

Ramjeet Singh Vs. Janki Devi

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Court : Patna

Decided On : Nov-21-2005

Judge : Syed Md. Mahfooz Alam, J.

Acts : Bihar Tenancy Act, 1885 - Sections 103A(2), 105A and 106; Code of Civil Procedure (CPC) - Sections 100

Appeal No. : Appeal from Appellate Decree No. 356 of 1989

Appellant : Ramjeet Singh

Respondent : Janki Devi

Advocate for Def. : Lalit Kishore, Sr. Adv.

Advocate for Pet/Ap. : Shivanand Prasad Sinha and Jayanand, Adv.

Disposition : Appeal dismissed

Judgement :

Syed Md. Mahfooz ALAM, J.

1. This second appeal has been preferred against the judgment and decree dated 27.6.1989 passed by Sri Sitaram Mahto, Special Judge, Gaya in Revenue Appeal No. 16/1987 confirming the judgment and decree dated 19.6.1987 passed by Sri Ramji Singh, Circle Officer, Gaya in Title Suit No. 1577 of 1982 whereby the

learned Circle Officer had been pleased to decree the suit of the plaintiff.

2. The brief facts of the case are as follows :-

Plaintiff-respondent Smt. Janki Devi filed Title Suit No. 1577 of 1982 before the Circle Officer, Gaya for correction of entry in the revisional suivey khatian stating therein that the name of the defendant Ramjeet Singh was wrongly entered in the remarks column of the revisional survey khatian. The prayer was made that the name of the defendant be deleted and the name of the plaintiff be entered in the remarks column.

3. The case of the plaintiff, in brief, is that R.S. Plot No. 565 appertaining to R.S. Khata No. 111. corresponding to old plot (C.S. Plot) No. 411 appertaining to C.S, Khata No. 97 measuring an area of 1 decimal situated in Mauza Khizersarai belonged to one Ram Khelawan Baskhor, son of Rddhan Baskhor, who by virtue of Sada sale deed dated 12.12.1956 sold the same to the plaintiff, now respondent and after the said purchase, the plaintiff- respondent constructed a pacca house over 1 decimal of land (suit land), and since thereafter the plaintiff was residing in the said house. Further case is that the defendant, now appellant, was never in possession of the suit land but due to mistake committed by Karrnchari, the defendant's name had been entered in the remarks column of the R.S. Khatian which was done without any basis and as Such, the necessity of filing of the suit arose.

4. The case of the defendant-appellant is that he purchased the suit land bearing plot No. 565 New appertaining to R.S. Plot No. 111 from Sanichari Baskhorin by virtue of oral sale in the year, 1952 accompanied by delivery of possession. The said Sanichari Baskhorin was the grand-mother of Ramkhelawan Baskhor, the alleged vendor of the plaintiff. Further case is that since the date of purchase the defendant came in possession of the suit land and constructed a room and verandah upon the suit land and has been coming in peaceful possession of the suit land and also running a cloth shop in the name of his son Satish Kumar. it is said that prior to the opening of the cloth shop, the defendant was running a medicine shop known as 'Khezersarai Medical Hall'. The said shop was started by Pratap Singh, uncle of the appellant. Further case is that the defendant also took

electric connection in the shop located over the suit land and was regularly paying chowkidar tax. On the basis of the abovementioned fact, a prayer has been made on behalf of the defendant to dismiss the suit of the plaintiff.

5. From perusal of the record of the trial Court it appears that in support of their respective cases both the parties adduced oral as well as documentary evidence and thereafter the trial Court decreed the suit of the plaintiff-respondent. Against the said judgment and decree of the trial Court, the defendant- appellant preferred first appeal which was also dismissed vide judgment dated 27.6.1989 passed by Sri Sitaram Mahto, Special Judge, Gaya in Revenue Appeal No. 16/1987. So it appears that there is concurrent finding of the Courts below that the entry of the name of the defendant in the remarks column of revisional survey khatian with respect to the suit land is wrong and the plaintiff is entitled to get his name incorporated in the khatian of the revisional survey in place of the defendant's name.

6. The contention of the defendant-appellant is that findings of the trial Court as well as the first appellate lower Court are bad in law as both the Courts below have failed to consider this fact that PW 9, Dudhilash Singh, the husband of the sole plaintiff, had admitted in his evidence that defendant Ramjeet Singh had been coming in possession of the disputed premises and due to non-consideration of the evidence of PW 9, the trial Court as well as the first Appellate Court committed grave error of law in holding that the entry in the khatian of the revisional survey with regard to the possession of the defendant is wrong. The learned Advocate of the appellant also argued that under Section 106 of the BT Act, the Court is not empowered to decide the title of the parties but the judgment of the trial Court will show that the trial Court has also decided the right and title of the plaintiff with respect to the suit land which is illegal.

7. On the basis of the arguments advanced on behalf of the appellant, the following substantial questions of law were formulated :-

(i) Whether the trial Court in his judgment has decided right and title of the plaintiff with respect to the suit land and whether the trial Court can legally decide the right and title of the party in a suit brought under the provisions of the 106 of the BT

Act?

(ii) Whether in view of the admission of PW 9 Dudhilash Singh, husband of the sole plaintiff, that Ramjeet Singh (defendant/appellant) is in possession of the disputed shop premises, the plaintiff is at all entitled to the reliefs claimed?

Substantial Question of Law No. (i)

8. It has been argued by the learned Advocate of the defendant-appellant that the trial Court (the Court of the Revenue Officer) while delivering the judgment in Title Suit No. 1577 of 1982 has decided the title of the plaintiff with respect to the suit land which is against Maw. He submitted that Title Suit No. 1577 of 1982 was filed under Section 106 of the BT Act for correction of wrong entry in the records of right and as such, the question of title could not be decided in the suit and the same was beyond the scope of Section 106 of the BT Act. The learned Advocate of the defendant-appellant further argued that plain reading of the judgment of the trial Court will show that the trial Court has also decided the title of the plaintiff while delivering the judgment in the suit which was beyond his jurisdiction. In support of his argument, the learned Advocate of the appellant referred the following lines from the judgment of the trial Court :-

To decide right, title and possession over the suit land we have to consider the paper of transfer of the land and Government R.R./Choukidari receipts. Both parties have based their claims on Sada paper and both have filed chaukidari receipts. These two points are in favour of both. This shows plus and minus point, but plaintiff has filed continuous rent receipts right from 1956-57 to 1986-87 along with demand copy. This documentary proof has definitely much more weightage in favour of plaintiff.

Referring to the above lines from the judgment of the trial Court, the learned Advocate of the appellant submitted that those lines from the judgment of the trial Court establish that the trial Court has decided title of the plaintiff which is not permissible under Section 106 of the BT Act.

9. In order to come to the conclusion as to whether in a suit filed under Section 106 of the BT Act, trial Court can decide title of the parties, I have to look into the provisions of Section 106 of the BT Act. Section 106 of the BT Act is quoted below :-

Institution of suit before a Revenue-Officer.-In proceedings under this Part, a suit may be instituted before a Revenue-Officer at any time within three months from the date of the certificate of the final publication of the record-of-rights under Sub-section (2) of Section 103-A of this Act, by presenting a plaint on stamped paper, for the decision of any dispute regarding any entry which a Revenue-Officer has made in, or any omission which the said officer has made from the record;

Whether such dispute be between landlord and tenant, or between landlord of the same or of neighbouring estates, or between tenant and tenant, or as to whether the relationship of landlord and tenant exists, or as to whether land held rent free is properly so held, or as to any other matter:

and the Revenue-Officer shall hear and decide the dispute :

Provided that in any suit under this section the Revenue- Officer shall not try any issue which has been or is already, directly, and substantially in issue between the same parties, or between parties under whom they or any of them claim, in proceedings for the settlement of rents under this part, where such issue has been tried and decided, or is already tried, by a Revenue-Officer under Section 105-A.

10. From plain reading of Section 106 of the BT Act it appears that the scope of this section is limited to the extent of deciding a dispute with regard to any entry in the revenue record and it cannot extend upto deciding the title of any party. I, therefore, find no difficulty in holding that question of title is beyond the scope of a suit brought under Section 106 of the BT Act and to this extent I fully agree with the argument of the learned Advocate of the appellant that the Revenue Officer is not entitled to decide title of the parties in a suit brought under Section 106 of the BT Act.

11. Let me see whether the Revenue Officer in his judgment has decided the title of the party or not?

12. The operative portion of the judgment of the trial Court runs as follows :-

In my opinion the order passed by the kharanpur officer khijar sarai should remain in force until and unless disallowed by the competent Court of jurisdiction. Besides, plaintiff possesses continuous Government R.R. and valid Jamabandi in her favour.

Thus, on the basis of the above narration, the suit is decreed in favour of the plaintiff. I order that Khatian Ke Mantwaya Column Se Pratiwadi Ka Nam Kharij Karen

13. From plain reading of the operative portion of the order of the trial Court, it appears that the trial Court has not decided title of the parties in the suit rather the trial Court simply passed order for correction of entry in the khatian on the basis of possession of the plaintiff over the suit land. Thus, I find that there is no illegality in the judgment of the trial Court whereby the trial Court has decreed the suit of the plaintiff filed under Section 106 of the BT Act. Accordingly this substantial question of law is answered.

Substantial Question of Law No. (2)

14. During course of argument it was submitted by the learned Advocate of the appellant that PW 9 Dudhilash Singh, husband of the sole plaintiff, has admitted in his evidence that defendant Ramjeet Singh is in possession of the disputed premises and as such, in view of the admission of PW 9, who is none else but the husband of the plaintiff, the plaintiff's suit should have been dismissed. The learned Advocate tried to place the said admission of PW 9 Dudhialsh Singh from his deposition before me but the handwriting of the deposition is such which is difficult to read and I tried my level best to take out the abovesaid admission from the deposition of PW 9 but I failed to find out the same. However, even if it is admitted that PW 9 had made some utterances in this regard in his evidence, such incoherent utterances of PW 9 cannot be treated as admission of PW 9 regarding

the possession of the defendant over the suit land and on that ground alone, the concurrent findings of the Courts below cannot be reversed and accordingly this second substantial question of law is answered.

15. It is settled principle of law that in second appeal, the findings of the lower Courts can be reversed only on the ground that the same are perverse or based on no evidence and in this regard, I place reliance upon the decision of the Hon'ble Supreme Court reported in 2005 (2) BBCJ (IV) 421, Manicka Poosali (D) by Lrs. and Ors. appellants v. Anjalai Ammal and Anr., respondents. The relevant paragraph from the said decision is quoted below :-

Paragraph-17 of the Judgment :-This judgment was followed by this Court in Civil Appeal No. 2292 of 1989 Govindaraju v. Mariamman : AIR 2005 SC1008 . In Govindaraju case, (supra)it has been held that the High Court while exercising its powers under Section 100 of the Code of Civil Procedure on re-appreciation of the evidence cannot set aside the findings of the fact recorded by the first Appellate Court unless the High Court comes to the conclusion that the findings recorded by the first Appellate Court were perverse i.e. based on misreading of evidence or based on no evidence.

16. Thus, from the decision referred above, it is clear that the concurrent findings of the Courts below can only be reversed in second appeal when the findings are perverse. Let me see-whether the findings of the Courts below are perverse. In this regard the argument of the learned Advocate of the appellant was that while passing the judgment the trial Court as well as the first Appellate Court did not consider the documents brought on record on behalf of the defendant-appellant. He submitted that on behalf of the defendant, the following documents were filed- (i) Electric Bill (Ext. A); (ii) Licence of Medical Shop in the name of Pratap Singh bearing Licence No. 35/72 (Ext. B); (iii) Licence No. 149/540/85 in the name of Satish Kumar, son of defendant Ramjeet Singh, cloth shop in the suit premises (Ext. C); (iv) Affidavit of Ram Khelawan Baskhor (Ext. D); (v) Chowkidari receipts (Exts. G to G/16) besides other documents. He further submitted that the trial Court as well as the Appellate Court without giving cogent explanation held that the documents produced on behalf of the defendant are not relevant. The learned

Advocate of the appellant submitted that at least Ext. C and Exts. G to G/16 prove possession of the defendant-appellant over the suit property and the learned lower Courts have committed error by not relying upon the abovementioned two documents of the defendant-appellant which have proved the possession of the defendant over the suit property. From perusal of the judgment of the Appellate Court, it appears that the Appellate Court while making discussion on the point of chaukidari receipts produced on behalf of the defendant-appellant, held that since the evidence on record shows that the defendant-appellant has got other houses in the locality and chowkidari receipts do not bear plot number, as such these chowkidari receipts are not relevant in this case. I am of the view that this finding of the Appellate Court appears to be correct. So far as Ext. C is concerned although this document bears suit plot and khata but it is not the proof of the fact that the business premises as shown in the Ext. C actually stands over the suit plot as the document (Ext. C) i.e. drug licence is usually prepared on the basis of the information furnished by the person concerned and not on the basis of any enquiry. In such view of the matter, I am of the opinion that this document is also not relevant so far the possession of the appellant over disputed premises is concerned and, therefore, I am of the view that the learned trial Court has rightly not placed reliance upon this document. As regards other documents of the defendant-appellant, the learned Advocate of the appellant has himself conceded that those documents are not relevant for deciding possession of the parties over the suit land.

17. It has also been argued by the learned Advocate of the defendant-appellant that Ram Khelawan Baskhor, the alleged vendor of the plaintiff, has deposed on oath before the Court that he had not executed any sale deed in favour of the appellant. He submitted that in view of the evidence of Ram Khelawan Baskhor, the learned trial Court as well as the Appellate Court should have held that the plaintiff's case that he had purchased the suit land from Ram Khelawan Baskhor, is false and the case of the defendant is true. It is true that Ram Khelawan Baskhor has deposed that he had not sold the suit land to the plaintiff but since in a case under Section 106 of the BT Act title of the parties cannot be decided, as such the evidence of Ram Khelawan Baskhor denying the execution of the sada sale deed in favour of the plaintiff has got no relevancy. Moreover, it appears that

the plaintiff has brought sada sale deed alleged to have been executed by Ram Khelawan Baskhor on which, it is said that Ram Khelawan Baskhor had put his L.T.I. but the defendant did not try to examine any expert to prove that L.T.I. appearing on the sada sale deed is not of Ram Khelawan Baskhor, On perusal of the judgment of the Appellate Court it appears that he has given reason for disbelieving the evidence of Ram Khelawan Baskhor as Ram Khelawan Baskhor was on litigating term with the brother-in-law of the plaintiff. I am of the view that the view taken by the Appellate Court in rejecting the evidence of Ram Khelawan Baskhor seems to be correct.

18. From perusal of the judgment of the lower Courts it appears that several documents were filed on behalf of the plaintiff-respondent in support of her case which are as follows :- (i) Sada sale deed executed by Ram Khelawan Baskhor in favour of Janki Devi dated 12.12.1956 (ii) Registered Ijara deed dated 26.5.1959: (iii) Rent receipts granted by the State of Bihar for the period from 1956-57 to 1986-87 (iv) Chowkidari receipts, electric bills, entry of demand register in the name of Janki Devi, registered deed dated 16.9.1986 besides other documents. It further transpires from the judgment of the trial Court as well as the Appellate Court that both the Courts below have given much importance to the entries of demand register and it has been specifically pointed out that Jamabandi was opened in the name of the plaintiff with respect to the suit land and the plaintiff was regularly paying rent receipts from 1956-57 to 1986-87 which proves the continuous possession of the plaintiff over the suit land. I am of the opinion that the view taken by the learned Courts below is correct and the oral as well as documentary evidence produced on behalf of the plaintiff-respondent are far superior than the oral and documentary evidence of the defendant-appellant. Moreover, it transpires from the judgment of the trial Court that during survey operation, khatian was opened in the name of the plaintiff at the time of Khanapuri by A.S.O. by Yaddast No. 45 on the basis of the possession of the plaintiff over the suit land but at subsequent stage, abruptly one Gopaljee, Kanungo made enquiry on the spot and without obtaining permission of A.S.O. or S.O. he himself entered the name of defendant-appellant in the khatian showing him as the Dakhalkar. According to the Revenue Officer who passed the judgment, this act of Gopaljee, Kanungo was without jurisdiction and he had no power to change the

order of A.S.O. I am of the view that the approach of the trial Court is in accordance with law and since Gopaljee, Kanungo had acted without jurisdiction, as such, the entry made in favour of the defendant-appellant did not create any right in favour of the defendant-appellant with respect to the suit land.

19. Thus, from the above discussions, it is proved beyond doubt that the judgment of the Courts below are not perverse and as such, in second appeal, the same cannot be reversed.

20. In the result, I do not find any merit in this second appeal and as such, the same is dismissed but without cost.

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