

(2001) 03 PAT CK 0094

In the Patna High Court

Case No : Appeal from Appellate Decree No. 418 of 1986

Bhrigunath Singh and Others

APPELLANT

Vs

Braj Banshi Singh and Others

RESPONDENT

Date of Decision : 05-03-2001

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 1 rule 8, Order 41 Rule 22, 145
Criminal Procedure Code, 1973 (CrPC) — Section 144, 145

Citation : (2001) 2 PLJR 350

Hon'ble Judges : S.N. Pathak, J

Bench : Single Bench

Advocate : Ram Kumar Sharma, Indra Mohan Kuer, Ramashish and Hansraj, for the Appellant; Shiv Nandan Roy and Madan Prasad Singh, for the Respondent

Final Decision : Dismissed

Judgement

S.N. Pathak, J.—This second appeal has been preferred by the plaintiffs of Title Suit no. 63 of 1974/14 of 1977. The suit was decreed by the trial court and on appeal by the defendants of the suit, the lower court's decree was reversed and, hence, this second appeal. The plaintiff-appellants challenged the findings of the first appellate court on the grounds, inter alia, that the first appellate court failed to consider the oral evidence of the parties and it formed a wrong opinion regarding Hukumnama claimed by the defendant-respondents and it also wrongly held that the order of the Magistrate passed in a proceeding u/s 145 Cr. P.C. was final because its revision also failed. Before I proceed to examine the judgment of the first appellate court in the light of grounds of appeal set up by the plaintiff-appellants, it would be worth while to state, in substance, the case of the parties which will facilitate the decision on the question involved in the second appeal. The concerned title suit was filed in representative capacity under Order 1 rule 8 C.P.C. and the suit land was 3.13 ""acres of plot no. 219. Admittedly, this plot was recorded in the cadestral survey as Gairmazarua Malik land being jungle. However, the plaintiff-appellants claimed that in spite of the entry as Gairmazarua Malik, the suit land was treated as Gairmazarua Am land

and the general public was using this land as pasturage and as a burial ground for dead infants. Part of the land was also used by the general public, especially potters. Major portion of the land contained reservoir for irrigation purposes. There was a temple of Ram-Janki and Lord Shiva used by the general public. The defendants claimed settlement over the disputed land of plot no. 219 which was baseless. On the basis of aforesaid averments, the plaintiff-appellants filed the suit and the defendant-respondents challenged all the claims of the plaintiff-appellants. The trial court decreed the suit in part and then the defendants went in appeal where they succeeded. So it has to be decided in the second appeal whether the first appellate court committed any legal error in reversing the judgment of the trial court and, whether, of course, the judgment of the first appellate court suffers from non-consideration of oral evidence.

2. Before I proceed to discuss the relevant questions of law, I would like to put in proper perspective the decree of the trial court, to this connection I find that the trial court disbelieved the story of using the suit land as pasturage and burial ground. The trial court also held that the plaintiff-appellants had failed to prove that the suit plot (219) or the suit land, as described in the schedule of the plaint, contained reservoir or that it was used by the potters for extracting earth. The judgment of the trial court shows that the trial court considered the entire gamut of evidence, oral and documentary, and came to a definite conclusion that the plaintiff-appellants had failed to prove their right of pasturage, burial, extraction of earth allegedly exercised by them over the suit land. The trial court also ruled out that there was any reservoir on the suit land. I find that the evidence led by the plaintiff-appellants to prove their aforesaid rights was considered in detail and in depth and the trial court held against the plaintiffs. However, the trial court, on admission, rather concession of the defendants that the temple housing the deities of Ram-Janki and Lord Shiva could be used by the general public and they had no objection for the same, declared this temple to be public temple. The first appellate court also did not reverse this finding of the trial court and, hence, the decree in this connection became final and none of the parties before this court also advanced any objection to the aforesaid decree. However, the statements of the trial court at Paragraphs 33 & 35 make a queer reading and in its import and purport, it would amount to negation of the claims of the plaintiff-appellants. In the preceding paragraphs, the trial court repudiated the claims of the plaintiff-appellants regarding their right of pasturage etc. over the suit land. However, at Paragraph 33, the court held that Sita Ram Das, the Pujari of the temple was entitled to recover possession of the cultivable portion of the suit land which had gone into the possession of the defendants on account of the order passed u/s 145 Cr. PC. Then the trial court further held,

It is also declared that the rest of the suit land is continuing under the possession of the plaintiffs.

3. At Paragraph 35, the court stated that the suit" was decreed in part. The aforesaid statements of the trial court in its judgment were interpreted by the

plaintiff-appellants" lawyer that their suit was decreed in its entirety and all the claims were accepted by the court. This interpretation of the trial court judgment is, in my opinion, not wrong rather perverse. I have already said above that the plaintiff-appellants were claiming the suit land for the general public for exercise of their right of pasturage etc. and the trial court, while dealing with each and every right of the plaintiff-appellants held that the plaintiffs had no right to exercise over the suit land. So when the trial court held that the Pujari was entitled to recover the cultivable portion of the land, it is not understandable under what authority the Pujari was entitled to recover possession over the cultivable portion of the suit-land. In various paragraphs, the trial court in its judgment, held that the suit plot was recorded as Gairmazarua Malik land and the plaintiff-appellants had failed to prove that it was "Aam" land. There was this definite finding of the trial court upon the evidence adduced by the parties. So unless it was asserted by the plaintiff or unless there was evidence to this effect that landlord Dhaneshwardhari Singh dedicated or gifted any portion of the suit land to the temple, it could not be held on presumption that the land adjoining the temple, was attached to the temple or it had become the property of the temple. The evidence adduced in the lower court also indicated that Dhaneshwardhari Singh had filed Title Suit No. 78 of 1949 and the suit was against 24 members of the village public. The suit was decreed on ex parte hearing in favour of Dhaneshwardhari Singh and he settled the suit plot to his wife who later sold major portion of the suit plot to various persons namely, Krishnand Singh, Shakaldip Singh and others. So the fact that major portion of the suit plot was sold to various persons by the wife of Dhaneshwardhari Singh, the Ex-landlord, clearly indicated that the suit plot was under Khas possession of the Ex-landlord and so it was dealt with by the Ex-landlord and his family members. Therefore, there was no evidence nor there was pleading that the Ex-landlord made any gift of any portion of the suit plot to the temple. It was also not the case of the plaintiffs that the cultivation of the suit land was done by the general public through any trust or through any recognised organisation, such as, Panchayat etc. nor it was proved nor pleaded that Sitaram Das was Sebait of the temple and, therefore, he was cultivating the portion of the suit land in that capacity. The trial court also did not give any finding to this effect, after discussing the evidence in this connection. So the direction of the trial court that Sita Ram Das was entitled to recover possession of the cultivable portion of the suit land was not based on sound reasoning. Moreover, the suit land was not based on sound reasoning. Moreover, the suit land measuring 3.13 acres was described in the Schedule of the plaint as a whole and the cultivable portion of the same was not delineated separately. The trial court's decree regarding the cultivable portion of the suit land was, therefore, vague and inexcusable. I have already held above that Sitaram Das was one of the plaintiffs claiming the suit land in representative capacity, did not acquire any authority to reclaim or recover cultivable portion of the suit land. So the decree in this connection was unfounded and baseless and useless in view of the findings that the general public had failed to prove right of pasturage etc. So far the decree of the trial

court at paragraph 33 that the rest of the suit land was continuing in possession of the plaintiff-appellant was neither here nor there. When the court had held that the plaintiff had no right of pasturage etc., the court's finding that the plaintiffs were continuing in possession of the part of the suit land was also an irrational finding. General public can exercise possession over any piece of land only through any recognised Organisation. I have already stated above that there was neither any pleading nor evidence in this connection and if it is assumed that the general public was cultivating the part of the suit plot regarding which the court held that they were continuing in possession here also the same question will arise as to by what medium, the plaintiffs were continuing in cultivating possession of the suit land. All members of the public cannot cultivate the suit land, unless there is a recognised Organisation created by them to exercise the aforesaid right. Neither there was any pleading to this effect nor there was evidence. The plaintiffs were, rather, claiming the suit land in representative capacity by their so called right of pasturage etc., which the trial court held to be not in existence in their favour. So the trial court's finding that the plaintiffs were continuing in possession of the part of the suit plot was also baseless. Besides that, the portion over which the plaintiff-appellants were held to be continuing in possession was also not demarcated. So the entire decree passed by the trial court which the plaintiff-appellants claimed to be in their favour was clothed with vagueness; rather I am of the opinion that it was no decree at all. The trial court had also held on the basis of the evidence that the defendant-respondents had been in possession of a portion of the suit land but they had come in such possession after the order u/s 145 Cr. P.O. The Court had held that Krish-nanand Singh and others who were purchasers from Uma Devi were stronger people and they had formed a group in the village and the defendants were weak and that is why they were seeking help of Police off and on and there was a proceeding u/s 144 Cr. PC. So the finding of the trial court that the defendants came in possession of the suit land after the order u/s 145 Cr. PC. also does not stand to reason. Admittedly the plaintiffs had gone in revision against the order u/s 145 Cr. PC. and they being in stronger position; I do not think they would have allowed the defendants to take possession of the suit land by force. So when there was definite finding of the trial court upon the evidence that the defendants were in possession of the portion of the suit land by cultivation, it would clearly indicate that the defendants' case of cultivating the suit land in their own right of settlement etc. was well founded. The trial court had taken much pains to find out infirmities in the case of the defendants regarding acquisition of the suit land by Hukumnama and it came to the conclusion that the defendants' claim was not proved, but the trial court forgot the basic principle of law that the plaintiff has first to prove its own case before it can obtain any decree. It is settled principle of law that the plaintiff of a suit cannot gain from the weakness of the case of the defendants or the failure of the defendants to prove its case can lead to the proof of claims of the plaintiffs. The appellate court in this connection took the correct view and it held that the plaintiff-appellants had failed in the trial court to prove their rights of pasturage

etc. on the basis of their documentary evidence. The appellate court also held that the evidence on behalf of the plaintiffs led in the trial court was regarding their rights of pasturage etc. and the trial court had repudiated their claims. The appellate court, therefore, held that it did not find any reason to disagree with the findings of the trial court because the oral evidence on behalf of defendants also supported their claim of possession. I do not, therefore, think that the appellate court's judgment suffered from any non-consideration of the oral evidence. It is not necessary that the appellate court must examine each and every witness on behalf of parties and give its opinion like the trial court. Moreover, in the first appeal the plaintiff-appellants neither filed any cross-appeal nor they had challenged the findings of the trial court regarding the right of pasturage, etc. as they were entitled to under Order 41 Rule 22 CP.C. The Judgment of the first appellate court does not show that the plaintiff-appellants had challenged the findings of the trial court in this connection. Before me also neither there was any reference to any cross objection to the findings which went against the plaintiff nor the decision of the trial court regarding these rights were challenged before me. So I do not think the appellate court's opinion that the oral evidence did not support the claim of the plaintiff-appellants was not justified. So far the contention raised before me that the verdict of the first appellate court suffers from legal infirmities in so far as the first appellate court held that the order passed u/s 145 Cr. RC. was final because in revision also it was confirmed and so it was the proof of possession of the defendants, is appealing on the face of it; but examined closely, the opinion of the appellate court appears to be correct not in its literal sense but nationally. This is so because some presumption does attach to the order passed u/s 145 Cr. P.C. and unless it is proved to be erroneous, by independent evidence, led by the plaintiff of a suit, that presumption shall go in favour of the parties in whose favour such an order is passed. The trial court's judgment which contains detailed discussion of the oral evidence as also the documentary evidence, regarding possession of the plaintiff-appellants, clearly showed that the plaintiffs did not exercise the right of possession of the suit land in the manner alleged. So if the first appellate court confirmed the findings of the trial court, I do not think he committed any illegality. So far the contention that the appellate court's opinion regarding the alleged Hukumnama issued by the Ex-landlord, this also appears to be fallacious. The appellate court held that since the plaintiffs were not parties to the alleged Hukumnama, they had no right to challenge it. Of course, the appellate court was correct in its approach from a particular angle, though not perfectly justified. Apparently, a document can be challenged only by those persons who have any interest in the property allegedly contained in the document. The Hukumnama was a document between the Ex-landlord and the ancestor of the defendants. So this Hukumnama can be challenged only by the descendants of the Ex-landlord; but rather the Ex-landlord himself admitted this Hukumnama by a registered deed dated 12.9.1969. It was submitted before me that since the Ex-landlord had ceased to have any interest over the suit land in the year 1969, he had no business to make any Ekrarnama; but I am of the opinion that if the Ex-landlord

confirmed a document which was issued from his Sirista, there was nothing wrong in executing the Ekrarnama. Of course, the plaintiffs were within their rights to prove that this Hukumnama was a fabricated document, but before proving this fact, they had to prove their own case regarding their own right over the suit-land. It had already been held above that the plaintiffs had failed to prove their claims by the evidence adduced on their behalf, documentary or oral. So I am of the opinion that whatever opinion the first appellate court formed regarding oral and documentary evidence adduced by the parties, I do not think the plaintiff-appellants were entitled to succeed in their claim of the suit land on the basis of their evidence. I am rather tempted to hold that the operative part of the judgment of the trial court decreeing the suit in favour of the plaintiff-appellants over and above the temple's portion was not based on the findings which the trial court had arrived on the basis of the evidence on the record. So the trial court decree itself appears to be self defeating and deceptive. The plaintiffs' manner of exercising their right over the suit land was negated by the findings of the court and hence the suit should have been dismissed and, in essence, it amounted to dismissal; but for the operative part of the judgment which appears to be without any foundation, as I have held above.

4. As a result of the aforesaid discussion upon the entire aspect of the case, I am to hold that the judgment of the first appellate court is neither defective nor it suffers from any legal infirmities. Hence, this second appeal is dismissed. In the circumstances of the case, there shall be no order as to costs of this appeal.