
(2011) 09 JH CK 0022
In the Jharkhand High Court
Case No : S. A. No. 78 of 2009

Jyoti Nayak and Others

APPELLANT

Vs

Putli Devi @ Karuna Mahto and Others

RESPONDENT

Date of Decision : 10-09-2011

Acts Referred:

Constitution of India, 1950 — Article 64, 65
Criminal Procedure Code, 1973 (CrPC) — Section 144, 145

Citation : (2012) 2 JCR 136

Hon'ble Judges : Narendra Nath Tiwari, J

Bench : Single Bench

Advocate : V.K. Tiwari, for the Appellant;

Final Decision : Dismissed

Judgement

N.N. Tiwari, J.—By the Court.—This appeal is against the judgment and decree dated 6.3.2008 passed by learned Additional District Judge, F.T.C-1X, East Singhbhum at Jamshedpur whereby learned lower appellant Court has upheld and affirmed the judgment dated 11.12.2002 and decree (decree signed dated 19.12.2002} passed by learned Munsif, Ghatsila in T. S. No. 8/98. The defendants are the appellants. The suit filed by the plaintiffs was decreed by learned Trial Court and the decree was affirmed by learned lower appellate Court.

2. The plaintiffs had filed suit for declaration of their right, title, interest and recovery of possession over the suit land.

3. The admitted claim of the plaintiffs is that they are the descendants of the recorded tenants of the land appertaining to khata No. 87. Plot Nos. 572. 573 & 570. measuring an area of 0.03 Decimals of Village - Khairbani, P.S - Shyamsunderpur, District - Singhbhum East.

4. According to the plaintiffs, the suit land was forcibly encroached upon by the defendants. The defendants have their residential house adjoining the suit land and they illegally amalgamated the suit land with their adjoining land, which

gave rise to the dispute. In the year 1995, the dispute led to a proceeding u/s 144 Cr.P.C. which was later on converted into a proceeding u/s 145 Cr.P.C. Then the plaintiffs filed the instant suit for the aforesaid reliefs.

5. The defendants appeared and contested the suit. In their written statement, the defendants took the plea that they are in continuous possession of the suit land and they have perfected their right title over the same. The defendants admitted that the suit land was recorded in the survey record, finally published in the year 1964, in the name of the predecessors-in-interest of the plaintiffs. But according to them, the entry is wrong.

6. Learned Trial Court framed several issues on the basis of the said pleadings.

7. Both the parties led their evidences, oral and documentary.

8. Learned Trial Court after thorough appraisal of the facts, evidences and materials on record came to the finding that the plaintiffs proved their right, title over the suit land and that the defendants could not establish their title by adverse possession. However, learned Trial Court has wrongly mentioned that the amended Articles 64 & 65 of the Limitation Act, 1963, brought by Bihar Regulation-I, 1969, which amends the period 30 years in place of 12 years in the cases of the members of the Scheduled Tribe, is applicable in the instant case. Learned Trial Court came to the finding that the suit is not barred by adverse possession. Learned Trial Court, thus, decreed the plaintiffs* suit.

9. Against the judgment and decree of learned Trial Court, the defendants - appellants filed appeal in the Court of learned District Judge, East Singhbhum, Jamshedpur being Title Appeal No. 4/2003. The said appeal was finally heard and disposed of by learned Additional District Judge, F.T.C - IX East Singhbhum, Jamshedpur.

10. Learned lower appellate Court heard the parties and considered the facts, evidences and materials on record and discussed the same in detail.

11. After thorough appraisal and discussion of the facts, evidences and materials on record and also taking into consideration the relevant provisions of law, learned lower appellate Court recorded his own independent findings holding that the plaintiffs have got title over the suit land and the defendants have failed to establish their hostile possession. The defendants have even not specifically pleaded about perfection of their right, title by adverse possession.

12. Learned lower appellate Court, in his conclusion, concurred with the findings of facts arrived at by learned Trial Court and dismissed the appeal.

13. The defendants have challenged the said judgment and decree of learned lower appellate Court mainly on the grounds that the Courts below have failed to consider the admitted continuous possession of the defendants over the suit land. Though there was admission of the PW-1 that the defendants have been in continuous possession over the suit land since the time of their grandfather, the

Courts below have committed error in not accepting the defendants' claim of acquiring title by adverse possession over the suit land.

14. Learned counsel for the appellants submitted that from the very inception the defendants claimed their right, title on the basis of their continuous possession and there was admission of the PW-1 that there is possession of the defendants from the time of their grandfather. The Courts below should have drawn inference that the possession of the defendants was adverse to the plaintiffs. Learned counsel further submitted that the claim of the defendants cannot be thrown out only on the ground that there was no clear pleading or evidence regarding the point of time of claiming title by adverse possession and the number of years of adverse possession, particularly, in the case where one of the plaintiff-witnesses has accepted that the defendants' possession dates back to the life time of their grandfather. Learned counsel referred to and relied on a decision of the Patna High Court. Ranchi Bench [as then was] in *Tata Iron and Steel Co. Ltd. Vs. Mrs. Parwati and Others*, .

15. Having heard learned counsel for the appellants, I perused the impugned judgments and decrees of learned Courts below. I find that learned lower appellate Court has discussed the facts, evidences and materials on record in detail and has come to the specific finding that the plaintiffs have established their right, title over the suit land and that the defendants have not even specifically pleaded acquisition/ perfection of their right, title by adverse possession. The defendants failed to make out a case of their hostile possession against the true owner. Learned lower appellate Court affirmed the judgment and decree of learned Trial Court.

16. In order to fortify the grounds taken by the appellants that there are sufficient materials on record to establish the plaintiffs' claim of adverse possession, learned counsel for the appellants submitted that the averments have been made in the plaint that the defendants have forcibly dispossessed the plaintiffs. The pleading of the defendants in their written statement that they are in continuous possession over the suit land, read with the evidence of PW-1, clearly substantiate the defendants' claim of acquiring title by adverse possession over the suit land and learned Courts below have committed grave error in not accepting the same and decreeing the plaintiffs' suit. However, it has been admitted by learned counsel for the appellants that there is no specific averment in the defendants' written statement regarding the point of time when the defendants first claimed hostile possession against the plaintiffs and the date on which they perfected their title by adverse possession. Learned counsel submitted that it is not necessary to specifically plead and prove adverse possession and the relief prayed for, can be granted to the defendants by assessing the facts and materials on record.

17. It is well established principle of law that there is presumption of possession in favour of a person, who has got title to the land. There is also an established principle of law that if a person makes claim of acquiring title by adverse

possession over any property, he has to specifically plead and prove the same.

18. The Limitation Act, 1963 has made clear provisions for suits based upon title. Clear distinction has been made for running limitation for the suit based on previous possession and not on title and for the suit for possession of immovable property based on title.

19. Article 64 of the Limitation Act provides period of limitation for filing suit for possession of immovable property based on previous possession and not on title from the date of dispossession, whereas, Article 65 of the Limitation Act provides 12 years limitation for a suit for possession of immovable property based on title. The period is 12 years when the possession of the defendant becomes adverse to the plaintiff.

20. Articles 64 & 65 of the limitation Act, 1963 read as follows :

Description of suit	Period of limitation	Time from which period begins to run
64. For possession of immovable property based on previous possession and not on title, when the plaintiff while in possession of the property has been dispossessed.	65. For possession of immovable property or any interest therein based on title.	Twelve years Twelve years The date of dispossession. When the possession of the defendant becomes adverse to the plaintiff.

21. In view of the said clear provision of Article 65, now the plaintiffs have to lay foundation of their title and once the plaintiff pleads and proves his title, the onus is on the defendant to prove that they have been in adverse possession of the property to the plaintiffs for more than 12 years before institution of the suit to the notice and knowledge of the true owner.

22. In the instant case, the plaintiffs have prayed for a decree for recovery of their possession based on the claim of their title over the suit land and they have been able to prove their title. The defendants have not disputed that the plaintiffs' predecessors-in-interest were recorded tenants in respect of the suit land. In view of the said unequivocal legal position, the defendants should have specifically set up their claim of acquiring title by adverse possession in their pleading and should have established the same by adducing cogent evidences.

23. Long back in the year 1922, Their Lordships of Privy Council AIR 1922 181 (Privy Council) had held that standing a title in "A" the alleged adverse possession of "B" must have all the qualities of adequacy, continuity and exclusiveness which should clarify such adverse possession. But the onus of establishing these things is upon the adverse possessor.

24. The Supreme Court in the same line while deciding the case reported in S.M. Karim Vs. Mst. Bibi Sakina, has held that adverse possession must be adequate in continuity, in publicity and extent and a plea is required at the least to show when possession becomes adverse so that the starting point of limitation against party affected can be found. Their Lordships further held that long possession is not necessarily adverse possession and such statement in the relief portion does

not substitute the plea required to be made in assertion of such title.

25. In the instant case, there is no clear averment in the written statement as to when the defendants' possession became adverse, so as to find out the starting point thereof.

26. In aforesaid case of S.M Karim, (supra), it has been further held that not only the party, who claims title by adverse possession, has to claim adverse possession, but he has also to establish the date from which his possession became adverse so that the starting point of limitation could be found.

27. The Apex Court in the case of Rajender Singh and Others Vs. Santa Singh and Others, observed that adverse possession cannot confer any right on the possessor immediately. Continued illegal possession ripens into a legally enforceable right, only after the prescribed period of time has elapsed.

28. In view of the said legal provisions, the party, who claims adverse possession, has to set up a clear case as to when his possession became adverse and when his right matures into an enforceable right.

29. Even in the case of Tata Iron and Steel Co. Ltd., supra, referred to and relied on by learned counsel for the appellants, adverse possession was established by oral and documentary evidence and two Courts concurrently recorded their findings in favour of adverse possession on the basis of the oral and documentary evidences. The second appellate Court had, thus, held that from the nature of the suit, it was to be found out whether the plaintiff had come up within 12 years or not for declaration of his title coupled with possession. If the plaintiff fails so then automatically it adversely affects the plaintiff's right and goes in favour of the defendant. In that case, it was observed that adverse possession was not required to be specifically pleaded.

30. In the instant case, the plaintiffs have established their title and also have established that the defendants dispossessed the plaintiffs about three years ago from the date of institution of the suit. The decision of Hon'ble Apex Court in Tata Iron & Steel Co. Ltd.. supra, is not at all applicable to the facts of the instant case.

31. Considering the plaintiffs' claim substantiated by the evidence, learned Courts below, while declaring the plaintiffs' title, have rightly granted relief of recovery of possession, as the defendants failed to establish their claim of adverse possession over the suit land.

32. In view of the said legal position and the concurrent findings of facts arrived at by learned Courts below, on thorough discussion and proper appreciation of the facts, evidences and materials on record. I find no error or illegality in the impugned judgments and decrees of learned Courts below. No ground is made out giving rise to any substantial question of law to be framed and decided in this second appeal. This appeal is, accordingly, dismissed. Appeal dismissed.