

(1930) 02 PAT CK 0021
In the Patna High Court

Bholanath Mahto and Others

APPELLANT

Vs

Niru Mahton and Others

RESPONDENT

Date of Decision : 21-02-1930

Acts Referred:

Citation : AIR 1930 Patna 328

Hon'ble Judges : Dhavle, J

Bench : Division Bench

Judgement

Dhavle, J.—This appeal arises out of a suit for declaration of title and confirmation of possession over a bandh of tank which in the Record-of-Rights was entered jointly in the names of the plaintiffs and the three defendants.

2. The Court of first instance held on the evidence that the entry in the Record-of-Rights had been sufficiently rebutted by the evidence on the plaintiffs' side, and accordingly decreed the suit. The learned Subordinate Judge, who dealt with the matter in first appeal, disagreed and held, that the plaintiffs had failed to prove that the survey entry is incorrect. He accordingly allowed the appeal, with the result that the suit stood dismissed. The plaintiffs have now come up to this Court in second appeal.

3. The learned advocate for the appellants has urged in the first place that the lower appellate Court had no jurisdiction to allow the appeal so far as Sonaram Mahta, defendant 2, was concerned, since he was not among the appellants and the original decree had been passed against him ex parte. The difficulty in accepting this contention is that now that there is an order of the lower appellate Court in favour of this Sonaram Mahta, it is obviously impossible to interfere with that order in Sonaram's absence. The appellants originally made Sonaram one of the respondents in the present appeal but afterwards failed to file the talbana required on his account (and his correct address) for the issue of a proper notice. The result was that on 9th January 1929, a Bench of this Court passed an order dismissing the appeal as against respondent 3, namely the aforesaid Sonaram. It is obvious that in these circumstances I cannot give the appellants any relief so

far as Sonaram is concerned.

4. The second contention raised by the learned advocate on behalf of the appellants is that Neru Mahta, defendant 1. who along with Mitani Mahta, defendant 3, filed a joint written statement in reply to the plaint, does not appear from that written statement to have had any interest in the bandh in dispute and that, therefore, the decree of the lower Court is erroneous so far as Neru is given any relief. But in the first place Neru has not been given any relief at all; he was only one of the defendants, and it was the plaintiffs that sought reliefs and it was they whose suit was dismissed by the lower appellate Court.

5. There was an issue framed on the pleadings as to whether Neru had any interest in the bandh. The Record-of-Rights, as I have already indicated, shows that the plaintiffs together with the defendants, amongst whom of course Neru is included, held the bandh, and the most significant issue framed in the case was issue 5: "are the plaintiffs the sole owners of the property in suit." This issue was found in favour of the plaintiffs by the learned Munsif who tried the suit and found against them by the lower appellate Court. The question of Neru's precise interest in the bandh, therefore, was not dealt with below at all.

6. Secondly the only written statement in the case was filed by Mitani and Neru jointly and they appear along with the absent party Sonaram, to be close relations. Indeed the learned advocate for the appellants has constructed a genealogy from the record which makes Sonaram and Mitani brothers and Neru their first cousin, and there are indications in the written statement that these three probably continued to be joint after the separation from the plaintiffs which is hinted, at in para. 6 of that document. The fact is that the case was tried in both the Courts below as if the only substantial issue was, have or have not the plaintiffs shown that the Record-of-Rights is wrong?

7. The learned advocate for the appellants has also criticised the handling by the Additional Subordinate Judge who heard the appeal, of the evidence in the case and has urged that Ramesh Chandra Bhattacharji, one of the admitted landlords, being a witness who was disbelieved by the trying Court, should not have been believed by the Court of first appeal. He has not contended, and the contention would obviously on the face of it be absurd, that in no circumstances is the Court of first appeal entitled to disagree with the Court of first instance as regards the credibility of a particular witness. His contention that the pronouncement of the trial Court with respect to the credibility of a witness who has already deposed ought not to be lightly set aside by the Court of appeal is too sound and too well known to require any authorities in support, but it cannot be said in the present case that the appellate judgment now under consideration has gone against that principle. The learned Munsif has not based his estimate of the credibility of the landlord on his demeanour in the witness-box, but has observed, on account of a certain inconsistency or discrepancy in the evidence, that he has now been gained over by Mitani.

8. The learned Subordinate Judge has refused to accept this as correct and has given more than one reason for arriving at that conclusion. It seems to me that the learned Subordinate Judge was entirely within his rights in doing so and that it is not really open to this Court to interfere on the point. The appeal is concluded by findings of fact; it fails and is dismissed with costs.