

Kanti Devi and ors. Vs. Sital Prasad and ors.

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Court : Patna

Decided On : May-13-2002

Judge : S.N. Pathak, J.

Acts : [Code of Civil Procedure \(CPC\) , 1908](#) - Sections 100

Appeal No. : Appeal from Appellate Decree No. 154 of 1988

Appellant : Kanti Devi and ors.

Respondent : Sital Prasad and ors.

Advocate for Def. : Veena Rani Prasad, Adv.

Advocate for Pet/Ap. : S.S. Dwivedi and Santosh Kumar Singh, Adv.

Disposition : Appeal allowed

Judgement :

S.N. Pathak, J.

1. This appeal is directed against the judgment dated 19th December 1987, passed by the 4th Additional District Judge, Patna, in Title Appeal No. 12 of 1985, confirming the judgment dated 19th December 1984, rendered by the 1st Addl. Munsif, Patna, in Title Suit No. 60 of 1982. The defendant of the suit Ram Sewak Mistry is the appellant before this Court.

2. The respondents of the appeal before this Court had filed the suit seeking the declaration that the judgment passed in Eviction Suit NO. 49 of 1972 was not binding on them. The Plaintiff Nos. 1 to 4 were claiming themselves to be members of the general public, Plaintiff No. 6 was Bharat Mata Mandali (deity) and Plaintiff No. 5 was the member of the Managing Committee of the aforesaid deity. A piece of land, measuring 554 sqr. feet at the Langer toli Chaurasta was the suit land. It was the case of plaintiff-respondents that over this place of land, earlier there was a Tulsi Chaura and a peepal tree. The members of the public used to hold Pooja etc. at this Tulsi Chaura and some musical programmes were also organised at this Tulsi Chaura (Platform). In course of time, this Peepal tree fell down. In the year 1928, Patna Municipal Corporation took over the aforesaid land. However, the members of the public used to set up temporary deities during Dashara festival. There was a Pooja Committee and it was later replaced by Bharat Mata Committee and the deity of Bharat Mata was installed. Deity of Lord Shiva, Lord Mahabir etc. were also set up. There were certain temporary structure known as Katras (blocks) when were under tenancy of B.N. Arya and Indradeo Singh. These persons used to pay rent to the Pooja Committee. During the course of Dashara festival, the Katras used to be demolished and the deity of Dew used to be installed. After Dashara, the Katras used to be set up again and the tenants used to pay rent to the plaintiff. However, one Shailendra Nath who was owner of Plot No. 770 sold this plot to Ram Sewak Mistry who filed Eviction Suit No. 48 of 1970 and 49 of 1970 and obtained decree against tenants. One Gorakh and Lakshmi allegedly were the sub-tenants over the subject matter of the suit in the Eviction Suit No. 49 of 1970 and Ram Sewak Mistry secured decree of eviction against them. The plaintiffs wanted to be impleaded as party to the aforesaid eviction suit, but they were not allowed to be impleaded. They went in revision before the High Court which directed them to seek their confirmation title by a separate suit. So the suit under appeal was filed seeking declaration that the decision in Title Suit No. 49 of 1970 was not binding upon them and that the defendants be restrained from interfering with the plaintiffs possession over the suit premises by or under the aforesaid decree. It was further sought that the defendant be restrained from dispossessing the plaintiff from the suit premises which was sought to be recovered in Execution Case No. 3 of 1979, pending in the

Court of Additional Munsif, IV, Patna.

3. So the aforesaid reliefs sought by the respondents was a suit for declaration of their title on the garb of the relief, which they had sought. In the concerned execution case, the plaintiffs were not a party nor they were in the suit. The execution case was levied against so called subtenants of Indradeo Singh who were Lakshmi and Gorakh. So unless the decision of aforesaid T.S. No. 49 of 1970 was not set aside nor any suit was filed to get this decree set aside, I fail to understand how the plaintiffs will seek a declaration that the concerned Gorakh and Lakshmi could not be evicted from suit-premises. It is also not understandable how the defendant-appellant Ram Sewak Mistry will be restrained from interfering with the possession of the plaintiffs, when he had already a decree in Eviction Suit No. 49 of 1970. In the instant suit, the question simply was whether the suit land was the same which was the suit land of eviction Suit No. 49 of 1970. Ram Sewak Choudhary had obtained a decree on the ground that he had purchased Plot No. 770 from Shailendra Nath and Gorakh and Lakshmi were sub-tenants under Indradeo Singh who was tenant under Shailendra Nath. So if the plaintiff-respondents of the appeal before this Court wanted to restrain Ram Sewak Chaoudhary, they will have to show that the suit land of the present suit was the same that was over Plot No. 770 over which Ram Sewak Mistry had obtained decree in T.S. No. 49 of 1970. The description of suit land as given in the plaint of the suit under appeal will show that it was a piece of land measuring 554 sqr. feet. It was described in Schedule-I of the plaint. This land was bounded by road on the north. On the south of this land, there was 'Gold House'. On the east there was Langertoli Chauraha. On the west, there was the premises in question in occupation of Kishori Singh and other sons of Indradeo Singh. So according to description of the suit land, Indradeo Singh and Kishori Singh whose sub-tenants were described to be Gorakh and Lakshmi in T.S. No. 49 of 1970, were holding their tenancy lan on the west on the suit land, Kishori Singh was the pant in Eviction Suit No. 78 of 1970. Indradeo Singh was defendant in T.S. No. 49/70. So if these persons were holding their tenancy land contiguous west to the suit land, it is not understandable how these persons will be on the suit land. It, however, Lakshmi and Gorakh were having any tenancy Katras on the suit land itself, plaintiffs should have described in specific terms that these persons were their

tenants and Ram Sewak Mistry had no right to evict them and then they should have sought the setting aside of the decree of Title Suit No. 49 of 1970 which was passed against them at the instance of Ram Sewak Mistry (Plaintiff of that suit). Moreover, Ram Sewak Mistry was claiming only Plot N. 770 on the basis of purchase from Shailendra Nath. No plot number has been mentioned in the suit filed by the plaintiff respondents. So if they were not claiming the Plot No, 770, it was submitted before me by the appellants lawyer that they had no grievance against the judgment of the Courts below. I shall examine this aspect later. At this stage, it has been seen above that no plot has been mentioned in the Schedule of the plaint and it has not specifically been mentioned in the plaint that Gorakh and Lakshmi were tenants of the suit land, as described in Schedule I, in specific terms, in any paragraphs of the plaint. In such a circumstance, the plaintiff-respondents had to show that Ram Sewak Mistry was not entitled to seek eviction of Gorakh and Lakshmi from the suit-premises of T.S. No. 45 of 1970, and also to show that the suit lands were subject matter of T.S. No. 49 of 1970.

4. The trial Court, while discussing the evidence of P.Ws. and D.Ws., came to the conclusion that Plot Nos. 769, 771 and 772 are the suit plots. The trial Court further held that Plot Nos. 768, 769 and 771 were entered in the name of Patna, Municipality. Over Plot Nos. 769, Shailendra Nath was having illegal possession. Plot Nos. 768 and 771 were entered in the made of Patna Municipality. Then the trial Court held at Paragraph-7, closing lines that the aforesaid facts indicated that the disputed Katras were part of Plot No. 770 fail to understand as to how that trial Court and on what basis came to this conclusion. The trial Court earlier at Paragraph 6 stated that in between th 'Gold House' and the suit premises thee was a 'Nala' which was filled up and Katras were constructed over the same. The suit premises (suit land) had its facing on the east, them there was a 'Nala' which was filled up and then further east, there was a road. Katras constructed over this filled up Nala. So those statements at Paragraph 6 are contradictory in themselves. On what direction Plot No. 770 was situated that Court has not given any definite finding, but there is the statement at Paragraph 6 itself that there is a house of the defendants on the west of the suit land. Schedule-1 of the plaint shows that on the west, there was the premises in question. That means, perhaps, the plaintiffs were lying their claim over the tenancy portion of Lakshmi and Gorakh

against whom the defendant Ram Sewak got decree in T.S. No. 49 of 1970. So Plot No. 770, will lie on the west of the suit land. The plaint will show that on the southern portion of the suit land, temporary structures used to be constructed which were let out to tenants for raising income for the Mandali. In such a circumstances, it was not understandable how the plaintiff will claim the premises on the west of the suit land. P.Ws. and D. Ws. on the basis of whose evidence, the trial Court came to the aforesaid conclusion, did not refer to the portion of Plot No. 770 over which disputed Katras were situated. The schedule of the plaint also did not indicate as to over what portion of Plot No. 770, the disputed Katras were situated Ram Sewak Mistry did not claim and other land, except Plot No. 770. The appellate Court held in its judgment that admittedly, the suit premises measuring 554 square feet stood on a portion of Plot No. 770. This statement of the appellate Court is neither here nor there. The description of the suit land, which I have stated above, does not indicate that the disputed Katras of the suit premise of 554 sqr. feet are situated over any portion of Plot No. 770. None of the statements in the plaint also showed that the suit land of 554 sqr. feet was part of Plot No. 770. So the fact that the suit land is part of Plot No. 770, which Shailendra Nath owned and sold to Ram Sewak Mistry was not established by the evidence on the record. Neither any survey knowing leader commissioner was appointed to measure the suit land, i.e. Plot No. 770, nor the Courts below based their findings on the basis of any evidence that 554 sqr. feet land, which was the suit land, was on any part of Plot No. 770. The trial Court has rather came to this conclusion on the basis of boundary of the disputed Katras given by the P.Ws. and, perhaps, the D.Ws. also. But none of these boundaries indicated clearly that the suit land existed on any part of Plot No. 770. The Plaintiff-respondents were baking on different papers, such as receipts regarding collection of subscription, publication in news papers and hand outs that the Pooja will be performed at a particular place, during Dashara festival etc. All these papers were unilateral declaration of the party and none of these papers showed that the suit plot was part of Plot No. 770. In such a circumstances, it was difficult to hold that the plaintiff-respondents had title or uninterrupted possession over any part of Plot No. 770 in order to defeat title of Shailendra Nath Sarkar or for the matter that of Ram Sewak Mistry so that he may be restrained from seeking the eviction of Gorakh or Lakshmi from the suit

premises of T.S. No. 49 of 1970. So far the declaration that the decision of T.S. No. 49 of 1970 is not binding upon the plaintiff respondents, since they were not parties to the aforesaid suit, there was no question of making any declaration in this connection. Perhaps by seeking this declaration, the would be seeking declaration of title over the subject matter of title suit under appeal before this Court which would amount to an indirect setting aside of the decree of T.S. No. 49 of 1970. Moreover, unless subject matter of the present suit is identified with the subject matter T.S. No. 49 of 1970, no declaration can be made in the suit under appeal in favour of plaintiff-respondents. The description of the suit land indicated that Plot No. 770 was on the western boundary of the same. The finding of the trial Court that the suit land was over a portion of Plot No. 770 was perhaps not based on conclusive evidence, rather it was on presumption and assumption. This finding the trial Court is also not specific as to over such and such area and in such and such dimension, he suit land was situated on a portion of Plot No. 770 In all circumstances, therefore, execution of the decree passed by the Court below would not only be difficult, rather well nigh impossible.

5. In the light of the aforesaid discussion upon the judgments of the two Courts below. I am of the opinion that neither of the judgments is fit to be allowed to stand in the present from and in its contents and spirit.

6. Accordingly, this appeal is allowed and the judgments of the two Courts are set aside.

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