
(2017) 05 PAT CK 0041
In the Patna High Court
Case No : 231 of 1978

Mostt. Kishori Devi & Ors

APPELLANT

Vs

Mostt. Phulmati Devi & Ors

RESPONDENT

Date of Decision : 16-05-2017

Acts Referred:

[Limitation Act, 1963](#), [Article 59](#), [Article 58](#)

Citation : (2017) 05 PAT CK 0041

Hon'ble Judges : Mungeshwar Sahoo

Bench : SINGLE BENCH

Advocate : Rajendra Narain, Avinash Kumar, Indrajeet Bhushan, Gopal Pandey,?
Shambhu Prasad Yadav

Judgement

1. This First Appeal has been filed by the defendants appellants against the Judgment and decree dated 25.02.1978 passed by the learned 2nd Addl. Sub Judge, Siwan in Title (Partition) Suit No.183 of 1969 / 189 of 1973 / 6 of 1977 whereby the learned trial Court decreed the plaintiff respondent's suit for partition.
2. The plaintiffs respondents filed the aforesaid partition suit claiming separation of one biggha 19 katha 18? dhur land purchased by the plaintiff out of the suit property. The plaintiff claimed the aforesaid relief alleging that Babu Binda Prasad was the owner of Tauzi No.1282 of village-Pagurkothi to the extent of 6 ana 8 karat and the rest interest in the Tauzi belonged to Babu Jamuna Prasad. Babu Binda Prasad settled 5 katha 12 dhur of Schedule I land by registered Patta dated 24.08.1922 to

Smt. Ram Dulari Devi who sold the said 5 katha 12 dhur land to the plaintiff No.1 to 4 by registered sale deed dated 21.06.1954 and plaintiff came in possession. Jamuna Prasad was in possession of 3 Bigha 14 katha 5 dhur under Khata No.2 and 115 of village - Pagurkothi. He died leaving his two widows, namely, Binda Basini Devi and Janki Devi. Janki Devi sold her half share to the plaintiff No.1 to 4 by registered sale deed dated 29.06.1968 which they purchased in the name of plaintiff No.5. This land is described in Schedule II of the plaint. The other widow, Binda Basini Devi sold her share measuring 1 biggha 14 katha 6 ? dhur of Khata No.2 and 115 to the defendant. All the lands of khata No.2 and 115 is described in Schedule III of the plaint. The parties are in joint possession. When the plaintiff demanded partition, the defendant refused, so the partition suit was filed.

3. The defendant No.1 alone contested the suit by filing contesting written statement. The main defence is that the suit land is coming in possession of the defendant as batiadar since 45-46 years and the defendant have acquired title by adverse possession. Due to ignorance of law, they thought that they have got right and title over half share on the suit land as batiadar so they purchased the remaining half area of the suit land by sale deed dated 01.06.1968 from Binda Basini Devi. This defendant denied all other allegation regarding ownership of Babu Binda Prasad, settlement made by him by registered patta in the year 1922 in favour of Ram Dulari Devi and pleaded that in fact they never came in possession rather the defendants continued in possession. The defendant also denied execution of registered sale deed in favour of the plaintiff by Ram Dulari Devi. According to the defendants, the sale deed is forged and fabricated document and executed by a person who had no title. The defendant also denied execution of sale deed by Janki Devi in favour of the plaintiff. According to the defendant, the plaintiffs have no title and that they never came in possession of the suit land.

4. On the basis of these pleadings, the learned trial Court framed the following issues :-

- (i) Is the suit as framed maintainable?
- (ii) Have the plaintiffs got any cause of action for the suit?
- (iii) Whether the Court fee paid is sufficient?
- (iv) Is the suit barred by limitation?
- (v) Have the defendants acquired title to the suit lands by adverse possession?
- (vi) Is the story of Batai settlement of the suit lands in favour of the defendant's ancestor correct?
- (vii) Are the sale deed dated 21.06.1954 executed by Ram Dulai Devi in favour of plaintiffs 1 to 4 and the sale deed dated 29.06.68 executed by Janki Devi in the name of plaintiff 5 genuine and valid?
- (viii) Are plaintiffs 1 to 4 entitled to a decree for partition? If so, to what extent?
- (ix) To what relief, if any, are the plaintiffs entitled?

5. The learned trial Court considered the evidences of the parties and then came to the conclusion that the plaintiff have acquired title to the extent covered by the sale deeds ext."1" and "1/A". The batai settlement claimed by the defendant is not correct and that the defendants have not acquired title by adverse possession. Accordingly, the plaintiff's suit was decreed.

6. The learned senior counsel, Mr. Rajendra Narain, appearing for the appellant submitted that the learned trial Court approached the case in wrong angle. In a suit for partition, the plaintiff is required to prove unity of title and unity of possession but the said issue was not framed and the Court below without recording finding on this point decreed the plaintiff's suit wrongly. The learned trial Court has wrongly held that the plaintiff have acquired title by the registered sale deed without considering the fact that the vendor of the plaintiff and the plaintiffs themselves never came in possession of the property which they purchased, therefore, the finding is vitiated. The defendant appellants were all along in possession of the suit property as bataidar and even after so called transfer, the plaintiffs never

came in possession, therefore, there is no unity of title and possession between the parties. The defendants appellants are in exclusive possession over the suit property. So far half share is concerned, they have purchased the same and so far the other half share is concerned, they are in possession as batiadar of the original owner and because of long possession, they have required occupancy riyat right as such the property could not have been sold by the vendor in favour of the plaintiff but the learned trial Court did not consider this aspect of the matter.

7. The learned senior counsel further submitted that in ext. "B", there is clear recital that the defendants are the bataidar and ext."A" proves that the defendants were and are in possession of the suit property but the learned Court below ignored these evidences and wrongly held that the story of Batiadar is incorrect. The learned counsel further submitted that the learned trial Court only catalogued the evidences of the defendants who have clearly deposed regarding bataidars but the trial Court without considering their evidences meticulously discarded them and wrongly held the story of bataidar as incorrect. According to the learned senior counsel, the defendants continued in possession for more than many 12 years since their ancestor's time as such they have also acquired title by adverse possession. On these grounds, the learned senior counsel Mr. Rajendrs Narain submitted that the appeal be allowed and the impugned Judgment and Decree be set aside and plaintiff's suit be dismissed.

8. On the other hand, the learned counsel, Mr. Gopal Pandey, submitted that the sale deeds of the plaintiffs are of the year 1922 and 1968. The defendants never challenged the sale deeds. The presumption of correctness is attached to the registered document and in the defence, the defendants only said that the sale deed are forged and fabricated. No counter claim was filed nor separate suit has been filed for setting aside the sale deeds. Moreover, the Bataidari claim should have been made by the defendant before the appropriate Forum under the Bihar Tenancy Act

and the Civil Court has no jurisdiction to grant such relief which is available to the defendant under the Bihar Tenancy Act. Moreover, the defendants themselves have purchased half share of the other widow of Jamuna Prasad and thereby they admitted the title of the owner Jamuna Prasad and his widow Binda Basini Devi in the year 1968 and the plaintiff have purchased the other half share of the other widow Janki Devi. There had been no partition between the two widows, therefore, the plaintiff and the defendant being the purchasers of half share came in joint possession of the land in suit. Now, when the defendants themselves admitted the title of one widow, they cannot deny the title of other widow on the ground of acquisition of occupancy raiyati right. On these grounds, the learned counsel, Mr. Pandey submitted that the First Appeal be dismissed with cost.

9. In view of the above submission of the learned counsels for the parties, the only point arises for consideration in this First Appeal is :-

(i) Whether the plaintiffs are entitled to separate possession of their purchased land by separating the same from the suit land as claimed by them or whether the defendants have acquired title by adverse possession or by occupancy raiyati right?

10. It is the case of the plaintiff that Babu Binda Prasad had interest to the extent of 6 ana 8 karat in Tauzi No.1282. He settled 5 katha 12 dhur of Schedule I land by registered Patta dated 24.08.1922 in favour of Ram Dulari Devi who in turn sold the same by registered sale deed dated 21.06.1954. This sale deed had been produced by the plaintiff which has been marked as ext."1". This registered sale dated 21.06.1954 executed by Ram Dulari Devi is not challenged by the defendants within the prescribed period. It may be mentioned here that the lands have been settled in favour of Ram Dulari Devi by registered Patta of the year 1922. This Patta is also never challenged by the defendants. In such circumstances, when registered documents have been produced by the

plaintiff in support of settlement in favour of Ram Dulari Devi and sale deed in favour of the plaintiff which have never been challenged by the defendants, the documents become final. There is presumption that the registered document is valid till the contrary is proved and the onus is on the person who asserts that the document is invalid or sham transaction. Reference may be made in this point to the decision of this Court reported in 2012 (2) PLJR 190 Seeta Sharan Prasad case. In the present case as stated above, nobody claimed any declaration that the registered patta of the year 1922 or the registered sale deed of the year 1954 are either forged and fabricated or sham transaction. In the written statement, it is only stated by way of defence that the documents are forged and fabricated. The registered documents have been produced, therefore, the presumption of its validity is in favour of the plaintiff and by mere saying that the documents are forged and fabricated that too after the expiry of period, prescribed under Article 58 and 59 of the Limitation Act, these registered documents cannot be held to be either forged or fabricated or sham transaction.

11. So far the other sale deed of the plaintiff dated 29.06.1968 ext. "1/A" which is in the name of plaintiff No.5. The lands have been purchased from Janki Devi by the plaintiff. This sale deed is also never challenged by the defendant. No declaration is sought for by the defendant with respect to the sale deed. Admitted fact is that the defendants have purchased the remaining half share of the other widow, i.e., Binda Basini Devi by registered sale deed of the year 1968. In other words, the defendants admitted the title of one widow of Babu Jamuna Prasad. The defendants never made any case that Janki Devi is not the widow of Babu Jamuna Prasad. In other words, it becomes admitted fact that Babu Jamuna Prasad died leaving behind two widows. From one widow, the plaintiffs have purchased and from the other widow, the defendants have purchased.

12. The total area of land comprised within Khata No.2 and 115 is 3 biggha 14 katha 5 dhur. Out of the said land, settlement was made for 5 katha 12 dhur in the year 1922 which the plaintiff purchased in the year 1954 by ext."1". Therefore, the remaining land was 3 biggha 8 katha 13 dhur. This remaining land was inherited by the two widows to the extent of half and half which comes to 1 biggha 14 katha 6 ½ dhur each. Janki Devi sold 1 biggha 14 katha 6 ½ dhur of Khata No.2 and 115 by registered sale deed ext."1/A" to the plaintiff. In view of this registered sale deed, now the plaintiffs acquired title and possession as they have purchased from the rightful owner.

13. The plaintiffs have also produced ext. 2 which is certified copy of registered patta dated 24.08.1922 executed by Binda Prasad in favour of Ram Dulari Devi. So far these documents are concerned, the only defence is Binda Prasad had no right to settle and that the documents are forged and fabricated. Except these bald statements, there is nothing on record in support of the case of the defendant. Ext. 3 series are rent receipt produced by the plaintiff to show their possession. In ext."1/A", it is recited that the vendor was in possession and possession has been delivered to the purchasers. P.W.14 is the widow, Janki Devi, who is the vendor. She has clearly supported that she sold the property and delivered possession to the purchasers, i.e., the plaintiff. P.W.12 is the plaintiff No.5 in whose name exhibit "1/A" stands.

14. Now, let us see the evidences of the defendants. Ext. "A" is a rent receipt. This document had been produced to show that the defendants are in possession of the property as batiadar. It may be mentioned here that this ext. "A" is not consistent with the present case of the defendant as in ext. "A", the area mentioned is 2 biggha 14 katha 14 dhur. Admittedly, Jamuna Prasad was in possession of 3 biggha 8 katha 13 dhur of both the khatas. When the defendants claimed that they were in possession of entire land then how only one rent receipt showing 2

biggha 14 katha 14 dhur had been produced. What is about the remaining land. There is no explanation at all. Therefore, on the basis of ext. "A;" it cannot be concluded that the defendants were in possession of the entire property of Jamuna Prasad measuring 3 biggha 8 katha 13 dhur. The other documents ext. "B is sale deed which has been executed by Binda Basini Devi in favour of the defendant. This documents is admitted by the plaintiff and by this document, the defendants purchased half of 5 katha 12 dhur settled in favour of Ram Dulari Devi also who sold to the plaintiffs by registered sale deed in the year 1954 when the plaintiff have already purchased the property by registered sale deed from the settlee to registered Patta ext. "2". The half portion of this land could not have been sold by Binda Basini Devi through ext. "B" in favour of the defendant.

15. The learned senior counsel, Mr. Rajendra Narain, gave much emphasis in the recital of the sale deed ext."B" to the effect that the vendee have been cultivating the lands sold as Bataidar, therefore, this is clear proof of Bataidari right of the defendant. It is admitted fact that during the trial, Binda Basini Devi was alive but she was never examined as witnesses in support of the statement. Moreover, whatever admitted by Binda Basini Devi is her statement will be admissible against her only and not against Janki Devi and / or the vendees of Janki Devi, i.e., plaintiffs.

16. Moreover, a person acquires occupancy right by legal fiction by efflux of time on expiry of the prescribed period. This Court in the case *Suryawans Upadhyaya Vs. Awdesh Chaoudhary*, 1999 (2) PLJR 173 has held that "the inquiry about the acquisition of occupancy right in term of Section 48 C of the Bihar Tenancy Act can be made only under Section 48 D. Since such a right is not available under general law of the land, the Forum created under the Act is alone competent to declare the status of a person as an occupancy under Raiyat or Raiyat within the meaning of Section 48 C and 48 D. It cannot be decided in a suit."

17. In view of this decision, the right claimed by the defendant is

that they have acquired occupancy right cannot be enquired into by the Civil Court. The defendants could have approached the appropriate Forum under Bihar Tenancy Act.

18. In view of this settled proposition of law, I have no option but to say that the defendants have failed to prove occupancy raiyati right and moreover this right cannot be investigated in this suit, particularly when they have not prayed for declaration of their either title or occupancy raiyati right.

19. The learned senior counsel, Mr. Rajendra Narain for the appellant gave much emphasis on the point of acquisition of title by adverse possession. So far this question is concerned, all the witnesses examined by the defendant D.W.1 to 4, 6 and 9 to 12 have only stated about bataidari right, i.e., occupancy right. The learned senior counsel submitted that the trial Court has not scrutinized the evidence of these witnesses meticulously. So far this submission is concerned, it may be mentioned here that since question of acquisition of occupancy right is a matter that can only be gone into by the authority under Bihar Tenancy Act as has been held by this Court in the aforesaid decision the evidences of these witnesses are not relevant for deciding the controversy between the party. Now, even if it is held that the defendants were in possession but then merely because they were in possession, it cannot be said that they acquired title by adverse possession. It is settled law that the possession how so long it may be, it will not ripen to title unless the ingredients constituting adverse possessions is proved by the person asserting it i.e., corpus possidendi and animus possidendi. To prove animus possidendi, there must be intention not only to possess the land but also there must be intention to dispossess the real owner. In the present case, since it is claimed by the defendant that they are in possession which proves only corpus possidendi and there is no animus possidendi, therefore, there is no question of acquisition of title by

adverse possession arises. Reference may be made to the decision of the Hon"ble Supreme Court in the case of P. T. Munichikkanna Reddy Vs. Revamma 2007 (6) SCC 59. Reference may also be made to the decision of Hon"ble Supreme Court in the case of Karnataka Board of Wakf Vs. Govt. of India and Ors 2004 (3) P.L.J.R. 245 SC.

20. I, therefore, find that the defendants have failed to prove acquisition of title by adverse possession. The learned senior counsel for the appellant submitted that issue regarding unity of title and possession has not been framed. So far this argument is concerned, it may be mentioned here that both the parties entered into trial knowing the case of each other and adduced evidences in support of their respective cases. It cannot be said that the defendants appellants were prejudiced in any way nor it can be said that the judgment and decree is vitiated for non-framing of this issue. Reference may be made on this point to the decision of the Hon"ble Supreme Court reported in AIR 1963 SC 884 and 2013(1) PLJR 48 S.C. para-67 Clause VII.

21. On the other hand the plaintiffs have examined witnesses P.W.1 to 5, 7 to 9 who all have stated joint possession of the parties. In view of this evidence that both the parties are purchasers from co-owner and there have been no partition, the parties are co-tenants, therefore, also non-framing of issue is not fatal to the case and on this point, the judgment cannot be said to be vitiated. It is not the case of the defendant that there had been partition between the two widows or the plaintiffs and defendants.

22. In view of my above discussion, I find that the plaintiffs have acquired title over the land which they have purchased by the registered sale deeds as such they are entitled to claim separation of their purchased lands from the suit land. The defendants failed to prove acquisition of occupancy raiyati right or title by adverse possession. The findings of the trial Court on this point is, therefore, confirmed. The points formulated is

answered against the appellant and in favour of the plaintiff respondent.

23. In the result, I find no merit in this First Appeal.

Accordingly, this First Appeal is dismissed with cost of Rs.10,000/- to be paid by the appellant to the respondent within two months failing which the plaintiff-respondent shall be at liberty to realize the cost through the process of the Court.