

(1971) 10 PAT CK 0009
In the Patna High Court
Case No : A.F.A.D. No. 688 of 1969

Chandrama Singh

APPELLANT

Vs

Smt. Nawaratan Kumari and Another

RESPONDENT

Date of Decision : 23-10-1971

Acts Referred:

Bihar Consolidation of Holdings and Prevention of Fragmentation Act, 1956 — Section 15(2), 37
Evidence Act, 1872 — Section 101

Citation : AIR 1972 Patna 472

Hon'ble Judges : Kanhaiyaji, J

Bench : Single Bench

Advocate : R.S. Chatterji, Brajesh Chandra Verma and Chakradhar Jha, for the Appellant; J.C. Sinha, Prem Shankar Sahay and Rudra Deo Kumar Sinha, for the Respondent

Final Decision : Dismissed

Judgement

Kanhaiyaji, J.—This is a second appeal by the defendant against the concurrent decrees of the Courts below declaring title and interest of plaintiff No. 1 in the disputed lands and holding the en-trios made in the recent survey record of lights in respect of the same as wrong. The dispute relates to plot No. 208, area 0.56 acres, and plot No. 209, area 0.72 acres of khata No. 132 situate in Mouza Parghari" and other two plots of the same village fully described in Schedule II of the plaint

2. The plaintiffs case is that plaintiff No. 1, Smt. Nauratan Kumari purchased 19.23 acres of land in Mauza Parghari and 3.58 acres of land in Mauza Sibaidih including the suit lands from the Co-operative Society, Parghari, on the 30th July, 1940, and came in possession of the same. She is cultivating the purchased lands through plaintiff No. 2, Makundi Mahto who is her Kamatia. Shri Bhagwat Sahay, father of plaintiff No. 1, used to look after the cultivation, and he constructed the basa On a portion of the disputed land for the facility of

cultivation. He also constructed a bandh for irrigational purposes, Bhagwat Sahay died sometime in 1946, and, after his death, Mahendra Prasad son of Plaintiff No. 1 began to look after the cultivation. Khas cultivation, however, did not prove profitable, and, therefore, Plaintiff No. 1 wanted to sell her lands to one Parmanand Singh of village Parghari, and a zarbiana was executed in the name of Karoo Singh, brother of Parmanand Singh and Binod Kumar Sahu and others. The transaction, however, could not materialise into a sale. This caused annoyance to Parmanand Singh. He, accordingly, formed an assembly of persons including the defendant to dispossess Plaintiff Ho. 1 from her lands. In furtherance of this object, the defendant (Chandrama Singh), Ramdhin Singh, Dar-bari Singh and others filed tanaja during survey operations conducted in the village in the year 1956 and got their names recorded as sikmidars in respect of different portions of the lands of Plaintiff No. 1. The defendant got his name entered in respect of the disputed land and got a sikmi Parcha issued in his name.

Plaintiff No. 1 filed an objection u/s 103A of the Bihar Tenancy Act which was disallowed without appreciating the evidence on record. Thus, the defendant got his name entered, and sikmi parcha in respect of the suit land was issued to him. Plaintiff No. 1, preferred an appeal before the Deputy Collector, Land Reforms, but the same was dismissed. Hence, the plaintiffs instituted the suit for declaration of the Plaintiff No. 1's raiyati right in the disputed lands and that the orders of the Revenue Courts and the Deputy Collector, Land Reforms, were without Jurisdiction and illegal.

3. The suit was contested by the defendant who filed a written statement contending inter alia that the suit, as framed, was not maintainable and that the suit was barred by limitation. It was alleged that the Plaintiff No. 1 never came in Khas possession of the suit lands, nor did she ever make any arrangement for khas cultivation of the lands in the village. The allegation regarding the construction of a base was totally denied. As regards the construction of the bandh, it was said that the defendant contributed half the cost towards the construction of the said bandh. It was contended that the defendant was the bataidar of the disputed land from the time of purchase of the lands by the plaintiff and that he was coming in possession of the same ever since. Therefore, the defendant's name was rightly recorded in the survey record of rights. The execution of the zarbiana deed by the Plaintiff No, 1 was admitted, but it was contended that Parmanand Singh did not purchase the land as the defendant and other bataidars were in possession of the land which they refused to vacate.

4. On the above pleadings, the parties went to trial before the learned Munsif, who, on a consideration of the relevant materials on the record, disbelieved the defendant's case and decreed the suit holding that Plaintiff No. 1 was the raiyat of the suit land and that the orders of the Revenue Courts holding the defendant to be a sikmi tenant were without jurisdiction, illegal and ultra vires. The suit was, accordingly decreed. An appeal was preferred against the said decree, and the appellate Court in agreement with the trial Court held that Plaintiff No. 1

came in possession of the lands after acquisition in 1940. She constructed a basa for the khas cultivation of the land and had been managing her affairs by her own plough and labour, firstly, under the supervision of her father and subsequently under that of her son. The defendant has failed to show that the lands had been settled in bhaoli with him, or, that he had acquired any right in these lands. The evidence adduced in the case, according to him, completely rebutted the presumption of correctness of the entry in the survey record of rights in favour of the defendant. The appeal was, accordingly, dismissed. The present appeal is against the said decision.

5. Mr. R. S. Chatterji, learned Counsel appearing on behalf of the defendant-appellant, raised a contention that the onus should have been heavily placed on the Plaintiff No. 1, and that the onus has been wrongly placed on the defendant which has resulted in substantial error or defect in the procedure. Learned Counsel referred to Section 101 of the Evidence Act and submitted that it was for the Plaintiff No. 1 who was asserting her right to prove her case, and it was not for the defendant to prove the negative. In support of the argument, reliance was placed on two decisions of the Supreme Court. The decision in *Kundan Lal Rallaram Vs. Custodian, Evacuee Property, Bombay*, is not relevant to the facts of the present case. That is a case relating to negotiable instrument, in which special rule of evidence contained in Section 118 of the Negotiable Instruments Act has been considered. In the other case, namely, in the case of *K.S. Nanji and Company Vs. Jatashankar Dossa and Others*, it has been held that a person having the right to the possession of a movable property wrongfully taken from him by another can file a suit to recover the said movable property within three years from the date of his coming to know of a certain fact, and it is for him to prove that he had the knowledge of the said fact on a particular date. It is the duty of the plaintiff to establish at any rate *prima facie* that the suit is within time and is not barred by lapse of time. The distinction between the phrase "burden of proof" as a matter of law and pleading and as a matter of adducing evidence, as pointed out by their Lordships, may be noted:

"Under the Evidence Act there is an essential distinction between the phrase "burden of proof" as a matter of law and pleading and as a matter of adducing evidence. u/s 101 of the Evidence Act, the burden in the former sense is upon the party who comes to court to get a decision on the existence of certain facts which he asserts. That burden is constant throughout the trial; but the burden to prove in the sense of adducing evidence shifts from time to time having regard to the evidence adduced by one party or the other or the presumption of fact or law raised in favour of one or the other".

6. Mr. J. C. Sinha, learned Counsel appearing for the respondents, contested the proposition and submitted that the onus was not wrongly placed on the defendant in the facts and circumstances of this case. He further submitted that the findings arrived at by the Courts below are based on evidence, both oral and documentary, adduced by the parties; and, in this view of the matter, the

consideration of question of onus will be only academic. Both the points urged by Mr. Sinha have force and should be accepted. It is the admitted position that the Plaintiff No. 1 is the purchaser of certain lands including the suit lands from the Co-operative Society on the 30th July, 1940, through the sale-deed (Ext. 3). The case made out by the defendant is that the Plaintiff No. 1 never came in possession of the disputed land and that he (the defendant) is the bataidar of the same. The only point for consideration was whether the defendant had acquired any right or interest in the suit land; if so, what was the nature of the right. Both the Courts below have concurrently found that Plaintiff No. 1 was the raiyat of the suit land and that the defendant had acquired no right or interest. It has been held in AIR 1920 67 (Privy Council) that where in a suit for possession the plaintiff's title is conceded, but the defendant sets up a permanent tenancy or an occupancy right in himself, the defendant is bound to prove the existence of his permanent tenancy or occupancy right. This view has been relied on by Kanhaiya Singh, J., who delivered the judgment of the Court, in the Full Bench decision of Jaldhari Mahto and Others Vs. Rajendra Singh and Others, in these words:

"The position will be different where the plaintiff does not admit the defendant to be his raiyat and sues as a proprietor to recover the land and the defendant sets up a tenancy right. In such a case the plaintiff has not to prove anything, because the admitted paramount title carries with it a presumption that the plaintiff is entitled to hold and possess the land, and therefore, the person seeking to defeat that right and claiming to hold under him must establish the right so asserted by him."

This presumption of law was recognised by the Privy Council in the case of AIR 1949 278 (Privy Council) , as will appear from the following observations:

"Their Lordships may here observe that in shifting the burden from one side to the other by adducing evidence, parties may rely on presumptions in law, which are really inferences of fact, in place of actual facts. If there was a presumption in law that an inamdar was the owner of both kudivaram and melvaram interests in the land then he could rely on that presumption to discharge the initial burden of proof that lay on him to prove his title to eject. In this sense the presumptions arising from law are connected with the question of onus of proof."

Mr. Chatterji argued that in this case the possession of the plaintiff is not admitted, and, therefore, the initial onus was on her to prove possession. Ext. 4 (a) is a receipt dated the 8th September, 1956, which has been granted by Parmanand Singh (D. W. 2) for purchase of grass of the suit lands. In this receipt, Parmanand Singh has virtually supported the entire case of the plaintiff No. 1, namely, that after purchase of the lands she came in khas possession of the suit lands and made her own separate arrangement for cultivation. On a consideration of the other materials on the records, both the Courts below have come to the conclusion that plaintiff No. 1 came in possession of the lands after acquisition in 1940 and she constructed a basa for khas cultivation of the lands. On this finding, it will not be correct to say that onus has been wrongly put on

the defendant to prove his case. In my opinion, the findings of the courts below were not vitiated by an error of law by the burden of proof having been wrongly thrown on the defendant.

In *Ladli Prasad Jaiswal Vs. Karnal Distillery Co. Ltd. and Others*, , the decisions of the District Court and Division Bench of the High Court given against the plaintiff suffered from serious infirmities in that they wrongly placed the onus of proof upon the plaintiff and reached a conclusion that the plaintiff failed to prove that the resolutions were not obtained by the exercise of undue influence. Naturally, in those circumstances their Lordships of the Supreme Court interfered. Similarly, in *Uppalapati Veera Venkata Satyanarayanaraju and Another Vs. Josyula Hanumayamma and Another*, , it was held by majority that where both parties were relying on possessory title, it was necessary that they should prove effective possession over the property in order to succeed on the basis of possessory title. The trial Court gave a finding on question of possession, but the first Appellate Court gave no proper finding on that question. The High Court remanded the case requiring the first Appellate Court to give a fresh finding on such question. The Supreme Court held that the High Court in doing so could not be said to be reversing finding of fact given by the first Appellate Court. These two cases are of no help to Mr. Chatterji on the facts of the instant case. The question whether the statutory presumption has been rebutted is always a question of fact. When the parties have adduced evidence and there has been no substantial error or defect in procedure, the question of onus disappeared. For the aforesaid reasons, I feel no hesitation in rejecting the contention raised on behalf of the appellant.

7. It was next argued that the courts below have not considered Exts. B series according to law. Ext. B is a letter dated the 24th August, 1948, purported to have been written by Kamla Prasad, the husband of plaintiff No. 1 to Chandrama Singh, the defendant. In this letter, it is said that he had informed all including Chandrama Singh that he would cultivate the land with his own bullocks and labour in Baisakh that year, but as arrangement could not be done in time, so he permitted them to cultivate on thikka rent on condition that they would deposit at the rate of Rs. 5/- per bigha. Subsequently, it is said that the writer had decided to sell the land to Parmanand Singh, and, therefore, he should take permission from him as he had ceased to have any concern with the land. To the same effect are other letters of Exts. B series. In the plaint itself, the plaintiff has alleged that these letters are not genuine ones but manufactured ones. The defendant did not take any step to prove their genuineness or at least to show that they were in the pen of Kamla Prasad. Apart from this, the letters were filed in Court on the 31st March, 1967, and, on the same day, a petition was filed with a prayer to keep them in a sealed cover.

Mahendra Prasad (P. W. 9), the son of Plaintiff No. 1, was examined only a few days after the said letters were filed and kept concealed in a sealed cover. The letters were not shown to P. W. 9 at the time when he was examined. Mr.

Chatterji argued that it was for the plaintiff to prove that they were fake; ana, as the plaintiff No. 1 has failed to prove that, the Court should have held that Kamla Prasad or plaintiff No. 1 was not in possession of the disputed land. The learned Munsif has rightly observed that reading the latters carefully there is no cleat indication to bold that the disputed lands were settled with tho defendant in bhaoli at any time. The contents of the letters would reflect that Kamla Prasad was friendly with the defendant and he only wanted to get the lands cultivated on bhaoli basis; but the letters do not go to establish that the lands had been settled with the defendant at any time. Further, in my opinion, it was not for the plaintiff to prove that the letters were fake; rather, in the circumstances, it was for the defendant to prove the genuineness of the letters. The Courts below have rightly placed no reliance on these letters.

8. It was next argued that the certificate granted u/s 15 (2) of the Bihar Consolidation of Holdings and Prevention of Fragmentation Act, 1956 hereinafter called "the Act", is the conclusive proof of title of the certificate-holder. In this connection, it may be noted that the Act was passed with the object of providing for the consolidation of holdings and prevention of fragmentation. The proceeding starts on declaration by the State Government of its intention to make scheme for consolidation of holdings. Section 4 prohibits legal proceedings during the period of consolidation proceedings. Section 8 provides for preparation of up-to-date record-of-rights before consolidation. It lays down that "as soon as may be after the publication of a notification u/s 3, an up-to-date record-of-rights, in respect of ail lands comprised in the notified area, together with a map shall be prepared in accordance with the provisions of Chapter X of the Bihar Tenancy Act, 1885" After the preparation of the record-of-rights u/s 8, a register of lands is prepared in the prescribed form u/s 9 and, copies of the relevant entries in such registers are served upon the raiyat or under-raiyat of the land to which the entries relate u/s 10 (1) of the Act. u/s 10 (2), any person interested in the land included in any entry in the registers may, within thirty days of the date of service of the notice, make any objection in writing to the Consolidation Officer.

It further provides under Sub-section (4) that any person aggrieved by an order passed by the Consolidation Officer may within thirty days of such order, prefer an appeal to the Director of Consolidation, who is an officer not below the rank of a Sub-Deputy Collector, appointed by the State Government to discharge all or any of the functions under the Act. Section 12 provides for publication of draft scheme, and Section 13 lays down for submission of scheme to the Director of Consolidation. The possession of the holdings allotted to the rai-yats and under-raiyats is regularised u/s 14 of the Act and Section 15 (2) provides that the Consolidation Officer shall grant to every under-raiyat a certificate of transfer having a right of occupancy in any land allotted to him in pursuance of the scheme and the certificate shall be conclusive proof of the title of such under-raiyat to such land and he shall be liable to payment of such rent and to such person as may be specified in the certificate. In the beginning, Mr. Chatterji

vehemently contended that the decision of the courts below is vitiated, because they have not considered Ext. D, which is a certificate granted u/s 15 (2) of the Act. When I looked into Ext. D, I found that the certificate (Ext. D) related to some other plots, i.e., Plots 198 and 214 of Khata No. 5. Therefore, it seems that the lawyer appearing for the defendant did not put reliance on this document.

In the plaint, the judgments of the revenue Courts have been challenged after the declaration of the plaintiff's title. Section 37 of the Act permits a Civil Court to entertain a suit or application when such decision or order had decided a question relating to title to land or to some interest in land as between parties having conflicting claims thereto. Therefore, the suit for declaration of title is not hit by Section 37 of the Act. Therefore, from the language of Section 37 of the Act it is manifest that the bar imposed under this section cannot apply to the suit of Plaintiff No. 1 which is a suit for declaration of title and cancellation of the orders passed by the revenue authorities. In this connection, it may be noted that at the earliest stage of the suit the learned Munsif transferred the case to the Collector in pursuance of the provisions of law contained in Section 109 of the Bihar Tenancy Act. The plaintiffs came to this Court in Civil Revision No. 512 of 1965. Untwalia, J., who decided the said revisional application by order dated the 2nd November, 1966 held that the suit dealt mainly with the question of title to the property and then asked for a declaration that the settlement entry was incorrect. As such, reading the plaint as a whole, it was clear that unless the plaintiffs succeeded in establishing their title and negating that of the defendant, they could not get the relief of correction of the survey entry. Therefore, this contention also raised on behalf of the defendant-appellant has no merit.

9. Lastly it was contended that the exhibits filed on behalf of the plaintiff No. 1 did not prove her khas possession. Nothing tangible has been shown in support of this argument. When there is no error or defect in the procedure and the decision of the Lower Appellate Court is based on evidence, the finding of the first Appellate Court on a question of fact is final. The courts below have decreed the suit in fault-less appreciation of evidence, and on an analysis of the evidence they have rightly decided the suit in favour of the plaintiffs.

10. All the contentions raised on behalf of the appellant thus fail. The appeal is, accordingly, dismissed with costs.