

(2020) 05 JH CK 0061
In the Jharkhand High Court
Case No : Second Appeal No. 11 Of 2012

Madhu Sudan Lal And Ors

APPELLANT

Vs

Murlidhar Shukla And Ors

RESPONDENT

Date of Decision : 12-05-2020

Acts Referred:

Code Of Civil Procedure, 1908 — Section 100

Citation : (2020) 05 JH CK 0061

Hon'ble Judges : Ananda Sen, J

Bench : Single Bench

Advocate : Ajay Kumar Sinha, Tirtha Nandan Jha

Final Decision : Dismissed

Judgement

1. Original appellant had preferred this appeal aggrieved by and dissatisfied with the judgment dated 05.12.2011 (decree following thereupon signed on 19.12.2011) passed by the Principal District Judge, Palamau at Daltonganj whereby the appeal being Title Appeal No.24 of 2007 was dismissed confirming the judgment and decree dated 23.03.2007 passed by the Subordinate Judge 2nd, Palamau at Daltonganj in Title Suit No.55 of 1995.

2. The original appellant herein was the plaintiff/appellant before the trial Court and the first appellate Court. Upon death of the original appellant, the present appellants have been substituted.

3. The plaintiff had instituted the suit for the relief of declaration that plaintiff has perfected her right by way of adverse possession being in possession peacefully, openly and hostile to the defendant since 1974 and even prior to her adverse possession is claimed against defendant No.3, through vendors of setlees, and prior to that vendors of the plaintiff, namely, Rambriksh Ram and others. Plaintiff also prayed that the sale deed No.4566 dated 05.05.1994 and 3635 dated 11.04.1994 executed by defendant No.3 in favour of defendants 1 and 2 is ab-initio void, conferring no right, title interest or possession in her favour.

4. The case of the plaintiff is that plot No.303 having an area of 66 $\frac{3}{4}$ decimals of land was a raiyati land upon settlement by the then landlord Pameshwari Dutt Jha, who succeeded his father Babu Durga Nand Jha, to Rambriksh Ram, Bhuneshwar Ram Jaishree Ram sons of Kail Ram and Sheo Ram and Bharat Ram sons of Tapeswar Ram, the setlee. It is the case of the plaintiff that within plot No.303 there was one small plot No.314 having area of 18 decimals. Thus, the possession of 14 decimal of plot No.314 was also settled by the landlord along with the 66 $\frac{3}{4}$ decimals of plot No.303. It is the case of the plaintiff that at the time of vesting of Estates and Tenures, the said setlees were in possession over those lands, situated in village Nimiya, Police Station Daltonganj. It is further case of the plaintiff that Smt. Ganga Devi and Girja Devi sold jointly under deed dated 01.01.1974 an area of 48 $\frac{1}{4}$ decimals to the plaintiff and gave a common boundary in the sale deed as follows: -

North : Land of Radha Krishna Jain

South : Land of earlier Bhuneshwar Ram, then Kanhaiya

Pd. Sinha now Satyadeo Pd. Agarwal

East : Land of Smt. Binda Devi

West : Road popularly known as Gorakshani Road

5. It is the case of the plaintiff that on purchase from the vendors, the plaintiff came in possession over the suit land from the date of purchase and as period of 20 years have passed, plaintiff has perfected her right through adverse possession so far plot No.314 is concerned. It is the case of the plaintiff that prior to the plaintiff, her vendor and vendor's vendor and prior thereto the setlees were in possession over the said land. It is the case of the plaintiff that under such circumstance, Parmeshwari Dutt Jha did not have any right, title and interest which they could have transferred vide registered deeds 4566 dated 05.05.1994 and 3635 dated 11. 04.1994 to the defendant. The plaintiff, thus, claimed that the sale deed executed by said Parmeshwari Dutt Jha, original defendant No.3 to defendants No.1 and 2 is ab-initio void. It is stated that defendants attempted to encroach upon the suit land by making illegal construction on 21. 05.1995, which was though resisted by the plaintiff, yet despite such resistance, the threat is still continuing. It has further been pleaded that during pendency of the suit, defendants hurriedly constructed boundary wall and had also constructed a small room.

6. Defendants No.1, 2 and 3 had filed their separate written statements. Defendant No.1 has taken ornamental plea of maintainability, cause of action, limitation, estoppels. Plea of non-joinder of necessary party, i.e., the sons of deceased defendant No.3 (Sudhir and Manohar Kumar Jha) has also been taken. He claimed the description of the suit land as detailed in the plaint as also in the map to be vague, imaginary and false. He denied the contention of the plaintiff that incorrect boundary has been depicted in the sale deed. He has denied that

Parmeshwari Dutt Jha has ever made raiyati settlement of 66 ½ decimals of land in plot No.303 to the said settlees as also delivery of possession of plot No.314 along with plot No.303 to the settlees. He claimed that plot No.314 of the said village belonged to defendant No.3, who had purchased it from the rightful owner and is in possession. He has specifically asserted that neither the vendor of plaintiff nor vendor's vendor of plaintiff ever came in possession over any portion of plot No.314, which always remained in khas possession of Parmeshwari Dutt Jha at the time of vesting of Zamindari and even subsequent thereto. He claimed that he has constructed boundary wall all around the land and a house. He has claimed that the then landlord has rightly sold the land conferring title to the defendant.

7. Defendant No.2 has pleaded that he had purchased the land from the rightful owner, in plot No.314, area 6 ¼ decimal within specified boundary and he is in possession over it. He stated that other persons also acquired land from said purchaser and all are in possession. He stated that both the defendants are in possession over their respective piece of land. He pleaded that since both the deeds, under challenge, are executed in the name of two different persons, plaintiff cannot be permitted to challenge both the deeds in one suit. He pleaded that plot No.314 and 303 are distinct, having different boundaries and both have got their individual character and no amalgamation had taken place. He denied that settlees or the subsequent purchasers ever came in possession over any portion of land under plot No.314. He claimed that boundaries written in any sale deed not in between the parties will not bind the defendants, but said Ganga Devi or Girija Devi do not have any right, title or interest to sell any portion of plot No.314 nor they have sold it as claimed and the entire assertion of the plaintiff is false. He claimed that defendant No.3 always remained in possession over 18 decimals of land of plot No.314 and has rightly transferred it to this defendant and as per the said purchase, defendant is in possession and has acquired valid right, title and interest and the plaintiff does not have any right to object the possession of the defendant. He claimed that the map annexed with the plaint is incorrect and false and the suit is the result of greed and temptation of the plaintiff.

8. Defendant No.3 in his written statement has asserted his title over plot No.314 as also his right to transfer of the said plot to the defendants No.1 and 2. He denied that plot No.314 is within the plot No.303, rather it has separate boundary and separate identity. He pleaded that the land settled to the settlees are three chains away from plot No.314, thus, claim of the plaintiff of settlement just by the side of plot No.314 and claim for plot No.314 is false. He also challenged the alleged purchase of Ganga Devi and Girija Devi of plot No.314. He denied that plaintiff ever came in possession over an inch of plot No.314, nor the settlees or their purchasers ever came in possession, much less adverse to the claim of this defendant. He stated that defendants No.1 and 2 have acquired valid title from their respective purchases and they are in possession over it without any interference from any quarter and the allegation of encroachment by

them, as made by the plaintiff is false. He stated that the rent of the lands bearing Plot No.303 has been fixed in Rent Fixation Case No.21/53-54 and whatever settlement taken by the heirs of Kail Ram and Tapeswar Ram is with regard to plot No.303 and not with regard to plot No.314.

9. On the basis of pleadings of the parties, the Trial Court had framed following issues: -

1. Is the suit as framed maintainable?
2. Whether the suit is bad for non-joinder of necessary parties and is also bad for improper valuation and payment of court fees?
3. Has the plaintiff got cause of action for the suit?
4. Whether the plaintiff's right, title and interest is perfected over the suit land on the law of adverse possession and sale deed No.4566 dated 05.05.1994 and 3635 dated 11.04.1994 are void documents?
5. Whether the sale deeds executed favouring defendants 1 and 2 No.1566 dated 05.05.1994 and 3635 dated 11.04.1994 are illegal documents.

6. To what other relief or reliefs is the plaintiff entitled to?

10. I have heard the the appellants and the respondents, who have appeared through their counsel.

11. The Trial Court, after considering the evidence and the materials on record, dismissed the suit of the plaintiff. The appellate Court also concurred with the said findings and dismissed the appeal.

12. The main issue for deciding the dispute is whether the plaintiffs' right, title and interest is perfected over the suit land by virtue of law of adverse possession. Both the Courts below had gone through the complaints and weighed the evidences. Both the Courts have found that the possession so given to the plaintiffs was permissive in nature. The disputed plot is plot No.314 and not plot No.303 over which there is no dispute that the plaintiff is the owner. The dispute is to the extent of 4 ¼ decimals only. The Courts have held that the plaintiff is claiming title over plot No.314 without any documents, the title is rather claimed by prescription. The document, which the plaintiff has relied upon is in relation to plot No.303 and not in relation to plot No.314. The plaintiffs claim that plot No.314 was included in plot No.303 was not accepted to be correct. There is no document to show that there was transaction of plot No.314, rather the documents suggest that transaction was in relation to plot No.303. Even P.W.1 could not justify the case of the plaintiffs. The Appellate Court, while quoting P.W.2 has found that the P.W.2 has stated in his cross-examination that he, nor his father, nor the purchasers have got any connection with plot No.314 and plot No.314 belongs to Parmeshwat Dutt Jha, which he sold. Both the Courts have concurrently held that the plaintiff has got no title over plot No.314. It is also pertinent to mention that when both the Courts have found that it is not the case

of the plaintiffs that they came in possession adversely through the true owner, rather, they claimed that their adverse possession is against true alleged vendor and their possession does not date back to the date they purchased or acquired the land under the sale deed, rather from the date when others got settled the land from the landlord. It is pertinent to mention here that according to the plaintiffs, this land was settled to Ram Briksh Ram and sons of Kail Ram, Sheo Ram and Bharat Ram, who are sons of Tapeswar Ram. The Courts also took into consideration the cadastral survey map and found that plot No.303 and plot No.314 are different.

13. Both the Courts, on the facts, have held that the plaintiffs have failed to prove that they remained in possession over plot No.314. Whether a person is in possession of a particular plot or not that too, hostile to the true owner or not, is absolutely a question of fact. After weighing the facts and evidence, both the Courts have answered the issue against the plaintiffs. Since the facts, which led to this case have been answered against the plaintiffs, this Court, exercising jurisdiction under Section 100 of the Code of Civil Procedure is not inclined to entertain and reopen the decided facts in this second appeal. No substantial question of law is involved, which fall for consideration by this Court in this second appeal.

This second appeal is, accordingly, dismissed.