
(1998) 05 PAT CK 0046

In the Patna High Court

Case No : Appeal from Appellate Decree No. 12 of 1987 (R)

Smt. Gomia Devi

APPELLANT

Vs

Kishun Rai and Others

RESPONDENT

Date of Decision : 19-05-1998

Acts Referred:

Citation : (1998) 3 BLJR 2287

Hon'ble Judges : Loknath Prasad, J

Bench : Single Bench

Final Decision : Allowed

Judgement

Loknath Prasad, J.—This Second Appeal is directed against the judgment dated 6.10.1986 and the decree dated 19.11.1986 passed by Shri Ranjit Prasad Sinha, 3rd Addl. Subordinate Judge, Giridih in Title Appeal No. 41/85 thereby and thereunder the appeal was allowed and the judgment dated 3.5.1985 and the decree dated 13.5.1985 passed by Shri B.K. Prasad, Munsif, Giridih in Title Suit No. 124 of 1974 was set aside.

2. The fact in short for the purpose of this appeal is that the original plaintiff Barhani, widow of Barhan Hazam who died during the pendency of the suit and her daughter Gomia was substituted, instituted a suit as against the defendants Kishun Rai, Bhagi Rai and Shyamlal Rai who are the sons and grand sons of one Chatur Rai for declaration of her title and also for recovery of possession in respect of some lands of Khata Nos. 32 and 39 of village Kripalpur, P.S. Dhanwar as described in Schedule A and B of the plaint. It has been alleged by the plaintiff that lands of Khata No. 32 was originally recorded in the name of one Dukhan Hazam whereas raiyati Khata No. 39 of village Kripalpur was jointly recorded in the name of Rewat Hazam and Barhan Hazam and some of the plots were Kabjawari. Dukhan Hazam died issueless and so he was inherited by his grand sons Rewat Hazam and Barhan Hazam recorded tenant of Khata No. 39. In the year 1925 Rewat Hazam and Barhan Hazam instituted Title Suit No. 69/25 against Tejo Rai and others in the Court of Munsif, Giridih in respect of some

lands of Khata No. 39 which was decreed and even the appeal was confirmed. Barhan Hazam died in the year 1936 leaving behind his widow Barhani who is the plaintiff and some daughters and after the death of Barhan Hazam his widow came in possession of the lands of Khata Nos. 32 and 39. Similarly Rewat also died without any son and he got three daughters, namely Churia, Dilia and Koshali but Churia and Dilia died and only Koshali is the only surviving daughter of Rewat. It has been alleged that the defendants who are turbulent persons forcibly dispossessed the plaintiff. Hence the suit.

3. All the defendants who are the heirs of Chatur Rai jointly contested the suit and a case was made out in the Court below that no doubt the lands of Khata Nos. 32 and 39 belong to Rewat and Barhan but they surrendered the lands of these two khata in favour of the ex-landlord Lal Behari Mahto on 21-8-35 and subsequently Chatur Rai took oral settlement of some of the lands of these khata from the ex-landlord and some other lands were settled with the different persons and even after vesting of the Zamindari Chatur Rai, and after his death defendants are in peaceful possession of the lands in suit and as they are raiyati.

4. The trial Court i.e., learned Munsif, Giridih decreed the suit of the plaintiff and recorded a finding that so called story of surrender by Rewat and Barhan to the ex-landlord and subsequently ex-landlord settled the same in favour of Chatur Rai had not been proved. As the plaintiff was dispossessed within 12 years from the institution of the suit so decreed the suit and ordered for recovery of possession. Against that defendants preferred Title Appeal bearing Title Appeal No. 41/85 and the learned Addl. Subordinate Judge-III, Giridih vide his judgment dated 6.10.1986 came to the conclusion that the appellant-defendant failed to prove that Rewat and Barhan surrendered their lands in favour of the ex-landlord in the year 1935 and Chatur Rai took settlement of the same. But decreed the appeal mainly for the reason that the appellant-defendants were in possession of the land in suit continuously and adversely to the knowledge of the plaintiff atleast from the year 1946. Thus, perfected their title by adverse possession. Against that decretal judgment the plaintiff preferred this Second Appeal. This appeal was admitted only on the substantial point of law that in view of the fact that the Court below held that the defendants had alleged that the appellant had title to the property, so in absence of any definite pleading as to when respondent-defendants started adversely claiming the property in the eye of law and title of appellant was extinguished by adverse possession can be sustained?"

5. So admittedly Rewat Hazam and Barhan Hazam were the raiyats and having title over the lands of Khata Nos. 32 and 39 of village Kripalpur which is the subject matter of the suit as described in Schedule A and B of the plaint. It is admitted position that Barhan died leaving behind his widow who was the original plaintiff and now the substituted plaintiff is the daughter of Barhan and Rewat also died leaving behind some daughters. The defendants who are the heirs of Chatur Rai also simply claimed that the original raiyat i.e., Rewat and Barhan surrendered the lands of Khata Nos. 32 and 39 in favour of the ex-landlord, Lal

Behari Mahto on 21.8.1935 and the ex-landlord orally settled the lands in suit in favour Chatur Rai the ancestor of the defendant-respondents. From the time of settlement the defendants are in continuous possession of the lands in suit. Both the Courts below concurrently recorded a finding that alleged surrender by Rewat and Barhan as claimed by the defendants had not been proved that the defendants also failed to prove that the ex-landlord also settled the lands in suit in favour of Chatur Rai. So there is clear finding of both the Courts that admittedly Barhan and Rewat were the raiyats of the disputed lands. Against these findings the respondent-defendants had no preferred any cross-objection so the findings of both the Courts below on this point are now well settled.

6. Admittedly learned Munsif decreed the entire suit of the plaintiff because the plaintiff is the heir of recorded raiyat of Khata Nos. 32 and 39 and she was dispossessed within the 12 years of the institution of the suit. But the appellate Court though confirmed the finding of the learned Munsif on other points i.e. on the point of surrender and settlement claimed by the defendants but decreed the appeal only for the reason that defendants are in possession of the disputed lands right from the year 1946 and thus, acquired title by adverse possession.

7. In view of the findings of the 1st Appellate Court and the substantial question of law framed in this appeal now the only question for consideration is if the finding recorded by the 1st Appellate Court that the defendants perfected their title by adverse possession and the title of the appellant, extinguished without any specific pleading in the written statement can be sustained.

8. On perusal of the written statement filed by defendants it can be said that the defendants have set up only specific case that the original raiyat Rewat Hazam and Barhan Hazam of Khata Nos. 32 and 39 surrendered their lands in the year 1935 in favour of the ex-landlord and the ex-landlord settled the same in favour of Chatur Rai that too orally and this plea was rejected by both the Courts below. The defendants have not set up a case that they also perfected their title by adverse possession and they simply made vague statement in the written statement that they are in possession of land in suit after the settlement. In order to make out a case of hostile title and perfection of title by adverse possession the defendants should have made a case in the pleading as to from when and what time they remained in continuous possession of the land in suit that too to the knowledge of the owner but they have not done. More over the defendants-respondents have simply claimed their own independent title on the virtue of settlement from the ex-landlord. At the same time no specific evidence was adduced as to from which and what particular time the defendants came in possession that too hostile possession and the knowledge of the plaintiff. In such a situation the finding of the 1st Appellate Court that the defendants are in possession of the suit land right from the year 1946 and set up a hostile title from that time as against the plaintiff, is definitely illegal and wrong as the appellate Court made out a third party case himself without such pleading in the written statement. In that view of the matter, the finding of the 1st Appellate

Court without such pleading in the written statement that the defendants acquired title by adverse by remaining in possession of the suit lands right from 1946 onwards, can not be sustained and thus, liable to be set aside.

9. In the result this appeal is allowed and the judgment dated 6.10.1986 and the decree dated 19.11.1986 recorded by 3rd Addl. Subordinate Judge. Giridih in Title Appeal No. 41/85 is hereby set aside, whereas judgment dated 3.5.1985 and decree dated 13.5.1985 passed by Sri B.K. Prasad, Munsif. Giridih in Title Suit No. 124/74 is hereby confirmed and maintained. But the parties will bear their own costs to this appeal.