

Tika Ram Vs. Moti Lal

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Court : Allahabad

Decided On : Dec-03-1929

Reported in : AIR1930All299

Appellant : Tika Ram

Respondent : Moti Lal

Judgement :

1. This case has been referred to a Bench of two Judges by an learned Judge of this Court because in his opinion the point raised in it is one which arises almost every day in civil litigations as to title, and it is desirable that an authoritative opinion be laid down.

2. The plaintiff appellant claimed possession of a piece of land in front of his house by demolition of certain constructions made by the defendants on a portion of it adjoining his own house, as well as for injunction and damages. The defendant had succeeded in obtaining a lease from the Municipal Board of this plot of land, which, however, was subsequently revoked by the Board at the instance of the plaintiff. The plaintiff claimed the land as his own property and repudiated the assertion that it was Nazul land. On the other hand the defendant pleaded in the first place that the north-western portion of it on which his constructions stood was his own land, and also pleaded that the rest of the land was Nazul land under the charge of the Municipal Board of which he held a lease.

3. The Court of first instance decreed the claim, and almost reaffirmed its findings when fresh issues were remanded by the lower appellate Court. The latter Court, however, has dismissed the claim. The plaintiff's title to that portion of the land which abuts on his house and is marked by a red line CD in Ex. A was not disputed before the lower appellate Court and has not been challenged before us. It is necessary to make this point clear so that there may be no future difficulty arising out of the dismissal of the plaintiff's case.

4. The defendant's house lies on the west of this land, and the plaintiff's house and the land appertaining thereto lie on the south of it.

5. The learned Munsiff briefly speaking held that inasmuch as the defendant had obtained a lease of this land from the Municipal Board he was estopped from putting up his own title to this land in supersession of the title of the Municipal Board: and he also held that inasmuch as the Municipal Board had subsequently revoked the lease and disclaimed their right the defendant could not set up the right of the Municipal Board.

6. The learned District Judge has repelled both these contentions. In our opinion he was right.

7. The mere fact that the defendant had taken a lease from the Municipal Board cannot estop him from setting up his own title as against the present plaintiff, who was no party to that lease. If any estoppel arose it would have been only as between the lessor and the lessee. Similarly the defendant cannot be estopped from setting up this claim simply because the Municipal Board has chosen to resolve that the lease should be revoked. The lease is for a period of twenty five years, and the defendant cannot be bound by any admission of the Municipal Board made subsequent to the grant of that lease. These points however need not be pursued any further, because the learned Judge has left the question of the defendant's ownership of the northwestern corner of this plot open. He has dismissed the suit on the main ground that the plaintiff has failed to discharge the onus of proving his title to this land or that it was not Nazul land. This finding is *prima facie* a finding of fact which cannot be challenged in second appeal.

8. The learned advocate for the plaintiff, however, contends that the finding is vitiated by the circumstance that the learned Judge has relied on two pieces of evidence which were not legally admissible. These are a sale deed dated 14th October 1902, by Kalyan Singh in favour of Sita Ram of the defendant's house and a sale deed of 24th March 1916, by Sita Ram in favour of Chajju Mal. This Chajju Mal was the vendor of the elder brother of the present defendant. The learned District Judge after remarking that the mere assertion of title to this plot of land in the sale deed executed by the plaintiff's vendor Akhay Ram in the latter's favour on 15th March 1917, cannot be conclusive has pointed out that there were contrary assertions in the two sale deeds mentioned above in which when describing the eastern boundary of the house sold there was a recital that Nazul land adjoined it.

9. The question before us is whether the recitals in these two deeds, showing that the house sold was bounded on the east side by Nazul land, were any evidence legally admissible to prove that it was Nazul land and did not belong to the plaintiff.

10. On this point there are numerous rulings of the Calcutta High Court and they are professedly conflicting. The earliest case which has been brought to our notice is the case of *Ningava v. Bharmappa* [1899] 23 Bom. 63 where it was distinctly laid down that the boundaries given in a mortgage deed relating to an adjacent land at a time when there was no dispute, was a statement within Clause (3), Section 32, Evidence Act, and was admissible under that section. This view was followed by the Calcutta High court in the case of *Abdullah v. Behari* [1912] 16 C.W.N. 252. The learned Judge held that such a statement was one against the pecuniary or proprietary interest of the party making it, and was therefore admissible under that clause. The same view was followed by the same High Court in *Imrit Chamar v. Sridhar Pandey* [1913] 17 C.W.N. 108 but was expressly dissented from in *Pramatka Nath Chaudhri v. Krishna Chunder Bhattacharjee* : AIR1924 Cal1067 , *Ambar Ali v. Lutfe Ali* and *Soroj Kumar Acharji v. Umed Alt Howladar* A.I.R. 1922 Cal. 251. In spite of this serious conflict of opinion it does not appear that the question has yet been referred to a Full Bench of the Calcutta High Court. A modified view has been taken in a later case of *Keetabuddin v. Nafar Chandra* : AIR1927 Cal230 where a recital was admitted as corroborative evidence of the

testimony of the executant in the witness box.

11. So far as this High Court is concerned there is only one case to which our attention has been drawn and this is *Natwar v. Alkhu* [1913] 11 A.L.J. 189 decided by a single Judge. There is a misprint in the head-note. According to the judgment, not only Section 32(3) was held to be applicable but the learned Judge also thought that the document was admissible under Section 13, Evidence Act.

12. Before taking up the main question it would be convenient to dispose of two subsidiary points which have been urged by the learned advocate for the respondent. Chajju Mal, the defendant's vendor, has been examined and thereof can be no doubt that a similar recital in the sale deed of 14th May 1917 executed by him would be admissible under Section 157, Evidence Act to corroborate his testimony. But under that section only the previous statement made by the witness himself can be admitted. Section 157 is of no help to us when the question of the admissibility of the deeds of 1902 and 1916 have to be considered for the recitals therein cannot by any stretch of the language be considered to be statements made by the witness Chajju Mal, even though the latter deed was in his own favour and the former in favour of his vendor.

13. In the same manner we are not inclined to accept the contention urged before us by the respondent that because the sale deeds have been formally proved and admitted in evidence, therefore all the recitals contained therein can be legitimately looked into as proof. In support of this contention reliance is placed on the last paragraph of the judgment in *Keetabuddin's case* : AIR1927 Cal230 where it was remarked that.

documents in favour of purchasers of adjoining lands could be used as corroborative evidence of the oral testimony of these witnesses, because they proved that those witnesses had purchased those lands.

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once being admissible in evidence the Court was entitled to look into the contents of the document and make such use of the contents as it thought fit because there

is no provision in the Evidence Act which says that it cannot be done.

14. We do not think that vendees who themselves have not, made such statements contained in documents in their favour can utilise such documents under Section 157, Evidence Act. Nor are we prepared to say that, because the document is admissible for a certain purpose, all recitals, statements and references therein can be used as proof of the facts to which they relate.

15. We agree with the view expressed by Chamier, J following the earlier Calcutta and Bombay cases, that a statement of a neighbour disclaiming his own title to a land and recognising another's title is a statement against the proprietary interest of the person making it and is admissible under Section 32 Sub-clause (3) Evidence Act. The recognition of another's title to the land is undoubtedly a statement against the proprietary interest of the person making that statement. But before it can be admitted in evidence the requirements contained in the opening part of that section must be fulfilled, and it must appear that it has been made by a person who is dead or cannot be found, or has become incapable of giving evidence, or whose attendance cannot be procured without an unreasonable amount of delay or expense. Unfortunately in this case the learned District Judge, although he has admitted the statements contained in the earlier documents, has omitted to say whether the executants of those documents were dead or whether their attendance could not have been procured without an unreasonable amount of delay or expense. This would be a defect in his finding if we were to hold that the only section applicable was Section 32, Sub-clause (3).

16. But Chamier, J., also expressed the view that the case would fall under Section 13 also. We may note that this was also the view expressed by a Bench of the Calcutta High Court in some of the earlier cases which was subsequently resiled from vide observations in *Pramatha Nath Chaudhri v. Krishna Chandra Bhattacharjee*. : AIR1924 Cal1067 .

17. There is considerable force in that view expressed by the learned Judges of the Calcutta High Court in subsequent cases that, inasmuch as the transaction of transfer does not relate to the adjoining land mentioned in the boundaries, it is not possible to hold that the statement was a transaction by which such a right was

recognized or asserted and that therefore it would not fall under Sub-clause (a) Section 13. But we see no reason why it should not be held that under certain circumstances recitals in deeds coupled with the omission of the executant to transfer such land, may amount to an instance in which such right was recognized.

18. In the case before us Kalyan Singh and after him Sita Ram purported to transfer the house now in the possession of the defendant, together with all the lands boundaries and rights appertaining thereto, but omitted to transfer the adjoining land now in dispute on the ground that the boundaries of their house did not include this land, in which the right of the Secretary of State was recognised by them. A mere statement may not by itself amount to an 'instance', and may only fall under Section 32, but where it is coupled by conduct even though by omission, we fail to see why it cannot be treated as an instance in which such right has been recognised. According to Murray's New English Dictionary the word 'instance' is wide enough to include in its broader sense a case accruing, a recurring occasion. Both Kalyan Singh and Sita Ram were purporting to transfer their house with all the lands, boundaries and rights appertaining thereto and yet they omitted to transfer the land now in dispute and expressly admitted that land did not belong to them but was Nazul land. Following the view of Chamier, J., we would therefore hold that the recitals in the two deeds were admissible under Section 13, Sub-clause (b) also.

19. In this view of the matter the finding of fact arrived at by the learned District Judge must be accepted as final. The appeal is accordingly dismissed with costs.