
(1969) 02 PAT CK 0021
In the Patna High Court
Case No : A.F.A.D. No. 259 of 1964

Thakur Dayal Rai and Others

APPELLANT

Vs

Bishundeo Rai and Others

RESPONDENT

Date of Decision : 18-02-1969

Acts Referred:

Limitation Act, 1908 — Article 142, 144

Citation : AIR 1970 Patna 100

Hon'ble Judges : M.P. Verma, J;Anwar Ahmad, J

Bench : Division Bench

Advocate : Shreenath Singh and Madhusudan Singh, for the Appellant; Prem Lal, Din Dayal Sinha, Muzaffar Hussain and Arun Bihari Mathur, for the Respondent

Final Decision : Dismissed

Judgement

1. This appeal by the defendants first party is directed against the decisions of the courts below decreeing the suit of the respondents first party in part, which was for declaration of title to and recovery of possession of 4 kathas 15 dhurs of land bearing survey plot No. 530, Khata No. 122, in village Pajhia in the district of Muzaffarpur. Admittedly, the aforesaid plot stands in the name of the ancestor of the respondents first party and third party in the survey record-of-rights. Plot No. 529 which is adjacent north of plot No. 530, is recorded in the name of the ancestor of the appellants and the respondents second party.

2. According to the case of the respondents first party, there was a ridge in between plots 529 and 530, which was demolished in 1957 by the flood water of river Baghmati. After the flood had receded, the appellants, in collusion with the respondents second party, forcibly and illegally ploughed a portion of plot No. 530 along with their own plot No. 529 and thus dispossessed the plaintiffs, in the month of Savan, 1364 Fasli.

3. The appellants set up a number of pleas including limitation and non-

maintainability of the suit. The main defence, however, was that the area in dispute was a part and parcel of plot No. 529 which belonged to them and it never formed part of plot No. 530. In the alternative, they, set up a title in them by adverse possession. They, however, did not give any specific date on which they came in possession of the disputed area of land.

4. The learned Munsif, acting on the report of the Pleader Commissioner, decreed the suit of the respondents first party in respect of 3 kathas 12 dhurs of land, which was found on actual measurement to be a part of plot No. 530. He disbelieved the case of the appellants that they had acquired title by adverse possession. He accepted the case of respondents first party on the points of their possession, and subsequent dispossession.

5. On appeal, the learned Additional Subordinate Judge applied Article 144 of the Limitation Act to the facts of the present case and held that there was no reliable evidence to support the plea of adverse possession set up by the appellants. Alternatively, he came to the conclusion that in case Article 142 be held to be applicable, the respondents first party were entitled to recovery of possession as their title was admitted by the appellants and the oral evidence adduced on behalf of the respondents first party, although not satisfactory, was not valueless. In this view of the matter, the learned Additional Subordinate Judge affirmed the findings arrived at by the learned Munsif.

6. Mr. Shreenath Singh, learned counsel for the appellants, very strongly urged that, the suit being in ejectment, the Court of appeal below was wrong in raising the presumption of title in favour of the respondents first party in coming to its conclusion that the respondents first party had succeeded in proving their case as required by Article 142 of the Limitation Act. In the submission of learned counsel, whenever a suit is brought on the basis of possession and subsequent dispossession, Article 142 of the Limitation Act will be applicable and in that case, the plaintiff cannot be allowed to raise the presumption of title in his favour. In this connection, learned counsel relied on *Raja Shiva Prasad Singh Vs. Hira Singh and Others*, . We are unable to accept the proposition of law as put forward by learned counsel.

The decision in *Raja Shiva Prasad Singh Vs. Hira Singh and Others*, was explained by Dawson Miller, C. J., who delivered the leading judgment of the aforesaid Full Bench, in *Tian Sahu Vs. Mulchand Sahu and others* in the following words:

".. The Full Bench case to which I have referred did not lay down the proposition that in no case could the probabilities and presumptions be taken into account. The rule there laid down was that it is only in case where there is no evidence of the plaintiff as to dispossession or, what amounted in the opinion of the Full Bench to the same thing where the evidence is valueless, that the plaintiff fails to make out his case by merely proving that he had an antecedent title and possession, but it must not be considered, merely because, where evidence was

given by both sides, the learned Judge who had to determine the case had a difficulty upon that evidence or even considered that evidence not altogether satisfactory, that in such circumstances he was not entitled to give weight to the probabilities of the case or to any presumption which might properly arise from the fact that the plaintiff had previously been in possession and had title, I think it would be extending the doctrine laid down in that case too far if we were to say that merely because the Judge had some difficulty in arriving at a conclusion upon the evidence of possession or because he did not consider the evidence altogether satisfactory, he was thereby precluded from looking either at the probabilities of the case as disclosed by other parts of the evidence or from the presumptions which might arise from the plaintiffs' title."

7. From what has been stated above, it is clear that, if the evidence adduced by a plaintiff is not valueless, which is not the same thing as to say that no evidence has been led by him on the point, the court of appeal below is entitled to take into account either the probabilities of the case or the presumption arising from his title, if the same is admitted by the defendant. This view of the law now stands settled by a Full Bench decision of this Court reported in *Jaldhari Mahto and Others Vs. Rajendra Singh and Others*, .

Paragraph 14 of that judgment runs:

"A review of the aforesaid cases shows that presumption of possession arising from title is not available where the land is capable of actual possession by cultivation or otherwise, and there is no evidence of possession or the evidence adduced is unworthy of the credit. But, this presumption is available in all cases (1) where the evidence is equally strong and apparently equally well-balanced on both sides so that it is difficult to determine where the truth lies; (2) where the evidence on both sides is weak or unsatisfactory, but not valueless or wholly incredible; (3) where the land is of such a peculiar nature that the evidence of actual user and enjoyment in the ordinary manner could hardly be expected e.g., lands which are waste, jungle, parti, gora, submerged under water or any other kind of land incapable of cultivation. To this extent the general rule laid down by the Full Bench in the case of *Raja Shiva Prasad Singh Vs. Hira Singh and Others*, must be deemed to be modified, and in such cases the plaintiff can succeed on the strength of his title alone."

8. So far as the judgment under appeal is concerned the learned Additional Subordinate Judge, as already stated, has completely disbelieved the plea of adverse possession set up by the appellants. He has further found that the evidence adduced on behalf of the respondents first party, although not satisfactory, was not valueless and he was, therefore, right in coming to the conclusion that the evidence adduced on behalf of the respondents first party received support from their title. On the findings arrived at by the learned Additional Subordinate Judge, it cannot be reasonably argued that he erred in law in raising the presumption of title in favour of the respondents first party. The learned Additional Subordinate Judge, having held that the appellants have

failed to prove their case of adverse possession over the plot in dispute, was right in observing that "even if Article 142 of the Limitation Act is applicable, even then the plaintiffs are entitled to recovery of possession for the reasons that the title of the plaintiffs is admitted and the oral evidence adduced on their behalf is not valueless."

9. It was also contended by Mr. Shreenath Singh that the Additional Subordinate Judge was obsessed by the idea that he was entitled to apply the provisions of Article 144 of the Limitation Act to the facts of the present case and, with that end in view, he construed the evidence accordingly. In our opinion, this submission of learned counsel is without substance and has to be rejected. A perusal of the judgment under appeal makes it perfectly clear that the Additional Subordinate Judge tried his best to arrive at the right conclusion and the criticisms levelled against his judgment by learned counsel are unfounded. No sufficient ground has been made out for our interference. The appeal is, accordingly, dismissed with costs.