

(1922) 05 PAT CK 0001
In the Patna High Court
Case No : L.P.A. No. 77 of 1921

Tian Sahu

APPELLANT

Vs

Mulchand Sahu and others

RESPONDENT

Date of Decision : 18-05-1922

Acts Referred:

Citation : (1922) 05 PAT CK 0001

Final Decision : Allowed

Judgement

Dawson Miller, C.J.—In this case the plaintiff who is the appellant before us purchased the land in suit from one Mulchand Sahu in June 1917 and according to his case came into possession and was a few months later dispossessed by the defendant Matuk. He thereupon instituted the present suit claiming a declaration of his title and possession after ejectment of the defendant Matuk.

2. The learned Munsif before whom the case came for trial found upon the facts that neither the plaintiff nor his predecessor Mulchand had in fact been in possession of the land at any period within 12 years antecedent to the suit and he dismissed the claim. The case put forward, by the defendant Matuk and supported to some extent by Mulchand was that in the year 1903 Mulchand had transferred this very land in exchange for another piece of land to the defendant Matuk and that Matuk had been in possession of the land ever since. The plaintiff questioned the genuineness of that transaction and the defendant questioned the genuineness of the kabala executed in favour of the plaintiff in 1917. On the finding come to by the Munsif it did not become necessary for him, in his opinion to decide any question about the genuineness of the title of either party.

3. The case then went on appeal to the District Judge and he considered that the oral evidence of the parties as to possession was not satisfactory on either side and he referred to certain discrepancies in the evidence which had been pointed out by the Munsif, and apparently the view which the learned District Judge arrived at was that, in so far as the oral evidence went, although he nowhere says that it was of no value, nevertheless was not such as without reference to

probabilities and other circumstances arising in the case, would be sufficient in itself to enable him to come to a satisfactory decision on the question of possession. He had no doubt, however, that the exchange transaction set up by the defendant in 1903 was not genuine and in dealing with that part of the case he says, "the land which is said to have been given in exchange is also said to have been the abandoned holding of Babu Kurmi and others", that is that the land which Matuk is said to given in exchange for the land in suit did not belong to Matuk at all. He then goes on, "but action u/s 97 of the Bengal Tenancy Act was not taken till 1917. Moreover the date of the chithi" that is, the chithi which evidenced this transaction of 1903, "has certainly been altered; and though it is not possible to say what the real date was, the inference to be drawn from the alteration must be hostile to the defendants respondents."

4. Now that seems to me to be a distinct finding that upon the evidence before him, which was put forward in support of the defendant's possession and title (I mean the defendant Matuk), the natural inference must be drawn that Matuk's possession was in fact not as long as he alleged and as it was necessary for him to allege in order to obtain a title by adverse possession. The inference drawn from this by the learned Judge seems to me to be that it was certainly not more than 12 years ago and must have been within 12 years that Matuk ever had anything to do with the land. Then he deals with certain huts and structures upon the land which had been dealt with by the Munsif as evidence in support of the defendant Matuk's possession and comes to the conclusion that no satisfactory inference could be drawn from their appearance as to how long they had been upon the land and, therefore, that part of the evidence was treated by him as being of really no assistance. He then further says, "the story of the exchange having failed" that is, the exchange by which Matuk claimed his title "the possession of Matuk is probably much later than he asserts."

5. The learned judge then finds that, in his opinion, Matuk had entirely failed to prove possession for 12 years before the suit. Then on the question of the plaintiff's title he came to the conclusion that as Mulchand's previous title and possession were admitted by Matuk and as Mulchand admitted the execution of the kabala in favour of the plaintiff and as Mulchand had failed to prove that the kabala was void for any reason and as Matuk had failed to prove adverse possession for 12 years he, therefore, held that the appellant's claim be decreed and he allowed the appeal.

6. From that decision, the defendant appealed to this Court and the appeal was heard before a single Judge. The learned Judge, before whom the case came, was of opinion that the findings arrived at by the learned District Judge in first appeal were not sufficient to entitle the plaintiff to a decree and he considered that the decision of the Full Bench of this Court in Raja Shiva Prasad Singh Vs. Hira Singh and Others, governed the case. He, therefore, allowed the appeal and dismissed the plaintiff's suit.

7. The reason why the learned Judge of this Court came to that conclusion was

because the District Judge had held that the oral evidence of possession was not satisfactory on either side, and he appears to have thought that in such a case it was not open to the learned District Judge, who was the ultimate Judge of fact, to take into account either the probabilities of the case or any presumption that might arise in favour of possession remaining in the person who had proved his title.

8. 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 cases 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 and it must not be considered that merely because where evidence was given by both sides and 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 that merely because the Judge had some difficulty in arriving at a conclusion upon the evidence or that 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 plaintiff's title.

9. What happened in the present case was that the learned Judge considered that although there was evidence on both sides it was not altogether satisfactory. He then dealt with the probabilities. He pointed out that from the defendant's own evidence an adverse inference must be drawn against him as to the actual date when this exchange transaction set up by him took place. The date had been altered and that, I think, was a very important point in assisting the learned Judge to come to a conclusion upon this vital matter in the case, namely, when did the defendant Matuk first have anything to do with this property. If you find him putting in a document in support of his claim intending thereby to shew that he had in fact been in possession of the property for over 12 years and you then find that the date of that document has been deliberately altered, I think, a very strong presumption must arise against him. This is not a case where no evidence has been given. It is a case where both parties have spoken to their possession although the actual oral evidence is such that the Judge had great difficulty in coming to a conclusion upon it. There were, however, as I said, the other circumstances in the case and there was the fact that the plaintiff's title was proved and the plaintiff's predecessor's possession was admitted at all events up to the period when Matuk first had anything to do with the property. There was the further point that the Judge entirely failed to believe the evidence put forward by Matuk and that was a matter which he was entitled to take into

consideration just as their Lordships of the Privy Council did in the Case of Ranjeet Ram Pandey v. Goburdhun Ram Pandey (1873) 20 W.R. 25 (P.C.) where they observed:-

"It may also be observed that their Lordships are not disposed to give credit, to the evidence brought forward by the appellant, inasmuch as his case which rested upon the theory that he had acquired this property for himself, has been found to be wholly untrue"

10. That was a case where their Lordships had difficulty in coming to a conclusion upon the facts of the case. In that case there was undoubtedly evidence and strong evidence upon both sides, but in the contradictory state of the evidence they said that it was difficult to come to a conclusion which was satisfactory to the mind, where the evidence was so conflicting and in that case they regarded the probabilities of the case and they further regarded the fact that the appellant's evidence upon another part of the story had been entirely disproved. This is not, in my opinion a case in which there is no evidence or where, what amounts to the same thing, the evidence is absolutely valueless.

11. There was evidence on both sides and I think the learned Judge was entitled to arrive at the conclusion he did by taking into consideration and weighing that evidence and the probabilities of the case coupled with the fact that the plaintiff originally or rather his predecessor was undoubtedly proved to have been in possession of the land. The result is that the appeal is allowed, and the plaintiff's suit is decreed with costs here and in the courts below.

Mullick, J-

12. I agree.

13. The only point is whether the findings in this case bring it under the rule propounded in the Full Bench decision of Raja Shiva Prasad Singh Vs. Hira Singh and Others, . In my opinion the findings are not sufficient to attract the operation of that rule.