
(1980) 07 PAT CK 0021
In the Patna High Court
Case No : A.F.A.D. No. 786 of 1969

Peyare Gir and Others

APPELLANT

Vs

Mst. Mundari and Others

RESPONDENT

Date of Decision : 10-07-1980

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 100

Citation : AIR 1981 Patna 45 : (1981) 29 BLJR 182 : (1981) PLJR 214

Hon'ble Judges : Nagendra Prasad Singh, J

Bench : Single Bench

Advocate : Kailash Rai and Surya Bhushan Prasad Singh, for the Appellant;
Parmeshwar Prasad Sinha, Arun Bihari Mathur and Naresh Kumar Sinha, for the Respondent

Final Decision : Allowed

Judgement

Nagendra Prasad Singh, J.—This second appeal has been filed on behalf of defendants first party. It appears that the suit in question was filed on behalf of the plaintiffs-respondents for declaration of title and recovery of possession in respect of 8 kathas 10 dhurs of land appertaining to plot No. 693, situated in village Akhtiarpur Chandauli in the district of Samastipur. According to the plaintiffs, the aforesaid plot measured about 1 bigha 3 kathas 10 dhurs and was recorded in the name of one Ramji Khan. After his death, his heirs Kashim Ali and others came in possession of the aforesaid plot. Kashim Ali executed a Bharna deed on 4th August, 1904 in favour of the ancestor of the plaintiffs in respect of 12 kathas 8 dhurs of land. Thereafter the family of the plaintiffs came in possession of that plot The Bharna deed included 8 kathas of plot No. 693 and 4 kathas of plot No. 707. It was alleged on behalf of the plaintiffs that Kashim Ali aforesaid sold 8 kathas of plot No. 693 to the family of the plaintiffs by an oral sale. This 8 kathas, on actual measurement, was 8 kathas 10 dhurs. According to the plaintiffs, then there was no custom of selling land without the consent of the landlord and that is why the portion of the plot in question was sold orally. It is

said on behalf of the plaintiffs that defendants 1st party got a proceeding initiated u/s 144 of the Code of Criminal Procedure in respect of the said disputed land. In that proceeding a pleader commissioner was appointed who submitted his report saying that there was no land measuring 8 kathas on the spot. The proceeding u/s 144 aforesaid was decided in favour of the defendants 1st Party. Being emboldened by that order, they dispossessed the plaintiffs on 29th October, 1960.

2. The defence of the defendants-appellants, on the other hand, was that the block of land measuring 8 kathas of that plot was never sold by Kashim Ali and Family members of the plaintiffs were never in possession thereof. They claimed to have purchased the land in dispute under two registered sale deeds (Exts. C and C/1) and since then they have remained in possession thereof.

3. The learned Munsif, on consideration of the materials on the record, came to the conclusion that the oral sale, as alleged on behalf of the plaintiffs, was not proved. He also held that the case of possession and dispossession, as set up on behalf of the plaintiffs was not correct. He upheld the claim of the defendants first party regarding possession of the land in dispute. On that finding he dismissed the suit of the plaintiffs. On appeal being filed on behalf, of the plaintiffs, the learned Subordinate Judge reversed the Judgment and decree of the trial Court. According to him, the case of oral purchase, as set up by the plaintiffs, was correct. He was also of the view that the plaintiffs came in possession of the land in question and they had been dispossessed by the defendants first party.

4. Learned Counsel appearing on be-half of the appellants submitted that the court of appeal below had reversed the judgment of the trial court and, as such, it was enjoined to consider the material issues in the case and to record its finding on those issues after taking into consideration the reasons given by the trial court. In this connection learned Counsel has drawn my attention first to the judgment of the learned Munsif where he has discussed the case of possession and dispossession, as set up on behalf of the plaintiffs. It is true that the learned Munsif has referred in detail to the documents and oral evidence: adduced on behalf of the parties. In Paragraphs 37 and 39 of his judgment he has discussed the evidence of the witnesses examined on behalf of the plaintiffs on the question of possession and dispossession. Then, he has considered in later paragraphs the documents and oral evidence adduced on behalf of the defendant in support of their case of possession from much earlier period than 29th October, 1960 which was said to be the date on which the plaintiffs were dispossessed and then ultimately, he came to the conclusion that the case of possession and dispossession, as alleged by the plaintiffs, was not correct. In this very connection learned Munsif has also considered the pleader commissioner's report regarding amalgamation of the disputed land. The appellate court, however, has simply referred to the evidence of some of the plaintiffs' witnesses and defendants' witnesses in paragraphs 41 and 42 of the judgment. He, has not

at all discussed their evidence which he was enjoined in law to do, especially when he was going to reverse: the finding of the trial court on that fluestion. Same is the position in respect of the pleader commissioner's report. No doubt the court of appeal below has discussed about that report in paragraph 39 of the judgment but the case of amalgamation, set up on behalf of the defendants, which was considered by the trial court, has not been discussed by the appellate court.

5. In a Bench decision of this Court in the case of Dr. R.P. Ghosh Vs. Bengal and North-Western Railway Co. Ltd., , while construing Section 100 of CPC as it stood prior to the amendment in the year 1977, it was observed as follows :--

""The circumstances noticed by the Munsif should not, in my opinion, have been ignored or overlooked by the learned Additional District Judge when dealing with the case and as his judgment is one of reversal and as the finding which he has arrived at is in the nature of an inference from the facts and circumstances of the case, it seems to me that his failure to take into consideration the very facts and circumstances upon which the findings of the Munsif were based amounts to such an error as would justify this Court in interfering with his decision." Similar view was expressed by the Supreme Court in the case of Sonawati and Others Vs. Sri Ram and Another, where it was pointed out that the appellate Judge, in arriving at the conclusion, ignored very important evidence on the record and on that account the conclusion was not binding on the High Court, I have already pointed out that the way the court of appeal below has discussed the evidence adduced on behalf of the parties on the question of possession and dispossession, which was the most material issue in the ease, it cannot be held that it has recorded a finding which is binding on this Court. I may hasten to add that every non-consideration of the reason given by the trial court in a Judgment of reversal will not attract this principle. It will all depend on facts of each case. Before a finding of fact, recorded by the court of appeal below while reversing the Judgment of the trial court can be held to be not binding, it must be shown on behalf of the appellant that non-consideration of the evidence or reasons given by the trial court are material in nature. The instant case is one of those cases where it cannot be held that the finding recorded by the learned Subordinate Judge is a finding as contemplated by Section 100 of the Code of Civil Procedure.

6. Accordingly, this appeal is allowed and the judgment and decree of the court of appeal below are set aside. The case is remitted back to the court of appeal below to be disposed of in accordance with law. Unfortunately, this appeal has remained pending before this Court for more than ten years. It is expected that the learned Subordinate Judge shall try to dispose of the appeal as early as possible. In the circumstances of the case, there will be no order as to costs.