
(1939) 08 PAT CK 0011
In the Patna High Court

Khedu Mahto and Others

APPELLANT

Vs

Khonka Mahto and Others

RESPONDENT

Date of Decision : 11-08-1939

Acts Referred:

Evidence Act, 1872 — Section 35

Citation : AIR 1939 Patna 591

Hon'ble Judges : Agarwala, J

Bench : Division Bench

Judgement

Agarwala, J.—This is an appeal by the plaintiffs from a decision of the Subordinate Judge of Purulia reversing a decision of the Munsif. The appeal arises out of a suit to eject the defendants on an allegation that they were under-riyats of the plain, tiffs. The defence was that the defendants-were not under-riyats but cosharers with the plaintiffs. The Court below has accepted the defence and dismissed the plaintiffs" suit. This decision is challenged by the appellants on the ground that the Court has acted on inadmissible evidence. The evidence objected to is a decision of the Khanapuri officer in the course of the settlement in 1903. In the finally published Record-of-Rights the predecessors of the defendants were recorded as under-raiyats in respect of the disputed land. But in the Khanapuri proceedings which preceded the finally published Record-of-Rights one of the present plaintiffs, Jhari Mahto, is stated in the decision of the Khanapuri officer to have admitted before him that the predecessors-in-interest of the present defendants were cosharers. It is this admission contained in the decision of the Khanapuri officer which is challenged as inadmissible.

2. In Parbutty Dassi v. Purno Chunder Singh (1883) 9 Cal. 586 the plaintiff who was sued for possession of a fishery sought to put in evidence an admission alleged to have been made in a previous suit by the defendants" predecessors-in-title in a written statement filed in that suit. The only evidence of the admission was the recital from the pleadings contained in the preliminary portion of the decree in the final suit. It was held that the statement in the decree was

evidence of the admission u/s 35, Evidence Act. The next case on the point is Krishnasami Ayyangar v. Rajagopala Ayyangar (1895) 18 Mad. 73. That was a suit for partition of family property in which it became necessary for the plaintiff to prove that his grandfather had been adopted by A. He sought to prove this fact by judgments in which it was stated that A's brother who was the grandfather of defendant 1 had sued to recover moneys due to A, alleging that the adopted son was an infant living under his protection. It was held that these judgments were admissible in order to prove the statement made by the predecessor-in-title of the party against whom they were sought to be used.

3. This case was referred to by the Privy Council in AIR 1934 157 (Privy Council) . With reference to the Madras case, their Lordships said:

In Krishnasami Ayyangar v. Rajagopala Ayyangar (1895) 18 Mad. 73 a statement amounting to an admission which was contained in a judgment was received in evidence u/s 35 as an entry in a record made by a public servant in the course of his duty. There is much to be said for this view of Section 35. In India judgments have to be in writing and signed by the Judge and the original judgments and decrees are records of the Court and retained in the record room the parties being supplied with certified copies only.

4. Now, the question before the Privy Council was whether an admission contained in a pedigree attached to a decree in a former suit was admissible against the successor-in-interest of the person on whose behalf the pedigree had been admitted in the former suit. Their Lordships held that the pedigree attached to the decree was admissible for the purpose of proving the admission relied upon. On behalf of the appellants reference was made to the decision of the Privy Council in Ram Parkash Das v. Anand Das A.I.R 1916 PC 256. The question in dispute between the parties in suit case related to the right to succeed to an aashal, it being alleged that one of the claimants was debarred by reason of his being a married man. This was sought to be proved by a statement with regard to it in the judgment of the Criminal Court. The Privy Council held that the judgment was inadmissible for this purpose.

5. That case was distinguishable from the cases already referred to in this respect that the person who made the statement in that case was a stranger to the parties before the Privy Council. Their Lordships, therefore, there said that the criminal proceedings were irrelevant in the case before them. In the case that is before me not only is Jhari Mahto himself the plaintiff, but from the decision of the Khanapuri officer it appears that he was, at the time, acting on behalf of all the persons jointly interested in the land in dispute. I, therefore, hold that the decision of the Court below cannot be challenged on the ground of inadmissibility of evidence.

6. Furthermore, even if the decision of the Khanapuri officer were inadmissible for proving the truth of the admission made by Jhari Mahto before the Khanapuri officer it would still be admissible for the purpose of proving that Jhari Mahto

made such a statement, and when that fact is admissible, the further fact, that Jhari Mahto himself being the plaintiff in the present litigation did not venture into the witness-box in support of his case that the defendants are under, raiyats could not but impress the Court of fact unfavourably with regard to his claim. It is evident from the judgment of the Court below that that Court was very unfavourably impressed by the fact that Jhari Mahto did not offer himself for cross examination. Under these circumstances, even if the evidence objected to were inadmissible, I am not prepared, in second appeal, to hold that the rejection of that evidence would have made any difference to the decision of the Court below.

7. Finally, reference may be made to the decision in Chand Ray v. Bhagwati Charan A.I.R (1934) . Pat. 248 that the proceedings before the survey authorities prior to the publication of the Record-of-Rights are admissible for the purpose of rebutting the presumption which attaches to the finally published record. The appeal is dismissed with costs.