

(1937) 10 PAT CK 0006
In the Patna High Court

Sheogulam Singh and Others	Vs	APPELLANT
Rambahadur Singh and Others		RESPONDENT

Date of Decision : 05-10-1937

Acts Referred:

Citation : AIR 1938 Patna 73

Hon'ble Judges : Fazl Ali, J

Bench : Division Bench

Judgement

Fazl Ali, J.—This is an appeal by the plaintiffs whose suit was decreed by the Court of first instance but has been dismissed on appeal. The parties are residents of village Koari, the plaintiffs' house being situated on plot No. 2311 and the house of the defendants being situated on plot No. 2344.

2. To the east of these plots, there is another plot No. 2326 which is recorded in the khatian as the sahan of the defendant. The case of the plaintiff is that the entry in the khatian is incorrect and they claim that they and the other residents of the village have a right to use this plot as a rasta for themselves and for the bullock-carts as they have done so for a long time. The plaintiffs further claim that the defendants have no right to obstruct the flow of water from plot No. 2311 and other plots to its east, west and north as such water always used to flow through plot No. 2326 towards the south.

3. The trial Court found that the plaintiffs had no right of easement over plot No. 2326 but it also found that the plot in question had been used by the public as a rasta for a long time and the defendants had no right to block it by putting up tatti fencing. The learned Munsif also held that the defendants had no right to obstruct the free flow of water from the plots on the north of plot 2326 through that plot towards the south. When the matter however came up in appeal before the learned Additional District Judge of Muzaffarpur, he took the view that the evidence adduced by the plaintiffs to prove that 2326 had been used by the public for a long time as a rasta was too vague and could not be accepted. He also found that the evidence regarding the plaintiffs' right to discharge water

into the disputed land was of similar description.

4. Upon these findings the learned Additional District Judge reversed the decision of the Munsif and dismissed the plaintiffs' suit. The plaintiffs have accordingly preferred this second appeal to this Court.

5. As to the claim of the plaintiffs that plot No. 2326 is a public rasta, it appears to me that the finding of the learned Additional District Judge is conclusive and cannot be re-opened in second appeal. No doubt the learned Munsif has pointed out that there is a public road to the north as well as to the south of plot No. 2326, that this plot has been described as a rasta in the survey khatian relating to plot No. 2344 and that certain admissions made by the defendant in his evidence in Court and in the plaint of an earlier suit support to some extent the case of the plaintiff. The learned Additional District Judge however has considered all these matters and come to the clear and definite finding that the plaintiffs have failed to establish that the plot in question is a public rasta. That finding in my opinion cannot be challenged in this Court.

6. As to the right of the plaintiffs to discharge water upon plot No. 2326, it has been pointed out to me that both the Courts below have overlooked the fact that apart from the question of any easement the plaintiffs could claim the right to discharge water upon plot No. 2326 as a natural right and as an incident of the ownership of the plot No. 2311 which is said to be on a higher level than plot No. 2326.

7. In support of this contention I the learned advocate for the appellant has relied upon the decision in *Hussain Sahib v. Subbayya* A.I.R.1926. Mad. 449 *Ramadin Singh v. Jadunandan Singh* A.I.R.1915. Cal. 486 and *Rajpati Narayan Singh v. Kirit Narayan Singh* A.I.R.1938. Pat. 71 It appears to me that the oases cited by the learned advocate for the appellant do support his contention and the point raised by him in this Court having been raised in his pleading should have received proper consideration in the Court below. On a reference to the judgment of the lower Appellate Court, I find that the whole question as to the right of the plaintiffs to discharge water upon plot No. 2326 has been "disposed of in the following passage:

Regarding the plaintiffs' right of flowing water of all kinds through the disputed land, I think that the plaintiffs' evidence on this point is also as vague as that of their evidence regarding the existence of any public right of way and for the same reason, as I have mentioned above, the plaintiffs' evidence is also to be disbelieved so far as this kind of easement claimed by them is concerned.

9. It is clear from this passage that the learned Additional District Judge did not approach the case from the correct standpoint and dealt with the matter as if it was governed by those very considerations which governed the other part of the plaintiffs' case. In fact the questions which should have been determined by him were whether it was a fact that plot No. 2311 and the other plots referred to in the plaint were on a higher level than 2326 and whether in the circumstances of

the case the plaintiffs could claim "the natural right" which has been fully discussed in the oases referred to above.

10. I would therefore, while upholding the judgment and the decree of the Court below negating the claim of the plaintiffs to use plot No. 2326 as a rasta, set aside its judgment and decree in so far as it deals with the claim of the plaintiffs to discharge water upon this land and remand the case to the Court below for disposal according to law.

11. The respondents will be entitled to half the costs incurred in this Court and in the Courts below. As to the rest of the costs, they will abide the result.