

(2002) 01 PAT CK 0041

In the Patna High Court

Case No : Appeal from Appellate Decree No. 78 of 1988

Smt. Jago Devi and Others

APPELLANT

Vs

Bhagirath Prasad @ Bachcha Babu and Others

RESPONDENT

Date of Decision : 10-01-2002

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 144, 145

Citation : (2002) 1 BLJR 344 : (2002) 1 PLJR 371

Hon'ble Judges : S.N. Pathak, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

S.N. Pathak, J.—This appeal is directed against the judgment and decree dated 23rd December, 1987 and 6th January, 1988 respectively passed by Additional District Judge XIII, Patna, in Title Appeal No. 78 of 1979, reversing the judgment of the trial Court dated 31st March 1979 passed in Title Suit No. 125 of 1969. The defendants of the suit are the appellants before this Court. The suit of the plaintiff-respondents was dismissed by the trial Court and the first appellate Court reversed the same against which the defendants have preferred the aforesaid second appeal.

2. The facts admitted by the pleadings of the parties are that there was one Plot No. 794 having a total area of 10 acres 5 decimals recorded in the names of three persons. The three recorded owners of this plot entered into partition and 1/3rd of the middle portion of the plot fell to the share of Srinaryan Singh and Bindeshwri Prasad Singh jointly after the Survey. Srinarayan Singh and Bindeshwri Singh also later effected partition of their share over this plot and the eastern half measuring an area of 2 bigha 13 katha and odd dhurs fell to the share of Srinarayan Singh and the western half of the same area fell to the share of Bindeshwri Prasad Singh. The entire area of Plot No. 794 was situated just north of Danapur-Maner road. Subsequently, 10 kathas was taken in settlement by the father of the defendants, namely, Bhekha Rai from Bindeshwari Prasad

Singh. Up to this extent, it is the plaintiff's admitted case, The defendants also admitted the aforesaid facts pleaded by the plaintiff-respondents. However, the case of the plaintiffs further was that one Deo Nandan Mahto who was an employee of Srinarayan Singh, took advantage of simplicity and deafness of Srinandan Singh and started laying claim over a portion of the suit land in possession of Srinarayan Singh and resultantly there were litigations, civil and criminal, between Srinarayan Singh, Deonandan Mahto and even the plaintiffs who were the sons and widow of Srinarayan Singh and in all these litigations, the plaintiffs' title and possession were confirmed and Deo Nandan Mahto lost throughout. So Deo Nandan Mahto set up defendants to lay a claim over the suit land of 10 katha and his led to a proceeding u/s 145, Cr. P.C. which was decided in favour of the plaintiffs. However, on revision to the High Court, the matter was remanded on certain technical grounds. During the pendency of this proceeding, the suit was filed for declaration of plaintiffs' title and for confirmation of their title or in the alternative for recovery of possession.

3. The case of the defendant-appellants was that, of course, he took settlement of 10 Kathas of Plot No. 794 from Bindeshwari Prasad Singh in the year 1935, after payment of Salami of Rs. 160/- and on annual rental of Rs. 7/-. But, he also took settlement of 10 Kathas of Plot No. 794 from the share of Srinarayan Singh orilly in the year 1935. Since then, he has been coming in possession and was mutated over the same by the order of the D.C.L.R. The plaintiffs had no subsisting title over the suit land and they were, therefore, not entitled to the reliefs which they had claimed.

4. I find that the trial Court dismissed the suit of the plaintiffs on the ground that the witnesses examined on their behalf failed to support their possession, whereas witnesses examined on behalf of defendants, had proved their possession. The sanction-plan of Nijamat Municipality (Ext-B) also indicated that the defendants were in possession of the suit land and the order of the D.C.L.R. also confirmed their possession. The litigations were fought between the plaintiffs' or their predecessor in interest with Deonandan Mahto in which the defendants were not party and so the results therein did not affect the title and interest of the defendant-appellants and it was not shown that Deonandan was in collusion with the defendants. In view of the aforesaid findings, the trial Court dismissed the plaintiffs' suit. The appellate Court considered the issues relating to title of the plaintiffs' and the issue relating to their possession and held that the plaintiffs' title for the suit was valid and subsisting and it was not extinguished by adverse possession of the defendants and hence, decreed the suit and reversed the judgment of the trial Court.

5. Admittedly, Srinarayan Singh and Bindeshwari Prasad Singh had got their 1/3rd share in the middle portion of the suit Plot No. 794. Subsequently, they had entered into partition of their joint share and they got 2 bighas, 13 kathas, and odd dhurs. The eastern half fell to the share of Srinarayan Singh and the western half fell to the share of Bindeshwari Prasad Singh. There was no dispute that a

land of 10 kathas was settled by Bindeshwari Prasad Singh with Bhikha Singh, defendants father. However, the defendants claimed that they had also accured 10 kathas of land from the share of Srinarayan Singh in the year 1935 and this settlement was oral and Salami of Rs. 160/- was paid to Srinarayan Singh as the same was paid to Bindeshwari Prasad Singh. So, the title of Srinarayan Singh up to the date of settlement in the year 1935 was admitted by the defendants. So unless the defendants show that they had acquired 10 kathas of the land of Srinarayan Singh by settlement and by virtue of settlement, they came in its possession and continued over the, same, they cannot succeed in the suit as the title of the plaintiffs shall stand admitted and the suit shall have to be decreed as the first appellate Court has held. In this connection, I must not fail to refere to the arguments of the appellants" lawyer that since Srinarayan Singh was claiming the suit land as his Bakast land, it was the bounden duty of the respondents to prove that they continued in actual physical possession of the suit land till the date of vesting so that it could be settled in their name by State of Bihar u/s 6 of the Land Reforms Act. It was submitted by the appellant"s lawyer that this was pure question of law and even if i was not raised in the Courts below, it may be raised here and the plaintiff-respondents would have to prove this fact. It was further contended by the appellants" lawyer that since there was no evidence to this effect by the plaintiff-respondents, their title had become extinct and so also they were not entitled to declaration of their title and recovery of possession. This piece of argument advanced by the appellant"s lawyer is neither aceptable nor it can be given any significance in the second appeal. This is so because the issue relating to vesting of a particular Bakast land and non-vesting of the same can be the issue between the land-holder and the State or between the land-holder and the 3rd person who claims settlement from the State after vesting of the intermediary interest of the land-lord. u/s 6 of the Land Reforms Act, all lands in Khas possession of the land-lord shall be deemed to have been settled with the occupant of the land subject to payment of rent and I have already held above that this issue cannot be raised by a person who claims settlement from the ex-landlord and before the abolition of Jamindari Estate. So the defendants had to prove that they had acquired settlement of suit land of 10 kathas in the year 1935 and they perfected their title by adverse possession, if their settlement was held to be invalid. The appellate Court has addressed this issue in its right perspective and it came to the conclusion on the basis of the evidence that the defendant-appellant failed to prove continued adverse possession and so there was no alternative, but to declare title of the plaintiff-respondents. Finding of facts regarding possession of the appellate Court are almost final this Court cannot interfere with the same. However, in this connection, it was pointed out that the appellate Court did not advance cogent reason to disagree with the findings of the trial Court regarding possession of the appellants and so the appellate Court"s finding deserve interference by this Court. I shall advert to this contention of the appellant"s lawyer later. At this stage, I shall consider whether the defendants have been able to prove that they had acquired the suit land by settlement. Admittedly, it was a case of oral

settlement. In the first instance, when the defendants acquired settlement from Bindeshwari Prasad Singh on the basis of the documents it is a bit unbelievable that they would acquire oral settlement from Srinarayan Singh. D.W. 3 was examined to prove this settlement, but this D.W. in the cross-examination said that a paper was prepared but no paper was produced and this evidence of D.W. 3 was against the pleading of the defendants. So, the appellate Court discarded the evidence of this witness. The trial Court placed reliance on the evidence of this witness because he was 80 years old, but the trial Court ignored the statement of this witness in cross-examination which went against the pleading of the defendants and evidence of D.W. 1 who was one of the defendants himself. So the story of settlement was not supported by cogent reliable evidence, except by the general and sweeping statement of certain D.Ws. who came to support the factum of possession of the defendants over the suit land. In this connection, there was evidence of so many witnesses on behalf of plaintiff-respondents as well. The trial Court disbelieved the evidence of plaintiff-respondents and did not consider the same in its depth but relied on the evidence of D.Ws. by a facile presumption that that they were truthful and reliable and it is not understandable why he discarded the evidence of P.Ws. simply because they admitted that the defendants were in possession of the suit land for last 3-5 years. This part of the evidence of P.Ws. was in consonance with the plaintiffs pleading that they were dispossessed after the order of D.C.L.R. mutating the names of the defendants. This, however, was not sufficient to prove the adverse possession of the appellants and the appellate Court has taken note of the fact that the oral evidence of both the parties were tainted with contradictions and discrepancies here and there. So the appellate Court held that the oral evidence on behalf of the defendants was not sufficient to prove their continued and uninterrupted possession from the year 1935 in order to constitute adverse possession.

6. I find that the trial Court relied much on the documentary evidence adduced by the defendants to hold that the suit land was settled in the name of their ancestor Bhika Singh and by virtue of the said settlement they were coming in possession. I, therefore, now refer to certain Exhibits filed by the appellants. In this connection, Ext-A and Ext-A/1 are the Jamindari receipts purported to have been issued by Srinarayan Singh under his signature, as the trial Court has held. However, it was averred and asserted by the plaintiffs that Deonandan was in possession of receipt books of Srinarayan Singh and used to obtain signatures of Srinarayan Singh on blank receipts. Admittedly, Deonandan Mahto and Srinarayan Singh had fought title suit as also criminal proceedings and all these cases ended in favour of Srinarayan Singh. There was also a case on account of rent calculated by Deo Nandan Mahto and that case also was decided in favour of Srinarayan Singh. So chance of Deonandan Mahto coming in possession of receipt and issuing the same to anybody, cannot be ruled out. Ext-A and Ext-A/1, according to the pleading were issued by Srinarayan Singh. The signature on these two receipts are in Kaithi language and it is illegible and even if it is assumed that the signature of Srinarayan Singh is there, it cannot be presumed

that it was genuine signature of Srinarayan Singh, especially in view of allegation of plaintiff regarding Deo Nandan Mahto. The fact that Deo Nandan Mahto was Patwari of Srinarayan Singh was evidenced by series, of litigation the documents in connection with which were filed and exhibited. Moreover, there is no date on which Srinarayan Singh issued receipts (Ext-A and A/1). So the finding of the trial Court that there two receipts indicated the settlement of suit plot in favour of Bhika Singh was an erroneous finding. Ext-A to A/14 were the receipts, all issued by Bindeshwari Singh and so these receipts may refer to the settlement of Bindeshwari Singh's land in favour of defendants' ancestor which was an admitted fact. So far the sanction plans (Ext-B and B/1) are concerned, I find that they refer to sanction of the year 1963 and perhaps, it refers to Holding No. 202-A. It was contended by the appellant's lawyer that this holding number consisted of the suit plot as also the lands taken by the defendants from Bindeshwari Singh, including his own land, i.e. plot No. 1240 which was contiguous to the settled land. However, Ext-B and Ext-B/1 are, perhaps, proposed plan and the same being sanctioned, and they refer to an area of a house of the dimension of 97 ft. x 24 feet. This area of the aforesaid house can, in no case, therefore refer to the land of 1 bigha 19 dhurs consisting of the acquired land of the defendants and their own land of 19 dhurs over plot No. 1240. Ext-B and B/1, therefore, did not prove that the defendants were in possession of the suit land right from the date of their settlement in the year 1935, Ext-C series were the municipal receipts and these receipts also did not show that they related to the suit land of 10 kathas. The appellate Court has further taken note of the fact that the house was already constructed and its Holding number also existed from before and then sanction plan was submitted and approval was obtained. So, this sanction plan could never indicate that the house was existing on the suit land. There is another aspect of the case and it is to the effect that in the year 1965, the defendants learnt that the Karmchari was not issuing receipt to them for the suit land, although they were getting receipts for the lands taken in settlement from Bindeshwari Prasad Singh and so they filed a case before the D.C.L.R. Dinapore. This D.C.L.R. directed the B.D.O. to hold inquiry and report about possession. The report of the B.D.O. was in favour of plaintiff-respondents and still the D.C.L.R. mutated the name of the defendants over the suit land. The trial Court dis-believed the evidence of the B.D.O. because the B.D.O. was not examined, but on the basis of the order of the D.C.L.R. it held that the defendants were in possession. In this connection, it would be pertinent to note that the defendants had taken settlement of the suit land in the year 1935 itself and it is not understandable as to why they waited till the year 1965 to get their names mutated, when they had already got their names mutated for the lands taken in settlement from Bindeshwari Prasad Singh. It is also surprising as to why the D.C.L.R. mutated the names the defendants when report of the B.D.O. regarding possession was against the defendants. There was another circumstance also negating the possession of the defendants and their case of settlement. It was the deposition of Bhika Singh in the proceeding u/s 145 of the Code of Criminal Procedure between Srinarayan Singh

and Deo Nandan Mahto and the order passed in this connection (Ext-8) was relied on by the appellate Court where there was mention of the Statement of Bhika Singh regarding the possession of Srinarayan Singh and denial of the possession of Deonandan Mahto. The trial Court disbelieved the statement of Bhika Singh because the aforesaid statement contained in affidavit was not filed before it. However, reference to this statement in the order passed by the Magistrate in seisin of the case did afford a circumstance in favour of plaintiff-respondents and against the defendant-appellant's case of settlement and possession. The trial Court wrongly ignored this aspect of the case. This proceeding was, perhaps, in the year 1955 (281/55 in the Court of S.D.O., Dinapore) and so if Bhika Singh would have taken settlement of the suit land in the year 1935, he was not supposed to speak in favour of Srinarayan Singh and his possession, because it was a proceeding u/s 144, subsequently converted to one u/s 145 Cr. P.C. So far Exts-D Series are concerned they are some Jamindari receipts, but they in themselves do not show that they related to Jamindari receipts of 10 kathas. In all circumstances, therefore, the documentary evidence on behalf of defendants did not suggest that Bhika Singh had taken settlement of the suit land from Srinarayan Singh and on the basis of the same, he and his descendants were in possession over the same, so much so that they had perfected their title on the basis of adverse possession. In this connection, it was pointed out by the appellants' lawyer that all the litigations between Srinarayan Singh and Deonandan Mahto were collusive litigations and, therefore, it cannot be presumed from the decisions therein that Srinarayan Singh was holding title and possession. In this connection, once again, I am of the opinion that this contention of the appellants' lawyer is misplaced. Deonandan Mahto was claiming the land of 2 bigha and odd Kathas, but not the entire land allotted to Srinarayan Singh and in no case, it can be presumed that these two persons were having collusive litigation just by way of show in order to defeat the title of the defendants over the suit land. The litigations between Deonandan Mahto and Srinarayan Singh which were in series indicated the position of enmity between the two and, hence, the fact of certain receipts being issued by Deonandan Mahto or in the forged name of Srinarayan Singh, cannot be ruled out. This view is strengthened by the fact that the defendants kept silent for a considerable period of time from the year 1935 up to the year 1965, when they filed a case before the D.C.L.R. for mutation of their names. If the story of settlement in their favour was genuine one, it was expected of them that they would file a case of mutation much before 1965 when they had obtained mutation for their land acquired from Bindeshwari Prasad Singh. So the entire set of circumstances on the record unleashed by the oral and documentary evidence indicated that defendants failed to prove their factum of possession from the year 1935 up to the date when the plaintiffs were dispossessed. Moreover, because same D.Ws. appeared and said that the defendants were in possession of the suit land by general and sweeping statement that cannot constitute their continued and uninterrupted peaceful possession constituting adverse possession. A suit is decided on the preponderance of probabilities and circumstances and it cannot

be decided on the oral testimony of witnesses which now-a-days is not difficult to obtain. I have already discussed the documentary evidence adduced on behalf of defendants and recorded my opinion thereon.

7. The contention of the appellants' lawyer that the appellate Court failed to give its reason to disagree with the findings of fact by the trial Court also does not appear to be tenable. The Appellate Court has given its views and opinion regarding the receipts and the sanction plan of the Municipality. The appellate Court has also referred to the evidence of P.Ws. and D.Ws. and came to the conclusion that the testimony of these witnesses did not specifically lead to substantiated the case of the defendants regarding adverse possession. Moreover, the Court of appeal is a Court of fact and law both and it is free to form its own opinion on the evidence on the record and it need not necessarily state how it disagrees with the finding of the trial Court, although in some cases, it may be appropriate for the appellate Court to give its reasons for disagreeing with the trial Court in order to validate its findings.

8. In the light of the discussions made above upon the evidence and the findings of the trial Court and the appellate Court, I am of the opinion that the plaintiff-respondents have proved their title over the suit land and the defendant-appellants have failed to defeat by their evidence the title of the respondents and, hence, the latter were entitled to receive the decree claimed for.

9. In the result, this appeal is dismissed and the judgment and decree of the first appellate Court is affirmed.