

(1938) 02 PAT CK 0015
In the Patna High Court

Etware Mahto

APPELLANT

Vs

Ganga Mahto and Others

RESPONDENT

Date of Decision : 21-02-1938

Acts Referred:

Citation : 174 Ind. Cas. 452

Hon'ble Judges : Varma, J

Bench : Single Bench

Judgement

Varma, J.—The point of law urged in this second appeal is very simple. Defendants Nos. 2 and 3 sold certain areas of land to the plaintiff. The plaintiff alleged that he was dispossessed from this land on account of certain entries in the Record of Rights whereupon the plaintiff filed a suit impleading defendant No. 1, with whose lands the purchased land is said to have amalgamated, and defendants Nos. 2 and 3 his original vendors. The prayer was either to get possession of the land or to get the price that he had paid to defendants Nos. 2 and 3. The learned Munsif decreed the plaintiffs suit and passed a modified decree in favour of the plaintiff inasmuch as he decreed that the plaintiff was entitled to get a sum of Rs. 175 from the defendants Nos. 2 and 3. Defendants Nos. 2 and 3 appealed to the lower Appellate Court. The plaintiff and the defendant No. 1 were made respondents. The plaintiff appeared, but the defendant No. 1 did not appear at that stage, and the lower Appellate Court, having come to the conclusion that the plaintiff was entitled to the land he claimed, passed a decree against the defendant No 1 and reversed the decision of the Munsif with regard to defendants Nos. 2 and 3. He has summarised his conclusions in the following terms which I had better quote

In the circumstances I would believe the evidence adduced on behalf of the plaintiff and hold that C.S. plot No. 909 corresponds with the western portion of Municipal Survey plot No. 1337 recorded in the name of defendant No. 1, that the said plot No. 909 belonged first to Sukhu Mahton and then by purchase under the kebala (Ex. A) to Sheo Sahai Mahton and defendants Nos. 2 and 3 as

his survivors and that the plaintiff purchased the plot from defendants Nos. 2 and 3 by the kebala(Ex. 2) who has been dispossessed therefrom by defendant No. 1.

The plaintiff is entitled to a decree for declaration of title to and recovery of possession of the disputed land along with mesne profits from Kartik 1341 Fasli.

2. The finding of fact is quite clear, but the point urged by Rajkishore Prasad; appearing on behalf of the appellant is that inasmuch as the plaintiff did not appeal against the decision of the trial Court to the lower Appellate Court, should not have passed a decree in his favour especially when the defendant No. 1 did not appear, before the lower Appellate Court. Now, there may be instances, as in the case reported in Kesho Prasad Singh Vs. Narayan Dayal and Others, , where it has been held that the Appellate; Court was not justified in passing certain orders in the absence of parties, but looking at Order XLI, Rule 33, it appears to me that; the Court has got ample powers to pass an order of this nature. In the case reported in Srimati Charu Bala Dasi and Others Vs. Srimati Nihar Kumari Dasi and Others, . We come across a case very similar to the present one. It appears that in that suit one of the defendants with a third person sold some land to defendant No. 9. That defendant sold the land to plaintiff with a condition that if the purchaser was ousted from the possession of the land, he would be entitled to recover the amount paid as consideration with interest. Now, the trial Court had held that the plaintiff failed to show that the land in suit formed a holding belonging to defendant No. 10 and the other persons who were joined. It also held that it was a part of the tenancy of defendants Nos. 3 to 8 and gave a decree to the plaintiff for the recovery of the money under the condition on which the conveyance was made and this decree was not in favour of defendant No. 9. Defendant No. 9 then appealed and the other parties, the plaintiff as well as defendant No. 10 and others, were made respondents. The Appellate Court came to the conclusion that defendant No. 10 and the other vendor were tenants of the land and that the plaintiff had acquired a good title under his conveyance. The lower Appellate Court reversed the decree of the trial Court and gave a decree to the plaintiff for the recovery of possession of the land in suit with mesne profits which he assessed at a certain amount. Now the first point taken in second appeal was that the lower Appellate Court was not entitled to pass the decree that he did. Their Lordships held that when the lower Appellate Court found that the plaintiff was not entitled to the alternative prayer which was granted by the Court of first instance, it was his duty to grant, if the findings justified, the other relief in order to adjust the rights of the parties in accordance with justice, equity and good conscience. In our own Court there is a recent decision of a Division Bench, to which I was a party, where similar views were expressed under similar circumstances. So, this point fails.

3. Mr. Rajkishore Prasad has tried to raise the question of limitation; but that point was never raised in the grounds of appeal.

4. The other points urged are mostly questions of fact which cannot be dealt with in second appeal.

5. I would, therefore, dismiss the appeal with costs. Although Mr. Janak Kishore represents the plaintiff and Mr. Rajeshwari Prashad represents the defendants Nos. 2 and 3 on the other side, there would be only one set of costs to be divided equally between them.

6. The prayer for leave to appeal under the Letters Patent is refused.