

(1935) 02 PAT CK 0009

In the Patna High Court

Case No : Appeals Nos. 1355 and 1356 of 1930

Mt. Krishna Kuar and others

APPELLANT

Vs

Secy. of State and others

RESPONDENT

Date of Decision : 06-02-1935

Acts Referred:

Citation : (1935) 02 PAT CK 0009

Final Decision : Allowed

Judgement

Rowland, J.—These second appeals arise out of one suit brought by the plaintiffs-appellants claiming to recover possession of 18 bighas 15 kathas and 16 dhurs of land as part of their estate Domaigarh Nezamat. They had impleaded as defendant 1 the Secretary of State for India in Council as proprietor of the Government estate adjoining and defendant I's lessee as defendant 2. The Subordinate Judge who tried the suit passed a modified decree in favour of the plaintiffs for possession of 17 bighas 17 kathas 4 dhurs out of the disputed land and gave a decree for mesne profits against defendant 2. Each of the two defendants appealed separately to the District Judge who has allowed the appeals and dismissed the suit. For this reason the plaintiffs present two appeals to this Court from the same judgment and decree.

2. Most of the facts are common ground. The plaintiffs have three tauzis in Mauza Domaigarh Nezamat, that is to say, the stable portion of village Domaigarh Nezamat. South of this some diara land has accreted which is Government estate of the name of Domaigarh Diara. In 1915 a dispute arose between the plaintiffs and the Collector of Saran representing the Secretary of State in which the plaintiffs claimed 141 bighas 2 kathas which had been demarcated by the Kanungo as part of the khas mahal alleging that this was wrong and the land belonged to their permanently settled estate. Negotiations for compromise falling through they brought Suit No. 58 of 1917 to recover this land from the Secretary of State and that dispute was adjusted by a compromise dated 6th June 1918, by which it was agreed that the revenue survey boundary

between the two villages should be relaid by the Survey Department and the parties would abide by the boundary so relaid and their rights should accrue from the date of decree to be passed the parties agreeing to accept the boundary between the two aforesaid estates that should be laid down. The boundary was accordingly relaid.

3. The plaintiffs allege that under the compromise referred to their title to the land now in suit was declared and they obtained possession and the Courts have found that in fact the boundary as relaid by the survey department includes the bulk of the disputed land within the limits of Nezamat Domaigarh Estate. The contention for the defendants was that the dispute of 1916-18 related to the boundary as between Domaigarh Nezamat and Domaigarh Diara and had nothing to do with laying the boundary between Domaigarh Nezamat and any other village. To the southeast of Domaigarh Nezamat is Bhabhauri, a Government estate of defendant 1, and the suit lands are in fact part of village, Bhabhauri being shown as such in a cadastral survey map prepared in 1898. It is common ground that this map does not agree with the revenue survey map and that the disputed land falls according to the map of 1898 in the defendants' estate of Diara Bhabhauri and according to the revenue survey map of 1843-44 it falls within the plaintiffs' estate of Domaigarh Nezamat. It is not a part of the 141 bighas which were in dispute in 1915. The Subordinate Judge thought that the dispute of 1915 and 1917 covered the whole of the southern boundary of Domaigarh Nezamat and therefore this decision should be decisive of the rights of the parties in the disputed land. The District Judge on appeal pointed out that the compromise was for the adjustment of the disputed boundary between Domaigarh Nezamat and Domaigarh Diara and was of opinion that the compromise decree could not affect anything which was not at the time within one of those two villages. After giving his reasons for this conclusion, which he has done clearly and at length, he says:

This disposes of the respondents' contention that they obtained title to the land in suit by virtue of the compromise decree.

4. He then states that there being no evidence on which he could find that the plaintiff-respondents were definitely in possession of the land in suit prior to the compromise or at any time within twelve years previous to it, the plaintiff-respondents failed to establish their title to the land because they could not prove that they had a subsisting title to the land in suit at the time of the compromise. The District Judge in saying this seems to have somewhat lost sight of the fact that the decision of the first Court had been based not merely on the plaintiffs' claim to title based on the compromise, but their claim to title based on the revenue survey map of 1843. The revenue survey map is in a sense itself a document of title because it was in this map that the Government reduced to writing the statement of the areas settled with zamindars. It was accepted by both the Courts below that the revenue survey map had been correctly relaid by the Survey Officer deputed from Ranchi in 1921 and that on

the basis of that relaying the original title to the land in suit lay with the plaintiffs. Mr. Mullick's contention is that on those facts and that finding the plaintiffs ought to succeed unless the defendants can prove that by adverse possession the title of the plaintiff's was, extinguished at some time between the revenue survey and the date of the proceeding in the present litigation.

5. The Subordinate Judge has said in his judgment "the plaintiffs had title to the land from a long time before 1917" and says that "in diara lands possession should follow title." Perhaps the Subordinate Judge has expressed himself rather too broadly. The principles to which regard is to be had in dealing with suits for alluvial land are set out in *Secy of State v. Krishnamoni Gupta*, (1902) 29 Cal 518 = 29 I A 104 = 8 Sar 269 (P C) where the principles governing limitation were discussed by their Lordships of the Privy Council and applied both to lands which had been continuously under cultivation for a long series of years and to lands in which the enjoyment of the land after a short period had been from time to time interrupted by the action of the river diluviating the lands. Their Lordships found that in respect of one part of the land in dispute before them, Government had acquired title by continuous adverse possession for over twelve years. Thereafter the land becoming submerged the title of the plaintiffs was not revived in respect of this land, but as regards the northern portion of the disputed lands their Lordships said other considerations applied:

The Government have never had actual possession of the land through their ijaradars for a continuous period of 12 years because the land became submerged prior to the year 1669 and remained so (it is found by the High Court) until within ten years of the commencement, of the suit. But it is urged on behalf of the Government that having been in possession through their tenants when the lands became submerged their possession must be deemed to have continued in law while the lands were under water and to have revived on their being reformed.

6. But their Lordships held that

for the purpose of trying the question whether limitation applies the Government must be regarded as a trespasser and dispossessor of the rightful owners, and it would be contrary both to principle and authority to imply such constructive possession in favour of a wrong doer, so as to enable him to obtain there by a title by limitation. In order to sustain a claim to land by limitation under the Indian Act, there must be actual possession of a person claiming as of right by himself or by persons deriving title from him.

7. Their Lordships thought that on the dispossession of the Government by the vis major of the floods the constructive possession of the land was, if anywhere, in the true owners. Applying this observation to the case before us, I think, that it was in the circumstances of this case for the defendant to show that he had at sometime been in adverse possession of the land in suit continuously for a period of twelve years. Both sides are agreed in evidence that the land was under water

and unfit for occupation from 1911 to 1916 and there is no evidence as to possession before 1911. The most that can be said is that the disputed land having been surveyed as part of village Bhabhauri Diara in 1898, a presumption arises that in the year the lands were capable of occupation and were in fact occupied by or on behalf of the Secretary of State. From that evidence regarding the state of things at one point of time we cannot presume that the Secretary of State had adverse possession for a period of twelve years. Consequently the plaintiffs should have succeeded in the suit on proof of their title. Accordingly I would allow the appeals, set aside the judgment and decree of the District Judge and restore these of the Subordinate Judge. The plaintiffs will get proportionate costs throughout. There will be only one set of Pleader's fee for the two appeals.

Fazl Ali, J.

8. I agree.