

(1938) 11 PAT CK 0001
In the Patna High Court

Mokhada Dasi and Others

APPELLANT

Vs

Lakshmi Narain Das and Others

RESPONDENT

Date of Decision : 14-11-1938

Acts Referred:

Evidence Act, 1872 — Section 167

Citation : AIR 1939 Patna 221

Hon'ble Judges : Wort, J

Bench : Division Bench

Judgement

Wort, J.—This is an appeal from the decision of the Subordinate Judge reversing the decision of the Munsif with regard to certain property being about 60 bighas of land, and in the result the question to be determined was whether Haricharan, the father of the mother of the plaintiffs, had been in adverse possession.

2. In the first instance those claiming through Haricharan, who were the shebait of the deity, set up a case that the land had been purchased by Haricharan in the benami name of his daughter, but on the findings of the learned Judge in the Court below that plea has not been sustained. As I say and repeat, in the result the question came to be determined whether Hari Charan was in adverse possession. There is a long history attached to the property since 1889 when the property was first purchased, and there is no doubt that whatever view this Court may take of the evidence, it will be impossible for this Court in second appeal to say or for the learned advocate appearing on behalf of the parties to argue that there was no evidence upon which the learned Judge in the Court below could come to the conclusion that Haricharan was in adverse possession and indeed Sir Manmatha Nath Mukherji who appears on behalf of the defendant-appellants does not contend that there was no evidence, but on behalf of his clients contends that the learned Judge in reversing the decision of the trial Court had omitted to mention the most important piece of evidence, and that evidence is no less than the Record of Rights and it was upon that record that the learned Judge of the trial Court, at any rate to some extent, had relied.

3. Now, it has been laid down on many occasions by a number of Divisional Court decisions of this Court that it is impossible to hold that a judgment cannot be sustained merely by reason of the fact that certain items of evidence have not been mentioned. It is perfectly obvious in this case that the Record of Rights must have been mentioned to the learned Subordinate Judge unless I were to hold that the advocate who appeared in the Court below on the part of the defendants neglected his duty, and, following the decisions of this Court, it is impossible for me to say that the learned Judge not only made no statement in his judgment regarding the record but also shut out from his mind any consideration of it. But it is not upon that, that I decide the case.

4. As I have already stated, there was ample evidence (indeed it was not argued that there was insufficient evidence) to come to the conclusion that Hari Charan was in possession. But the appellants cannot be in any better position in this Court than if the learned Judge had deliberately held that the Record of Rights was not admissible in evidence. The Record of Rights is of no better value than any other piece of truthful evidence, if I may use the expression; there is a presumption that the record therein found is true; but there is no presumption that it overrides every other item of evidence which both parties may call. And it is the duty of the Court in those circumstances to treat that as a piece of reliable evidence and at the same time consider the other evidence in the case.

5. Now, had this been a piece of evidence admissible but which the learned Judge had rejected, Section 167, Evidence Act, would most certainly have applied and the Court is prohibited from ordering a new trial merely on the ground that the learned Judge has rejected the evidence which was admissible. I say and repeat the parties cannot be in any better position and in those circumstances, to repeat what I have already stated, the mere fact that the learned Judge has not mentioned in his judgment the Record of Rights does not entitle me to say that he dismissed that piece of evidence wholly from his consideration.

6. If the learned Judge is persuaded, from the items of evidence (and there was a large number of items) to come to the conclusion that Hari Charan was in adverse possession, it would necessarily follow that he would come to the conclusion that the Record of Rights was erroneous in this respect. For either reasons which I have stated, I am of the opinion that it is impossible for me to reverse the decision of the lower Appellate Court and for those reasons I would dismiss the appeal with costs. Leave to appeal is refused.