
(2002) 07 PAT CK 0137

In the Patna High Court

Case No : Second Appeal No. 196 of 1999

Dasrath Prasad and Others

APPELLANT

Vs

Shiv Dayal Sah and Others

RESPONDENT

Date of Decision : 04-07-2002

Acts Referred:

Citation : (2002) 3 PLJR 308

Hon'ble Judges : Radha Mohan Prasad, J

Bench : Single Bench

Advocate : Khurshid Alam and Bakhteyar Yusuf, for the Appellant; None, for the Respondent

Final Decision : Dismissed

Judgement

Radha Mohan Prasad, J.—This appeal is against the judgment of affirmance passed in Title Appeal No. 23 of 1993 by 6th Additional District Judge, Saran at Chapra affirming the judgment passed by 1st Subordinate Judge, Saran at Chapra in Title Suit No. 133 of 1990.

2. Briefly stated the case of the Plaintiff-Appellants is that the two sons of common ancestor Kuli Mahto, namely, Matarjit and Chunni Mahto separated after his death and partitioned his entire property. Matarjit also died much before survey leaving behind his only son Suba Mahto, who came in possession of his entire property. Similarly, Rupa and Ram Dayal, sons of Chunni Mahto also came in possession of that share left by him. Though the names Suba Mahto as well as Rupa and Ram Deyal Mahto were jointly recorded in survey Khatian but separate possession of both the branches were shown. During that pendency of the suit the Plaintiffs by amendment brought the fact that Chunni Mantel had a daughter Kunti Devi. Rupa Mahto died unmarried and Ram Deyal Mahto came in possession of his share. Suba Mahto died issueless in the year 1930 and his wife predeceased him. Thereafter, Rani Deyal Mahto being the only surviving main member came in possession of the separate share of Suba Mahto also and the Plaintiffs, who are heirs of Ram Deyal Mahto have been coming in possession the

share of property of Suba Mahto to the knowledge of all since 1930, as such, these have perfected their title by way of adverse possession also. Their further case is that Kunti Devi was not the daughter of Suba Mahto rather she was the daughter of Chunni Mahto and she had no right to execute the sale deed in question in favour of Defendant Nos. 1 to 3. Thus, they filed the suit for declaration that the properties mentioned in Schedule I of the plaint belong to the Plaintiffs and the sale deed executed in favour of Defendants 1 to 3 by Kunti Devi is void and inoperative.

3. The Defendant-purchaser in their written statement have admitted the fact of separation, but denied that Suba Mahto died issueless. Their case is that Suba Mahto died leaving behind his only daughter Kunti Devi, who came in possession of his entire property, and because she was facing difficulty in managing the property, she executed the sale deed in question after taking consideration money and put them in possession of the entire property left by Suba Mahto.

4. The trial Court on consideration of the pleadings as well as evidence both oral and documentary adduced on behalf of the parties came to the conclusion that Kunti Devi is the daughter of Suba Mahto and Defendant Nos. 1 to 3 are rightful purchasers from Defendant No. 4 and the Plaintiffs have no right, title and interest in the suit land, and, thus, dismissed the suit. The lower appellate Court on appeal affirmed the findings of the trial Court.

5. It is submitted by the learned Counsel appearing for the Appellants that the Courts-below have not assigned any reason while discarding the evidence of P.Ws. He further submitted that the question of adverse possession has been decided without framing any issue, which has adversely affected the Plaintiffs' case. It is also submitted that the Courts-below have committed grave error of law in not recording the findings on adverse possession and ouster in right perspective. He further submitted that the Courts-below have wrongly shifted the onus to prove the daughtership on the Plaintiffs, and, thus, the judgments passed by the Courts-below are fit to be set aside.

6. The lower appellate Court in paragraph 9 of its judgment considered that although the Court-below has not framed any separate issue in regard to adverse possession, but dealt with the same with the main issue, and it has been well settled that even without framing an issue the Court can enter into the question, if it appears to be linked with, the main issue. The lower appellate Court in paragraphs 26 and 27 of its judgment has elaborately discussed the documentary as well as oral evidence on the point of adverse possession and has come to the conclusion that the Plaintiff-Appellants have miserably failed in making out a case of ouster and perfection of their title based on the principle of adverse possession against the Defendant-Respondents. As regards the daughtership, the lower appellate Court has recorded its findings that neither of the party has adduced any documentary evidence in proof of daughtership and this issue has been decided on oral evidence of the parties. The lower appellate Court after examining the evidence led by the Plaintiffs found that neither of the

P.Ws. has shown any special means of knowledge of relationship by conduct nor the Plaintiffs have examined any relative as witness. While after examining the evidence of D.Ws. he found that almost all of them are directly or indirectly or distantly related with the family of Kunti Devi or Chuni Mahto. The lower appellate Court after careful examination of the evidence, came to the conclusion that the findings recorded by the trial Court on the issue of daughtership is justified.

7. Both the Courts-below on consideration of evidence in detail have found that Kunti Devi was the daughter of Suba Mahto and she came in possession of the entire share of Suba Mahto after his death and she had rightly executed the sale deed in question after taking consideration money, and the learned Counsel for the Plaintiff-Appellants has failed to show any infirmity in the findings recorded by the Courts-below. Thus, in my opinion, the judgment of both the Courts-below are well considered and does not warrant any interference in Second Appeal.

8. As the matter stands concluded by the concurrent findings of facts by the two Courts-below, this Court does not find any reason to interfere with the impugned judgments, more so, when no substantial question of law has been argued. The appeal is, thus, dismissed summarily.