

(2012) 11 PAT CK 0065
In the Patna High Court
Case No : Second Appeal No. 411 of 1988

Chandwa Pasi and Others

APPELLANT

Vs

Laxman Yadav and Others

RESPONDENT

Date of Decision : 23-11-2012

Acts Referred:

Evidence Act, 1872 — Section 90, 91
Registration Act, 1908 — Section 17, 49
Transfer of Property Act, 1882 — Section 117

Citation : (2012) 11 PAT CK 0065

Hon'ble Judges : Mungeshwar Sahoo, J

Bench : Single Bench

Advocate : Jawahar Dhari Singh, for the Appellant; Gopal Jee, for the Respondent

Final Decision : Dismissed

Judgement

Mungeshwar Sahoo, J.—The plaintiffs-respondents-appellants have filed this Second Appeal against the judgment and decree dated 13.05.1988 passed by learned Additional District Judge VII, Gaya in Title Appeal No. 17 of 1988/19 of 1985 whereby the Lower Appellate Court allowed the appeal and reversed the judgment and decree of the trial court dated 30.04.1982 passed by learned Munsif III, Gaya in Title Suit No. 40 of 1980. The plaintiffs-appellants filed the aforesaid suit for declaration of right, title and possession over the land denoted by letter ABCD and for declaration that the said land is part and parcel of R.S. Plot No. 1771. The plaintiffs also prayed for declaration that the khatiyani and the map of the revisional survey are wrong and the defendants have no right, title or possession over the said land.

2. The plaintiffs claimed the aforesaid relief alleging that C.S. Plot No. 863 measuring 1 acre 14 decimals and C.S. Plot No. 865 measuring 2 acres 30 decimals was recorded in the cadastral survey in the name of Bhikhari Gope and Shankar Gope as Bhauli Bataidar Raiyat under Arshad Ali Khan. Because they

were unable to pay the rent, the rent accumulated so, they surrendered both the plots of khata no. 59. Subsequently, they executed a sada memorandum of surrender in 1339 Fasli. Since the date of surrender, the recorded Raiyat or their heirs had no interest in the same. By Hukumnama, Exhibit 13 dated 20 Jeth 1353 Fasli, the landlord settled 1 bigha 5 katthas of plot no. 865 with Chaudhary Pasi, the father of plaintiff nos. 1 to 5 and 7. Chaudhary Pasi constructed house and the rest of the lands were under his cultivating possession. Part of C.S. Plot No. 865 was also settled by landlord in favour of Nanhku Chamar. The remaining part of the land of plot no. 865 was settled with the heirs of recorded tenant. In revisional survey, the land settled in favour of the recorded tenants was renumbered as R.S. Khat No. 1772. The disputed land shown by letter ABCD has been mentioned in R.S. Plot No. 1772 instead of R.S. Plot No. 1771. In fact, the said land is part and parcel of R.S. Plot No. 1771. The entire land of C.S. Plot No. 863 measuring 1.14 acres was settled with Deodhari Chamar.

3. The defendants filed contesting written statement alleging that the land was never surrendered by their ancestors as alleged by the plaintiffs. In fact, plot no. 863 was not settled by the landlord with Deodhari Chamar rather the ancestor of the defendants namely Timan Mahto had given shelter to Chaudhary Pasi as he was his friend and had given him 10 decimals only for construction of house recorded in his name in revisional survey in R.S. Plot No. 1770. Nanhku Chamar was worker of Timan Mahto, therefore, 10 decimals land was given to him by the defendant's ancestor whereon he has built his house and it is mentioned in R.S. Plot No. 1773 and 1774. After vesting of zamindari, the Bhauli rent was converted into Nakdi and the defendants are regularly paying rent and obtaining rent receipts. All the trees standing on plot no. 865 was planted by their ancestors.

4. The trial court decreed the plaintiffs suit recording the finding that the rent receipts filed by the defendants i.e. Exhibit A series and Exhibit 1 series show that plaintiffs are in possession of the land. The defendants filed the appeal. The Lower Appellate Court disbelieved the story of surrender and, therefore, reversed the finding of the trial court and allowed the appeal.

5. On 07.03.1989, following substantial questions of law were formulated:

I. Whether the finding that the land in question were settled with the plaintiffs has been arrived at on the basis of errors of record in as much as the court of appeal below has failed to observe that the plaintiffs have not stated as to in whose favour the rest of the lands was settled, when paragraph 9 of the plaint positively states that?

II. Whether the court of appeal below did not notice Exhibit 2/L while observing that the rent receipts of the year 1953 Fasali have not been filed?

6. The learned counsel for the appellants submitted that there are many errors of record committed by the Lower Appellate Court. The Lower Appellate Court proceeded to decide the disputes of the parties assuming that the plaintiffs have

not disclosed as to what happen about the other lands of plot no. 865 without looking into the pleadings of the parties. The Lower Appellate Court held that since the plaintiffs have not explained this fact, therefore, their case of surrender and settlement is doubtful. In paragraph 9, the plaintiffs specifically mentioned that the rest of the lands were settled in favour of the defendants. Likewise, the Lower Appellate Court no doubt, refers the rent receipts Exhibit 2/L which is of the year 1353 Fasli but observed that the plaintiffs have not produced any rent receipts for the year 1353 Fasli. Because of these errors of record, the judgment of the Lower Appellate Court is vitiated. The learned counsel further submitted that the Lower Appellate Court has not properly considered the case of the parties as has been done by the trial court. The Lower Appellate Court disbelieved the documentary evidences, Exhibit 12 and 13 which clearly indicate surrender and settlement.

7. On the other hand, the learned counsel appearing on behalf of the respondents submitted that there are many rent receipts filed by the defendants but except Exhibit 2/L which is rent of the year 1353 Fasli, none of the rent receipts relates to the land involved in the suit. The learned counsel further submitted that the Lower Appellate Court has considered all the evidences and then recorded the finding that the ancestor of the defendants never surrendered the land and no settlement was made in favour of the plaintiffs. Therefore, the findings of the Lower Appellate Court on this question are finding of fact which cannot be interfered with. Even if Exhibit 2/L is considered then also on that basis only, it cannot be said that the lands were surrendered and then it was settled in favour of the plaintiffs. So far first substantial question of law is concerned, the learned counsel submitted that no doubt, at paragraph 9 of the plaint it has been mentioned that the rest lands were settled by the ex-landlord in favour of the ancestor of the defendants but that does not mean that the plaintiffs have been able to prove their case or that merely because the Appellate Court has mentioned this by mistake, the judgment is vitiated and is liable to be set aside on that ground alone.

8. From perusal of the Lower Appellate Court judgment, it appears that the Lower Appellate Court has considered the evidences produced by the parties and recorded the finding that the lands were never surrendered by the ancestor of the defendants. Exhibit 12 has been considered by the Lower Appellate Court and Lower Appellate Court did not rely on the said document as it is unregistered document. The Lower Appellate Court while considering Exhibit 12 held that it is unregistered deed of surrender and has not been produced from proper custody. It may be mentioned that the Lower Appellate Court found that although, the case of the plaintiffs is that the memorandum of surrender was prepared subsequently but the Lower Appellate Court perusing the document found that in fact, by this document, surrender was made therefore, it requires compulsory registration. Since it is not registered, it is inadmissible in evidence. While considering the case of settlement, the Exhibit 13 produced by the plaintiffs, the Lower Appellate Court held that it is also unregistered therefore, it is

inadmissible and on the basis of the same, it cannot be said that the lands were settled and title passed.

9. In the case of Ram Nath Mandal and Others Vs. Jojan Mandal and Others, , Full Bench of this court has held that u/s 117 of the Transfer of Property Act a lease for agricultural purposes is not necessary to be made by a written document. It may be effected by an oral agreement, and when so effected no registration is required, but if the transaction is reduced to writing, then, in the case of a lease from year to year or for any term exceeding a year or reserving a yearly rent, registration would be required u/s 17 of the Registration Act, and, if unregistered, the lease will be inadmissible in evidence u/s 49 of the Registration Act, and other evidence of its terms will be precluded u/s 91 of the Evidence Act.

10. In the case of Avinash Kumar Chauhan Vs. Vijay Krishna Mishra, , the Apex Court considering the unregistered sale deed held that unregistered sale deed shall not be admitted for any purpose whatsoever. If all purposes for which the document is sought to be brought in evidence are excluded the document would not be admissible for collateral purposes.

11. In view of the above settled proposition of law, in my opinion, the learned Lower Appellate Court has rightly not relied upon on Exhibit 12, the alleged surrender deed and the Exhibit 13, the alleged settlement document. Further, because of the decision of the Apex Court for collateral purposes also, these documents cannot be looked into. Now, therefore, the case of the plaintiffs regarding surrender and settlement fails.

12. So far first substantial question of law is concerned, only because some error has been committed, it cannot be said that the judgment is vitiated and on that ground the judgment cannot be set aside particularly when the Lower Appellate Court considered each and every evidence on that question. This substantial question of law relates to giving explanation by the plaintiffs regarding the other part of the land comprised within plot no. 865. When the surrender itself is disbelieved, whether there is any explanation given by the plaintiffs or not, it makes no difference. Likewise, so far second substantial question of law is concerned also, it relates to non-consideration of Exhibit 2/L. It is only one rent receipt which is of the year 1353 Fasli. On the basis of this rent receipt, no finding can be recorded that in fact, the land was surrendered by the ancestor of the defendants and thereafter the ex-landlord came in possession of the same and then settled the same in favour of the plaintiffs particularly when the surrender itself has been disbelieved. The Lower Appellate Court also observed that no satisfactory evidence has been produced by the plaintiffs to show that the ex-landlord came in possession of the property. Likewise, the settlement document, Exhibit 13 is also inadmissible. When the document is inadmissible merely on the basis of Exhibit 2/L, the plaintiffs case of settlement cannot be relied upon.

13. The other aspect of the matter is that the plaintiffs produced the surrender

deed from his custody. If any surrender deed was executed then it is expected to be in possession of the landlord. It is the case of the plaintiffs that the part of the land was settled in favour of defendant's ancestor and also plot no. 863 measuring 1.14 acres was settled with another person then how the surrender deed was produced only by the plaintiffs. Therefore, the plaintiffs have not explained as to how he came in possession of the surrender deed and it has been marked as an Exhibit u/s 90 of the Evidence Act. Considering this aspect of the matter, the Appellate Court also disbelieved this document. In view of the above facts and circumstances of the case, the substantial questions of law formulated at the time of admission are answered against the appellants and in favour of the respondents. Thus, I find no merit in this Second Appeal and accordingly, it is dismissed.