

(1983) 01 PAT CK 0003

In the Patna High Court

Case No : Appeal From Appellate Decree No. 191 of 1976 (R)

Karunamoy Dutta and Others

APPELLANT

Vs

State of Bihar and Others

RESPONDENT

Date of Decision : 27-01-1983

Acts Referred:

Chotanagpur Tenancy Act, 1908 — Section 258
Limitation Act, 1963 — Article 113

Citation : (1983) 31 BLJR 244

Hon'ble Judges : Uday Sinha, J

Bench : Single Bench

Judgement

Uday Sinha, J.—This is an appeal by the plaintiffs against a judgment of affirmance.

2. The plaintiffs filed suit for declaration of title and confirmation of possession as also for declaration that survey entry in regard to the lands in suit was incorrect. The lands in suit originally formed part of plot 2 within khata 25 in village Genrue within Patawala police station in the district of Singhbhum. This was a large plot measuring more than 100 bighas. Revisional survey in regard to these lands took place in 1964. In that survey old plot 2 was split into several parts, Three of them were plots 9, 10 and 1042. The plaintiff claim (sic)title and possession over 3.60 acres in plot 9, 0.10 acre in plot 10 and 3.80 acres in plot 1042. The total of the lands in suit is 7.50 acres. The boundaries of the lands in suit as mentioned in the plaint are as follows:

North: Tisco land

South : Land of Sahdeb Das and others.

East : Pahar (Bihar Sarkar Forest Department),

West : Tisco land.

3. The case of the plaintiffs is that Mahendra Nath Das, the ex-landlord settled

15 bighas of land out of plot 2 with Sudbamoy Dutta and Dhrubmoy Dutta in 1342 B.S. which is equivalent to 1939. After taking settlement, the plaintiffs entered into possession. While being in possession, the plaintiffs claimed to have extended their cultivation and acquired possession over 7 bighas more of plot No. 2 besides 15 bighas settled with them. According to the plaintiffs, they were not given any notice in regard to the survey settlement which took place in 1964 in the district, in that survey, the plots in dispute were recorded as Unabad Mali Bihar Sarkar. The plaintiffs' assertion is that they did not know about it but in January, 1969 the Karmachari started interfering with their possession. Hence, the suit was filed in April, 1970.

4. The real contesting defendant in the suit was the State of Bihar ; others were pro forma defendants Shibram Dutta, who was settlee of the lands along with Dhrubmoy Dutta, disclaimed all interests in the suit lands.

5. Upon these pleadings, the parties went to suit. The trial court found that the suit was barred by the provision of Section 258 of the Chotanagpur Tenancy Act, 1908 (hereinafter to be referred to as the "Act"). The trial court also found that the plaintiffs had proved their story of settlement. It, however did not accept the claim of the plaintiff to have converted the land to their use as cultivable and the lands still remained Patri. Needless to say, the trial court rejected the story of Korkar in respect of 7 bighas of land as set up by the plaintiffs. The trial court rejected the stand of the State the suit was barred in terms of Article 113 of the Limitation Act, 1963 (hereinafter to be called the new "Limitation Act"). Upon those findings, the trial court dismissed the suit with costs.

6. On appeal, the lower appellate court also held that the suit was barred in terms of Section 258 of the Act. The lower appellate court also, in agreement with the trial court, found that the lands had not been appropriately defined and, therefore the plaintiffs could not be granted any relief. The lower appellate court, however, did a little better than the trial court and held that the plaintiffs had failed to prove the story of settlement of 15 bighas of land. Needless to say, it also held that the story of reclamation of land measuring 7 bighas out of the suit land was not acceptable. The lower appellate court thus dismissed the appeal.

7. Being aggrieved by the judgment and decree of the learned Additional Subordinate Judge, Jamshedpur, on appeal the appellants moved this Court by the present appeal. At the time of admission, the following substantial questions of law were framed:

1. Whether the courts below were justified in dismissing the suit on the ground that the description of the suit properties was vague; and

2. Whether, upon the facts and circumstances of this case, the suit was barred u/s 258 of the Chotanagpur Tenancy Act?

8. Besides the above questions of law, other questions have also been raised in this second appeal. The first question, which has been seriously contested by

learned Counsel for the respondent State and which must be disposed of here and now, is that the suit was barred in terms of Article 113 of the new Limitation Act. It is not in controversy that the relevant provision in the Limitation Act governing the period within which the suit should have been filed is Article 113 which lays down a period of 3 years from the, time the right to sue accrues. According to Mr. Lal, learned Counsel for the State, the cause of action arose in June, 1964 when "the wrong entry in the record-of-rights was made. If that were the only aspect to the considered, Mr. Lal would, probably, have been right. But we cannot lose sight of the averment of the plaintiffs in the plaint. In paragraph 10 of the plaint it has been stated that on 15th January last, which would mean 15th January, 1960, a Karmachari of the State of Bihar threatened to dispossess the plaintiffs from the suit land on the strength of wrong and incorrect settlement record. So the plaintiffs were compelled to bring the suit for declaration of title and confirmation of possession over the suit lands, after declaration that the settlement record was wrong. In paragraph 12 of the Plaint it has been stated that the cause of action for the suit arose of 1st June, 1964 from the date of final publication of the wrong settlement record and from 15th January 1969, the date of threatening in mauza Genrui, police station Patanga. It is well settled that the question of limitation has to be tested on the averments of the plaintiffs. It must be conceded that for this purpose a Court need not confine itself merely to the frame of the suit but is permitted to look into the substance of it. Even so the suit being for declaration of title and confirmation of possession, the real invasion on the interest of the plaintiffs arose when the Karmachari threatened to dispossess the plaintiffs. The incident having taken place in January, 1969 or 1970 the suit filed on 17-4-1973 was certainly well within time. Under Article 113 of the new Limitation Act the suit was not barred by time. Learned Counsel for the respondent State placed reliance upon *Sudhakar Misra and Another Vs. Nilkantha Das and Others*, . where Writ J. observed that the mere fact that a suit for declaration of the plaintiff's title and that the settlement record is erroneous and fraudulent without any claim for possession is governed by Article 120 of the Limitation Act, 1908 and the time runs from the final publication of the record of rights. The mere fact that the plaintiff pays an ad valorem Court fee make no difference. It will be observed that in that case his Lordship observed that without any claim for possession the case would be governed by Article 120 of the Limitation Act, 1908, which is equivalent to Article 113 of the new Limitation Act. In the instant case, the prayer is for declaration of title and for confirmation of possession. It is, therefore, difficult to say that this was a suit for mere declaration without any claim for possession *Sudhar Misra's case (supra)* therefore has no application and the submission must be rejected. That being the position, I am of the view that the suit was not by limitation.

9. The plaintiffs have been non-suited on the ground that the suit was not maintainable in terms of Section 258 of the Act. That section bars the filing of suits in any Court to vary, modify or set aside either directly or indirectly order or decree of any Deputy Commissioner or Revenue Officer in any suit, application or

proceeding u/s 85, 86, 87, 89 or 91 except on the ground of fraud or want of jurisdiction I have left out parts of Section 258 which are not relevant for our purposes here. That section further lays down that every decision as mentioned in that section shall have the force and effect of a decree of a civil Court in a suit between the parties and subject to the provisions of the Act relating to appeal shall be final. Sections 83, 87, 89, 90 and 91 find place in Chapter XII of the Act, which deals with preparation of record of rights and settlement of lands. Section 83 provides for preliminary publication, amendment, and final publication of record of rights. Section 87 provides for institution of suits before Revenue Officer in regard to matters covered by Sections 83 and 85 of the Act. Section 89 lays down that any Revenue Officer especially empowered by the State Government may, within 12 months of the entry in the draft record of rights or decision made u/s 83, revise the same. Section 90 gives power to the Deputy Commissioner to correct any bona fide or material error in record of rights within 5 years from the date of its final publication. The Courts below have taken the view that the present case was governed by Section 258 as the prayer was for correction of record of rights with respect to the suit lands. In my view, the Courts below were absolutely in the wrong. The case of Gobardhan Sahu Vs. Lalmohan Kharwar and Others, ., is a complete answer to the proposition that Section 258 barred the institution of the present suit. For that purpose again, we will have to see the prayer in the plaint. The plaintiffs prayer firstly, was for confirmation of the plaintiffs possession over the lands described in Schedule A of the plaint after declaration of their right in and title to the same, The second prayer in Clause (b) was for declaration that "the settlement record Khatian No. 120 of Mouza Genrua recording the suit lands in the name of Bihar Sarkar is wrong and erroneous". The Division Bench of this Court was faced with a situation similar to the present one in the case Gobardhan Sahu (supra). Fazal Ali, J. with his usual lucidity, laid down that Section 258 was no bar to a suit for declaration of title and that the prayer for correction of the record of rights would be merely incidental, Fazal Ali, J. observed that there was no provision in the Chotanagpur Tenancy Act that the presumption of correctness which attaches to an entry in the record of rights, becomes irrebuttable after a decision u/s 87. The present case is one where there has been no decision u/s 87. The present case therefore stands on a better footing than that of Gobardhan Sahu's case (supra). If there was no decision u/s 87 of the Act, there can be no question of application of bar of Section 258. I have therefore not the least doubt that Courts below erred in holding that the suit was barred by Section 258 of the Act. This case is fully covered by the decision in Gobardhan Sahu's case (supra).

10. Learned Counsel for the appellants submitted a point not urged before any of the Courts below that Section 90 of the Act empowered the Deputy Commissioner to correct any error in the record of rights after holding an enquiry either on an application or on his own motion. Section 149 of the said Act provides that the suit shall not be cognizable in any Court except as provided in this Act, namely suits and applications in respect of which jurisdiction is

conferred by this Act on the Deputy Commissioner see Section 139(8), Learned Counsel for the State submitted that in terms of Section 90 the Deputy Commissioner has the jurisdiction to correct any material error in regard to all rights and therefore the only forum was that of the Deputy Commissioner and not before a civil Court. With regret I am unable to accede to this submission. The decision of Gobardhan Sahu's case (supra) applies to this proposition as well, and a suit for declaration of title and possession cannot be governed by Section 139. On a parity of reasoning the submission urged on behalf of the respondent must be rejected on the authority of Gobardhan Sahu's case (supra).

11. One of the grounds on which the appellants were non-suited was that the description of the lands given in the plaint was vague. The plaint was not in conformity with the provisions of Order VII, Rule 3 of the Code of Civil Procedure. This rule provides that where the subject matter of the suit is immovable property the plaint shall contain description of the property sufficient to identify it and in case such property can be identified by boundaries or numbers in a record of settlement or survey the plaint shall specify such boundaries or numbers, The compliance with this rule is essential to give a content to any decree of a Court. But it is now well restablished that only for failure to set out the suit lands with clarity a party cannot be nonsuited. If a Court finds that the plaintiff has a cause of action and has a title to the land claimed by him, it is incumbent upon it to call upon the plaintiff to provide better and fuller particulars of the immovable property. Reference in this connection may be made to Nagar Khan and Others Vs. Gopi Ram Agarwala, . where H.L. Agarwal, J. observed that a suit cannot be dismissed nor plaint rejected for insufficient particulars and the Court may call upon the plaintiff to furnish more particulars even to the extent of allowing amendment of the plaint. I am in respectful agreement with the view of H.L. Agrawal, J. The dismissal of the suit on that score was ill founded.

12. We now come to the merit of the rival claims. The lands in suit measure 22 bigha. 15 bighas out of the suit lands were claimed by settlement and 7 bighas by Korkar. In my view, the claim of the plaintiffs to 7 bighas of suit land as Korkar cannot be sustained. The plaint does not set out the claim of Korkar. In fact, the word Korkar has not even been mentioned in any part of the plaint. The word Korkar has found an expression in Section 3(xiii) of the Act. It has definite legal connotation. The plaintiffs were therefore obliged to state clearly that land measuring 7 bighas out of the suit lands was their Korkar. In the absence of formality under the Act for acquiring title to land of Korkar the plaint is remarkably deficient in regard to the claim of Korkar. Learned Counsel for the appellants placed reliance upon the contents of paragraphs 4 and 7 of the plaint in support of the claim of Korkar. Paragraphs 4 and 7 read as follows :

4. That the plaintiff and his brother Shibram Dutta since the date of settlement in 1343, B.S. have been possessing the said settlement land by planting fruit trees and growing Rabi crops after reclaiming the same by cutting shrubs and removing stones from the land. In the course of reclamation they extended the

area of the land and have been possessing the extended area which is about 7 bighas on C.S.P. No. 2. They extended the said area about 20 years ago and they have been possessing about 22 bighas of land of plot No. of Mouza Gentua as appertaining to their jote of Rs. 3.

7. That the extension of 7 bighas was made in the course of reclamation of the settled land about 20 years ago. The said extension can be considered as an accretion to the original tenancy of 15 bighas. The plaintiff has acquired occupancy raiyati right in the area of 7 bighas also which was amalgamated with the original jote.

A reading of the paragraph quoted above shows that all that the plaintiffs alleged was that they had planted fruit trees and had grown Rabi crops after reclaiming the same by cutting the shrubs and removing stones. This is not sufficient to constitute Korkar. Korkar implies artificial levelling or embanking of land primarily for cultivation of rice which previously was jungle waste or cultivated. There is no whisper in the plaint that the plaintiff had levelled or embanked the 7 bighas of land or that they had grown rice thereon. In that view of the matter the plaintiffs have no claim to 7 bighas of land claimed by them as Korkar. To that extent their suit was rightly dismissed.

13. Then remains the claim of the plaintiffs to 15 bighas of land based on settlement. The trial Court accepted the story of settlement. In paragraph 10 the trial Court observed that the plaintiff had documentary title to the lands settled but they had not converted the land to their use as cultivable and the lands still remained Part. If the story of settlement had been accepted the claim of the plaintiffs could not be rejected in relation to 15 bighas just because they had not cultivated the lands. There was no question of avdorse possession. They had taken settlement of the land and it was continuing as such whether they cultivated it or not. The lower appellate Court by a curious process of reasoning has rejected the story of settlement. The learned Subordinate Judge did not really address himself as to whether the story of settlement of 15 bighas of land was well sustained or not. Yet in paragraph 15 he observed that he had come to a finding that the plaintiffs had not succeeded in proving the story of settlement of 15 bighas of land by the ex-landlord. It is true that the lower appellate Court did address itself to the documents filed by the plaintiffs in regard to the settlement. But have failed to find much substance in it. The ex landlord had filed return to the State of Bihar in respect of tenants under him. The plaintiff's name is found mentioned in that return. Certified copy of that return was Ext. 7. In that return it has been mentioned against serial 9 that tenants Shibram Dutta and Dhrumboy Dutta were permanent settlees in regard to plot 2 area 15 bighas out of 107 bighas 10 kathas 12 dhurs, The settlement was made in 1342. The lower appellate Court rejected this document as showing settlement for the reason that at the top of the document is mentioned land settled with tenants "after 1st January 1946". The mention of settled lands with tenants after January 1946 appears to be on printed form. The mention of the year 1946 was not of

much significance. It appears that the ex-landlord was filing the return of the tenants under him. In that view of the matter the story of settlement could not have been rejected on the ground that the return showed that the settlement was post 1946. The learned Subordinate Judge commented adversely upon a rent receipt of 1350. It is true that there is a rent receipt of 1350. The plaintiffs had filed a rent receipt of 1350 B.S. which would probably, mean 1947. That may not be a perfect evidence of title but certainly it was good evidence of possession. And if the plaintiffs were in possession in 1947 that would go a long way in establishing their claim of title. The case of *Mt. Ugni v. Showa Mahto* AIR 1967 Pat. 302 Paragraph 16 lends some assurance to the view that I have taken in this regard.

14. The plaintiffs examined 2 sons of the ex-landlord who supported the plaintiff's case in full. The lower appellate Court did not consider it appropriate to place reliance upon their testimony. The first reason given was that they did not know R. S. Plots 9, 10 and 1042. I am unable to appreciate this comment. These plot numbers came into existence in 1964. The ex landlord had ceased to have any interest in these lands in 1955. At that time the plot number was 2 and therefore, it is not surprising that the sons of the ex-landlord were ignorant of plots 9, 10 and 1042. It is true that some documents have not been filed but they were in possession of the ex-landlord and the sons of ex-landlord deposed that all their documents receipts etc. had been deposited with the State. These, however are questions of fact which need to be considered by the Court of fact. The lower appellate Court accepted the evidence that Gora and Kurthi are grown on Parti and Tant lands. Besides this finding, he also observed that the plaintiffs did not possess any evidence to prove that they had converted any portion of the suit land into paddy growing land. The evidence that the plaintiffs had not converted any portion of the suit land into paddy growing land would be necessary for the Court of fact to find whether right of Korkar had been established or not. But the evidence adduced on behalf of the plaintiffs is that they had grown Gora (rice) and Kurthi that would be sufficient to show that the plaintiffs were in possession of 15 bighas of land by growing those crops beside planting mango trees, jack fruit trees, etc. In that view of the matter the finding of the lower appellate Court in regard to possession of the plaintiffs and their claim of settlement requires reconsideration by the Court of facts.

15. While advertng to the judgment of the lower appellate Court I have made same comments thereon but this was only for the purpose of holding that the findings were not satisfactory. My observations on questions of fact should not prejudice the Court of fact.

16. My concluded view therefore, is that the suit was not barred by time, the suit was not barred by Section 258 of the Act, the suit was not barred by Section 139-A of the Act the claim to Korkar over 7 bighas of land has no merit. The suit could not be dismissed for want of full particulars of the lands claimed by the plaintiffs. The plaintiffs must be afforded an opportunity of giving full better

particulars of the lands claimed by them. The case is now remitted back to the lower appellate Court for giving a fresh finding on the plaintiffs claim of settlement over 15 bighas of the suit land and disposal of the appeal in accordance with law. The appeal is accordingly allowed costs will abide the result.