

Smt. Chameli Devi and ors. Vs. Basamati Devi and ors.

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Court : Patna

Decided On : Aug-21-2003

Judge : P.K. Deb, J.

Acts : [Code of Civil Procedure \(CPC\) , 1908](#) - Order 41, Rule 11

Appeal No. : Appeal From Appellate Decree No. 206 of 1989

Appellant : Smt. Chameli Devi and ors.

Respondent : Basamati Devi and ors.

Advocate for Def. : Ranjit Kumar Verma, Adv.

Advocate for Pet/Ap. : Mahesh Prasad and Sanjay Prasad, Adv.

Disposition : Appeal allowed

Judgement :

P.K. Deb, J.

1. This appeal has been preferred by the above named plaintiffs of Tittle Suit No. 17/1979 against the judgment and decree passed by the District Judge Munger, the appellate Court in Title Appeal No. 32/1987 whereby and whereunder the decree granted in favour of the plaintiff/appellant in the trial Court has been reserved and the suit has been dismissed.

2. The facts of the case pivots round in narrow compass.

The suit property is 6 decimals of land appertaining to plot No. 1446 Khata No. 69 having boundaries thereon. The total area of plot No. 1446 is admittedly 63 decimals. One Mohar Dome son of Balo Dome was the original tenant. He died long back leaving behind his wife Mungiya and two sons Bhojal and Karu. Out of that 63 decimals of land Mungiya and Bhojal in the year 1950 had sold any 24 decimals to Sitaram who happens to be the grandfather of the contesting defendants. It is also an admitted fact that during the life time of Mohar, he had sold away to different strangers 37 decimals of land and out of the total plot of 63 decimals 2 decimals of land is covered by Nala. According to the plaintiffs they have purchased 6 decimals of land from Bhagwati who happens to be the widow of Karu, another son of Mohar and such purchase was made on 25-3-1977 and when plaintiff's possession and purchase were being interfered by the defendants the present suit was filed. It was specifically mentioned in the plaint that there was no partition between Bhojal and Karu and they possessed the lands inherited by them from Mohar Ram. It was also mentioned in the plaint that after the evolution of Zamindari when return was filed by the ex-landlord out of 24 decimals of land purchased by Sitaram only 12 decimals of lands were organized and Karu was also recognised as tenant and both Karu and Sitaram used to pay rent to the Zamindari Sarista before coming into force of the Bihar Land Reforms and after it has been vested to the State. Register II was opened both in the name of Karu and Sitaram and they were paying their rents according to their shares to the State of Bihar. The defendants plea is that after the sale being made of 24 decimals of land by Bhojal the i.e. remained no land out to Mohar Dome or his successors. The defendants have also denied the i.e. existence no land Karu as being another son of Mohar Ram. According to them if the 24 decimals of land as sold by Bhojal and Mungiya (although at the relevant time of sale Mungiya had no title, over any portion of the land as widow's right had not been recognised in those days but still she have joined in the sale deed) no land had been left out and as such by purchase dated 25-3-1977 plaintiffs have not acquired any Title. So the crux of dispute were as to (i) whether Mohar Dome had any other son named Karu or not. (ii) Whether by purchase from Bhagwati widow of Karu who died in 1964 the plaintiffs have got any title over the suit plot of 6 decimals of land.

3. In the trial Court voluminous documents with return filed by the ex-landlord, Register II, rent receipts filed by both the parties were exhibited and also both parties have adduced evidence on the crux of dispute as already stated above. The trial Court held that Karu was one of the sons of Mohar Dome and in that way even if 24 decimals have been sold by Bhojal the same can given title only in respect of 12 decimals to Sitaram and Karu having further 12 decimals of land from which his wife on his death sold 6 decimals to the plaintiff so the plaintiff has rightly acquired title over the suit plot of land and there was decree for khas possession also as it was claimed from the side of plaintiff that they were licences over the plot since 1940 and were residing since then after construction of house etc. This has also been believed by the trial Court and then decreed the suit as a whole in favour of the plaintiff. On appeal being preferred by the defendants the appellate Court on the first crux of dispute concurred with the finding of the trial Court that Karu has another son of Mohar Dome but then he held that the Bhojal the predecessor in interest of the defendants got the whole of 24 decimals of land and that Karu had no land and very peculiarly he had made out a third case that while making family arrangement Karu might have been given any other land left by Mohar Dome although this was nobody's case and then it was held on the second crux of disputed point that by such purchase the plaintiffs have not acquired any title. The appellate Court has also disbelieved the long possession of the plaintiff as claimed by them since 1940 as a licence of the heirs of Mohar Dome. Hence, the suit has been dismissed as a whole by reversing the judgment of the trial Court.

4. Before this Court while admitting the appeal under Order XLI, Rule 11 of the Code of Civil Procedure a Bench of this Court vide order dated 16-8-1990 had framed the following substantial questions of law:

(i) Whether the impugned judgment under appeal is vitiated of account of non consideration of the fact that under Article 65 of the Limitation Act 1963 the plaintiff had to establish only his title and not subsisting title or possession as has been wrongly considered by the lower appellate Court in the circumstances of the case?

(ii) Whether the lower appellate Court was justified in making out a new case that Karu might have got other land different land which was sold to Sitaram in the year 1915, when no such case was ever pleaded or made out by the defendant/respondents?

5. Although on the facts and the crux of dispute as I have stated earlier and the decision is being arrived at by the Courts below I do not find that the first substantial question of law framed is having any much bearing in the present lis. Let me first of all take the second substantial question of law framed.

6. It is an admitted position as is revealed from the records of the lower Court that nowhere it has been pleaded by the defendants nor there is any evidence from either of the side that Mohar Dome the Predecessor in interest of Bhojal and Karu had any other land besides the suit plot No. 1446 measuring 63 decimals of land. In that way there is no question of getting land by Karu somewhere on partition. It does not also appear that there is any pleading of partition between the heirs of Mohar Dome from the side of the defendant's and practically such sort of plea does not arise also when defendants have altogether denied the existence of Karu. But both the Courts below have concurrently found that Karu was another son of Mohar Dome and when no partition has been pleaded from either of the parties rather the plaintiffs' case is that Bhojal and Karu were joint then the question of partition does not arise at all. In that way the learned appellate Court definitely committed error in making out a third case that in the suit plot Karu had got no right title and interest as he might have been given other lands. Now coming to the filed substantial question of law framed in my view that has got no much bearing in the present circumstances of the case. The suit of the plaintiff can be barred only when it could be shown that there was complete ouster of his vendor Karu the suit property rather it was found that Bhojal and Karu were joint. Then even if the story as set up by the plaintiff that he came to possess the suit land since 1940 as a licence under heirs of Mohar Dome then also he would definitely get title on his purchase from Bhagwati widow of Karu because Karu died 1964 then definitely Bhagwati got the whole share of the husband as per provisions under Section 14/15 of the Hindu Succession Act, 1956. When no case of ouster has been there then the question of application of Article 65 does not

arise but then the lower Court has also committed error in granting khas possession until and unless there was any plead that there was partition between Bhojal and Karu rather it was the specific case of the plaintiff that the Karu and Bhojal were joint. Now by selling of 24 decimals by Bhojal by taking Mungiya his mother could not have alienated title in favour of Sitaram because on death of Mohar Ram Bhojal and Karu would get half share on 24 decimals of land leaving aside 38 decimals which has been sold by Mohar Dome during the life time and 2 decimals covered by Nala and out of that 12 decimals when Karu's wife 6 decimals only to the plaintiff they would get title over the same as there was no partition they would get only joint possession alongwith other shares in that plot and to that extent the trial Court's judgment is required to be revised. It should also be mentioned that ex-landlord has only recognised title to the tenant of 12 decimals Register II was opened to that extent only.

7. In the result this appeal is allowed. The judgment and decree passed by the First Appeal Court in Title Appeal No. 32 of 1987 is hereby set aside upholding the judgment and decree of the trial Court in Title Suit No. 17/13 of 1979/1983 with a modification that the plaintiffs would get joint possession alongwith other co-sharers of plot No. 1446 Khata No. 69.

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