
(1968) 07 PAT CK 0016
In the Patna High Court
Case No : A.F.A.D. No. 578 of 1966

Hazi Khosal Biswas

APPELLANT

Vs

Ram Sundar Bhagat and Others

RESPONDENT

Date of Decision : 18-07-1968

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 100, 101

Citation : AIR 1969 Patna 128

Hon'ble Judges : Tarkeshwarnath, J

Bench : Single Bench

Advocate : Mahendra Pd. Pandey, for the Appellant; Jyotirmoy Ghose, for the Respondent

Final Decision : Dismissed

Judgement

Tarkeshwarnath, J.—This appeal by defendant No. 1 (the son of original defendant No. 1) arises out of a suit for declaration of title and recovery of possession in respect of 2.28 acres of land appertaining to revisional survey plots Nos. 3307 and 3527 of the revisional survey khata No. 903 of village Sukhasan and also for recovery of Rs. 248/10/- as compensation received by him (defendant) from the Land Acquisition Department in respect of 0.38 acres of land.

2. The case of the plaintiff was that he took settlement of 3 bighas 17 kathas and 19 dhoors of land bearing cadastral survey plot No. 582 along with other lands by means of a registered kabuliat dated 3-3-37 from the landlords. He further took rai-yati settlement of 12 bighas and odd kathas of land from the same landlords in the same village by means of another registered kabuliat dated 12th March, 1937 and came in possession of all the lands amalgamating them into one, holding on an amalgamated rental. Later on 0.38 acre of land out of cadastral survey plot No. 582 was acquired by the State of Bihar and compensation for the crops raised on that land was awarded to him. The remaining portion of that plot continued in possession of the plaintiff but during

the recent revisional survey operation that portion came to be recorded in Nos. 3305, 3307 and 3527. Plot No. 3305 was recorded in the name of Harekisun Bhagat (son of the plaintiff) in the re-visional survey khatian but the remaining two plots 3307 and 3527 were wrongly recorded in the name of Hazi Ramjan Biswas the ancestor of defendants 1 to 1 (c) as his occupancy holding, while the names of defendants 2 and 3 were wrongly recorded as bataidars of plots 3307 and 3527 respectively in spite of objections by the plaintiff, Hazi Ramjan Biswas fraudulently realised the amount of compensation to the extent of Rs. 284/10/- in respect of 0.38 acres without the knowledge of the plaintiff. The revisional survey entry regarding plot Nos. 3307 and 3527 was incorrect and being emboldened by that entry the defendants dispossessed the plaintiff from those two plots in Baisakh 1365Fs. which gives a cause of action to the plaintiff for the suit giving rise to this appeal.

3. Hazi Ramjan Biswas, defendant No. 1 died during the pendency of the suit, but he had filed a written statement contending that cadastral survey plot number 582 was never settled with the plaintiff and the plaintiff never came in possession of that plot. According to defendant No. 1 this plot was settled with him by means of a registered kabuliat dated 16th April, 1937 by some of the co-sharer landlords, namely, Sant Saran Chaudhry and others and later on that settlement was approved by the remaining co-sharer landlords. Defendant No. 1 had paid rent to the landlords and he continued in possession throughout ever since the time of that settlement. He denied the title and possession of the plaintiff in respect of the land in suit. His further plea was that the entries in the revisional survey khatian with regard to plot Nos. 3307 and 3527 were absolutely correct. Defendants 2 and 3 as well filed a written statement supporting the case of defendant No. 1 and these defendants claimed to be the bataidars of those two plots.

4. The learned Additional Munsif held that the plaintiff had acquired title to the lands settled with him, but he failed to prove his subsisting title, meaning thereby his possession over the suit land within twelve years of the institution of the suit and hence the Munsif came to the conclusion that the plaintiff was not entitled to a decree. Accordingly he dismissed the suit of the plaintiff. Being aggrieved by the said decree, the plaintiff filed an appeal. The learned Additional Subordinate Judge took a different view of the evidence and came to the conclusion that the plaintiff had not only proved his title to the land as a raiyat but had proved his possession as well within twelve years of the date of the suit. He further found that the plaintiff's case that he was dispossessed from the suit land only four years prior to the date of the institution of the suit was correct. In view of these findings he allowed the appeal, set aside the judgment and decree of the learned Munsif and decreed the plaintiff's suit declaring his title and granting him decree for possession in respect of the land in suit and compensation to the tune of Rs. 242/13/-only recoverable from defendants 1 to 1(c). Hence defendant No. 1 (who is the son of original defendant No. 1) has filed this appeal.

5. Learned Counsel for the appellant urged two points in this appeal. The first one was that the judgment of the learned Additional Subordinate Judge was not in accordance with law inasmuch as he had not considered all the reasonings given by the learned Munsif which persuaded him for discarding the evidence of the plaintiff's witnesses and holding that the plaintiff had failed to prove his subsisting title. The contention was that the finding of the learned Additional Subordinate Judge that the plaintiff had proved his possession within twelve years of the suit was vitiated, inasmuch as he did not consider the evidence of the plaintiff's witnesses properly and ignored the comments made by the trial court with regard to their evidence. The second point was that the trial court had framed an issue (No. 6) to the effect, whether the entry in the record of rights was wrong, but this issue had escaped the attention of the learned Additional Subordinate Judge.

6. I would deal with the points in the order, in which they have been urged. Both courts found that the plaintiff had taken settlement of the land in suit, but they differed on the question of possession. The learned Munsif dealt with the evidence of the plaintiff's witnesses and came to the conclusion that the oral testimony of those witnesses was not satisfactory for holding that the plaintiff had got possession of the suit land as alleged by him or that he had subsisting title to the suit land. The learned Additional Subordinate Judge on the other hand also referred to the evidence of the plaintiff's witnesses but he came to a different conclusion and that conclusion was in favour of the plaintiff on the question of possession. He dealt with the oral evidence of the plaintiff's witnesses in paragraph 10 of his judgment and commenced that paragraph by observing that "there is overwhelming oral evidence on the side of the plaintiff to show that he came in possession of the land after settlement and continued in possession of it till four years prior to the date of the institution of the suit, when he was forcibly dispossessed by the defendants". Thereafter he dealt with the evidence of Patwari (P. W. 1) and observed that P. Ws. 2, 4, 7 and the plaintiff (P. W. 12) had stated that the plaintiff had been coming in possession of the land till four years prior to the date of the institution of this suit. He took the view that the plaintiff was supported on the question of possession by P. Ws. 2, 6, 7, 8, 9 and 10, all of whom were competent witnesses, as they were either residents of village Sukhasan or they were employees of the co-sharer landlords. All those witnesses supported the case of the plaintiff that he continued in possession of the suit land for 24 or 25 years and he was dispossessed from that land about four years back. He again observed that P. Ws. 2, 4, 8, 9 and 10 owned land near the land in suit and so their testimony regarding possession of the plaintiff could not be discarded. After dealing with the oral evidence he considered the documentary evidence filed by the plaintiff and then he gave a finding on the question of possession. It should be mentioned here that both the courts disbelieved the case of the defendants with regard to their possession in respect of the suit land. It is true that the learned Additional Subordinate Judge has not referred to all the comments which the trial court had made with regard to the

evidence of the plaintiffs witnesses, but that by itself can hardly be a "ground for reversing the finding of the final court of fact, inasmuch as, it cannot be said in the present case that the finding on the question of possession has been arrived at without a consideration of the evidence or that the appellate Court had relied on some evidence which was not admissible or had approached the case from a wrong point of view.

Learned counsel for the appellant in support of his contention referred to a recent decision of this court in Sheikh Bashiruddin v. Dhani Mohammad 1968 BLJR 374. Rajkishore Prasad J. observed in that case that simply recording findings of fact, without any discussion of the evidence, was no judgment at all and such a judgment could not be said to be a proper judgment of reversal. His Lordship then observed as follows:--

"The court of appeal below may ultimately be correct, if it had considered the evidence, in reversing the judgment of the trial court, but it must appear from the judgment itself that the Court of appeal below has considered all the reasonings given by the trial court for coming to the contrary conclusions. In this view of the matter, the judgment under appeal cannot stand".

His Lordship ultimately remanded that second appeal for a fresh decision in accordance with law. I must say with great respect that this view is not in accordance with the principles laid down by the Supreme Court in R. Ramachandran Ayyar Vs. Ramalingam Chettiar, while considering the scope of Section 100 of the Civil Procedure Code. In that case the trial Court had decreed the suit, but that decree was reversed by the lower appellate court. Thereafter the High Court in second appeal reversed the judgment and decree of the lower appellate court and restored those of the trial court. Learned counsel for respondent No. 1 tried to support the judgment and decree of the High Court and urged that the lower appellate court had erred in reversing the judgment of the trial Court without considering all the reasons given by the trial Court. Dealing with this contention of Mr. Chatterjee, learned counsel for that respondent, Gajendragadkar, J. as he then was, observed as follows :--

"He says that if the lower appellate court wanted to interfere with the trial Court's conclusions of fact, it was necessary that all the reasons given by the trial court should have been examined and the whole of the evidence set out by the trial Court in its judgment should have been taken into account. Since the judgment of the lower appellate Court is not elaborate and some of the grounds set out in the trial court's judgment have not been examined, that constitutes an error or defect in the procedure and so, the High Court was entitled to correct that error or defect, because the said error or defect affected the decision of the merits in the case. The judgment of the appeal court, Mr. Chatterjee contends, "must come into close quarters" with the judgment of the trial court and meet the reasoning given therein, before it can be treated as conclusive between the parties for the purposes of Section 100."

Thereafter his Lordship referred to a catena of decisions and discussed the scope of Section 100 in the following manner:

"That Is why, even if the appreciation of evidence made by the lower appellate court is patently erroneous and the finding of fact recorded in consequence is grossly erroneous, that cannot be said to Introduce a substantial error or defect in the procedure. On the other hand, if in dealing with a question of fact, the lower appellate court has placed the onus on a wrong party and its finding of fact is the result, substantially, of this wrong approach, that may be regarded as a defect in procedure: if in dealing with questions of fact, the lower appellate court discards evidence on the ground that it is inadmissible and the High Court is satisfied that the evidence was admissible, that may introduce an error or defect in procedure. If the lower appellate court fails to consider an Issue which had been tried and found upon by the trial court and proceeds to reverse the trial court's decision without the consideration of such an issue, that may be regarded as an error or defect in procedure; if the lower appellate court allows a new point of fact to be raised for the first time before it, or permits a party to adopt a new plea of fact, or makes out a new case for a party, that may in some cases, be said to amount to a defect or error in procedure. But the High Court cannot interfere with the conclusions of fact recorded by the lower appellate court, however, erroneous, the said conclusions may appear to be to the High Court, because as the Privy Council has observed, however, gross or inexcusable the error may seem to be there 13 no jurisdiction u/s 100 to correct that error".

Ultimately his Lordship held that Mr. Chatterjee was not right in contending that because the judgment of the lower appellate court was not as elaborate as that of the trial judge, or because some of the reasons given by the trial Judge had not been expressly reversed by the lower appellate court, the High Court was entitled to interfere with the conclusions of the lower appellate Court. The result was that the judgment and decree of the High Court were set aside - inasmuch as the High Court was not justified in interfering with the finding of fact recorded by the lower appellate court in favour of the appellants. In view of these principles, I must overrule the contention raised by learned counsel for the appellant that the judgment of the lower appellate court suffered from the said infirmity and hence the finding of fact arrived at by him should be reversed in this second appeal. The Question as to whether the plaintiff had proved his possession within twelve years of the suit was entirely a question of fact and the finding given by the lower appellate Court is binding in the second appeal.

7. So far as the second point, with regard to the entry in the revisional survey khatian, is concerned, it is not correct to argue that the lower appellate court missed this aspect of this case. In fact learned Additional Subordinate Judge observed in paragraph 13 that Ext. 3 was the certified copy of the revisional survey khatian in respect of these two plots which stood recorded in the name of Hazi Ramjan Ali, but this entry appeared to have been made without the survey authorities having any material before them to make that entry. Moreover, the

plaintiff's title and possession having found to be correct, the recent entry in the revisional survey khatian regarding the two plots in the name of Hazi Ramjan Biswas must be held to be correct. Accordingly there is no merit even in the second contention and it must be overruled. The plaintiff has proved his title and possession within twelve years of the suit and he was entitled to a decree.

8. In the result, the appeal is dismissed with costs payable to the plaintiff respondent No. 1.