
(2011) 02 PAT CK 0046
In the Patna High Court
Case No : First Appeal No. 565 of 1975

Raj Ratan Singh @ Ram Jatan Singh and Others	APPELLANT
Vs	
Rewati Singh and Others	RESPONDENT

Date of Decision : 02-02-2011

Acts Referred:

Citation : (2011) 02 PAT CK 0046

Final Decision : Dismissed

Judgement

Mungeshwar Sahoo, J.—The Defendants have filed this First Appeal against the judgment and decree dated 27.09.1975 passed by Sri Chandra Shekhar Lall, the learned Additional Subordinate Judge III, Patna in title suit No. 56 of 1970/3 of 1974 decreeing the Plaintiff's suit for declaration of title and recovery of possession along with manse profit.

2. The sole Plaintiff, Masomat Lagmano Kuer, since deceased filed the aforesaid title suit for declaration of her title and recovery of possession of the suit property. According to her case, as pleaded in the plaint, one Gokhul Singh was the owner of landed property both Zamindari and Raiyati. He had four sons namely Kuldip Singh, Sakaldip Singh, Jagdip Singh and Ram Khelawan Singh. Kuldip Singh had a son, Ganga Sagar Singh who is the Defendant No. 1. Ram Khelawan Singh had a son, Vyas Singh who is Defendant No. 2. Jagdip Singh died issueless. Sakaldip Singh, the second son of Gokhul Singh had two sons namely Ram Lagan Singh and Tilsanga Singh. The Plaintiff, Lagmano Kuer is widow of late Tilsanga Singh. Both the sons of Sakaldip Singh, pre deceased. The further case is that the four sons of Gokhul Singh were separate and on the death of Jagdip Singh his properties were divided equally between the three brothers. Sakaldip Singh died sometimes in the year 1933-34 leaving behind his widow, Emrit Kuer and Sarwati Kuer, the widow of Ram Lagan Singh and the Plaintiff. On the death of Emrit Kuer in the year 1938, both the daughter-in-laws i.e. Sarwati Kuer and the Plaintiff inherited the properties of Sakaldip Singh and came in joint possession thereof. Sarwati Kuer also died sometimes prior to filing

of the suit and therefore, Plaintiff became the absolute owner of the property of Sakaldip Singh.

3. The further case is that the Defendant had a greedy eye over the suit properties i.e. the property of Sakaldip Singh and therefore, 145 proceeding was initiated wherein the possession of the Defendant was declared. On the basis of the said declaration of possession, the Defendant dispossessed the Plaintiff on 06.01.1999, therefore, the Plaintiff filed the suit for declaration of title and recovery of possession.

4. The Defendants appeared and filed a contesting written statement. Besides taking various legal pleas mainly it was contended that Sakaldip Singh died in the year 1931 and on his death, his widow Masomat Emrit Kuer agreed to take maintenance and Defendants came in possession of the entire land left by Sakaldip Singh. Emrit Kuer died in the year 1936 and not in the year 1938. As she died in the year 1936, her two daughter-in-laws i.e. Sarwati Kuer and the Plaintiff were not the heirs of Lagmano Kuer and therefore, they did not inherit the property. The further case of the Defendant is that they were continuously in possession of the entire Zamindari and Raiyati interest right from the time of death of Sakaldip Singh and were paying the rent and irrigation dues. The Defendants also claimed that they have acquired title by adverse possession.

5. On the basis of the above pleading of the parties, the learned Court below framed 9 issues as follows:

- (i) Is the suit as framed maintainable?
- (ii) Is the suit barred by limitation?
- (iii) Has the Plaintiff any cause of action for the suit?
- (iv) Is the suit bad for non-joinder of the necessary parties?
- (v) Did Emrit Kuer died in 1938 as alleged by the Plaintiff or in 1936 as alleged by the Defendants?
- (vi) Has the Plaintiff any title to the lands in dispute?
- (vii) Is the Plaintiff entitled to mesne profits and if so for what period and at what rate?
- (viii) Is the Plaintiff entitled for re-imbusement of the money which the Defendants have withdraw from the deposit in a proceeding under 146 Cr.P.C.?
- (ix) To what relief or reliefs if any, is the Plaintiff entitled?

6. After trial, the learned Court below came to the conclusion that Emrit Kuer died in the year 1936 and on her death, Sarwati Kuer and the Plaintiff inherited the property and according to Hindu Succession Act, 1956, both of them became the absolute owner. The learned Court below also found possession of the Plaintiff till 06.01.1969 and therefore, decreed the Plaintiff's suit for recovery of

possession and also for mesne profit.

7. Mr. D.P. Sharma, the learned Counsel appearing on behalf of the Appellant submitted that the learned Court below has wrongly decreed the Plaintiff's suit because since the death of Kuldip Singh, the Defendants are coming in possession and thereby they have acquired title by adverse possession. The learned Counsel further submitted that because Emrit Kuer died in 1936, her two daughter-in-laws i.e. Sarwati and the Plaintiff were not the heirs of Kuldip Singh and therefore, they did not inherit the property. The learned Counsel further submitted that there are overwhelming evidences available on record to show that the Defendants were in possession but the learned Court below has wrongly found the possession of the Plaintiff. On these grounds, the learned Counsel for the Appellant submitted that the impugned judgment and decree are liable to be set aside.

8. On the other hand, the learned senior counsel, Shiv Nandan Rai appearing on behalf of the Respondent submitted that the finding of the learned Court below regarding the year of death of Emrit Kuer in the year 1938 cannot be interfered with by this First Appellate Court because that finding has been recorded by the learned Court below after appreciation of the oral evidences only. The learned Counsel further submitted that on the death of Emrit Kuer in 1938, the property of Sakaldip Singh which was in possession of Emrit Kuer will devolve on the heirs of Sakaldip Singh and Sarwati Kuer along with the Plaintiff being the son's widow inherited the property. The learned Counsel further submitted that it is immaterial whether the Defendants were in possession since the death of Sakaldip Singh but as has been admitted by them, they came in possession with the permission of Emrit Kuer, therefore, they will never prescribe title by adverse possession. On these grounds, the learned Counsel submitted that this appeal is liable to be dismissed with cost.

9. In view of the above rival contentions of the parties, the points arise for consideration is as to "whether the Plaintiff is entitled for declaration of title and recovery of possession as decreed by the learned Court below" and "whether the impugned judgment and decree are sustainable in the eye of law?"

10. Prior to going into the merit of this case, it may be mentioned that the sole Plaintiff-Respondent, Lagmano Kuer died during the pendency of this appeal. Two sets of purchasers filed application for being added/substituted in place of the sole Respondent. Since there was dispute between them regarding who is to be substituted, a report was called for from the Court below. The Appellant, Vyas Singh also filed application for being substituted in place of Lagmano Kuer alleging that on her death, he inherited the property. After enquiry, on the basis of evidences, a report has been received. According to the learned Court below, both set purchasers from Lagmano Kuer are to be substituted. Both the parties were heard on this point also, as earlier by Order No. 59 wherein it was directed that the substitution matter shall be considered at the time of hearing. After hearing, I find no reason to interfere with the report of the learned Court below.

Since the purchasers from Lagmano Kuer have approached this Court, they have a right to be substituted/added in place of Emrit Kuer. In this case, whether their sale deeds were forged and fabricated, cannot be decided in substitution matter. Accordingly, I accept the report and the purchasers are made parties in place of the sole Respondent.

11. The Plaintiff filed this suit for declaration of title and recovery of possession and the Defendant's main defense is that they have acquired title by adverse possession. Therefore, the Plaintiff's suit will be governed under Article 65 of the Limitation Act.

12. In such circumstances, since the suit has been filed for recovery of possession on the basis of title, Plaintiff is required to prove her title. Once she proved her title, then it will be for the Defendant to prove their adverse possession. It is admitted fact that the four sons of Gokhul Singh were separate. On the death of Jagdip Singh, his property was divided between the three sons of Gokhul Singh. Now, therefore, admittedly Sakaldip Singh was separate and therefore, on his death, it may be either in 1931 as pleaded by the Plaintiff or may be in 1933-34 as pleaded by the Defendant, the property will devolve on his widow, Emrit Kuer. According to the Defendant, they have specifically pleaded at paragraph 7 of the written statement that on the death of Sakaldip Singh, Emrit Kuer take maintenance and these Defendants came in possession. Therefore, according to the Defendants themselves they came in possession with the permission of Emrit Kuer. So far the year of death of Emrit Kuer is concerned, according to the Plaintiff she died in 1938 and according to the Defendants, she died in 1936. It may be mentioned here that there is no documentary evidences adduced by either parties regarding the year of death of Emrit Kuer. After considering the oral evidences of the parties coupled with the evidences of D.W.6 and D.W.8, the learned Court below at paragraph 6 of the impugned judgment found that Emrit Kuer died in the year 1938. This finding of fact arrived at by the learned Court below is based on purely oral evidences. The Appellant failed to place any special feature about the evidence of a particular witness which has been escaped the notice of the trial court.

13. In a decision reported in Madhusudan Das Vs. Smt. Narayanibai (Deceased) by Lrs. and Others, , the Hon"ble Supreme Court has held that in an appeal against a trial court decree, when the Appellate Court considers an issue turning on oral evidence, it must bear in mind that it does not enjoy the advantage which the trial court had in having the witnesses before it and of observing the manner in which they gave their testimony. When there is a conflict of oral evidence on any matter in issue and its resolution turns upon the credibility of the witnesses, the general rule is that the Appellate Court should permit the findings of fact rendered by the trial court to prevail unless it clearly appears that some special feature about the evidence of a particular witness has escaped the notice of the trial court or there is a sufficient balance of improbability to displace its opinion as to where the credibility lies.

14. Therefore, so far this finding is concerned, it cannot be interfered with by the Appellate Court as from perusal of the impugned judgment, it appears that the learned Court below has considered all the witnesses very minutely. I find no reason to interfere with the said finding. Accordingly, it is hereby confirmed.

15. In view of the above facts, on the death of Emrit Kuer in the year 1938, the Plaintiff and Sarwati Kuer being the son's widow of Sakaldip Singh inherited the property. Thereafter, because of Section 14 of the Hindu Succession Act, 1956, both of them became the absolute owner with respect to the property of Sakaldip Singh i.e. the suit property. Subsequently, Sarwati Kuer also died and therefore, Plaintiff became the sole absolute owner. It is not disputed that Plaintiff was residing in the house of Sakaldip Singh. This fact that the Plaintiff was residing in the house of Sakaldip Singh is admitted by all the witnesses of the Defendants. The Plaintiff also produced Exhibit-2 series, the Choukidari receipts, Exhibit-3, the Rent receipts and Exhibit-7 is certified copy of Registered Deed. The only dispute is that the Defendants came in possession of the suit property. Admittedly, the Plaintiff was a lady and D.W.15, Vyas Singh himself in his evidence stated that there was a settlement between Emrit Kuer and the Defendants that she agreed to take maintenance and the Defendants will cultivate the land. This agreement appears to be quite natural. Therefore, in the pleading as well as in the evidence, the Defendant admitted that they came in possession of the suit property on the permission of Emrit Kuer. However, at paragraph 14 and 16, the Defendants pleaded that they have acquired title by adverse possession also. As stated above, since their entry in the suit land was on the basis of permission, the Defendants were required to plead and prove as to when they started denying the title of Emrit Kuer or the Plaintiff. As mere possession howsoever long it may be, if there was no intention to dispossess the true owner, it will never constitute adverse possession. In this case, therefore, even if the Defendants are admitted to be in possession although, it is disputed by the Plaintiff then also, if they have not acquired title by adverse possession, the Plaintiff has filed the suit for recovery of possession which is liable to be decreed because we have seen above that Plaintiff has the title over the suit property.

16. In view of the above settled legal position, it is not necessary to go into the question as to who was in possession of the suit property after death of Sakaldip Singh.

17. In 2009 1 B.L.J. S.C. 82 (Hemaji Waghaji Jat v. Bhikhabhai Khengarbhai Harijan and Ors.), the Hon''ble Supreme Court considered earlier pronouncement of the Hon''ble Supreme Court and reiterated the legal position. It is better to quote some of the paragraphs of the said decision. The important paragraphs such as paragraph 14, 18, 19 and 22 are quoted here-in-below:

14. In S.M. Karim Vs. Mst. Bibi Sakina, , Hidayatullah, J. speaking for the court observed as under:

Adverse possession must be adequate in continuity, in publicity and extent and a plea is required at the least to show when possession becomes adverse so that the starting point of limitation against the party affected can be found. There is no evidence here when possession became adverse, if it at all did and a mere suggestion in the relief clause that there was an uninterrupted possession for "several 12 years" or that the Plaintiff had acquired "an absolute title was not enough to raise such a plea. Long possession is not necessarily adverse possession and the prayer clause is not a substitute for a plea.

18. In *Karnataka Board of Wakf Vs. Government of India and Others*, , this Court observed as under:

In the eye of the law, an owner would be deemed to be in possession of a property so long as there is no intrusion. Non-use of the property by the owner even for a long time won't affect his title. But the position will be altered when another person takes possession of the property and asserts a right over it. Adverse possession is a hostile possession by clearly asserting hostile title in denial of the title of the true owner. It is a well-settled principle that a party claiming adverse possession must prove that his possession is "nec vi, nec clam, nec precario", that is, peaceful, open and continuous. The possession must be adequate in continuity, in publicity and in extent to show that their possession is adverse to the true owner. It must start with a wrongful disposition of the rightful owner and be actual, visible, exclusive, hostile and continued over the statutory period.

The court further observed that plea of adverse possession is not a pure question of law but a blended one of fact and law. Therefore, a person who claims adverse possession should show: (a) on what date he came into possession, (b) what was the nature of his possession, (c) whether the factum of possession was known to the other party, (d) how long his possession has continued, and (e) his possession was open and undisturbed. A person pleading adverse possession has no equities in his favour. Since he is trying to defeat the rights of the true owner, it is for him to clearly plead and establish all facts necessary to establish his adverse possession.

19. In *Saroop Singh Vs. Banto and Others*, , this Court observed:

29. In terms of Article 65 the starting point of limitation does not commence from the date when the right of ownership arises to the Plaintiff but commences from the date the Defendant's possession becomes adverse.[See *Vasantiben Prahladji Nayak and Others Vs. Somnath Muljibhai Nayak and Others*,]

30. "Animus possidendi" is one of the ingredients of adverse possession. Unless the person possessing the land has a requisite animus the period for prescription does not commence. As in the instant case, the Appellant categorically states that his possession is not adverse as that of true owner, the logical corollary is that he did not have the requisite animus. See *Md. Mohammad Ali (Dead) by Lrs. Vs. Sri Jagadish Kalita and Others*, .

22. In a relatively recent case in P.T. Munichikkanna Reddy and Others Vs. Revamma and Others, this Court again had an occasion to deal with the concept of adverse possession in detail. The court also examined the legal position in various countries particularly in English and American system. We deem it appropriate to reproduce relevant passages in extensor. The court dealing with adverse possession in paras 5 and 6 observed as under:

5. Adverse possession in one sense is based on the theory or presumption that the owner has abandoned the property to the adverse possessor on the acquiescence of the owner to the hostile acts and claims of the person in possession. It follows that sound qualities of a typical adverse possession lie in it being open, continuous and hostile. [See *Downing v. Bird*, 100 So. 2d 57 (Fla. 1958), *Arkansas Commemorative Commission v. City of Little Rock*, 227 Ark.1085:303 S.W.2d 569(1957); *Monnot v. Murphy*, 207 N.Y. 240, 100 N.E. 742 (1913); *City of Rock Springs v. Sturm*, 39 Wyo. 494, 273 P. 908; (1929) 97 A.L.R. 1 .

6. Efficacy of adverse possession law in most jurisdictions depend on strong limitation statutes by operation of which right to access the court expires through effluxion of time. As against rights of the paper-owner, in the context of adverse possession, there evolves a set of competing rights in favour of the adverse possessor who has, for a long period of time, cared for the land, developed it, as against the owner of the property who has ignored the property. Modern statutes of limitation operate, as a rule, not only to cut-off one's right to bring an action for the recovery of property that has been in the adverse possession of another for a specified time, but also to vest the possessor with title. The intention of such statutes is not to punish one who neglects to assert rights, but to protect those who have maintained the possession of property for the time specified by the statute under claim of right or color of title. (See *American Jurisprudence*, Vol. 3, 2d, Page 81). It is important to keep in mind while studying the American notion of Adverse Possession, especially in the backdrop of Limitation Statutes, that the intention to dispossess cannot be given a complete go by. Simple application of Limitation shall not be enough by itself for the success of an adverse possession claim.

18. In view of the above well settled principles of law as laid down by the Hon'ble Supreme Court, in the present case, I find no such pleading as to since when the Defendants started denying the title of the Plaintiff. According to them, they came in possession with the permission of Emrit Kuer and continued as such after her death. Moreover, the Plaintiff has also adduced evidences oral as well as documentary to prove her possession over the suit property.

19. In view of my above discussion, I find that the Defendants have failed to prove acquisition of title by adverse possession over the suit property.

20. In view of above discussion, I find no merit in this First Appeal.

21. In the result, therefore, this First Appeal is dismissed with cost of Rs. 10,000.