

(2001) 04 JH CK 0043

In the Jharkhand High Court

Case No : Appeal from Appellate Decree No. 92 of 1984 (R)

Jawahar Mahto and Others

APPELLANT

Vs

Bilash Mahto and Others

RESPONDENT

Date of Decision : 09-04-2001

Acts Referred:

Citation : (2002) 50 BLJR 334

Hon'ble Judges : Gurusharan Sharma, J

Bench : Single Bench

Advocate : K.K. Sahay, for the Appellant; N.K. Prasad and Manjul Prasad, for the Respondent

Final Decision : Dismissed

Judgement

Gurusharan Sharma, J.—Plaintiffs filed Title Suit No. 7 of 1976 for declaration of title over disputed properties, detailed in Schedules "A" and "B", and for eviction of defendants from the suit house detailed in Schedule "B" to the plaint.

2. Admittedly, suit properties belonged to plaintiffs' father, Mahangu Mahto, who had built two new houses over Plot No. 715, one for residential purpose and other for keeping cattles and for his servants,

3. Defendants (sic) came from village Salatua, PS Akbarpur, village Mohammadganj in search of work made proposal to plaintiffs' father, about eleven years earlier to filing of the suit, to allow them to reside in the bigger houses constructed for residential purpose. It was let out to them on monthly rental of Rs. 15/-.

4. Plaintiffs came to know subsequently that defendants maneuvered to include their names in the demand register (Register-11) maintained by the State for collection of rent showing that they were also co-sharers.

5. Defendants contested the suit. According to them, Akhaj Koeri had five sons, namely, Damri Mahto, Mahangu Mahto (plaintiffs' father), Chandrika Mahto,

Deod-hari Mahto and Girdhari Mahto. They claimed that Mahangu Mahto was phuphera brother of Raghuni Mahto. Lakhpatia, sister of Manorath Mahto, father of Raghuni Mahto, was married with Akhaj Koeri. So defendants were close cognetic relation of the plaintiffs. Suit houses were initially built by Raghuni Mahto and his brothers and were re-built by defendant No. 1 and his uncle Chaturi Mahto and Ramratan Mahto. Plaintiffs's story to let-out the same on monthly rental of Rs. 15/- to the defendants was false. Rahuni Mahto and his two brothers were allowed by Mahangu Koeri to own and possess the suit land, besides other lands. Accordingly, rent was being paid to the erstwhile landlord proportionately and after vesting, likewise to the State of Bihar. Defendants also claimed acquisition of title by adverse possession.

6. Trial Court dismissed the suit holding that there was no relationship of landlord and tenant between Mahangu Mahto and defendants in respect of the suit hoses. It was further held that plaintiffs had no subsisting title over the suit properties, whereas defendants acquired title over Schedules "A" and "B" properties by virtue of adverse possession.

7. Plaintiffs preferred appeal, which was allowed in part. First appellate Court held that the defendants were living in the suit house (Schedule "A") on their own right for the last several 12 years and as such they perfected their title thereof by adverse possession. However, defendants did not acquire any title over Schedule "B" land by adverse possession and as such trial Court's finding in this regard was set-aside.

8. Defendants preferred the present second appeal against part of the impugned judgment and decree of first appellate Court, so far as it relate to Schedule "B" land, and plaintiffs filed cross-objection, challenging other part whereby defendants' title was declared over Schedule "A" house.

9. No doubt plaintiffs' claim was that defendants came in permissive possession of Schedule "A" house and defendants also admitted that initially there being cognatic relationship between the parties, they were enjoying possession since 1944 and subsequently from 1953 they started claiming hostile title against the plaintiffs. Chowkidari tax receipts were granted to them since 1953. They also got their names entered in the tenant's ledger, Register II, maintained by the State along with plaintiffs on the basis of possession and enjoyment and started payment of rent against receipts since 1968.

10. Plaintiffs failed to prove that actually defendants came in Schedule "A" house in or about 1965 and both the Courts below recorded concurrent finding of fact that defendants were in village Mohammadganj from 1944, and it was proved that defendants were living in the house in question since 1944.

11. In the present case, no doubt plaintiffs were able to prove their title, it was defendants' onus to prove continuous possession for more than twelve years, which they succeeded in proving.

12. Plaintiffs also failed to produce any document relating to creation of tenancy or any rent receipt showing payment of rent by defendants. So their case that defendants were tenants and were liable to be evicted miserably failed.

13. So far as the cross-objection filed by defendants against the finding of the first appellate Court, negating their claim of acquiring title by adverse possession over Schedule "B" land was concerned, in view of finding of fact recorded by first appellate Court that they failed to prove their case of adverse possession, and in view of plaintiffs' admitted title over the same, I find no reason to disturb the aforesaid finding in this second appeal.

14. So far as Schedule "A" lands were concerned, defendants miserably failed to establish that actually from which date, they started claiming hostile title against the plaintiffs. In my view, since they admitted to have come in permissive possession unless they were able to prove that from a particular date, they started claiming hostile title to the knowledge of the plaintiffs and thereafter continued in uninterrupted physical possession for more than twelve years, they could not have acquired title by adverse possession.

15. In the aforesaid circumstances, I find no reason to interfere with the impugned judgment and decree passed by the Court of appeal below.

16. In the result, this appeal filed by the plaintiffs and cross-objection filed by defendants, both, are dismissed. However, there shall be no order as to costs.

17. Appeal dismissed.