

(2010) 12 PAT CK 0036

In the Patna High Court

Case No : Appeal from Appellate Decree No. 256 of 1990

Surya Narain Ram and Kundan Prasad Ram

APPELLANT

Vs

Singheshwar Ram, Dilmohan Ram and Tarni Prasad Ram all
Sons of Late Manshi Ram

RESPONDENT

Date of Decision : 03-12-2010

Acts Referred:

Citation : (2010) 12 PAT CK 0036

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

Bench : Single Bench

Final Decision : Dismissed

Judgement

S.N. Hussain, J.—This second appeal has been filed by defendants-appellants-appellants challenging judgments and decree of both the courts below.

2. The matter arises out of Title Suit No. 104 of 1977 which was filed by plaintiffs-respondents-respondents for declaration that they were the rightful owners of the suit land measuring 40 ft x 10 ft bearing Plot No. 295 and that the defendants had no manner of right, title and interest therein and also for declaration that survey map and record of rights prepared by the revisional survey authorities published on 01.09.1977 by including the suit land in Plot No. 298 appertaining to Khata No. 147, of Thana No. 288, Tauzi No. 3260 under Colgong Police Station within the District of Bhagalpur, in the name of defendant No. 1 was wrong and incorrect. The plaintiff further sought a decree of permanent injunction restraining defendant No. 1 from interfering with the possession of the plaintiffs.

3. The defendants appeared and contested the case of the plaintiff claiming that the suit land was their ancestral land and was allotted to his branch in partition and they are coming in possession thereof from the time of their ancestor making construction thereupon. It was also claimed that plaintiff No. 1 was also attesting witness to the deed of partition dated 11.10.1947.

4. Learned court below considering the pleadings of the parties formulated the following issues for deciding the title suit:

- (i) Is the suit framed as maintainable?
- (ii) Is the suit bad for non-joinder of parties?
- (iii) Is the suit barred by limitation?
- (iv) Are the plaintiffs entitled to decree as prayed for?
- (v) To what relief or relief, if any, are the plaintiffs entitled?
- (vi) Whether the suit is beyond the pecuniary jurisdiction of this Court?

5. After considering the pleadings and evidence of the parties, Munsif-I, Bhagalpur decreed the suit on contest with cost vide his judgment and decree dated 31.01.1983 after arriving at the following findings:

- (a) The claim of the defendant is neither supported by any document, nor supported by any witness nor any suggestion was given on the point of jurisdiction and valuation.
- (b) There is no merit in the assertion of the defendants that the suit is beyond the pecuniary jurisdiction of this Court.
- (c) The evidence of the plaintiffs, both oral and documentary, fully proved their case, whereas the defendants failed to prove any earlier partition by metes and bounds by any evidence.
- (d) The claim of the plaintiffs that the suit land was amalgamated with land of the plaintiffs stands fully proved.
- (e) Even the evidence of the defendants fully supported the case of the plaintiffs, but they could not support the pleadings made in the written statement.
- (f) The report of the pleader commissioner also supports the claim of the plaintiffs.
- (g) The plaintiffs are in possession of the suit land and defendants have no right, title and interest over it.
- (h) The entries in the revisional survey record of rights are wrong with respect to the suit land and are not binding on the plaintiffs.
- (i) The defendants are restrained from interfering with the possession of the plaintiffs in any manner over the suit land.

6. Against the aforesaid judgment and decree of the trial court, the defendants filed Title appeal No. 14 of 1983. After hearing the pleadings of the parties, the learned court of appeal below formulated the following point for deciding the title appeal:

Whether the title appeal is fit to be allowed?

7. After considering the arguments and evidence of the parties, 5th Additional District Judge, Bhagalpur dismissed title appeal on contest with cost vide his judgment and decree dated 02.05.1990 after arriving at the finding that the appeal was not fit to be allowed.

8. Against the aforesaid judgments and decree of both the courts below, the instant second appeal has been filed by the defendants-appellants which was admitted on 15.01.1992 by a bench of this Court after framing the following substantial questions of law:

(i) Whether the court below was justified in rejecting Ext.A on the ground that the contents thereof were not known to plaintiff No. 1, ignoring that he was in a position of Privi to the transaction and as such it should be presumed that he was in know of it.

(ii) Whether the court below erred in rejecting Ext.B ignoring the fact that the disputed land is a portion of 18 decimals which was recorded in the record of rights.

9. From the arguments raised on behalf of the parties as well as from the materials on record and the judgment of affirmance of the court below, it is quite apparent that Ext.-A is the deed of partition among defendants only and plaintiff was not a party to it. He was merely an identifier of the signature of a lady executant and was not a witness to the deed and hence the said deed of partition or its contents cannot be binding upon the plaintiffs who were claiming only 10"x 40" of the suit land and it cannot be legally presumed that he was in know of the contents thereof. Furthermore, plaintiff No. 1 could not come to depose due to his old age, but the defendants did not take any step to bring him into evidence box to support the contention. This aspect of the matter is quite apparent from paragraphs 22 and 23 of the lower appellate court judgment.

10. So far Ext.-B is concerned it is Revisional Survey Khatian of Plot No. 298 which was originally within plot No. 79 of Cadastral Survey Khatian measuring 1.45 acres. The said Cadastral Survey Plot was carved into two Revisional Survey Plot Nos. 295 and 298 out of which 298 measures 18 decimals and the said measurement was challenged in the suit by the plaintiffs who claimed that it was more than its actual measurement, which was in possession of the plaintiffs. This aspect of the matter has been fully considered in detail by the trial court in paragraphs 14 to 20 of its judgment and also by the lower appellate court in paragraphs 22 and 23 of its judgment and they concurrently found that the evidence of the plaintiffs fully proved it, which the defendants evidence could not disprove.

11. In view of the aforesaid facts as well as in view of the specific pleadings and evidence of the parties considered in detail by the learned courts below in the aforementioned paragraphs of their respective judgments, it is quite apparent

that Ext.-A deed of partition was rightly not relied upon and Ext.-B Revisional Survey Khatian was rightly found to be not correct with respect to measurement.

12. In these circumstances, the questions raised by the appellants could not be substantiated in law and accordingly, this Court does not find any merit in this second appeal which is, accordingly, dismissed, but in the facts and circumstances of this case, there will be no order as to costs.