

Md. Abdul Sattar Vs. the State of Bihar

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Court : Patna

Decided On : Feb-26-1999

Judge : Ravi Nandan Sahay, J.

Appeal No. : Appeal from Appellate Decree No. 390 of 1985

Appellant : Md. Abdul Sattar

Respondent : The State of Bihar

Disposition : Appeal Allowed

Judgement :

Ravi Nandan Sahay, J.

1. This is an appeal by the plaintiff against the decree of the 3rd Additional Subordinate Judge, Muzaffarpur dated 27th June, 1985, whereby the decree passed by the Munsif dated 8.10.1983 dismissing the plaintiff's suit was affirmed.

2. The suit was filed for declaration that the revisional survey entry in the name of State of Bihar in respect of plot No. 4014 measuring an area of 9 decimals being portion of C.S.P. No. 2790 situated in village Kolhua Paigambarpur was wrong and also for declaration of the plaintiff's possession over the suit plot. Cadestral' Survey Plot No. 2790 was a big plot having an area of 2.90 acres which was recorded as Bakasht Babu Nandlal Bagh. This plot was an orchard. The landlord

had settled portions of this plot to different persons who came in possession of their settled area. Makhdum Eux, father-in-law of the appellant had also taken settlement of 1 bigha 10 katha 9 dhurs of land out of the aforesaid cadestral survey plot from the then landlord Urna Shankar Prasad and came in possession. He paid rent and was granted rent receipt. After the revisional survey different numbers were given to different settlee by the ex-landlord. So far as land settled with Makhdum Bux is concerned, they were number as R.S.P. Nos. 4011, 4012, 4014 and 4015. Makhdum Bux sold plot No. 4011 to Md. Siddiqui. Likewise other plots in possession of Makhdum Bux were also sold.

3. Makhdum Bux, according to the plaintiff's case, sold portion of R.S.P. No. 4015 in respect of which there is no dispute by registered sale-deed dated 6.9.1976. Makhdum Bux sold remaining portion of R.S.P. No. 4015 and the entire disputed land of R.S.P. No. 4014 to the appellant but there is no dispute with regard to the portions sold to the plaintiff in R.S.P. No. 4015. The State of Bihar disputed the claim of the plaintiff-appellant on the basis of entry in the Revisional Khatian. According to the plaintiff, State of Bihar had no concern with this plot as survey entry was wrong. The plaintiff was in possession of portion of this plat Admittedly, the names of other tenants are recorded in the other plot sold by Makhdum Bux. His residential house stands on this plot. The State of Bihar started Land Encroachment proceeding. The plaintiff served notice under Section 80 of the Act on the State of Bihar.

4. In the written statement, the State of Bihar maintained that the survey entry was correct and the plaintiff was not in possession. The other facts regarding settlement by the Ex-landlord in favour of father-in-law of the plaintiff, etc. has not been disputed. According to the defendant-Respondent, the plaintiff was not in possession over the suit land, therefore, the State of Bihar did not grant receipt to the plaintiff in which encroachment Case No. 16 of 1979-80 was started against the plaintiff before the Anchal Adhikari, Kanti.

5. Both the Courts below have held that the Revisional Survey with regard to the suit land was rightly made. The appellate Court held that the suit was barred by limitation. Despite notice, the Respondent-State of Bihar has not appeared in this

appeal.

6. The defendant, as stated earlier, had not challenged the salient facts of the case. It is not disputed that Makhdum Bux had taken settlement and that he had disposed of the land settled to him to different persons. The transferees are in possession and in the Revisional Survey, their names were accordingly entered in the revisional survey khatian. The defendant only on the strength of the entry in the revisional survey khatian disputed the title of the plaintiff. The plaintiff examined a large number of witnesses to support the case made out in the plaint that the landlord and settled C.S.P. No. 2790 having an area of 2.90 acres to different persons including Makhdum Bux. Makhdum Bux had taken settlement of 1 bigha 10 katha 9 dhurs on the said plot long ago and came and continued in cultivable possession and paid rent and was granted rent' receipt, by the ex-landlord formerly and then by the State of Bihar. The portion taken in settlement by Makhdum Bux was numbered as 4011, 4012, 4014 and 4015 out of which Makhdum Bux sold R.S.P. No. 4011 to Md. Siddiqui, who subsequently sold to one Sitia. R.S.P. No. 4012 was sold to Wali Mohammad. The disputed fact is that Makhdum Bux sold the disputed land along with portion of R.S.P. No. 4015 and registered sale-deed was not executed. The plaintiff led evidence to show that he came in possession after purchase from his father-in-law and the constructed residential house on the portion of R.S.P. No. 4014 and reside with his family. The State of Bihar has not been recorded in any of the plots transferred by Makhdum Bux except the suit plot. The suit was filed when the plaintiff received notice in Encroachment-proceeding and Karamchari refused to resile and issue receipt.

7. The evidence adduced by the State of Bihar is thoroughly worthless and none of the Courts below noticed this, it is pertinent to mention that D.W. 1 Abu Bakar, who was Karamchari, was not competent to state whether the plaintiff was in possession or not since the land came within the jurisdiction of another Karamchari Moinuddin Ahmad, who was not examined. This witness, therefore, had no occasion to visit the land. He was deposing on hearsay. This witness had no personal knowledge about the land. This witness admitted that whatever stated by him in his evidence was facts conveyed to him by Karamchari Moinuddin Ahmad. He had no personal knowledge (Para-5 of his Evidence). D.W. 1 had not

even visited the land as admitted by him. He is not competent to say about the possession. Similarly, the evidence of D.W. 2 Upendra Prasad Singh, Anchal Inspector is vague. He only stated that the land was recorded in the name of State of Bihar. He further stated that the plaintiff had encroached the portion of disputed plot. He has not stated that there was encroachment. This witness was incharge of the Anchal on 12.7.1983 and he had no knowledge about this plot prior to that date. He found the house of the plaintiff on the disputed plot. He learnt about the land from Karamchari Moinuddin Ahmad, who was not examined. So the entire evidence is hearsay.

8. The material facts in the plaint has not been denied by the State of Bihar and the plaintiff has proved his case by overwhelming evidence but it is surprising how both the Courts below dismissed-the suit. It is well settled that the entry in the record of right is not entry of record of right. There is no evidence of title. The appellant has adduced more than necessary evidence to displace the presumption. The suit was practically uncontested by the State of Bihar. The suit is not barred by limitation, hence the cause of action arose when encroachment proceeding was started and Karamchari refused to accept rent. The judgment of the appellate Court is perverse and not in accordance with law. Having regard to the evidence, the plaintiff was bound to succeed. The suit ought to have been decreed. The judgment of the Courts below is based on ignorance of law of pleadings and discarding oral and documentary evidence adduced by the plaintiff.

9. This appeal is accordingly allowed. The decree of the appellate Court is set aside and the plaintiff's suit is decreed in terms of the relief claimed in the plaint. However, there shall be no order as to costs.