
(2004) 09 JH CK 0065
In the Jharkhand High Court
Case No : Second Appeal No. 90 of 2002

Bhagwati Charan Bharti

APPELLANT

Vs

State of Jharkhand and Others

RESPONDENT

Date of Decision : 03-09-2004

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 100

Citation : (2004) 4 JCR 283

Hon'ble Judges : Narendra Nath Tiwari, J

Bench : Single Bench

Advocate : Lalit Kr. Lal, for the Appellant; Shamim Akhtar, S.C.-II for State, for the Respondent

Final Decision : Dismissed

Judgement

Narendra Nath Tiwari, J.—This appeal is against the judgment and decree dated 11.6.2002 passed in Title Appeal No. 2/01 passed by the 1st Additional District and Sessions Judge, Latehar setting aside the judgment and decree dated 23.11.2000 passed in Title Suit No. 4/97.

2. The plaintiff is the appellant. He filed a suit praying decree for declaration of title and recovery of possession over the suit property. The suit property measured only 1 decimal of Plot No. 715 under Khata No. 71 of village-Alaudia, Tola Haria P.S. Chandwa, District Latehar. The said Plot Nos. 715 has a total area of 86 decimals. It was recorded as garmazruwa malik of the ex-landlord. According to the plaintiff, out of the total area the ex-landlord has settled 29 decimals of land in the said plot in favour of the plaintiffs father Deodhari Bharti and others in the year 1938. According to the plaintiff, they had been coming in possession of the said land. The plaintiff claimed that although the deed was with respect to only 29 decimals of the suit plot, yet his father possessed an area of 31 decimals of land and thus he has been coming in possession of 31 decimals of land. The defendant-State forcibly constructed a Yatri Shed covering nearly an area of 1 decimals of land of the said plot which gave rise to the cause of action

for the suit. It was stated that out of that area 10 decimals of land was acquired by the PWD and as such he remained in possession of the rest of the area measuring 19 decimals of land.

3. The State-defendants appeared and filed written statement contesting the said suit. It was stated that an area of 29 decimals only out of 86 decimals of said Plot No. 715 was settled with the plaintiffs father. Out of that, an area of 10 decimals of land was acquired by the State of Bihar earlier. In this way only 19 decimals of Plot No. 715 remained with the plaintiff and as such the plaintiff's claim beyond that is wholly illegal and without any basis. According to the defendants, the Yatri Shed has been constructed over a public land and not on the land of the plaintiff and as such the said suit was without any basis and is liable to be dismissed.

4. Both the parties led, oral as well as documentary evidences in support of their respective cases. On the basis of the pleadings and some oral evidences, the trial Court decreed the plaintiff's suit holding that the oral evidences of the PWs are believable and the evidences of the defendants are not believable. However, no reason was assigned for believing the PWs and disbelieving the DWs.

5. Aggrieved by the said judgment and decree of the trial Court, the State-respondents filed title appeal being T.A. No. 2/01. The said title appeal ultimately came to be heard and decided by the 1st Additional District and Sessions Judge, Latehar. The learned lower appellate Court considered the evidences and materials on record and came to the finding that the plaintiff could not prove his right, title and possession over the area on which the said Yatri Shed was constructed. The appellate Court further found that the land over which the said Yatri Shed has been constructed is a public property belonging to the State-defendants and that the learned Munsif has committed an error in decreeing the plaintiff's suit by only believing the oral evidences adduced on behalf of the plaintiff and discarding the defendants evidences.

6. Mr. L.K. Lal, learned counsel appearing on behalf of the appellant, submitted that the judgment and decree of the lower appellate Court setting aside the judgment and decree of the trial Court is not based on sound appreciation of evidences and materials on record and thus vitiated in law. According to the learned counsel in this case there was a dispute between the area and the; boundary and it is now well established that in such case of dispute, the boundary of the land should prevail and not the area.

7. Having heard the learned counsel for the appellant, and perused the impugned judgment and records, I find that the submission of Mr. L.K. Lal is without any substance. The plaintiff made out specific case that in the said plot only 29 decimals were settled in favour of his father and as such there was no dispute of area vis-a-vis boundary, regarding the same. Further, I find that the learned lower appellate Court has considered all the legal and factual aspects of the case and meticulously scrutinized the evidences on record and found that the suit land

measuring one Decimal over which the Yatri Shed has been constructed is a public land belonging to the respondent and that the plaintiff failed to establish his right and title over the same. It has been further found by the learned lower appellate Court that there was no basis for rejecting the evidences of the defendants by the learned trial Court and that the said Court committed an error in declaring the plaintiff's title and decreeing the suit only on the basis of the oral evidences of the plaintiffs. In my view, there is no infirmity or illegality in the judgment and decree of the learned lower appellate Court giving rise to any substantial question of law to be decided in this second appeal.

This appeal is, accordingly, dismissed.