

(1959) 07 GAU CK 0006

In the Gauhati High Court

Case No : Second Appeal No. 36 of 1958

Ngasepam Ibotombi Singh

APPELLANT

Vs

Wahengbam Ibohal Singh

RESPONDENT

Date of Decision : 09-07-1959

Acts Referred:

Civil Procedure Code, 1908 — Order 20 Rule 4, Order 6 Rule 2, 100, 101
Civil Procedure Code, 1908 (CPC) — Order 20 Rule 4, Order 6 Rule 2, 100, 101
Limitation Act, 1908 — Article 142, 142, 144, 144

Citation : AIR 1960 Manipur 16

Hon'ble Judges : T.N.R.Tirumalpad, J

Bench : Single Bench

Advocate : Y.Imo Singh, N.Ibotombi Singh, Advocates appearing for Parties

Judgement

1. This is a second appeal by the plaintiff in T. S. No. 310 of 1952 before the Munsiff of Maniour, against the judgment and decree of the District Judge of Manipur in Civil Appeal No. 75 of 1955 by which he reversed the decision of the Munsiff in the said suit.

(2) The appellant brought the suit against the two respondents for a declaration of his title over the suit land. His case was that he purchased the land from one Nonathombam Komol Singh, the deceased husband of the second respondent about 15 years before suit, that ever since then he has been in possession of the said land adversely and as of right, that respondent 1 asserting title to the land filed a Rent Suit No. 42 of 1951 against him before the Munsiff as if the appellant was his tenant and it had become necessary for him to have his title declared against respondent 1. Respondent 1 contested the suit saying that he became entitled to the suit land by purchase in Sale Case No. 355 of 193536 on 6135, that the appellant cannot have any manner of right in the suit land, that the appellant got possession of it as tenant in 1949 and that he has no other right in the said land except as tenant. Respondent 2 supported the case of the appellant.

(3) The appellant produced the sale deed executed in his favour by one Komol

Singh as Ext. 1. It was dated 2841941. The suit having been filed in 1952, the plaintiff allegation of purchase 15 years before suit was thus found to be incorrect. It may be mentioned here that the suit land along with other lands originally belonged to one Amor Singh, the younger brother of Komol Singh, who executed the sale deed in favour of the appellant. Amor Singh died issueless and Komol Singh was said to have inherited the properties of Amor Singh.

But it would appear that there was a revenue sale of Amor Singh's land in Revenue Case No. 355 of 193538 and that in the said sale one Pancham Singh became the purchaser of the suit land and other lands on 6135. The appellant admitted the fact of this revenue sale and purchase by Pancham Singh. There was some dispute in the lower Courts as to whether this Pancham Singh was respondent 1 or the son of respondent 1. Respondent 1 claimed to be the person who purchased the land in the revenue sale. But the learned Munsiff held that the said Pancham Singh was respondent 1's son. That question is not now very material as the appellant admits that the said Pancham Singh is dead and respondent 1 became entitled to the lands of the said Pancham Singh. Thus respondent 1 is now the person interested in disputing the appellant's title.

(4) The appellant's case as set up in the plaint was that he purchased the suit land from Komol Singh and that he has been in possession of the suit land for 15 years before suit and that he has acquired title by adverse possession. He set up such a case, because he knew that the land had been sold in revenue sale long before the sale deed Ext. 1 in his favour by Komol Singh and that Komol Singh did not therefore have any right or interest in the said land at the time he executed the sale deed Ext. 1 on 28441.

So, the appellant knew that he cannot rest his case on Ext. 1, but only on his having acquired title by adverse possession for 15 years before suit. But Ext. 1 being dated 28441 and the suit having been filed on 161252, 12 years period had not elapsed for the appellant to claim having perfected title by adverse possession. So, what the appellant attempted to prove at the time of the trial was that there was an oral sale by Komol Singh to him some 15 years before suit, but that the sale deed Ext. 1 was executed only on 28441 and that he was thus actually in possession of the land for 15 years before suit.

The learned Munsiff did not accept this" case of the appellant evidently because there was no pleading to the effect that there was such an oral sale and that the appellant had obtained possession on the strength of such oral sale. The learned Munsiff therefore held that the appellant came into possession only on 28441. But he held that respondent 1 or his son Pancham Singh did not taken session after the revenue sale and that Komol Singh continued to be in possession of the said land in spite of the revenue sale.

He therefore held that the possession of Komol Singh, in spite of the revenue sale from 1935 taken along with the possession by the appellant from 28441 on the strength of Ext. 1 must be taken to have extinguished the title of respondent

1 to the property and that the appellant must therefore be held to have perfected title by adverse possession.

(5) The learned Appellate Judge disagreed with this finding of the Munsiff. He found that after the revenue sale Pancham Singh got the land mutated in his name and that he had no reason to think that the purchaser in the revenue sale would have allowed the previous owner to continue in possession even after such mutation. He also held that the appellant had not shown that either Komol Singh or the appellant paid any revenue for the land after such mutation in the name of Pancham Singh.

The learned Munsiff had accepted the oral evidence of the appellant and his witnesses and rejected the oral evidence of Respondent 1 and his witnesses on the question of possession. But the appellate Court for the reasons above mentioned thought that the evidence of respondent 1 and his witnesses had certainly to be preferred to that of the appellant and his witnesses.

(6) In second appeal I cannot therefore interfere in the matter of mere appreciation of oral evidence on questions of fact unless it is shown to me that such appreciation was perverse. I am not in a position to say that the appreciation by the learned Appellate Judge is perverse. It was pointed out to me that respondent 1 did not produce any evidence in support of his purchase in the revenue sale and in support of his having paid revenue after the mutation in the name of Pancham Singh.

But the fact of the revenue sale was admitted by the appellant. We have also to take it that revenue is paid by the person in whose name the land has been mutated. It was therefore for the appellant to prove that in spite of such mutation Komol Singh and he paid the revenue after the said mutation. Thus on the question of oral evidence regarding the fact of possession I am not prepared to interfere with the finding of the Appellate Judge.

(7) But the appellant's case has to fail even on his own pleadings. His case being that he acquired title by adverse possession it was for him to make the necessary pleadings and to establish in accordance with those pleadings the fact that he had perfected his title by adverse possession. But the appellant's plea in the plaint was that he purchased the land from Komol Singh and was in possession for 15 years before suit. It is significant that he did not mention the date of the purchase in the plaint.

When he produced the sale deed it was seen that the purchase was only on 28441 which showed that he cannot have been in possession for more than 12 years on the date of the suit. So, an attempt " was made by him to let in evidence at the time of the trial that his purchase was earlier than Ext. I1 orally. He ought not to have been allowed to let In such evidence at the time of the trial. The learned Munsiff rightly disbelieved such evidence.

But he attempted to make out a new case which the appellant himself had not

set up. It was that Komol Singh was in possession from 1935 to 28441 and the appellant from 2841941 and that the appellant was entitled to tack on Komol Singh's possession to his own to perfect his title by adverse possession. The learned Munsiff failed to see that it was not the appellant's case. A Court should not attempt to establish a title for a party against the party's own case. A party must succeed or fail on the strength or weakness of his case. The learned District Judge was therefore fully justified in correcting the mistake committed by the learned Munsiff and in holding that the appellant has not proved his case of adverse possession.

(8) There are no merits at all in the second appeal and it is dismissed with the costs of respondent 1.