

(1935) 05 CAL CK 0013
In the Calcutta High Court

Durgaram Chaudhury and Others

APPELLANT

Vs

Amrita Chandra Goswami and Others

RESPONDENT

Date of Decision : 13-05-1935

Acts Referred:

Citation : 164 Ind. Cas. 452

Hon'ble Judges : Lodge, J;Guha, J

Bench : Division Bench

Judgement

Guha, J.—This appeal has arisen out of a suit brought by the plaintiffs-respondents in the Court for declaration that the lands specified in schedule (fed) and (ga) to the plaint were Dharmottar lauds of Dihina Satra, and that the defendants Nos. 1, 2 and 3, appellants in this Court, had no title to those lands. In the suit, prayer was also made by the plaintiffs for confirmation of their possession in those lands, on behalf of the Dihina Satra of which they were the Adhikars, and for recovery of possession of the lands described in schedule (oma) to the plaint. The claim in suit was resisted by the defendants Nos. 1 to 3.

2. The history of the property in litigation has been given in the judgment of the learned Subordinate Judge in the-Court below, in some detail, and it is not necessary to refer to the early history of the same as the decision arrived at by the Court below that the property was the subject of religious endowment, was not and could not be disputed on the materials on the record. The Dihina Satra existed from ancient times, and on the material before us, it may be taken to be established that it exists even now. The plaintiffs case before the Court was that the property belonging to the endowment was not in any way affected by the various changes in the character of its ownership and possession, during the period commencing from 1876 to 1906. The property in litigation was, in 1876, covered by the potta No, 1131 granted by the Government of Assam. In course of time the lands covered by that potta were settled by the Government under potta No. 0/535 and 58/54 and pota No. 1/69. The last of these settlements was effected with Abhoyram Chaudhuri the predecessor-in-interest of the defendants

Nos. 1 to 3 sometime previous to the year 1906, the Government jamabandi of 1905-06 showing Abhoyram Chaudhuri as the pattadar. The pottas to which reference has been made, granted by the Government, were what are known as Nisikheraj pottas in Assam, and having special incidents attaching to them under the Assam Land and Revenue Regulations. The question of the original title of the plaintiffs to the lands in suit, covered by the pottas mentioned above, which from 1876 onwards, covered an area of 476 bighas 1 kotta and 19 lessas, is not in controversy in this appeal. The question for consideration in the appeal is the one arising out of the two points raised in issues in the case: Does the land even now retain its character of a trust property ? Is the suit barred by limitation, as indicated by Issues Nos. 5 and 8 in the suit ? These points arose directly upon the pleadings of parties, regard being specially had to the case stated in para. 12 of the written statement of the contesting defendants, the appellants in this Court.

The plaintiffs' suit is barred by limitation. From the time of the defendants' father's purchase of the lands in the aforesaid manner, they were in enjoyment and possession of the lands in. property rights, openly and without opposition till 1323 B.S., after realising every year the rents at the full Government rate from the plaintiffs and all other like tenants in possession. The plaintiffs and pro forma defendants and other tenants in possession, having acknowledged Abhoyram Chaudhuri as their proprietor, used to pay him rent without objection and used to live and possess the lands under him as tenants. In this way his rights were perfected by his possessing the entire 476 bighas 1 kotta and 19 lessas of suit lands for 21 years adversely to others. Under the Circumstances, even if the Dihina Satra or anybody else had any right and title, the same were extinguished and were barred by limitation. They (the defendants) are paying the Government revenue every year.

3. The Court below, on consideration of the materials on the record, came to the conclusion that the plaintiffs in the suit were entitled to a declaration of their title to 97 bighas of land out of the entire estate, as it was not shown that the adverse possession of Abhoyram Choudhury, the predecessor-in-interest of the defendants Nos. 1 to 3 "has fixed up on any definite plot". Direction was given by the Subordinate Judge that

In partitioning out those 97 bighas, the block should be so formed as to include within this area, the Satra premises, the namghar and other houses. The possession of this area was to be delivered to the plaintiffs after such severance from the entire estate; such a division is equitable and will be just in the circumstances of the case.

4. The defendants Nos. 1 to 3 appealed to this Court from the decision and decree passed by the Court below, the plaintiffs preferred cross-objections in regard to the portion of their claims in suit, dismissed by the Court below, namely the area of 379 bighas in respect of which it was held that the defendants Nos. 1 to 3 had acquired title by adverse possession.

5. The question of adverse possession arising for consideration in the case, has to be decided on the evidence of possession adduced by the parties concerned. So far as the oral evidence goes, it may be said that it is one-sided; the plaintiffs were unable to give any evidence of their possession of the property in litigation within twelve years of the institution of the suit which could entitle them to relief as claimed. On the side of the contesting defendants there was evidence in the shape of Government jamabandis showing Abhoyram Chaudhuri's possession in 1905-06 in respect of 476 bighas odd of land, comprised in the potta granted to him by the Government. There were in the next place jamabandis prepared at the instance of Abhoyram Chaudhuri as the owner of the lands settled with him by the Government; there were collection papers evidencing collection of rent from tenants on the land, and there were rent decrees obtained by Abhoyram Chaudhuri against tenants, and rent decrees against the plaintiffs themselves passed on contest. On this part of the case, relating to the possession of Abhoyram Chudhuri, as evidenced by his jamabandis, we are unable on the materials before us to agree with the finding arrived at by the trial Court that the jamabandis of 1918 (Ex. D in the case) could not be acted upon for the reason that the witnesses for the defence admit that the details mentioned were compiled without proper survey and probably without survey. The evidence referred to does not bear out the conclusion arrived at, on the point. In our judgment there is no reason whatsoever to discard the evidence adduced on the side of the contesting defendants in the suit, in support of the case of possession of the lands settled with Abdhoyram Chaudhury by the Government. So far as the character of the possession exercised by Abhoyram Chaudnury was concerned, the evidence on the record, fully justifies the decision arrived at by the trial Court, that in 1897 or near about the time the Dihina Gossains, the plaintiffs in the suit or their predecessor-in-title, knew that Abhoyram Chaudhuri was coming to the land with assertion of his own title. It was known from that time that Abhoyram Chaudhuri was collecting rent from the plaintiffs or their predecessors-in-interest, and the tenants on the lands comprised in potta granted him by the Government as the owner of the property. In our judgment the reasons categorically stated by the Judge in the Court below for his decision on the question of the nature of adverse possession are sound and convincing; and we have no hesitation in accepting the same.

6. There was, on the evidence before the Court, a case of adverse possession established on the side of the contesting defendants in the suit. The question then was, what was the extent of that adverse possession ? According to the trial Court the area to which the acquisition of the title of defendants Nos. 1 to 3, and the extinction of the original title of the plaintiffs, was to be limited to 379 bighas as mentioned in a sale certificate Ex. 5 in the case, granted to the predecessor-in-title of Abhoyram Chaudhuri on October 31, 1894. In proceeding on this footing, the trial Court completely overlooked the position made out by the large body of documentary evidence in the case. It would appear that Rajkumar Joy Chandra Singh to whom the sale certificated Ex. 5 was granted, was registered as the

pattadar of the entire area of 476 bighas odd comprised in the Government potta, and this Rajkumar Joy Chandra Singh sold his interest as pattadar in respect of 476 bighas odd of land to Abhoyram Chaudhuri, predecessor of defendants Nos. 1 to 3. Abhoyram Chaudhuri's name was in due course mutated in respect of the entire 476 bighas odd. There was jamabandi prepared by the Government in which Abhoyram Chaudhuri was shown as the pattadar in respect of the entire estate (pottai lands) comprising 476 bighas odd ; that was in the year 1894-95. In 1905-06 there was a fresh jamabandi by the Government showing Abhoyram Chaudhuri as pattadar in respect of lands covered by potta No. 1-69, comprising the area of 476 bighas odd. There can, therefore, be no question that the extent of the adverse possession by Abhoyram Chaudhuri, and by the defendants Nos. 1 to 2 has to be considered with reference to the materials on the record, referred to above, and not merely to the statement of area in the sale certificate, Ex. 5 in the case, which was not and could not be taken to be the foundation of the claim to possession by Abhoyram Chaudhuri, a claim which was recognised by settlement granted to him by the Government, so far as the property in litigation was concerned, a settlement of lands comprising 476 bighas odd. It was with reference to this area that possession was asserted by Abhoyram Chaudhuri and his successors-in-interest, defendants Nos. 1 to 3 in the suit. The collection papers, the jamabandis and the rent decrees placed before the Court, in support of the defendants case of possession of the property in suit, related to the property of which settlement was granted to Abhoyram Chaudhuri, after his purchase of the lauds comprised in potta No. 1-69, the area of which was 476 bighas odd. In the above view of the case before us, it cannot be held that the acquisition of title by the contesting defendants and the extinction of the same, so far as the plaintiffs were concerned, related not to the lands comprised in the entire estate, the pottai lands, the area of which was 476 bighas odd, but to 379 bighas only. The Judge in the Court below has given no reason for coming to the decision, which could be held to be sound and acceptable for passing a decree in favour of the plaintiffs, in respect of 97 bighas of land out of the entire estate comprising 476 bighas odd, of which effective possession was established by documentary and oral evidence, and with referenced to which evidence, it has been held by the trial Court that in 1897 or near about that time the plaintiffs did know that Abhoyram Chaudhuri was coming to the land with assertion of his title. In our judgment, the trial Court's decision that the plaintiffs' suit could succeed in respect of an undivided share of 97 bighas of land, being the difference between 476 and 379, bighas,--is wholly unsustainable on the materials on the record and cannot be supported on the conclusions arrived at by the Court below in its judgment, bearing on the question of possession by the defendants Nos. 1 to 3 and their predecessor-in-title Abhoyram Chaudhuri in assertion of title as settlement holders under the Government in respect of 476 bighas odd of land comprised in the successive pottas issued by the Government, in respect of the lands in question, the original title to which was in the plaintiffs and their predecessors-in-interest. It may be noticed in this connection in consonance

with what was said in the judgment of this Court in the case of Mohini Mohan Roy v. Promoda Naih Roy 24 C 256 : 1 CWN 804, that acts of possession over a part of any immovable property might be evidence of de facto possession of the whole. This rule of course operates with full force in favour of rightful owners, and it should be applied with some reservation in favour of a wrong-doer, for this reason, among others, that the right to the whole which makes the possession of a part equivalent to the possession of the whole and forms the connecting link between the whole and the part is wanting in the other. In the case of a wrong-doer claiming to possess the whole, by reason of possessing a part, it was sometimes difficult to say, in the absence of the connecting link of title, how far the whole extended. The want of that connecting link might however be supplied by other., such as close connection and inter-dependence between the part actually possessed and the whole of which it was claimed to be a part. In the case before us, applying the above rule of general application, which may be taken to be well-settled, and keeping this position in view that there was the existence of the connecting link showing definitely how far the claim to the whole did and could extend,--there was close connection, and inter-dependence between the part taken by the Court below to have been proved to be in actual possession, and the other part in regard to which strict proof of actual possession may be said to be wanting. The possession of the contesting defendants, claiming through Abhoyram Chaudhuri, was in assertion of title to an entire estate comprising 476 bighas odd settled by the Government. On the evidence as it stands, no part of 476 bighas odd covered by the Government potta granted to Abhoyram Chaudhuri, could possibly be excluded from the operation of adverse possession on the part of Abhoyram Chaudhuri and defendants Nos. 1 to 3 claiming through him, resulting in the extinction of the original character of the property in suit, and of the title claimed by the plaintiffs in the suit, as also in the accrual of title of the defendants Nos. 1 to 3, as asserted by them.

7. The result of the conclusion we have arrived at, as mentioned above, is that the decision and decree passed by the Court below must be set aside ; and we direct accordingly. The appeal by the defendants Nos. 1 to 3 is allowed, and the cross-objections preferred by the plaintiffs are dismissed. The plaintiffs' suit giving rise to the appeal and the cross-objections is dismissed. In the circumstances of the case, we direct that the parties to the litigation do bear their own costs throughout, including the costs in this Court.

Lodge, J.

8. I agree.