
(2013) 05 PAT CK 0071
In the Patna High Court
Case No : Second Appeal No. 130 of 2012

Parmanand Trivedi

APPELLANT

Vs

The State of Bihar

RESPONDENT

Date of Decision : 13-05-2013

Acts Referred:

Citation : (2014) 1 BBCJ 452

Hon'ble Judges : Chakradhari Sharan Singh, J.

Bench : Single Bench

Advocate : Mr. Umesh Pd. Singh, Senior Advocate, Mr. Rajiv Ranjan Prasad, Advocate, for the Appellant; Mr. J.S. Arora, SC. 6, for the Respondent

Final Decision : Dismissed

Judgement

Chakradhari Sharan Singh, J.(Oral)—I have heard Mr. Umesh Prasad Singh, learned Senior Advocate appearing on behalf of the appellants and Mr. J.S. Arora, learned Standing Counsel No.6 on behalf of the State of Bihar-Respondent.

2. The appellants were plaintiffs before the trial Court and are aggrieved by the judgment and decree dated 5.11.2011 passed by the learned District Judge, Muzaffarpur in Title Appeal No. 64 of 2009, whereby he dismissed the appeal and confirmed the judgment and decree passed by the learned Sub-Judge Vth, Muzaffarpur dated 28.8.2009 in Title Suit No. 466 of 2003.

3. The plaintiffs, who are sons of late Mahendra Prasad Trivedi, filed the suit seeking a declaration that the suit land described in Schedule I of the plaint be reverted back and title over it be vested in the plaintiffs according to the terms and conditions of the deed of donation dated 21.9.1960 executed by the plaintiffs' father in favour of His Excellency the Governor of Bihar. They also sought for a declaration that the defendant, State of Bihar through the Collector, Muzaffarpur had in no manner any concern with the suit land.

4. As per the plaintiffs' case, their father Late Mahendra Prasad Trivedi was the

absolute owner and in possession of Schedule I land being CSP No. 114 and 115 (m) admeasuring 5 kattha appertaining to Touzi No. 6694 situated in village Narayanpur Anant alias Sherpur, District-Muzaffarpur corresponding to R.S.P. No. 1278 of Khata No. 384 admeasuring 23 decimal. As per the plaintiffs' case, the defendant State of Bihar intended to construct a building over the suit land for the welfare of women and children from which the plaintiff's father Late Mahendra Prasad Trivedi agreed to donate the suit land for the aforesaid purpose and executed the deed of donation on 21.9.1960 in favour of His Excellency the Governor of Bihar in respect of the suit land, purely for the aforesaid purpose on the terms and conditions that the donee State of Bihar should hold the suit land solely for the said purpose and subject to the condition that moment the said plot ceased to be used for the purpose of construction of building for the welfare of women and children, the said plot of land with all the buildings if any and appurtenance thereto whatsoever, shall vest in the donor, provided the donor pays to the donee a reasonable amount of compensation for the said building and appurtenance put up by the donee. The condition was accepted on behalf of His Excellency the Governor of Bihar.

5. As per the plaintiffs' case, after having come in possession, defendant no.1 State of Bihar through the Collector, Muzaffarpur constructed a small mud-built pucca tiled building in the suit land and opened a Teachers Training Centre for Women, namely, "Mahila Mandal" in the year 1961 which continued upto the middle of 1965. The suit land was, accordingly recorded in the revisional survey Khatiyan as "Gairmazarua School" in the name of the State of Bihar. It was pleaded by the plaintiffs that the said Centre ceased to function since 1965 and according to the terms and conditions of gift deed, the land and building reverted back to and vested in the plaintiffs. Since, however, the building was still existing, the donor did not take any steps for taking possession over the said land. As per further case, due to lack of proper care and maintenance, building collapsed and building materials were stolen away by the public in the absence of any guard. This happened in the year 1972. The specific case which the plaintiffs pleaded in their plaint before the trial Court was that they took possession over the vacant land on 15.1.1973 and that they were continuing in peaceful possession thereof since then. The donor Late Mahendra Prasad Trivedi died on 26.6.1985.

6. As per the plaintiffs' case, by virtue of condition in the gift deed, from the date the suit land ceased to be used for the purpose it was donated, stood-reverted back to the plaintiffs and vested in them and they got right of possession over the suit land. Accordingly, the plaintiffs are said to have come in possession over the land in the year 1973 with the defendant losing all rights over the suit land since 1965 and 1973 and thus, claimed that the plaintiffs had got absolute and perfect title and possession over the suit land and got every right to such declaration. As per their case before institution of the suit, a notice under Section 80 of the Code of Civil Procedure was served upon the defendant.

7. The defendant State of Bihar through Collector, Muzaffarpur appeared and filed written statement. It was pleaded in the written statement that "Mahila Mandal Training School, Sherpur was in peaceful possession over the suit land for several 12 years to the knowledge of all including the plaintiffs and they asserted that claim of the plaintiffs whatsoever stood extinguished under the provisions of the Limitation Act. The defendant further asserted in its written statement that after having accepted the donation by Mahendra Prasad Trivedi in the year 1960, "Mahila Mandal Training School Building" was constructed in the year 1960 and the said school had been running up-till-now. The defendant denied the plea that brick and other materials of the school building were stolen away by the public. They denied the plea that the land stood reverted back to the plaintiffs as claimed by them.

8. On the basis of the rival pleading of the parties, learned trial Court framed altogether six issues including issue No.V which reads thus:-

"V. Is the suit land described in Schedule I of the plaint reverted back to and vested in the plaintiffs for non fulfilment of condition laid down in the deed of donation dated 21.9.1960 and the plaintiffs is entitled to get a decree of declaration as claimed?"

9. After the issues having been framed the plaintiffs adduced evidence in support of their case, both oral and documentary. It, however, appears that no evidence was adduced in course of trial on behalf of the State of Bihar. Learned trial Court on scrutiny and analysis of oral and documentary evidence adduced on behalf of the plaintiffs arrived at a finding that the plaintiffs could not prove their possession over the suit property as alleged in the plaint. Learned trial Court further came to a finding that the plaintiffs could not prove that there was no Mahila Mandal Training School over the suit land. Learned trial Court, accordingly, dismissed the suit vide judgment dated 28.8.2009 and decree dated 17.11.2011.

10. The plaintiffs, thereafter, preferred title appeal under section 96 of the Code of Civil Procedure vide Title Appeal no. 64 of 2009 on various grounds including the ground that there was heavy burden upon the defendant to prove that the building existed over the land in dispute and education for the welfare of the women and children was still being imparted.

11. On perusal of the judgment of the learned first appellate Court it appears that he took into consideration the documentary as well as the oral evidence adduced on behalf of the plaintiffs in course of trial. It further appears that in course of trial the plaintiffs brought on record three documentary evidence, namely, (a) certified copy of the deed of gift dated 21.9.1960 (Ext.1), (b) notice under Section 80 of the Code of Civil Procedure (Ext.2) and (c) Postal receipts (ext.3). In addition, five witnesses were examined including the plaintiffs/appellants himself.

Learned first appellate Court took into account the admitted fact that during the revisional survey proceeding, which took place in the year 1961-62, the suit land

was found in possession of the Mahila Mandal Training Centre and was accordingly, recorded as Gairmazura School. It also took into account the admission of P.W.2 Luxman Rai, in course of cross-examination, that survey started in the year 1962 and concluded in the year 1976 during which period the plaintiffs were present in the village. The learned trial Court, keeping this fact in mind, posed a question as to why the plaintiffs did not raise any objection against the revenue authorities during all these years when according to them they came in possession over the land since 1973. Learned first appellate Court considered the evidence of all the witnesses and assigned reasons as to how either they failed to prove the plaintiffs' case or deserved to be discarded.

12. Learned first appellate Court considering that onus lay upon the plaintiffs that defendant was not in possession over the suit land, discussed the impact of defendant not adducing any evidence in support of the fact that Mahila Mandal Training Centre was still continuing. Learned first appellate Court dealt in paragraph 24 that the appellants could have easily moved an application for spot inspection by Court Commissioner or could have easily produced photograph of the disputed land in order to prove their case that there was existed huts of the plaintiffs in which several tenants were residing.

13. For the aforesaid reasons, learned first appellate Court concurred with the findings of the trial Court and refused to interfere with the same and dismissed the appeal.

14. Mr. Umesh Prasad Singh, Learned Senior Counsel appearing on behalf of the appellants has submitted that both the Courts below failed to appreciate that there was heavy burden on the defendant to prove the positive fact that Mahila Mandal Training School was in continuous possession over the suit land and it was being used for welfare of the women and children. He has further submitted that the defendant did not bring on record any evidence to prove the pleadings in their written statement and the Courts below wrongly relied upon assertions made in the written statement, not proved in course of trial. He has further submitted that the Courts below wrongly decided the issue of question of title and possession instead of deciding the issue in terms of the conditions incorporated in the deed of gift on 21.9.1960.

15. Mr. J. S. Arora, Learned Standing Counsel No.6, on the other hand, has submitted that second appeal is not maintainable as it does not involve any substantial question of law and according to him there are concurrent findings of fact of the Courts below which are based upon consideration of evidence adduced in course of trial. Findings arrived at by the Courts below cannot be said to be contrary to evidence available before them nor the same can be said to be without such evidence.

16. Questioning the bona fide of the plaintiffs in bringing the suit for the relief as claimed for, Mr. Arora has submitted that the donee, Late Mahendra Prasad Trivedi, after having executed the deed of gift survived till 1985. During his life

time he did not raise any issue that Mahila Mandal Training School was not functioning and for that reason the suit property was required to be reverted back in view of terms of deed. He has further submitted that the suit was filed in the year 2003, whereas, as per the case of the plaintiffs, they took possession over the suit land in the year 1973 itself. He accordingly, submits that the suit was hopelessly barred by limitation and deserved to be dismissed at the very threshold.

17. After having heard learned counsel for both the sides, it is apparent that there is no dispute between the parties that after the deed of gift was executed in the year 1960, a building for Mahila Mandal Training School was erected over the suit land. As per the plaintiffs' case also, the said school functioned for a few years. The fact as to whether there remained no building of Mahila Mandal Training School over the suit property after it collapsed and the building materials were stolen away by local people, was a pure question of fact which was required to be adjudicated upon by the Courts below on the basis of evidence adduced in course of trial. The plaintiffs made out a positive case that in the year 1973 itself they took over possession of the suit property by virtue of the condition contained in the deed of gift and erected few huts over the same which huts were let out to people on rent.

18. From the concurrent findings of the Courts below, I find that the plaintiffs failed to establish the fact that they took the possession over the suit land. In my opinion, if the plaintiffs alleged that no school was functioning over the suit land or that there was no building over it, it was primary burden on him to prove this fact by bringing on record certain evidence as has been rightly pointed out by the learned first appellate Court.

19. Mr. Umesh Prasad Singh, learned Senior Counsel appearing on behalf of the appellants, in reply, has submitted that the judgment of the first appellate Court does not conform to the requirement of Order 41 Rules 31 and 33 of the Code of Civil Procedure inasmuch as learned first appellate Court has failed to formulate separate points for consideration and determination of such points on the basis of material available on record. He has placed reliance upon a Supreme Court judgment reported in (2009) 13 SCC 229 (L.N. Aswathama v. P. Prakash). He has relied upon the said judgment also for the proposition that the defendant could not claim title on the basis of the gift deed as well as make out a case of adverse possession. In my opinion, in the present case there was no issue framed on the question of adverse possession and there is no decision on such issue in favour of the defendant. So far the requirement of Order 41 Rule 31 of the CPC is concerned, from the judgment of the first appellate Court I find that the points have been separately and duly considered by the first appellate Court and requirement of Order 41 Rule 31 have been substantially complied with.

20. Mr. Singh, learned Senior Counsel has also relied upon a judgment of the Supreme Court reported in (2001) 5 SCC 18 to submit that in similar situation, when it was found that no institution was functioning on a land donated for

charitable purpose, the Supreme Court approved the judgment of the High Court giving concession to the defendants to construct a building within a period of one year and in failure of same being done, the donee to remain in possession over the suit land. The said judgment cannot be applied in the present case for the reason that in that case it was an admitted position that the building for degree college could not be constructed and it continued in possession of the plaintiff and in such circumstance the suit was filed claiming his possession over the land. In the present case, however, this is an admitted position that after the donation was effected, building for the purpose for which the donation was made was in fact constructed and school functioned.

21. In view of the above, I do not find any substantial question of law involved in the present second appeal. I do not find any perversity in the concurrent findings of learned trial Court and the first appellate Court. The appeal does not deserve admission and is, accordingly, dismissed.

22. Before parting with this order, keeping in mind the ambit and scope of power under Section 100 of the Code of Civil Procedure of this Court, I am tempted to observe that the State of Bihar must comprehend the pious intention of the donee while sparing his immovable property for the service of the society. The pious intent and feelings of such person deserves to be honoured to the maximum. If the State of Bihar has in fact, in some way or the other, has been lacking in proper utilization of the land for the purpose for which it was donated, very sincere and honest efforts must be taken so that the property is utilized to the maximum so as to honour the pious wish and intention of the donee.

23. The appeal is, accordingly, dismissed.