
(1984) 03 PAT CK 0029
In the Patna High Court
Case No : A.F.A.D. No. 688 of 1980

Narain Singh and Others

APPELLANT

Vs

Kanta Singh and Others

RESPONDENT

Date of Decision : 28-03-1984

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 41 Rule 33, 100, 107, 96

Citation : AIR 1985 Patna 214

Hon'ble Judges : Aswini Kumar Sinha, J

Bench : Single Bench

Advocate : Tara Kant Jha, Nagendra Rai, P.K. Shahi, A.K. Thakur and Bipin Bihari Singh, for the Appellant; Sheo Dayal Singh and Umesh Prasad Singh, for the Respondent

Final Decision : Dismissed

Judgement

Aswini Kumar Sinha, J.—This second appeal is by the defendants against a judgment of the reversal.

2. The plaintiffs brought a suit for a declaration that by mutual exchange between the parties, the plaintiffs got the lands (described in schedule of the plaint) and, in lieu thereof, the defendants got plot No. 143 with a Baithka thereon (as described in schedule I of the plaint). The plaintiffs' case was that plot Nos. 83, 110 and 112 with an area of 18 1/2 decimals (fully described in schedule II of the plaint) came to the plaintiffs by mutual exchange and plot No. 143 with Baithka thereon (having an area of 11 decimals) (as fully described in schedule I of the plaint), belonging to plaintiff, went to the defendants. These plots were situate in village-Masaurha Telpa, in the district of Patna.

3. The plaintiffs also prayed for a declaration of their title and confirmation- of possession over the same and, in the alternative, for recovery of possession in case the plaintiffs were dispossessed by the defendants during the pendency of the suit.

4 The plaintiffs, alternatively, prayed that if story of exchange of plots was not accepted by the Court, in that case plot No. 143 of Khata No. 51 be restored to the plaintiffs and they put in possession of the same by dispossessing the defendants therefrom and also for permanent injunction restraining the defendants from interfering with the possession of the plaintiffs over the land described in schedule II of the plaint. The plaintiffs also prayed for restraining the defendants from changing in any way the local features of plot No. 143 and in making alteration in the Baithka on plot No. 143.

5. The plaintiffs' case was that the plaintiffs were members of undivided Hindu Mitakshara family with plaintiffs 1 and 2 respective Kartas of their family. The defendants, according to plaintiffs, were also members of an undivided Hindu Mitakshara family of which the defendant 1 was the Karta.

6. According to plaintiffs, there was Title Suit No. 102 of 1973 between the plaintiffs and one Kamal Nayan Singh and his dependants in respect of certain lands. That suit was compromised and a final decree for partition was prepared and as per final decree, the plaintiffs, amongst other plots, got plot No. 143, measuring 11 decimals, plot No. 110 with an area of 3 decimals on the West and plot No. 120 measuring 9 decimals in the village in question.

7. According to plaintiffs, the defendants owned, amongst others, plot No. 112, measuring 4 decimals, plot No. 110, measuring 3 decimals on north-eastern side and plot No. 83, measuring 11 1/2 decimals on the eastern side (as describe in schedule II of the plaint). According to plaintiffs, their Sanani Kita was in plot No. 143 and the Sanani Kita of the defendants was in plot No. 119 and small Baithka in plot No. 144 contiguous east of plot No. 143. According to plaintiffs, they had built a kuchcha house consisting of two rooms and Osara facing North in the centre of plot No. 143 about 4 or 5 years before the partition.

8. According to plaintiffs, a proposal came from the defendants through defendant 1 in Nov., 1974 for exchanging plot No. 143 (belonging to the plaintiffs) in exchange for the plot Nos. 83, 110 and 112 (as per schedule II of the plaint) to which the plaintiffs, looking to the convenience of the parties, agreed and accepted the same. Accordingly, the parties exchanged the plots as aforesaid, i.e., the plaintiffs gave plot No. 143 with house standing thereon to the defendants on 19-11-1974, and the defendants gave to the plaintiffs plot Nos. 83, 110 and 112 (as described in schedule II of the plaint). According to the plaintiffs, when they made arrangement for raising foundation for construction of a Baithka on plot Nos. 110, 111 and 112, defendants objected and insisted that plot Nos. 112 and 110 be kept in the same condition in which they were given in exchange, and the plaintiffs were not allowed to construct Baithka on the amalgamated block of plot Nos. 110, 111 and 112. According to the plaintiffs, the defendants were also in possession of plot No. 143, and they, too, had amalgamated this plot with their other plots.

9. As an obstruction was put by the defendants, it necessitated the filing of the

present suit.

10. The suit was contested by defendants 1 to 7, who filed a joint written statement. There is no dispute on the following facts : --

(a) That there was an exchange between the plaintiffs and defendants and the same was oral as the parties had confidence in each other. The defendants also agreed that the plaintiffs gave their plot No. 143 to the defendants. However, the differences between the parties were only as follows : --

(1) That, according to the plaintiffs, they gave plot No. 143 along with two mud-built rooms and a verandah on the same; whereas, according to defendants, there was no structure on plot No. 143 at the time of exchange.

According to plaintiffs, the defendants gave to the plaintiffs plot No. 112 (4 decimals), plot No. 110 (3 decimals) on North-East and plot No. 83 (11 1/2 decimals) on the East for plot No. 143; whereas according to the defendants, they gave plot No. 81 only to the plaintiffs in exchange for plot No. 143. The parties also differed so far as the year of exchange was concerned. According to the plaintiffs, the exchange was made on 19-11-1974; whereas, according to the defendants, the exchange was in Jaith 1957. There is still some difference where the parties differ. According to the plaintiffs, plot No. 143 (11 decimals) was allotted to them exclusively in Title Suit No. 102 of 1973. Whereas, according to the defendants, this plot No. 143 was given in exchange to Narayan Singh (defendant No. 1) by the sons of Chand Govind Singh and Havaladar Singh, who were then members of a joint family. It is pertinent to note here that the plaintiffs 1 and 2 are the sons of Chand Govind Singh and Havaladar Singh was the father of Kamal Nayan Singh, who was defendant 1 in the aforesaid Title Suit. In other words, the plea of the defendants was that; plot No. 143 was not resolved in the year 1974 for giving in exchange. According to the defendants, they had amalgamated this plot No. 143 with their own plot No. 144 as early in 1957, and had made a continuous construction over the same covering the whole of the plot No. 143 and had also made a brick kiln on some parts of plot Nos. 143 and 144 in the year 1969.

11. There is again some difference between the parties. According to the plaintiffs, plot No. 81 was the bed of river and useless, whereas according to the defendants, the same was suitable not only for building purpose, but also for cultivation.

12. Thus, in short, the dispute between the parties resolved within very short compass. Exchange is admitted. Only the year is in dispute. That plot No. 143 was given to the defendants with Baithka thereon is admitted. What is in dispute is whether the defendants in exchange of plot No. 143 gave plot No. 81 or plot Nos. 83, 110 and 112.

13. The trial Court dismissed the suit. It held that the story of exchange as put forward by the plaintiffs was unacceptable. It held that the story of the exchange

as given by the defendants appeared to be more possible. It further held that plot Nos. 143 and 144 had been amalgamated with each other and there was no amalgamation of plot Nos. 110, 111 and 112 as alleged by the plaintiffs. It further held that it was plot No. 81, which was in possession of the plaintiffs and there was no exchange as alleged by the plaintiffs. It also held that the exchange took place prior to 1974, and may be even before 1961. It further held that the construction over plot Nos. 143 and 144 was before 1976 and may be even before 1961. It also held that plot No. 143 was in possession of the defendants prior to the demarcation case as well as 1961. With these findings, the trial Court, as stated above dismissed the suit.

14. Against the judgment and decree of the trial Court, the plaintiffs preferred an appeal. The lower appellate Court allowed the plaintiffs' appeal and set aside the judgment and decree of the trial Court. It held that the case of the plaintiffs was well-founded. It also held that the evidence led on behalf of the plaintiffs was more convincing and acceptable. It categorically held that the story of exchange and the manner of exchange as alleged by the plaintiffs were true and correct. It held that the plaintiffs had proved their title to the lands described in schedule II of the plaint and they were entitled to the recovery of possession in respect thereof. The lower appellate Court directed the defendants to deliver vacant possession of schedule II lands to the plaintiffs within ninety days from the date of judgment, failing which it was ordered that the plaintiffs would be entitled to recover possession of the same through the agency of the Court at the cost of defendants.

15. The lower appellate Court also held that plot No. 143 was in possession of the plaintiffs and their agnate, Kamal Nayan Singh till before the final decree in Title Suit No. 102 of 1973. The lower appellate Court also held that the defendants could not take advantage of exhibit-D (registered deed of exchange dt. 26-3-1974 between Yadunandan Singh and another on one side and plaintiffs, Kamata Singh and Ramdeo Singh on the other) and that the trial Court had gone wrong in relying upon the same for a finding that the plaintiffs were in possession of plot No. 81.

16. With these findings, the lower appellate Court allowed the plaintiffs' appeal. Hence, the present second appeal by the defendants.

17. The learned counsel appearing for the defendants appellants has advanced only two submissions. Firstly, that the judgment under appeal was not in accordance with law as the lower appellate Court, while reversing the judgment and decree of the trial Court, had not considered the reasonings of the trial Court. Secondly, the learned counsel for the appellant has submitted that the findings of the lower appellate Court regarding the age and nature of construction over plot Nos. 143 and 144 were passed only on the pleader Commissioner's report without considering the oral evidence adduced on behalf of the appellants and by committing an error of record when it had said that no objection was filed by the defendants to the report of the pleader Commissioner.

18. It is well-settled that if a finding of a fact is recorded without any discussion of the evidence, it is no judgment at all. The lower appellate Court is the final Court of fact and a very important duty is cast upon it. It is for this Court to decide final questions of fact on which the disposal of the suit might depend. On a perusal of the judgment of the lower appellate Court, it must appear that it has made an honest endeavour to make a proper appraisal of the merit of the case put forward by the parties. In case of reversal, it is all the more important for the Court of appeal below to consider the evidence and also the reasonings of the trial Court and only thereafter to give its own reasons for not agreeing with the findings of the trial Court. A perusal of the judgment must show that the lower appellate Court has applied its own mind independently to the evidences on the record.

19. It is also well-settled that every non-consideration of the reasons given by the trial Court in a judgment of reversal is not enough for interference by the High Court sitting u/s 100 of the C.P.C. What has to be seen is whether the lower appellate Court has failed to consider the most material evidence and if it has, then in that case finding is not binding on the High Court. If the finding arrived at by the lower appellate Court is sustainable from the reasonings given by the lower appellate Court, in that case finding cannot be interfered with.

20. With the aforesaid settled principles of law, it has to be seen whether the findings of fact arrived at by the lower appellate Court are such findings, which can be interfered with.

21. The findings arrived at by the lower appellate Court have been given in detail above. The learned counsels for the respective parties have taken me through the judgment under appeal in detail and I am satisfied that the lower appellate Court has taken pains to discuss all the material evidences (oral and documentary) on the record and it has also given a very proper appraisal of the same with sound reasons with regard to each finding. The lower appellate Court has given cogent reasons, after discussing the material evidence on the record adduced by the parties. It has also taken into consideration the reasons of the trial Court. The learned counsel appearing for the defendants-appellants has made a grievance that a few of the evidences on the part of the plaintiffs considered by the trial Court regarding the story about exchange has not been considered by the lower appellate Court. The learned counsel appearing for the plaintiffs-respondents has placed the relevant paras of the lower appellate Court's judgment and has drawn my attention to the discussion of oral evidences made by the lower appellate Court in various paras of the judgment. I am satisfied that the lower appellate Court has taken into consideration all the material evidence on the record. The learned counsel appearing for the defendants-appellants has not argued that any material evidence, considered by the trial Court, has been left to be considered by the lower appellate Court. If that would have been the position, the matter would have been different in view of the settled principles of law.

22. Learned counsel for the appellants has also submitted that the judgment under appeal must be held to be not in accordance with law, as the lower appellate Court did not consider the reasons given by the trial Court while dealing with plot Nos. 110, 112 and 83. The trial Court had held that the story of exchange as alleged by the plaintiffs was not correct. There is no force in this submission of the learned counsel for the appellants as well. The only question that was to be considered was whether the plaintiffs' story of exchange was correct or not and the lower appellate Court has dealt with it in detail, on a proper consideration of the entire materials on the record. It has already been stated above that every non-consideration of the reasons of the trial Court is not enough for interfering with the finding of fact arrived at by the lower appellate Court. The logic for the findings arrived at by the lower appellate Court, in my opinion, is very cogent and sound. Thus, I hold that there is no force in the first submission advanced by the learned counsel for the defendants-appellants.

23. So far as the second submission advanced by the learned counsel for the defendants-appellants is concerned, this also has no force. The learned counsel for the parties have taken me through the judgment under appeal in detail. I am satisfied that the finding with regard to the age and nature of construction over plot Nos. 143 and 144 is based upon material evidence on the record. Even if the defendants filed an objection to the pleader Commissioner's reports, it takes defendants no further. The Lower Appellate Court has taken into consideration the material evidences and has given a very proper appraisal thereof. Thus, this submission advanced by the learned counsel for the appellants also fails.

24. I hold that the findings arrived at by the lower appellate Court are neither unreasonable nor perverse. In my opinion, this appeal is concluded by findings of fact.

25. In the result, this appeal is dismissed. However, there will be no order as to costs.