
(2001) 06 PAT CK 0012

In the Patna High Court

Case No : Second Appeal No. 577 of 1986

Maharaj Pandey and Others

APPELLANT

Vs

The State of Bihar and Others

RESPONDENT

Date of Decision : 25-06-2001

Acts Referred:

Citation : (2001) 06 PAT CK 0012

Final Decision : Dismissed

Judgement

Ashok Kumar Verma, J.—The Plaintiffs Appellants have filed this Second Appeal against the judgment and decree, dated 3.6.1986, passed by Additional Subordinate Judge, III, Aurangabad, in Title Appeal No. 3 of 1973/11 of 1984, whereby the learned Subordinate Judge dismissed the appeal and confirmed the judgment and decree passed by the Additional Munsif, Aurangabad, in Title Suit No. 156 of 1965/43 of 1978. The Plaintiffs had filed the suit for declaration of title to hold "mela" and "hat" on the suit land which was recorded in the survey Khatiyani as gair mazrui malik land and after the survey it was brought under cultivation and became "bakasht" land in cultivating possession of the land lord of Kunda Estate. The land was settled with Smt. Shiv Bachhan Devi in the year 1342 Fasli on nakdi rental basis and she continued in the possession and paid rent to the land lord. Smt. Shiv Bachhan Devi managed the suit land through her brother and Mukhtar Ram, Raghav Narain Singh. After coming in possession of the land, Smt. Shiv Bachhan Devi started holding "mela" and "hat" on the suit land on one day, i.e., Kartik Purnima day and she used to realise toll and rent. Smt. Shiv Bachhan Devi sold the land to the Plaintiffs under registered sale deed dated 6.4.1964 and put the Plaintiff in possession of the land. The Anchal Adhikari, Kutumba, and other local officers were threatening to usurp the Plaintiffs right to hold "mela" and "hat" on the suit land. The Plaintiffs have right to hold the "mela" and "hat" and to realise its profits.

2. The Defendant, State of Bihar, through Collector, had contested the suit and filed written statement. According to the Defendant, the suit land was gair

mazrua malik and had never become the "bakasht" land of the ex-land lord and had remained gair mazrua malik character till it vested in the State of Bihar under the Bihar Land Reforms Act. The alleged settlement of the land in favour of Smt. Shiv Bachhan Devi sister of Raghav Narain Singh is ante dated, collusive and fictitious and she never came in possession of the suit land. Smt. Shiv Bachhan Devi had not acquired any occupancy right as she did not hold "mela" on the suit land. The alleged purchase of the land by the Plaintiff is collusive and without consideration and inoperative and the Plaintiffs have not acquired any title and possession. The Plaintiff and his vendor had no possession over the suit land and "mela" was never held on the land on behalf of the Plaintiffs or the vendor. The State of Bihar has been in actual and physical possession of the land from the date of its vesting in the State and "mela" and "hat" are being held annually by settlement at the instance of the State of Bihar.

The said Raghav Narain Singh had taken settlements in some years and so the Plaintiffs and his predecessors in interest are stopped from challenging the right of the State of Bihar to hold "mela" and exercise other sairat rights.

3. The points, which had been formulated for consideration in this Second Appeal is that whether the judgment of the Court below is vitiated for non-framing of the issue on settlement by the ex-landlords? Whether the judgment of the Court of appeal below is vitiated for non-consideration of the Commissioner's report? Whether the Court of appeal below has jurisdiction to frame and decide an issue without taking evidence on the point?

4. It was submitted by the learned lawyer for the Appellant that the trial court had not framed specific issue that whether the settlement of land was done by the ex-land lord and therefore the judgment of the Court below is vitiated. It was contended by the learned Government Advocate, appearing on behalf of the State of Bihar that the trial Court has specifically mentioned in the judgment that the whole question for determination. is whether the suit lands is gair mazrua malik land vested in the State of Bihar or the Plaintiffs are the occupancy raiyats of the suit land and the trial court has held in its judgment that the Plaintiffs have failed to prove that they are occupancy raiyats of the suit lands and that the suit lands as gair mazrua malik lands had not vested in the State of Bihar. The contention of the learned Government Advocate is tenable. Therefore the judgment of the Court below is not vitiated.

5. Exhibit-D is Khatiyani in respect of the suit land which shows it as gair mazrua mazkur bakabza malik. According to it, the land is gair mazrua malik. The Plaintiffs-Appellants has also admitted in the plaint that the land was recorded in the survey Khatiyani as gair mazrua malik land.

6. Exhibit 12 is the certified copy of the order sheets, dated 27.5.1968; 25.6.1968 and 30.6.1968 of Sarpanch, which shows that mutation petition for mutation of names of Maharaj Pandey and others s/o Shri Brahmdeo Pandey and others in respect of Khata No. 98, plot No. 869 of village Parta, Thana Kutumba,

Thana No. 569 had been filed and order for mutation was passed. Exhibit 12/A is the certified copy of the order sheets, dated 27.5.1968, 25.6.1968 and 30.6.1968 of the Sarpanch which shows that mutation petition was filed on behalf of the Brahmdeo Pandey for mutation of his name in respect of Khata No. 98, plot No. 863, 865 and 872, thana No. 569 and order for mutation was passed. Admittedly, the Title suit in respect of the land had been filed by Brahmdeo Pandey Maharaj, Pandey and others in the year 1965, whereas the order of mutation in respect of the land in suit was passed in the year 1968, i.e., nearly after three. years of the filing of the suit.

7. The case of the Plaintiffs is that land lord of Kunda Estate had settled the land with Smt. Shiv Bachhan Devi, sister of Raghav Narain Singh of village Kunda in about the year 1342 Fasli on nakdi rental basis and she managed the suit land through her brother and Mukhtar, Raghav Narain Singh and Smt. Shiv Bachhan Devi sold the suit land to the Plaintiffs by. registered sale deed, dated 6.4.1964, Exhibit 2 is a sale deed, dated 6.4.1964, executed by Raghav Narain Singh in favour of Brahmdeo Pandey. Exhibit 2/A is another sale deed, dated 6.4.1964, executed by Raghav Narain Singh in favour of Maharaj Pandey, Gopinath Pandey and Baijnath Pandey. It is relevant to mention here that the Title Suit out of which this Second Appeal has come up had been filed by Brahmdeo Pandey, Maharaj Pandey, Gopinath Pandey and Baijnath Pandey, which clearly shows that the Plaintiff had got the sale deed executed in the year 1964 and they had filed the suit in the year 1965. According to Exhibit A/3, settlement of Parta Kartik Purnima Mela of Kutumba Anchal which it held once in a year on the eve of Kartik Purnima was made with Shyam Narain Singh in the year 1957. According to Exhibit A/4, the settlement of the said mela in the year 1959 was made in favour of Raghav Narain Singh by the Anchal Adhikari. It is also relevant to mention here that according to the Plaintiffs, the land lord had settled the land with Smt. Shiv Bachhan Devi, sister of Raghav Narain Singh and she managed the suit land through her brother and Mukhtar, Raghav Narain Singh. It has already been mentioned above that according to Exhibit A/4, the settlement of the said mela was made in favour of Raghav Narain Singh in the year 1959-60. According to Exhibit A/5, Parta Mela was settled with the ex-intermediary Smt. Shiv Sundari Dutt and Shri, Anil Kumar through agent Raghav Narain Singh, attorney, for the year 1960-61. According to Exhibit A/6, the Parta Mela was settled in the year 1961-62 for three years with the ex-intermediary, Smt. Shiv Sundari Dutt and Shri Anil Kumar through her agent, Shri Raghav Narain Singh attorney up to the year 1963-64.

8. In view of the facts and circumstances of the case, the aforesaid contention of the learned lawyer for the Appellant is not tenable.

9. It was submitted that the learned lawyer for the Appellant that the lower appellate Court has not considered the report of the Advocate Commissioner. In this connection the contention of the learned Government Advocate was that the Advocate Commissioner was not examined by the Plaintiff as a witness in the

trial Court and in absence of the examination of the Advocate Commissioner as a witness, the judgment of the lower appellate Court is not vitiated.

10. It was also submitted by the learned lawyer for the Appellant that the lower appellate Court had framed issues and so it should have remanded the case to the trial Court when the lower appellate Court had thought that these issues were essential to be framed.

11. It appears, from the judgment of the lower appellate Court, passed in Title Appeal No. 5 of 1973/11 of 1984, that the learned Additional Subordinate Judge has mentioned the points for consideration which are whether the disputed land had become bakasht land of Kunda Estate after survey and whether the disputed land was settled with Shiv Bachhan Devi in the year 1342 Fasli on the basis of Nagdi Lagan and whether Shiv Bachhan Devi was holding mela on the disputed land and realising toll and whether on the basis of the sale deed, dated 6.4.1964, executed by Smt. Shiv Bachhan Devi, the Appellants got any right to hold mela on the disputed land?

12. The Plaintiffs have stated in the plaint that after survey, lands were brought under cultivation and became bakasht land in cultivating possession of the land lord Kunda Estate and the suit land remained in cultivating possession of the land lord of Kunda Estate till it was settled to Smt. Shiv Bachhan Devi, sister of Raghav Narain Singh of village Kunda near about the year 1342 Fasli on Nagdi rental basis and soon after coming in possession of the suit land Shiv Bachhan Devi began holding "mela" and "hat" on the suit land only for one day on the 30th Kartik, i.e., Kartik Purnima day and she used to realise toll and rent of the "mela" and "hat" and Smt. Shiv Bachhan Devi sold the suit land to the Plaintiffs under the registered sale deed, dated 6.4.1964 and put the Plaintiffs in possession and thus the Plaintiffs became entitled to all the rights, title and interest of the vendor, including the right to hold the "mela" and "hat" So the learned Additional Subordinate Judge has not taken up any new point for consideration in his judgment.

13. Therefore, in view of the facts and circumstances of the present case, the lower appellate court was not required to take evidence.

14. The plea had been taken by the Plaintiffs in the trial court and therefore it had to be considered by the Court below.

15. It was contended by the learned lawyer for the Appellant that concurrency of the finding is nothing. It was also submitted by him that in concurrent findings of fast interference in Second Appeal is justified and in support of his contention he placed his reliance on a decision of the Supreme Court, reported in Sundra Naicka Vadiyar (dead) by LRs. and another Vs. Ramaswami Ayyar (dead) by his LRs., It was also submitted by the learned Counsel for the Appellant that in the appeal the concurrent findings of the lower courts can be interfered with and he placed reliance on a decision of the Supreme Court reported in Variety Emporium Vs. V.R.M. Mohd. Ibrahim Naina, It has been held by the Supreme Court in the

case of Kondiba Dagadu Kadam Vs. Savitribai Sopan Gujar and Others, that concurrent findings of fact however erroneous, cannot be disturbed in Second Appeal u/s 100 of the Civil Procedure Code.

16. In view of the facts and circumstances of the case and in view of the decision of the Supreme Court, reported in Kondiba Dagadu Kadam Vs. Savitribai Sopan Gujar and Others, there is no merit in this Second Appeal. It is, accordingly dismissed with costs.