

(2008) 08 PAT CK 0039
In the Patna High Court

Raj Kishore Prasad and Another

APPELLANT

Vs

Tripurari Sharan Sharma and Others

RESPONDENT

Date of Decision : 04-08-2008

Acts Referred:

Citation : (2008) 08 PAT CK 0039

Final Decision : Dismissed

Judgement

Ghanshyam Prasad, J.—This appeal by the plaintiffs has been preferred against judgment and decree dated 5.8.1995 passed by 7th Additional District Judge, Nalanda at Biharsharif in Title Appeal No. 92 of 1990 thereby the learned Additional Judge has dismissed the appeal and affirmed the judgment and decree dated 31.8.1990 passed by 5th Sub Judge, Biharsharif in Title Suit No. 68 of 1980/19 of 1990.

2. The plaintiff-appellants filed the aforesaid suit for declaration of their title and recovery of possession over the suit lands detailed at the foot of the plaint. The suit land is 31 decimals out of Plot Nos. 1561 and 1562 situated in village Madhopur, P.S. Chandi, District Nalanda.

3. The plaintiffs' case in short is that one Yamuna Prasad Singh was landlord of village Madhopur. One Bulchand Mahto and Jehal Mahto were tenants of aforesaid suit plots. The aforesaid landlord auction purchased the land of Bulchand Mahto in execution of rent decree in the year 1936. He also filed a separate rent suit bearing No. 2399 of 1935 against son of Jehal Mahto. Mahendra Narain Singh, father of the defendant Ist set intervened in the said rent suit and ultimately, suit was compromised and 7 decimals out of Plot No. 1561 went in favour of Yamuna Prasad Singh. In the year 1955 Yamuna Prasad Singh mortgaged the suit land in favour of one Ramswaroop Singh for Rs. 200/-. Later on, plaintiffs purchased the suit lands from Yamuna Prasad Singh through registered sale deed dated 25.6.1961 for Rs. 1500/-. Rs. 200/- the mortgage money, was kept in Amanat.

4. The further case of the plaintiffs is that they filed title mortgaged Suit No. 77 of 1963 for redemption against Ramswaroop Singh. Ramswaroop Singh denied having any possession over the suit land as mortgagee and stated that Mahendra Narain Singh, father of the defendant Ist set was actually title holder and in possession over the same. Ultimately, the plaintiffs lost the suit up to High Court. Thereafter, this suit was filed against the defendant.

5. Defendants 1 to 3, sons of Mahendra Narain Singh, filed written statement and contested the suit. Their main defence is that the suit land are purchased land of their father who purchased it from Bulchand Mahto and Jehal Mahto through sale deeds in the year 1914 and 1916 and since then they are coming in possession over the same. Now they have also acquired adverse possession over the suit lands against the plaintiffs and their vendor. It is further stated that in redemption Suit No. 77 of 1963 these defendants appeared as intervenor defendants and also filed written statement claiming their title and possession but later on the plaintiffs with ulterior motive got the names of the defendants deleted. Thus, the suit is also barred by res judicata as well as limitation as the suit has been filed much after 12 years of knowledge of possession of the defendants.

6. The learned trial court framed as many as seven issues. However, the main issue upon which the case was decided is "have the plaintiffs got title to the suit land"

7. The learned trial court held that by virtue of auction purchase in execution of rent decree as well as by virtue of compromise in another rent suit Yamuna Prasad Singh acquired title and possession over the suit land. However, the trial court dismissed the suit on the ground that the defendants had perfected their title by virtue of adverse possession and the suit was barred by limitation as the plaintiffs did not file suit within 12 years from the date of knowledge of possession of the defendant Ist set and their father Mahendra Narain Singh.

8. Being aggrieved by the said judgment of trial court the plaintiffs preferred appeal before the District Judge. It was ultimately heard by 7th Additional District Judge, Nalanda. The learned Additional Judge framed almost identical points and upheld the decision of the trial court. He also held that Yamuna Prasad Singh acquired title by virtue of auction purchase and compromise in rent suit but dismissed the appeal on the ground of adverse possession and limitation.

9. This second appeal has been admitted to be heard on following substantial questions of law:

i) Whether in face of concurrent finding that the plaintiffs have their title, the findings of adverse possession against the plaintiffs in the circumstances of the case is correct ?

ii) Whether the trespasser taking possession from the mortgagee can be allowed to raise a question of adverse possession against the mortgagor.

10. The learned Counsel for the appellants submitted that the judgment of both the lower courts on point of adverse possession is wrong and bad in law. The defendants basis of possession is title and not hostile to the plaintiffs. Therefore, possession of defendants even after expiry of period of 12 years cannot be treated as adverse to the plaintiffs.

11. The issue of adverse possession is not pure question of law. It is a question of law and facts. Law in this regard has been laid down by Apex Court in a decision reported in Konda Lakshmana Bapuji Vs. Government of Andhra Pradesh and Others, Paragraph-53 of the judgment is relevant on this point. It runs as follows:

53. The question of a person perfecting title by adverse possession is a mixed question of law and fact. The principle of law in regard to adverse possession is firmly established. It is a well-settled proposition that mere possession of the land, however long it may be, would not ripen into possessory title unless the possessor has animus possidendi to hold the land adverse to the title of the true owner. It is true that assertion of title to the land in dispute by the possessor would, in an appropriate case, be sufficient indication of the animus possidendi to hold adverse to the title of the true owner. But such an assertion of title must be clear and unequivocal though it need not be addressed to the real owner. For reckoning the statutory period to perfect title by prescription both the possession as well as the animus possidendi must be shown to exist. Where, however, at the commencement of the possession there is no animus possidendi, the period for the purpose of reckoning adverse possession will commence from the date when both the actual possession and assertion of title by the possessor are shown to exist. The length of possession to perfect title by adverse possession as against the Government is 30 years.

12. The facts admitted in this case itself would go to show that the defendants have perfected their title by adverse possession before filing of the suit. The admitted fact is that the plaintiffs-appellant filed title mortgage Suit No. 77 of 1963 against Ramswaroop Singh alleged mortgagee of the suit land. In that very suit, the defendants appeared as intervener defendants and also filed written statement claiming their possession over the suit land. However, the plaintiff-appellants got their name deleted. The admitted position is that the plaintiff-appellants filed the suit much after lapse of period of 12 years from the date of knowledge of possession of defendants.

13. Exts. D and D/1 are judgments of title mortgage Suit No. 77 of 1963 and its appeal. The suit for redemption was dismissed as neither the plaintiffs were found to have title nor Ramswaroop Singh possession as a mortgagee. The same was also confirmed in appeal.

14. Both the lower courts after consideration of evidence and documents have clearly held that the defendant-respondents are in continuous possession over the suit land for more than 12 years in knowledge of the plaintiffs and,

accordingly, the defendants have already acquired adverse possession over the same. Thus, the law decided in above decision of Apex Court fits in the facts and circumstances of the case. The finding on the point of adverse possession is concurrent findings of facts by two courts. Therefore, this Court is not inclined to interfere under the jurisdiction of second appeal. In the result, this appeal is dismissed on contest with cost.

Lawyer's fee Rs. 250/-

Lawyer's clerk's fee Rs. 50/-.