SooperKanoon - India's Premier Online Legal Search - sooperkanoon.com

Gulzar Mathto and ors. Vs. Most. Ram Dulari Devi and ors.

Gulzar Mathto and ors. Vs. Most. Ram Dulari Devi and ors.

SooperKanoon Citation : sooperkanoon.com/126238

Court : Patna

Decided On : Jul-11-2001

Judge : S.N. Pathak, J.

Appeal No. : Appeal from Appellate Decree No. 366 of 1984

Appellant : Gulzar Mathto and ors.

Respondent : Most. Ram Dulari Devi and ors.

Disposition : Appeal Dsimised

Judgement :

S.N. Pathak, J.

1. This second appeal is directed against the judgment and decree passed by Sri Hirdaya Narain, 1st Additional Sub-ordinate Judge, Muzaffarpur in Title Appeal No. 17 of 1981, which was a judgment of reversal against the judgment and decree passed by the Special Execution Munsif, Muzaffarpur in Title Suit No. 139 of 1979. The plaintiffs of the suit are the appellants here.

2. The palaintiffs of the suit (appellants) had filed the aforesaid suit for declaration of their title over 21 decimals of the suit land which was part of Revisional Survey Plot No. 3204 which was carved out of C.S. Plot No. 1701. The case of the plaintiff-appellants was that their father Kailash Mahto and their uncle Sitaram

Mahto had inherited the aforesaid C.S. Plot No. 1701 from their ancestors. The total area of this plot was 17 katha 8 dhurs, equivalent to 74 decimals. On partition, Kailash Mahto and Sitaram Mahto got 8 katha 14 dhurs each. However, Sitaram Mahto sold his share to the Defendant No. 1 of the suit in 1986. But, the Defendant No. 1 fraudulently got 10 kathas entered in the sale-deed. However, Prakash Mahto and Defendants were entered into the Sirista of ex-landlord only over 8 kathas 14 dhurs and, on vesting of Jamindari also, Jamabandi was created in favour of plaintiff-appellants and Defendant No. 1 only for 8 kathas 14 dhurs. Moreover, the plaintiffs also gave Gena Mahto this land of 8 katha, 14 dhurs, in mortgage which was redeemed in the year 1960. However, during the revisional survey proceedings, the Defendant No. 1 got 21 decimals of Plot No. 1701 entered in his name which was taken out form the plaintiffs' land over Plot No. 1701, corresponding to R.S. Plot No. 3204. The plaintiffs prayed for declaring this entry as wrong and also for confirmation of their possession or, in the alternative, for recovery of possession. This 21 decimals of the suit land was included in the R.S. Plot No. 3133 of the Defendant.

3. The case of the contesting Defendant No. 1 (respondent here) was that the total area of C.S. Plot No. 1701 was 1 bigha and the ancestor of plaintiff Prakash and Sitaram got 10 katha each. The western half of this plot fell to the share of the plaintiff's ancestor and the eastern half fell to the share of Sitaram Mahto, which the Defendant No. 1 purchased in the year 1946. In the year 1960, the Defendant No. 1 exchanged certain lands with the plaintiff and, thus, he was in possession of a larger area. Three plots were carved out from the C.S. Plot No. 1701 and one of the plots was plot No. 3133 in which allegedly 21 decimals of the land of plaintiffs was included for the recovery of which, plaintiffs tiled suit and for declaring the survey entry as wrong, plot No. 3204 was the plaintiffs' land in the revisional survey which corresponded to Plot No. 1701 from which 21 decimals of land of the plaintiffs was included in the Defendants' land of Plot No. 3133 which was also carved out from C.S. Plot No. 1701. This was exactly the case of the plaintiff, but this was denied by the Defendant-respondent asserting that the Defendants came in possession of this land in the year 1946 and subsequently in the year 1960 on account of exchange with the plaintiffs certain more lands came in his possession. Thus, the survey operations were rightly conducted and all the entries were rightly

prepared.

4. The trial Court decreed the suit. Subsequently on appeal, this decree was set aside and the suit was dismissed by the appellate Court on the ground that the relief regarding revisional survey was time-barred and the plaintiffs had also not proved that they were in possession within 12 years of the filing of the suit. The legal questions which were formulated in this appeal for consideration, as per order dated 11-12-1985 were the following:

(i) Whether the Court of the appeal below erred in holding that the Defendant had perfected his title by adverse possession when there was no such pleading? and,

(ii) Whether the Court of appeal below erred in holding that the suit was barred by limitation?

5. The second appeal is enterainable only on the legal questions and not on facts. So far as the first question formulated for decision in this appeal is concerned, I find that both the lower Courts held that adverse possession was not pleaded by the Defendant-respondents;but on perusal of the written statement of Defendant No. 1 at Paragraph 3, I find that adverse possession was very much pleaded. The language used in the W.S. at Paragraph 3 is:

That the suit is barred by limitation and adverse possession for more than 12 years to the knowledge of plaintiffs.

Rt. Paragraph 24, it has been pleaded:

That the Defendant is coming in possession of the suit land since the year 1946 on the basis of Kebals executed by Defendant No. 4 as also by virtue of exchange effected in the year 1960.

Reading of these two paragraphs will render a clear averment of adverse possession. So adverse possession was very much pleaded. Admittedly, the suit was filed on 21st December, 1976. So the filing of the suit was, of course, time-barred and it was also barred by adverse possession, if the Defendant proved his possession right form the year 1946 and from the year 1960. The possession of

the Defendant was a question of fact which was decided by the first appellate Court in his favour. So I do not think, this Court will be right in interfering with the judgment of the first appellate Court, so far as the finding regarding possession is concerned. So the first legal question formulated for this second appeal was, perhaps, wrongly framed. I shall discuss the second legal question of law, before I refer to certain significant statements of the plaintiffs just to illustrate whether he was in possession of the suit land on the day of filing of the suit. The second question formulated was whether the first appellate Court was right in holding that the suit was barred by limitation. The lower appellate Court was right in holding that the suit was barred by limitation. The lower appellate Court has held that the revisional survey record was finally published in the year 1973 (January) and the suit was filed on 21 st December, 1976. The plaint of the plaintiff-appellant at Para-13 was clear to the effect that the revisional survey Khatiyan was finally published on 2nd January, 1973. The suit could not be filed within three years of the final publication. So the suit was apparently barred by law of limitation, so far as the relief regarding wrong survey entry was concerned.

6. Now, so far the possession of the plaintiffs over the suit land, plaint of the plaintiffs was that he was still in possession and, therefore, he wanted confirmation of his possession and, in the alternative, for recovery of possession. What he meant by recovery of possession was not clear because he did not give the time when he was dispossessed. The survey operation-takes a long time and if the Defendant was found in possession, during the survey, operation, the plaintiffs must have been served with Parcha which he could have challenged, but there is no case that he challenged the wrong Parcha in favour of Defendant and with what result. Moreover, at Paragraph 11, the plaintiffs, as P.W. 1 admitted that there was a ridge between his land and the land of Defendant. He claimed 5 kathas of land on the east of this ridge from the Defendant. This statement of the plaintiffs would mean that he was not in possession of the land which he was claiming from the Defendant. When he was dispossessed from this land, has not been stated either in the plaint or in his evidence. At Paragraph 14, he admitted that he had got Parcha of his homestead land. From the aforesaid fact also, it is more than obvious that he had got Parcha during the revisional survey operations and so the Parcha regarding his own land reducing its area and including in the suit Plot No.

(3133) also must have been to him and so he must have the knowledge of wrong survey entry much before 1973. The fact that he has ruppresed the year of his dispossession also shows that he did not come to Court with clean hands. This much is regarding the claim of possession of the plaintiffs, the first appellate Court has held on the basis of e wdence, adduced that the Defendant was in porsersion in of the disputed land and the plaintiffs' evidence indicated that he was out of possession for more then 12 years. this Court need not go into the details of the findings of the appellate Court on facts because this is not the requirement of second appeal.

7. As a result of the aforesaid discussion, I am of the opinion that no substantial question of law arose for decision of this appeal recersitating interference with the findings of the first appellate Court.

8. This appeal is accordingly dismissed. There shall be no order as to cost of the appeal.

SooperKanoon - India's Premier Online Legal Search - sooperkanoon.com