

(1926) 07 PAT CK 0030
In the Patna High Court

The Hon"ble Maharaja Kesho Prasad Singh	APPELLANT
Vs	
Kirtarath and Others	RESPONDENT

Date of Decision : 13-07-1926

Acts Referred:

Citation : AIR 1926 Patna 577 : 97 Ind. Cas. 282

Hon'ble Judges : Dawson Miller, C.J; Foster, J

Bench : Division Bench

Judgement

Dowson Miller, C.J.—These 38 appeals which were heard together arise out of suits instituted by the appellant, the Maharaja of Dumraon, as proprietor of an estate in Shahabad known as Sheopur Diar Naubarar, or more shortly Naubarar, against the proprietors of the adjoining estate known as Sheopur Gangbarar Janubi, or Gangbarar, and certain tenants whose holdings, it is alleged, lie partly within one and partly within the other of those two estates.

2. Fifty-one such suits in all were instituted in September, 1920, and were tried together before the Munsif of Buxar. The object of the litigation was to establish the appellant's title to a certain defined area of each of the holdings in question appertaining to his estate of Naubarar and to obtain an apportionment between himself and the neighbouring proprietors of Gangbarar of the rent payable by the tenants of those holdings who for many years have been paying the entire rent to the Gangbarar malik. He also claimed from the tenants arrears for the four years before the suit of so much of the rent as was proportionate to the area of their holdings which he contended fell within his estate.

3. Various defences were raised by the respective defendants in the suits and were dealt with by the trial Court, but for the purposes of this appeal two matters only remain for consideration, They concern the title of the appellant and a question of limitation.

4. But. these questions were questions of fact and both were decided in favour of the respondents by the Subordinate Judge of Shahabad on appeal from the

Munsif, and the findings of fact of the lower Appellate Court are binding on this Court unless it can be shown that the learned Subordinate Judge has erred on some point of law material to the decision.

5. In the trial Court the plaintiff succeeded, or partly succeeded, in 13 of the suits. Of the rest, 3 were withdrawn with permission to sue afresh and the others were dismissed.

6. From the trial Court's decisions appeals were preferred by the plaintiff in 23 cases to the Subordinate Judge of Shahabad and 15 appeals were preferred by some or other of the defendants. Of these, 2 were remanded to the trial Court for disposal in accordance with the Subordinate Judge's directions and the remainder were decided against the plaintiff. The plaintiff has preferred the present appeals, 38 in number, which have been heard together, the arguments in each case being the same.

7. It appears that the lands comprised in Naubarar and the vicinity, which are diara lands, were at one time submerged by the river Ganges which in that neighbourhood is liable to change its course, sometimes slowly and almost imperceptibly, and sometimes suddenly. In 1862, owing to changes in the course of the river in the preceding years, a large area of land to the south of Gangbarar became exposed as the river receded to the northward with a consequent encroachment on the lauds of Gangbarar. This newly exposed area was re-measured by the Revenue Authorities and a certain portion, was included in Gangbarar whilst the remainder lying to the southward, said to measure some 2877 bighas, was formed into a new estate named Naubarar with a revenue of Rs. 1,104 estimated upon, the area then fit for cultivation, said to measure 570 bighas. This newly formed estate was also settled with the proprietors of Gangbarar. As both estates belonged to the same proprietors the demarcation line between them was a matter of small importance at that time, and it is not improbable that the lands were settled with tenants comprising an area partly in one and partly in the other, which is the plaintiff's case. In 1901, the revenue of Naubarar having fallen into arrears, that estate was advertised for sale by the Collector under the revenue sale law and was purchased by Maharani Rani Prasad Kuar of Duuraon, the predecessor-in-interest of the plaintiff. Subsequently boundary disputes arose between the plaintiff and the maliks of Gangbarar; and in 1911 a suit was instituted by the plaintiff against a number of the proprietors of Gangbarar the object of which was to obtain a judicial decision as to the line of demarcation between the two estates. That suit was afterwards re-registered as Suit No. 4 of 1913. The plaintiff succeeded in that litigation and obtained a decree from the trial Court in June, 1918. That decree was affirmed on appeal by the High Court in 1919, and a further appeal to His Majesty in Council was dismissed in January 1925. The result of that litigation was to establish "as against the defendants in that suit" that the boundary line between the "two estates was that shown on a map prepared by Mr. C.H. Parker, the District Engineer of Arrah, a Commissioner appointed in the case. The boundary so

demarcated is the boundary now claimed by the plaintiff in the present suit. In pursuance of his decree obtained in the trial Court in 1916 the plaintiff, in the same year, obtained dakhildahani, or symbolical possession of the area awarded to him in that suit; but it does not appear that he ever got actual possession of the lands in dispute in the present appeal. In 1917 the "revenue of Naubarar was considerably increased by the Revenue Authorities and settled for a period of five years at a sum of Rs. 6,911. This was due to the fact that the cultivable area had materially increased since the Original Settlement of 1862. There can be little doubt also that the Revenue Authorities accepted as accurate the boundary line determined by the previous litigation. It appears, however, that Naubarar is split up into a number of different patties. It is stated that there are 17 separate pattis and each patti is sub-divided into several khewats the proprietors of which appear to be in possession of separate areas with a separate collection of rent from the tenants. The present respondents, as found by the lower Appellate Court, were not parties to the previous litigation and contended that they are not bound by the decree passed therein or the dakhildahani which followed it. They dispute the boundary line as shown in Mr. Parkers map and contend that the lands claimed lie within the Gangbarar estate. They also contend that they have all along collected the rents as proprietors of Gangbarar without interruption and have in any case acquired title thereto by adverse possession even if the lands lie geographically within the plaintiff's estate.

8. The learned Munsif who tried the suit found that in certain cases the defendant-proprietors had been parties to the previous litigation in which the plaintiff's title had been decreed and that the dakhildahani obtained in execution of the decree was conclusive of the question of possession against those parties, and in such cases he found for the plaintiff. With regard to those defendants who were not parties to the previous suit he held, and I consider rightly, that the decree and dakhildahani were not binding on them or evidence of title or possession in the plaintiff and, therefore, it was for the plaintiff to establish his title by other means than the production of the decree. He found that apart from the decree there was absolutely no evidence on which the Naubarar lands could be demarcated and, therefore, the claim for an apportionment failed. He further found that the plaintiff since the inception of his title in 1904, had never been in actual possession of the lands claimed and that the defendants had during that time been realising the rents and dealing with the lands as their own. Therefore, whether the suit was to be treated as governed by Article 142 or Article 144 of the Indian Limitation Act the plaintiff's claim must fail even if he should establish his title. He further found that the enhancement of revenue in 1917 did not operate as a new settlement creating a new title, but was merely a reassessment of Naubarar whatever it might include.

9. On appeal, the Subordinate Judge of Shahabad in the cases in which the defendant-proprietors had appealed, reversed the trial Court's finding that they had been parties to the previous suit and found as a fact that they had not been parties, or represented therein. This finding is not, and cannot be, questioned. In

other respects in all the suits, with the exception of the two which were remitted to the trial Court for correction of certain errors of apportionment which have not been questioned before us, he affirmed the trial Court's decision.

10. From that decision the present appeals are preferred to this Court. The question's argued before us are three in number, (1) that the judgment in Suit No. 4 of 1913 is strong evidence of the plaintiff's title, (2) that certain maps and papers prepared by Government for revenue purposes are admissible in evidence and must be taken as correct unless rebutted, and (3) that no question of limitation can arise in face of the fact that Government re-settled the lands with the plaintiff in 1917.

11. On the first point it is sufficient to say that a judgment, not being a Judgment in rem, is not admissible in evidence against those who are neither parties to it nor derive title through such parties, as proof of the facts determined therein. At the most it is admissible as an assertion of title to the land claimed in that suit.

12. On the second point it is to be observed that the evidentiary value of the documents referred to was weighed by the trial Court and the lower Appellate Court who considered that they came into existence as a sequel to the plaintiff's success in the previous litigation, and added little or nothing to the authority of the decree in that suit and ought not to be taken as binding on the defendants who were not parties thereto, and, when weighed with the other evidence in the case, the value of these documents was small. It was also found that the daurapanchsala map (Ex. 12 in the suit) which is much relied on by the plaintiff was not supported by any evidence to show that it in fact proved the demarcation line between the two estates. The plaintiff appears to have fallen into the error of supposing that the judgment in the earlier litigation would be proof of the matters therein decided and to have come before the Court, insufficiently supplied with evidence on material points. It was for the lower Appellate Court to appraise the value of the evidence on either side and even if we should on that evidence have taken a different view, it is not open to us to interfere on that ground alone. It is not made out that the lower Appellate Court has contravened any law or usage having the force of law or erred in any matter of procedure affecting the merits of the case.

13. As to the third point the argument assumes that a re-adjustment of revenue is a new settlement conferring a new title, but this is not so. Naubarar estate was settled permanently in 1862 at allow revenue based on the existing cultivable area. The same estate was sold to the plaintiff's predecessor in 1904. It was subject to a readjustment of revenue, as additional areas came under cultivation, under the provisions of Regulation XI of 1793, and that is what happened in 1917. There is nothing to show that a new estate was settled with the plaintiff in 1917. The argument, therefore, fails.

14. Before concluding this judgment I wish to add that the learned Subordinate

Judge considered that the plaintiff had failed to prove his possession within 12 years of the suit and that on that account it was barred by limitation. If Article 142 of the Limitation Act applies, his decision on this point is correct. It is by no means clear, however, that the suit is founded upon dispossession of the plaintiff so as to attract the operation of Article 142. Paragraph 5 of the plaint appears to refer to the lands claimed in the previous suit, and is not an averment of dispossession of the plaintiff by the defendants of the lands now claimed. In my opinion the proper Article of the Limitation Act is Article 144, in which case the onus would be upon the defendants to show that they had acquired title by adverse possession. Although the trial Court dealt with the case upon the hypothesis that Article 144 applies and found that the defendants had been in possession for more than 12 years, the learned Subordinate Judge on appeal did not consider the case from this point of view, although he does not differ from the findings of the trial Court. If, however, it is found, as it was, that the plaintiff has failed to make out his title, then the defendants' possession cannot be disturbed and the question of limitation does not arise.

15. In my opinion these appeals must be dismissed with costs. There will be one set of costs payable to the respondents who have appeared.

Foster, J.

16. I agree.