

Niranjan Singh Vs. Mahabir Singh and ors.

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Court : Allahabad

Decided On : Apr-14-1930

Reported in : AIR1930All845

Appellant : Niranjan Singh

Respondent : Mahabir Singh and ors.

Judgement :

Bennet, J.

1. This is a Letters Patent appeal by Niranjan Singh, the plaintiff, against a judgment of the learned single Judge of this Court by which the suit of the plaintiff for a declaration that he was in proprietary possession of certain plots was dismissed in its entirety. The lower appellate Court decreed the suit of the plaintiff for plots 308-10 and 308-11 and dismissed it for plot 324-14. The plaintiff filed an appeal in regard to the latter number which was dismissed by the learned single Judge, and the cross-objection of the defendants in regard to 308-10 and 308-11 was allowed. Hence the present appeal of the plaintiffs. The facts as found by the lower appellate Court are as follows:

In the village of Deoraspur, mahal Madhoram, there are four principal pattis of which the plaintiff Niranjan is a cosharer in the patti which bears his name and the other three pattis are known as Patti Bhola, Patti Sheo Govind and Patti Ram Bharos, and in these three pattis the plaintiff Niranjan has no share. There are

three shamilat pattis comprising various portions of land, and they are attached to the main pattis as follows:

1. Shamilat patti No. 1 appertains to the pattis of Sheo Govind and Bhola.
2. Shamilat patti No. 2 appertains to the pattis of Ram Bharos and Bhola, and it is in this patti that the three numbers in question are situate.
3. Shamilat patti No. 3 appertains to Niranjan Singh and Ram Bharos. The fact is that under a partition, which was effected a long time ago, before the year 1890, as is stated by the learned counsel for each side, there was this division of this mahal, and apparently the parties were not very well acquainted with the way in which the shamilat pattis had been arranged. Apparently the parties were under the impression that the three shamilat pattis appertained to all the four principal pattis. The plaintiff is held by the lower appellate Court to have been in possession of plot 308/10 for 24 years, of plot 308/11 for 13 years and of plot 324/14 for eight years at the time of the suit. The question is whether the plaintiff has acquired the rights of an owner to hold the two plots as his khudkasht Nos. 308/10 and 308/11 for which he has obtained a decree from the lower appellate Court. That Court considered that the exclusive cultivation by the plaintiff of these two numbers for a period exceeding the statutory period of limitation of 12 years gave the plaintiff a right by adverse possession to hold these numbers as his khudkasht. On the other hand the learned single Judge of this Court approaching the matter from a different angle of vision considered that because the plaintiff had not asserted that his possession was adverse, and because the plaintiff had been under the impression that he was a cosharer entitled to hold those numbers in his cultivation as khudkasht, therefore the plaintiff would not acquire any title in these numbers by adverse possession; that is, the learned single Judge of this Court considered that for adverse possession there must be a definite assertion by the plaintiff that his possession was adverse. We do not consider that under the circumstances of the present case it was necessary for the plaintiff to make any such definite assertion. His conduct in the possession of these plots was the conduct of an owner, as he was in the exclusive cultivatory possession of these plots. The written statement pleads that the defendants knew that the plaintiff had no right in

these plots, because the plaintiff was not a cosharer in shamilat patti No. 2, Ram Bharos Bhola, to which these plots appertain. The written statement alleges that the possession of the plaintiff of these plots was that of a tenant of the defendants. That allegation has not been proved by the defence, and it is found that the plaintiff was not a tenant of the defendants. Accordingly the finding of the lower appellate Court is that the plaintiff cultivated these plots as an owner. Another point which has not been established by the defence is that in the annual settlement of accounts any reckoning was taken by the defendants of the cultivation of these plots by the plaintiff. It is not shown therefore that the cultivation by the plaintiff was a matter to which the defendants in any way consented. Accordingly the situation is that the plaintiff for 24 years cultivated one plot and for 13 years cultivated another plot without regard to the defendants who were the owners of the patti. Under these circumstances we consider that the action of the plaintiff amounts to an action which has ripened into ownership by adverse possession for more than 12 years. We therefore consider that the finding of the lower appellate Court is correct, and we allow this Letters Patent appeal and decree the suit of the plaintiff in regard to plots 308/10 and 308/11.

2. In regard to the third plot the plaintiff has again pleaded in Letters Patent appeal that there is an estoppel by acquiescence, and his counsel told us that plot 324.14, for which the period of possession is eight years only, has a grove, and a temple and a well. But there is no finding of fact on the record that the grove, the temple and the well are in this number. All that is found is that the cultivation of the plaintiff of this number is for eight years. Under these circumstances we consider that the plaintiff has failed to prove that he has any title as owner in this plot. We therefore dismiss the Letters Patent appeal in regard to plot 324/14. The parties will get proportionate costs in regard to the success and failure of both the hearings in this Court.