

(2003) 03 PAT CK 0081
In the Patna High Court
Case No : S.A. No. 158 of 2000

Devendra Tiwari and Others	Vs	APPELLANT
Prithabi Nath Tiwari and Others		RESPONDENT

Date of Decision : 03-03-2003

Acts Referred:

Citation : (2003) 03 PAT CK 0081

Final Decision : Dismissed

Judgement

S.K. Katriar, J.—Heard Mr. Shahi Shekhar Dwivedi for the Appellants, and Mr. S.K. Mazumdar for the Respondents.

2. The Plaintiffs are the Appellants against the judgment of affirmance. This appeal is directed against the judgment and decree dated 09.02.2000, passed by the 1st Additional District and Sessions Judge, Siwan, in Title Appeal No. 80 of 1979 (Devendra Tiwari and Ors. v. Prithvinath Tiwari and Ors.), whereby he has dismissed the Plaintiffs' appeal, and has upheld the judgment and decree dated 31.03.1979, passed by learned 04th Additional Sub Judge, Siwan, in Title Suit No. 69 of 1973 (Kesho Nath Tiwari and Ors. v. Baijnath Tiwari and Ors.) The trial Court had dismissed the suit. We shall go by the description of the parties occurring in the plaint.

3. The Plaintiffs (Appellants) have brought the suit for declaration of their title and recovery of possession along with mesne profits and also for recovery of Rs. 206/-. According to the plaint, the Plaintiffs came is that one Radhanath Tiwari, the common ancestor of the parties had two wives. He had two sons from the first wife, who were Defendants in the suit. He had six sons, namely, Kashinath Tiwari, Keshonath Tiwari, Umanath Tiwari, Bishwambhar Nath Tiwari, Sudama Tiwari and Kanhaiya Tiwari, were born from the 2nd wife. It has been pleaded that Sudama, Kanhaiya and Umanath died issueless in the state of jointness. Their wives have also expired. Kashinath Tiwari died in the year 1970. It is said that Defendants separated from the Plaintiffs in the year 1933 but the properties remained joint and there was no partition by mete and bounds.

4. The Plaintiffs further case is that there was a plot bearing No. 1560 under khata No. 776, having an area of 6 bighas 7 kathas 14 dhurs in village Gabhirar be longing to the ex-landlords, Sri Bhawani Pratap Narain Sahi, of village Bal, who had 4 anas share in the said land. On partition amongst the ex-landlords, he got his 1/4 share in the west of the khesra. Subsequently, he settled 1 bigha 5 katha of land (the suit land) with Keshonath Tiwari and Kashinath Tiwari through a registered patt(sic) dated 04.10.1939, after accepting Rs. 45/- as Nazrana. He also delivered possession of the said land to the settlees and sinc(sic) then the Plaintiffs have been coming in cultivating possession of the same. It ha(sic) been pleaded that Kashi Nath Tiwari and Keshonath Tiwari took settlement of the said land from their own earnings after separation and therefore, the Defendants no any concern with the same.

5. The Plaintiffs have further pleaded (sic)at one Sri Ram Prasad Narain Sahi of (sic)age Gabhirar was a man of status, pur(sic)ased the Milkiat interest of the Zamindari (sic) Babu Bhawani Pratap Narain Sahi in (sic)auza Gabhirar. After the purchase of the (sic)kiat interest, he demanded something (sic)m sshonath and Kashinath by way of (sic)zrana but the same was refused. It has ther seen pleaded that Babu Ram Prasad Narain Sahi also managed to get a Title Suit No. 264 of 1946 instituted by the (sic)neral public under Order 1, Rule 8 of the CPC gainst the Defendant and the Plaintiffs of this suit. Ultimately the said suit (sic)ded in compromise on 13.03.1947 herein the Plaintiffs of that suit where said (sic) have accepted the title and possession (sic) Keshonath and Kashi Nath Tiwari. There has also a Rent Suit No. 1077 of 1954 in Court of Munsif. II, Siwan, with respect to (sic) Suit land, which was decreed in favour (sic) Ram Prasad Narain Sahi. The Plaintiffs (sic)re said to have satisfied the decretal (sic)ount. Thus, he in collusion with Defendant No. 1, submitted returns in the name of Defendant with respect to the suit land at (sic)e of vesting of the Zamindari.

6. The suit has been contested by Defendant Nos. 1 and 2 and both filed (sic)parate written statements. Taking similar nd(sic) the Defendants have, inter alia, (sic)ded that the suit is not maintainable, according to the Defendants, the suit land (sic)s never settled with the Plaintiffs through (sic)gistered patta on 04.10.1939, nor they (sic)re ever put in possession. The Defendants-also deny the jointness. According to Defendant No. 1, the entire landed property (sic)d her articles were partitioned. The Defendants were coming in possession of (sic) Suit land since the date of settlement. It has been en pleaded that Sri Bhawani Prasad (sic)ain Sahi settled the disputed land on 23.10.1933 in favour of the Defendant and since then the latter is coming in peaceful possession. He settled the land through a Sada Hukumnama and took Rs. 51/- as Nazarana. The Defendants have got receipts in their favour. They have also based their case on adverse possession. The Defendant has also dealt with the disputed land. It is totally false to say that Defendant admitted the Plaintiff's claim in any title suit or took part in any compromise the compromise, if any, in any title suit, is not binding upon the Defendants. The return was rightly submitted in favour of the Defendants at the time of vesting of Zamindari. The Defendants have also given

some lands to general public out of the suit land for the use of the public Rasta. Therefore, the Defendants have acquired right, title and interest over the suit land by means of adverse possession and the Plaintiffs have no concern whatsoever with the suit land.

7. The trial Court framed the following issues for consideration.

- (i) Is the suit as framed maintainable?
- (ii) Have the Plaintiffs got any cause of action and right to sue?
- (iii) Is the suit barred by the law of limitation?
- (iv) Whether the registered putta dated 04.10.1939 is genuine, valid and operative?
- (v) Whether Defendant No. 1 acquired right and title to the land either by Sada Hukumnama or by adverse possession?
- (vi) If the Plaintiffs are entitled for mesne profit amounting to Rs. 1,700/-?
- (vii) Whether the Plaintiffs are entitled for recovery of Rs. 206/- being the amount of sale proceeds?
- (viii) If the Plaintiffs are entitled for any other relief?

8. The parties led evidence in support of their respective cases. The trial Court held that the registered deed dated 04.10.1939 (Exhibit 2) by Babu Ram Prasad Narain Shahi, the landlord in favour of Kashi Nath Tiwari and Kesho Nath Tiwari, was never acted upon. He further found that this being lease deed in perpetuity within the meaning of Section 105 of the Transfer of Property Act, not having been executed by the lessee, is hit by the provisions of Section 107 of the Act. He further found that the Defendants (Respondents herein) have perfected the title by adverse possession.

9. While assailing the validity of the impugned judgment, learned Counsel for the Plaintiffs (Appellants) submits that the Courts below have erred in interpreting Exhibit 2 which is a deed of settlement and not a deed of lease and, therefore, the provisions of Section 107 of the Act are inapplicable to the facts and circumstances of the present case. He next submits that the finding of fact with respect to adverse possession is bad in law. He lastly submits that the learned Court of appeal below has not considered the entire evidence on the record and the findings are perfunctory.

10. learned Counsel for the Defendants (Respondents) has supported the impugned judgment.

11. I have perused the impugned judgment and considered the submissions of the learned Counsel for the parties. In so far as the Plaintiffs' first contention is concerned, I have perused Exhibit 2, a copy of which has been supplied by

learned Counsel for the Plaintiffs during the argument. It appears to me that the same is a deed of lease in perpetuity in consideration of the price paid. Therefore, learned Court of appeal below is right in holding that Exhibit 2 is an invalid and inoperative document, being hit by the provisions of Section 107 of the Act, not having been executed by the lessee (the Plaintiffs). learned Counsel for; the Defendants (Respondents) has rightly relied on the Division Bench judgment of this Court reported in Garaj Narain Singh Vs. Babulal Khemka, In so far as the Plaintiffs second and third contentions concerned, the same are concluded by concurrent findings of fact which bind this Court in second appellate jurisdiction. No substantial question of law arises in the facts and circumstances of the present, case.

12. In the result, this appeal is dismissed with costs throughout.