

(1936) 08 PAT CK 0027
In the Patna High Court

Jagan Koeri and Others

APPELLANT

Vs

Chairman, Gaya Municipality and Another

RESPONDENT

Date of Decision : 18-08-1936

Acts Referred:

Bengal Municipal Act, 1884 — Section 223A
Bihar and Orissa Municipal Act, 1922 — Section 58
Evidence Act, 1872 — Section 83

Citation : AIR 1937 Patna 567

Hon'ble Judges : Rowland, J

Bench : Division Bench

Judgement

Rowland, J.—These are five analogous appeals by the plaintiffs who had each been granted a lease of one cuttah of land within plot No. 14628 of the Municipal survey of Gaya town in mohalla Dighi by defendant 2, Rai Bahadur Baijulal Nakphopha, purporting to be the proprietor and in possession of the land. The claim is resisted by the Municipality sued through their Chairman, defendant 1, who, on receiving applications from the plaintiffs for permission to build houses on these plots, refused the applications on the ground that the lands belonged to the Municipality. Hence the plaintiffs brought these suits for a declaration that by the settlement from defendant 2 they had acquired good title to the land and the Municipality were not justified in refusing permission to build. The Munsif before whom the suits came decreed them; but on appeal the Subordinate Judge has reversed the findings of the Munsif and dismissed all the suits. The Subordinate Judge holds that the plaintiffs have not established that the lands in suit are a part of the estate of Rai Bahadur Baijulal Nakphopha known as mahal Alamgir, Tauzi No. 2495. The Subordinate Judge further held that these lands are a part of the lands comprised in the tank and its adjacent lands appertaining to it vested in the Municipality u/s 58, Bihar and Orissa Municipal Act, 1922. The contention for the appellants in second appeal is that the first finding is vitiated by an error of record; and the second by mis-placing the onus of proof and attaching an importance to the survey map and khesra which the Subordinate Judge was not

entitled to attach to those papers.

2. As to the former point it appears from Exs. G and H that defendant 2 had brought a mortgage suit against Shamji Mawar and obtained a decree in execution of which he purchased Tauzi No. 2495 Alamgirpur; and the sale certificate Ex. 1 refers to Dighi among the properties included. It is argued that in face of these documents it was not open to the Subordinate Judge to question the contention of the plaintiffs that the sale conveyed title to the whole mahal Dighi, but it appears that the sale cannot have been of the entirety of mahal Alamgirpur because in that mahal there are other tauzis bearing separate numbers 2489 and 2492 which were certainly not sold at that auction sale. Therefore I think that the Subordinate Judge was not in error in requiring the plaintiffs to prove that the disputed land was a part of the property covered by that auction sale. No maps or description by boundaries of the property conveyed are forthcoming; and I cannot say that the Subordinate Judge was in error in the view that he took on this question of title.

3. On the second question the Subordinate Judge has relied on the entries in the Municipal survey map and khesra which were prepared under a different procedure from that associated with the preparation of map and Record of Rights in rural areas under the Bengal Tenancy Act. In a Municipality the map was prepared under the Calcutta Survey Act which was made applicable to mufassil municipalities by virtue of Section 223-A, Bengal Municipal Act, 1884. The Calcutta Survey Act has been referred to at the hearing and no doubt it contains no provision for a statutory presumption of correctness to attach to the entries in the maps. At the same time it still remains a fact that the map is a map prepared under the authority of Government and a presumption of correctness attaches to it u/s 83, Evidence Act; while similarly the entries made in the khesra being entries made in an official record by public officers in the discharge of their duties, are themselves relevant facts and may be considered by the Courts as evidence of possession from which the Courts may, if they think fit, draw an inference as to title and therefore if from these entries the lower Appellate Court has thought fit to find that possession has all along been with the Municipality and from that he has drawn the inference that title is with the Municipality, it does not seem to me that I can say that there is any error of law committed in coming to the finding. Reference has been made at the hearing to the decision in *Framji Cursetji v. Goculdas Madhowji* (1892) 16 Bom 338. for the proposition that title by adverse possession will not accrue by reason of such casual acts of use as throwing of rubbish or even grazing or tethering cattle, etc., where it was not clear that such acts were done in an assertion of a title to the land and it is pointed out that there is rather a scarcity of direct acts of possession on the part of the Municipality. In fact throwing of rubbish on this land is the principal use to which it has been put; but this is not a case in which the Municipality is seeking to establish title by means of adverse possession. The Municipality asserts a title and refers to acts of possession as confirmatory of the fact that this title has been asserted by them all along. Plot No. 14628 is in fact a large plot and a

portion of it has been undoubtedly used by the Municipality for making & road, this being done apparently without objection by any party about the year 1927. The Municipal survey, I may mention, began about 1913 and was finally approved by Government in 1917. It seems to me that the questions raised for the appellants are really questions of fact and are concluded by the findings of the Court below, I do not find that these findings are vitiated by any error of law. Accordingly the appeals will be dismissed with costs.