disputed plot to,one Hardhan Mondal by granting rent receipt and delivery of possession which was followed by grant of Hukumnarna. Hardhan Mondal after taking settlement came in possession over the lands and later entered into negotiation of sale of the lands under Khata No. 53, plot No. 1366 measuring an area 62-1/2 decimals on the western side of the said plot and finally sold the land to Smt. Dayamanti Devi by a deed dated 24.2.1954 and delivered possession to her. Dayamanti Devi after purchase came into possession of her purchased land and remain in possession and got her name mutated and all along paid rent to the State of Bihar. Further case of the plaintiff was that the said Dayamanti Devi sold the land described in Schedule B of the plaint along with other plots of land through her power of attorney holder Shri Ram Krishna to the plaintiff and delivered possession, who thereby acquired valid title over the disputed lands. Further case of the plaintiff was that defendant recently installed and constructed a Gul Factory which is named and styled as Godawari Funel Product over plot No. 1355 lying adjacent to plot No. 1366. Further case of the plaintiff was that as the plaintiff is in possession of the western half of plot No. 1366 which portion lie just in front of the Godawari Funel Product. The defendant approached the plaintiff for sale of the said land to be used for the ingrace and egress of his transport and for use of the said land as entrance and exist from and to Godawari Funel. Product. As the defendant wanted to purchase the said valuable land of the plaintiff for a ridiculously low value, hence the plaintiff did not. Being frustrated in his attempt the defendant is now threatening the plaintiff to dispossess him by illegal means. Hence present suit with the aforesaid reliefs was filed.

4. The suit was contested by the defendant by filing written statement. As per written statement the case of the defendant was that the suit is not maintainable, the plaintiff has got no cause of action for the present suit. The suit is undervalued, hence the trial Court has got no jurisdiction. The suit is bad for non- joinder and mis-joinder of parties and cause of action. The suit is barred under the principle of estoppel waiver and acquiescence and principle of natural justice the suit was also barred by limitation. The suit is premature and the suit is barred under Order 2, Rule 2 of the CPC. Further case of the defendant was that the plaintiff has no right title or interest over the disputed land. It was further case of the defendant that one acre of land in plot No. 1366 including the suit land has been acquired by Ramesh Chandra Garg, the father of the defendant. The further case of the defendant was that plot No. 1366, Khata No.

53 was gair abaci malik and vested in the State of Bihar with the vesting in Jamindari. The land in suit was danga patit and was made fit for cultivation by Panu Naplt and Nakul Naplt in the year 1956 who had land contiguous to it in plot No. 1355. Tills matter was in knowledge Karamchari and a report of encroachment was submitted to the Circle Officer, Govindpur who started a proceeding for settlement of this land under Case No. 190 of 1964-65 and the said Circle Officer by his order dated 23.9.1967 settled one acre of land of plot No. 1366 on taking salami and fixing rent therefore and accordingly. The land was settled in favour of the said Panu Naplt and Nakul Naplt, a correction slop along with the sketch plan of the said plot was issued in favour of the said Panu Napit and another. The said Panu Napit and Nakul Napit while in possession sold the land of plot No. 1355 and 1366 to Gajendra Prasad Chauhan and Praveen Kumar P. Chauhan by two registered deed of sale No. 15085/71 and 17760 of 1971. In the year 1978 by Sale Deed No. 6011/78 and 6012 of 1978 Gajendra Chauhan and Praveen Chauhan transferred their right title and interest in plot No. 1355 to Ramesh Chandra Garg and Smt. Puspa Garg, Ramesh Chandra Garg and Puspa Garg, the mother of the father of defendant immediately after purchase came in possession of the said plot of land got it enclosed within a boundary wall and orally settled the land and-allowed them to construct a Coal Briquette factory thereon in the process of enclosing the said land within a boundary wall the said Ramesh Chandra Garg encroachment upon a portion of land measuring 3 decimals on the Southern side bearing plot No. 1309 for converting the said land with G. I; road and also constructed a path way on the said plot of land No. 1309 by encroaching 2 decimals of land out of the said plot No. 1309 and as such a proceeding of encroachment was started on the report of Karamchari to the CO. on 28.12.1985 in Encroachment Case No. 10(x)/85-86 and a recommendation was made for the settlement of land in favour of Ramesh Chandra Garg. During the recent survey of the said land the schedule land has been recorded in the name of Ramesh Chandra Garg who has been in possession thereof to the exclusion of plaintiff and all other persons. In this way defendant is in possession over the suit land since 1918. The plaintiff has got no right, title or interest over it. The sale deed executed by Dayamanti Devi is a collusive. It was the further, case of the defendant that the land in suit being Gair Abad Malik, no question ever arose for settlement thereof in favour of Hardhan Mandal in any manner whatsoever and for delivery of possession and grant of any Hukumnama in his favour. Therefore, the suit was liable to be dismissed. "

5. The learned trial Court on the aforesaid pleadings framed as many as 8 issues, one of which (issue No. 7) was "whether the plaintiff is entitled to a decree as claimed for ? This issue was decided on consideration of entire evidence adduced by both the sides and the trial Court in paragraph 37 of judgment, said" to sum up I am of view that plaintiff has got no title over the land and as such he is not entitled to get any relief. Accordingly, this issue is decided against the plaintiff. However, without framing any issue whether or not the plaintiff was in possession of the suit land, while deciding the issue aforesaid (issue No. 7) the

Court also found on fact in paragraph 34 that the plaintiff was never in actual and physical possession and he was having no title and plaintiff in order to purchase a litigation from a solvent, person, purchased several bonds so that he may bargain with the defendant. The suit was. thus, dismissed.

6. Being aggrieved by and dissatisfied with the aforesaid judgment and decree, the plaintiff preferred F. A. No. 24 of 1988 and the first appellate Court has decided the appeal only on one point, whether the judgment and decree passed by the trial Court is proper and valid ? The first appellate Court in paragraph 19 held as follows: I am of the view that a suit for injunction is maintainable only where right, title and interest of the plaintiff is established and there was no dispute about that". Subsequently on facts the learned first appellate Court has also held that the witnesses examined in this case have not supported the factum of possession of the plaintiff/appellant. In paragraph 24 of the appellate. Court judgment though the learned appellate Court searched on the point of title but did not declare the title of the plaintiff. Thus, the effect of the appellate Court judgment is that the plaintiff was not in a possession of the suit land. It is also found that the appellate Court did not declare that the plaintiff had no title over the suit land. It is a settled principle of law that the judgment and decree of the trial Court merges in the finding of the first appellate Court. Therefore, the final result circumstance is that there is no declaration by the learned appellate Court with regard to the title of the plaintiff but nevertheless there is a clear finding that the appellant was not in possession of the suit land.

7. In the aforesaid circumstance I find that there is a consistent finding of both the Courts below that the plaintiff was not in possession of the suit land though without framing a specific issue regarding possession, this decision has been given, is supported from the facts on record. I find on appraisal of evidence, as it was a reversal of trial Courts finding that such a finding is not perverse. On question that has been raised is whether without framing any issue with regard to the possession, the finding could have been given in respect of that ? On perusal of the record I have found that in issue No. 7 all the matters have been discussed by the learned trial Court. It was not proper for the trial Court to club all the issues together in one issue of maintainability. Issues are to be framed on the basis of pleadings and when a particular fact is asserted by one side and denied by other side, there should be a specific issue on that. Here as it is specific claim of the plaintiff that he was in possession of the suit land, denied by the defendant, so the proper course for the learned trial Court was to frame an issue whether or not the plaintiff was in possession over the suit land, which the learned trial Court did not frame. But nevertheless when both the parties appeared and adduced their evidences on this point, which they specifically pleaded in their pleadings and finding was given thereon then even in absence of framing of a. specific issue does not prejudice the case of either side and, therefore, for non- framing of this particular issue no prejudice has been caused to either parties. The learned lower appellate Court has rightly held that in absence of possession having been proved no permanent injunction could have

been given in a suit u/s 38 of Specific Reliefs Act and it has rightly not given a conclusive finding on title. As there was a clear and consistent, finding of the two Court below that the plaintiff was not in possession, so it cannot be said that the Courts below have dismissed the suit/appeal in absence of a finding on possession.

8. Considering all aspects of the matter, as discussed above, this second appeal is dismissed on contest with costs including Advocate's fee as usual rate. Send back the I. C. Records.