

(1997) 10 PAT CK 0023

In the Patna High Court

Case No : Appeal From the Appellate Decree No. 8 of 1984

Ram Kishun Ram and Others

APPELLANT

Vs

Krishna Ram and Others

RESPONDENT

Date of Decision : 03-10-1997

Acts Referred:

Citation : (1998) 1 BLJR 135

Hon'ble Judges : Gurusharan Sharma, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

Gurusharan Sharma, J.—The plaintiffs are the appellants in this appeal which has been filed against the impugned judgment and decree of reversal.

2. Admittedly plot Nos. 1167 and 1195 measuring 5 Khatas and 18 dhurs at village Main within Gaya district, stood recorded as Jagir of one Gobardhan Misir, son of Ram Sanahi Misir of the said village and in the remarks column thereof his possession as Brahmottardar was shown.

3. By a registered deed of endowment (Aparnama) dated 11.2.1915, he dedicated the aforesaid lands, including other lands to the deities Baba Koteswarnath Mahadeb and Durgaji of his village. According to the deed, he was himself to continue as Mutwalli to look after the management of the properties dedicated and Pandit Dharnidhar Tiwari was appointed to perform Puja-path and after his death Pandit Dharnidhar Tiwari was to act as Mutwalli and manager.

4. The plaintiffs claiming themselves to be the descendants of one Ram Balak Ram filed Title Suit No. 75 of 1978 before the Munsif, Third Court, Gaya against the defendants for declaration of title and confirmation of possession over the Schedule 1 lands and if dispossessed during the pendency of the suit then for recovery of possession and permanent injunction restraining the defendants from interfering with their possession over the suit land.

5. According to the plaintiffs Gobardhan Misir had orally settled the suit land to Ram Balak Kahar @ Ram Balak Ram on an annual rental of Rs. 5/- in lieu of services rendered, who constructed house thereon and resided. A reference of such settlement was made in the registered deed of partition dated 27.3.1944. In the revisional survey plot Nos. 1858, 1864, 1866 and 1867 carved out of cadestral survey plot Nos. 1167 and 1195 in the defendant's names and they threatened to dispossess the plaintiffs.

6. A joint written statement was filed on behalf of the defendants 3 to 7 and 11. According to them Ram Kumar Tiwary, son of the Mutwalli, Pandit Dharnidhar Tiwary, with the consent of Gobardhan Misir by a registered deed dated 23.2.1926 settled plot No. 1167 with their ancestor Durga Kahar at annual rental of Rs. 4/-, who constructed his house. There was no oral settlement by Gobardhan Misir in favour of Ram Balak Ram. The plaintiffs were never in possession of any portion of plot No. 1167.

7. The trial Court decreed the suit and thereby the plaintiff's title was declared, there possession over the disputed land was confirmed and the defendants were restrained permanently to interfere with their possession. However, on appeal by the defendants the first Appellate Court allowed it and set aside the trial Court's Judgment and decree and dismissed the plaintiff's suit.

8. The first Appellate Court found that the plaintiffs failed to establish that they acquired any title over the suit land on the basis of a settlement in their favour or in favour of their ancestor. They also failed to prove that they were dispossessed from the suit land within a period of 12 years prior to the institution of the suit. The alleged date of their dispossession, as given by P.W. 14, was 16.9.1981, which was not accepted by the first Appellate Court.

9. After hearing the parties and perusing the records, I find that Maharaj Kumar Gopal Sharan Narain was the sole proprietor of Touzi No. 5151 of Mauza Main and in the cadestral survey khatian, Ext. 7, plot Nos. 1167 and 1195, appertaining to khata No. 232, having an area of 1.3 decimals and 6 decimals respectively, stood recorded in the name of Gobardhan Misir, Brahmottardar with house standing thereon. In such position a question arises as to whether Gobardhan Misir, the Brahmottardar had a right to settle the lands of khata No. 232. Besides this the fact that settlement if any, made by Gobardhan Misir in respect of the lands in question, was not mentioned in the deed of endowment, Ext. C and whatever right, title and interest the dedicator possessed over the lands mentioned in the deed was dedicated to the deities.

10. It is true that in the registered deed of partition dated 27.3.1944, Ext. 5, wherein Gobardhan Misir was a party, it was recited that in respect of 5 kathas 18 dhurs land in village Main, Ram Kishun and others, the discedants of khidmatgar (Servant) Balak Kahar was paying yearly rental of Rs. 5/-. From this recital a case is not made out that Gobardhan Misir had either right to make settlement of the land in question or actually he had made settlement in our of

the plaintiffs" ancestor, Ram Balak Ram.

11. In my view as recorded in the Cadestral Khatiyā, Ext. 7 the house of the Brahmottardar was already standing over the lands, which was dedicated to the deities and at the time of partition in the year, 1944 Ram Kishun and others, who were the descendants of Balak Kahar, a servant of the family were paying Rs. 5/- as yearly rental, which was being invested for the Puja-path of the deities. In such circumstance, the plaintiffs misreably failed to establish his right, title, interest and possession over the suil lands by virtue of the alleged oral settlement from Gobardhan Misir.

12. In the aforesaid circumstances, I do not find any reason to interfere with the finding of fact recorded by the first Appellate Court in this Second Appeal. However, in my opinion, yet another question arises as to whether plot No. 1167 could have been settled in law and in terms of the deed of endowment Ext. 6 the son of Pandit Dharnidhar Tiwary, the alleged Mutwalli had any authority to execute and register deed dated 23.2.1926 and settle the said plot No. 1167 with Durga Kahar for construction of residential house thereon. There was yet another question as to whether during the life time of Gobardhan Misir, who admittedly died in the year 1946, either Pandit Dharnidhar Tiwary or his son could have acted as Mutwalli.

13. Since the plaintiffs failed to establish their claim over the disputed lands and suit has been dismissed, I am not required to go into the aforesaid question in this appeal. However, in my view those questions are required to be answered and are left open to be adjudicated and decided if necessary, in due course. It is made clear that finding if any recorded by the courts below in respect of the right, title and interest of the defendants based on the deed dated 23.2.1926, Ext-D shall not operate as res judicata in future litigation in respect of cadestral survey plot No. 1167.

14. In the result, the appeal fails and is dismissed, but without costs.