

(2013) 08 PAT CK 0007
In the Patna High Court
Case No : Second Appeal No. 675 of 2011

The State of Bihar and Another	Vs	APPELLANT
Alakh Singh and Others		RESPONDENT

Date of Decision : 08-08-2013

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 41 Rule 11

Citation : (2013) 4 PLJR 363

Hon'ble Judges : Mungeshwar Sahoo, J

Bench : Single Bench

Advocate : Ajay Kumar, for the Appellant;

Final Decision : Dismissed

Judgement

Mungeshwar Sahoo, J.—Heard learned counsel Mr. Kundan Bahadur Singh, Standing Counsel No. 22 appearing on behalf of the appellants and the teamed counsel Mr. Achhaibar Singh appearing on behalf of the respondents under Order XLI, Rule 11 of the Code of Civil Procedure. The defendants-respondents-appellants have filed this Second Appeal against the judgment and decree dated 29.6.2011 passed by the learned Additional District Judge, Fast Track Court No. 1, Kaimur at Bhabua in Title Appeal Nos. 51 of 2008/13 of 2009 whereby the learned appellate court allowed the appeal and reversed the judgment and decree of the trial court dated 21st July, 2008 passed by learned Subordinate Judge-I, Kaimur at Bhabua In Title Suit No. 300 of 2002.

2. The plaintiffs-respondents filed the aforesaid suit for declaration of title on the suit property. According to the plaintiffs, the suit property was settled by the ex-landlord in the name of the father of plaintiffs in the year 1940. After settlement the father of the plaintiffs came in possession over the suit property and was paying rent to the ex-landlord. At the time of vesting of zamindari ex-landlord submitted return in the name of the father of the plaintiffs. After vesting on the basis of return, Register-II was opened in the name of plaintiffs and since then the plaintiffs were paying rent to the State of Bihar against the grant of rent

receipt till the year 1970. However, in the revisional survey record of right suit property has wrongly been recorded in the name of State of Bihar describing the land as Gair Majarua Aam. On the basis of the said wrong entry when the State of Bihar threatened to dispossess, the present suit was filed.

3. The State of Bihar filed written statement denying any settlement in favour of plaintiffs and alleged that in fact the property is Gair Majarua Aam and the property has rightly been recorded in the name of the State of Bihar in the revisional survey record of right.

4. The trial court on the basis of the materials available on record dismissed the plaintiffs' suit alleging that the suit is barred by law of limitation because the entry was made in the year 1970, whereas the suit was filed in the year 2002. The plaintiffs thereafter filed appeal before the lower appellate court. The lower appellate court set aside the finding of the trial court and held that the suit is not barred by law of limitation and accordingly on the basis of the documentary evidences including rent receipts, return and Register-II and other evidences held that the suit land was settled with the plaintiffs' father by the ex-landlord and after vesting the plaintiffs are the raiyats of the land. Accordingly, the judgment of the trial court was set aside and the plaintiffs' suit was decreed by the lower appellate court.

5. The learned Standing Counsel No. 22 raised only one question of law i.e. the suit is barred by law of limitation because admittedly the name of the State of Bihar is recorded in the revisional survey record of right in the year 1970 and the suit has been filed in the year 2002. Therefore, in view of the Article 58 of the Limitation Act the right to sue accrued to the plaintiff on the date when the property was recorded in the name of the State of Bihar. In such circumstances, the trial court has rightly held that the suit is barred by law of limitation. Except this question no other point has been raised.

6. On the contrary, learned counsel for the respondents submitted that this question is not at all substantial question of law. According to learned counsel mere entry in the survey record of right will not give rise to cause of action. The learned counsel submitted that when there was infringement of the title of the plaintiffs, the prayer has been made for declaration of the title.

7. So for the point raised by the learned Standing Counsel No. 22 is concerned, it may be mentioned here that it is admitted fact that in the revisional survey record of right the property was recorded in the name of State of Bihar in the year 1970. It is not disputed that the plaintiffs are in possession of the property. Now, therefore, the question will be when the right to sue will accrue to the plaintiff? According to the plaintiffs, the State of Bihar threatened to dispossess in the year 2001, thereafter the suit was filed in the year 2002. Moreover, the suit has been filed for declaration of title of the plaintiffs over the suit property and so far the possession is concerned as stated above, there is no dispute.

8. In the case of Daya Singh and Another Vs. Gurdev Singh (Dead) by L.Rs. and

Others, , the Hon"ble Supreme Court has held that mere adverse entry in the revenue records will not give rise to cause of action. The right to sue accrues when there is a clear and unequivocal threat to infringe a right. In my opinion, in view of the above settled propositions of law, the right to sue never accrued to the plaintiffs on the date of entry in the revisional survey record of right. Moreover, since the prayer has been made for declaration of title, therefore, the relief sought for by the plaintiffs cannot be said to be barred by law of limitation. In view of the above facts, the points raised by learned counsel for the appellants are not at all substantial questions of law. Therefore, in my opinion, no substantial question of law is involved in this Second Appeal and accordingly, this Second Appeal is dismissed at the stage of admission itself.