
(2000) 06 PAT CK 0023

In the Patna High Court

Case No : Appeal from Appellate Decree No. 463 of 1985

Kamal Mandal and Others

APPELLANT

Vs

Sri Ragho Mandal and Others

RESPONDENT

Date of Decision : 27-06-2000

Acts Referred:

Limitation Act, 1963 — Article 113

Citation : (2000) 3 BLJR 2172

Hon'ble Judges : Gurusharan Sharma, J

Bench : Single Bench

Final Decision : Allowed

Judgement

Gurusharan Sharma, J.—Defendants are appellants. Plaintiffs filed Title Suit No. 24 of 1981 for declaration that Revisional Survey entry in respect of disputed land, detailed in Schedule "Ka" to the plaint in the names of defendants 1 and 2 was illegal as also for declaration of their title and recovery of possession thereon.

2. One Singheshwar Mandal owned and possessed 10.73 acres land bearing C.S. plot No. 886 in village Mohanpur. He had no issue and so he adopted Govind Mandal, son of Santoshi Mandal of village Surmaha as his son, but subsequently Singheshwar Mandal, was blessed with three sons, namely, Anathi Mandal, defendant No. 10, Jagannath Mandal, defendant No. 12 and Ragho Mandal, plaintiff No. 1. Defendant No. 10 had a son, Lakhan Mandal, defendant No. 11, Jagannth Mandal had three sons, Hari Mandal, defendant No. 13, Ratanlal Mandal, as since dead and Suresh Mandal, defendant No. 14 Wakil Mandal, defendant No. 15 was son of late Ratanlal Mandal and Sudania Devi, defendant No. 16 was his widow. Balram Mandal, Jairam Mandal, Maheshwar Mandal and Shankar Mandal, plaintiffs 2 to 5 were sons of plaintiff No. 1.

3. The aforesaid Govind Mandal, who was adopted as son by Singheshwar Mandal had two sons, Kamal Mandal, defendant No. 1 and Mahendra Mandal, defendant No. 2 Bahadur Mandal, Upendra Mandal, Mohan Mandal and Dinesh

Mandal, defendants 3 to 6 were sons of defendant No. 1 and Ganesh Mandal, Umesh Mandal and Bauku Mandal, defendants 7 to 9 were sons of defendants No. 2 Gajji Mandal, minor son of defendant No. 3 was added as defendant No. 9 (ka).

4. After death of Singheshwar Mandal, there was partition among his four sons, namely, plaintiff No. 1, defendants 10 and 12 and father of defendants 1 and 2. Subsequently on 17.2.1961, a memorandum of partition (Ext. 4) was prepared over which all the four brothers put their signature, Exts. 3 (f) to 3 (I).

5. In the aforesaid partition, Govind Mandal got lands both in village Surmaha and Mohanpur. All the four brothers got their names mutated in respect of lands allotted to their share and were paying rent accordingly.

6. In the recent Revisional Survey R.S. Plot No. 364 having an area of 30 decimals was curved out from portions of three C.S. plots, namely, 23 decimals from southern part of C.S. plot No. 886, 6 decimals from C.S. plot No. 890 and 1 decimal of C.S. plot No. 888 in the names of defendants first party.

7. Plaintiffs claimed that aforesaid 23 decimals land in C.S. plot No. 886 was allotted to them. In the aforesaid partition and it was wrongly recorded in the name of defendants first party, who dispossessed them on 31.12.1977. The said 23 decimals land was subject-matter of dispute in the suit and was described in Schedule "ka" to the plaint.

8. Defendants first party filed Written statement and contested the suit. According to them in the year 1930, Khatiyan of khata No. 51 of village Mohanpur, having total area of 38.28 acres was prepared jointly in the names of Singheshwar Mandal and Govind Mandal respectively, having 3/4th and 1/4th share therein. They denied partition or preparation of any memorandum thereof. They had title and possession over the suit land and as such recent Revisional Survey entry was rightly done in their names. So there was no question of dispossessing the plaintiff. In fact, defendants first party asked for partition of their 1/4th share in the land of khata No. 51, which comes to about 16.75 acres, which caused anxiety to the plaintiffs and defendants second party and, therefore, they filed suit on false assertions. Defendants second party in their Written statement supported plaintiffs case. According to them on 15th Falgun 1358 Fasli partition by mates and bounds was effected among four co-sharers and subsequently on 17.2.1961 memorandum of partition (Ext. 4) was prepared, which was duly signed by all the four co-sharers. Defendants first party sold some land of their share in Mauza Surmaha and also mortgaged some land for purchasing pumping set.

9. The trial Court decreed the suit. Case of partition and thereafter preparation of memorandum thereof on 17.2.1961 was accepted and recent Revision Survey entry was held to be wrong. Plaintiffs title was declared over the aforesaid 23 decimals land, detailed in Schedule "ka" to the plaint and they were held entitled to recover possession. Defendants first party preferred Title Appeal No. 3 of

1983, which was also dismissed by impugned judgment and decree dated 24.7.1985.

10. It is not in dispute that plaintiff No. 1 mortgaged lands allotted to him in 1956 (Exts. 6 & 6/A) and also sold some lands (Exts. 7 to 7/B) to defendants-first party in 1962.

11. It was proved that on memorandum of partition (Ext. 4) Govind Mandal put his signature. Both the Courts below recorded concurrent findings of fact that Ext. 4 was a genuine and effective document. Plaintiffs brought on record Jamabandi register, wherein four separate Jamabandi (Exts. 5 to 5/C) were created after partition in the names of all the four sons of Singheshwar Mandal some times in 1962-63 and since then they were paying rent separately.

12. Even there was partition by metes and bounds among the four sons of Late Singheshwar Mandal in 1951, it was necessary for the Courts below to examine as to whether 23 decimals land in question, which was part of C.S. Plot No. 886 was allotted to plaintiff No. 1. In this regard only document brought on record was Ext. 4. There is no specific finding that actually the area from southern portion of C.S. plot No. 886 was allotted to plaintiff No. 1 in the said partition so as to ascertain that 23 decimals land in question was actually part of share of plaintiff No. 1 already allotted to him.

13. It appears that after disposal of suit and Title Appeal, plaintiffs received the exhibited documents, including the said memorandum of partition (Ext. 4) on 18.9.1986 and failed to refile the same in the present appeal for perusal.

14. In the impugned judgments and decrees neither the trial Court nor the appellate Court considered this aspect of the matter as to whether the suit land (23 decimals from southern portion of C.S. plot No. 886) was allotted to the plaintiffs on partition and it was proved from Ext. 4.

15. In my opinion, therefore, plaintiffs failed to prove that actually disputed land, which was a portion of C.S. plot No. 886 was allotted to them on partition.

16. Admittedly, Revisional Survey Khatian was finally published on 3.10.1977 and the suit was filed on 1.10.1981 challenging the entry therein relating to the suit land in the names of defendants first party. The suit was filed after expiry of 3 years, period and so it was barred under Article 113 of the Limitation Act. 1963.

17. I, therefore, set aside the impugned judgments and decrees passed by the Courts below and dismiss Title Suit No. 24 of 1981.

18. In the result, the appeal is allowed, but without costs.