

Narayan Gope and Vs. Smt. Dulari Devi

Narayan Gope and Vs. Smt. Dulari Devi

SooperKanoon Citation : sooperkanoon.com/520571

Court : Jharkhand

Decided On : Jun-19-2006

Reported in : 2007(1)BLJR243; [2007(1)JCR171(Jhr)]

Judge : Narendra Nath Tiwari, J.

Acts : Code of Criminal Procedure (CrPC) - Sections 144

Appeal No. : S.A. No. 69 of 2003

Appellant : Narayan Gope and ;munia Gowalin

Respondent : Smt. Dulari Devi

Advocate for Pet/Ap. : Lalit Kumar Lal, Adv.

Disposition : Appeal dismissed

Judgement :

Narendra Nath Tiwari, J.

1. This second appeal is against the judgment and decree of affirmance passed by the Additional District Judge, Fast Track Court No. I in Title Appeal No. 26 of 1998 dismissing the appeal and upholding the judgment and decree of learned Munsif, Hazaribagh in Title Suit No. 122 of 1991.

2. The respondent-plaintiff had filed Title Suit seeking a decree for declaration of his title and confirmation of possession and alternatively for recovery of possession over the lands described in Schedule 'A' of the plaint. The plaintiff has also prayed for permanent injunction restraining the defendants from interfering with the peaceful possession of the plaintiff. The plaintiffs case is that Plot No. 1116 of Village Khirgaon, measuring an area of 18 decimals belongs to the recorded tenants of Khata No. 100 who had partitioned the said land amongst themselves. The father of the defendants had purchased an area of 4 1/2 decimals out of 18 decimals of said plot No. 1116. Thereafter in 1969 the only son of the recorded tenant had sold the remaining 13 1/2 decimals of Plot No. 1116 to the plaintiff-respondent by virtue of a registered sale deed dated 19.09.1969 and had put the purchaser in possession. The plaintiff, thereafter, got her name mutated and constructed a house in the middle of plot No. 1116. She also subsequently purchased 20 decimals of Plot No. 1117 from the heir of the recorded tenants and amalgamated the two plots, i.e., Plot No. 1116 and Plot No. 1117. The further case was that the plaintiff had left about 4 decimals of land towards west of the house for egress and ingress. The plaintiff and her husband had been staying in Singhbhum where her husband was engaged in his occupation Taking advantage of the absence of the plaintiff, the defendants started laying foundation for construction of the house over the western portion of the vacant land of the plaintiff on Plot No. 1116. On getting information, the plaintiff came to Hazaribagh and initiated a proceeding under Section 144 of the Code of Criminal Procedure, which was subsequently dropped holding that the case is of civil nature. Subsequently, the suit was filed. During the pendency of the suit, an amendment was made in the plaint adding that the plaintiff has been dispossessed from the suit land by the defendants who has constructed two rooms and compound wall and closed the plaintiffs road used as ingress and egress.

3. Defendants appeared and filed their written statement, stating, inter alia, that their father, Barhan Gope, had purchased 4 1/2 decimals out of 18 decimals of land from the recorded tenant for valuable consideration, i.e., western side of the plot by describing the boundary of the entire plot by virtue of sale deed dated 30.04.1946 and since the date of purchase, the defendants' father had been in possession of the land, over the disputed portion. Cow-dung is being kept since

long to the knowledge of the recorded tenants without his objection. In due course of time, that area was brought within the compound wall. The said hostile possession was to the knowledge of everybody including the plaintiff and her vendor, which perfected the defendants' title by adverse possession on 01.05.1988. The alleged sale deed has not conferred any right, title or interest on the plaintiff, over the suit land. The plaintiff was also not given possession. The plaintiffs mutation, if any, must have been done by suppressing the actual facts. It was further stated that the purchased land was mutated in the name of their father and after his death, in the name of their mother. The suit land was never used as egress and ingress by the plaintiff. The defendants, thus, denied the plaintiffs claim and prayed for dismissal of the suit.

4. On the basis of the pleadings of the parties, several issues were framed by learned Trial Court. The parties led their evidences. While deciding Issues No. 5 and 6 regarding the right, title of the parties, learned Trial Court, after thorough scrutiny, discussion and consideration of evidences and materials on record, came to the finding that the plaintiff has got valid right, title and interest in the suit land and that the defendants' father has purchased the eastern portion of the suit land and the defendants forcibly dispossessed the plaintiff, some time, in the year 1991 by raising construction over the land of the plaintiff. The defendants were never in possession of the suit land. They also failed to prove their adverse possession. Learned Court held that the plaintiff was allegedly dispossessed by the defendants by trespassing over his land. He further decided the other issues in favour of the plaintiff and decreed the suit and the defendants were directed to hand over vacant possession over the suit land. Against the said judgment and decree of the Trial Court, the defendants preferred an appeal in the Court of the District Judge, Hazaribagh, which was registered as Title Appeal No. 26 of 1998. The said appeal was finally heard and disposed of by the Additional District Judge, Fast Track Court No. I, Hazaribagh. Learned Lower Appellate Court has also dealt with and discussed the entire facts, evidences and materials on record, issue wise, and after an elaborate discussion and consideration of the same, has concurred with the findings of the Trial Court and held that learned Trial Court had rightly declared the plaintiffs' right, title and interest and there was no infirmity in the judgment and decree of the Trial Court and the same does not require any interference. Learned

Lower Appellate Court, thus, affirmed the judgment and decree of learned Trial Court.

5. Mr. Lalit Kumar Lal, learned Counsel appearing for the appellants has assailed the impugned judgment and decree of learned Lower Appellate Court on the ground that the said judgment and decree is a mechanical reproduction of the judgment of learned Trial Court and there is no application of mind by learned Lower Appellate Court. Learned Counsel submitted that Lower Appellate Court is duty bound to make critical analysis of the matter and it cannot mechanically affirm the findings of the Trial Court without due and proper application of mind. Learned Counsel referred to and relied on a decision of the Supreme Court in State of Rajasthan v. Harphool Singh through his L.R.S reported in : (2000)5SCC652 . Learned Counsel next submitted that though it is true that in the defendants' sale deed there is boundary of the entire suit plot, yet it was the duty cast on the Courts below to ascertain the exact area of purchase on due consideration of the evidences on record, but the Courts below have committed an error in relying on the boundary of the appellants' sale deed in arriving at their conclusion. Learned Counsel submitted that the Courts below have ignored the continuous possession of the defendants on the portion of the suit land and has erroneously decreed the plaintiffs suit. He further submitted that the appellate Court has failed to discharge its duty as a last Court of fact only by reproducing the findings of learned Trial Court.

6. After hearing learned Counsel and perusing the judgment and decree and also the material on record including the sale deed produced by the respective parties, I find that learned Trial Court has thoroughly examined the documents and oral evidences adduced by the respective parties and after due consideration of the evidences, has recorded the findings and declared the plaintiffs right, title over the suit land. The defendants had taken plea of perfecting, their title by adverse possession over the land in question, but the defendants failed to establish the claim of adverse possession. Learned Trial Court had arrived at the said findings after due appraisal of the evidences and material on record. I find no illegality or infirmity in the findings recorded by the said court. Learned Lower Appellate Court has also discussed the facts and evidences issuewise, and has thoroughly

scrutinized and considered the same and found no point of difference on the conclusion and concurred with the findings recorded by the Trial Court. I find that there is a detailed discussion and consideration of facts, evidences and material on record. A judgment which is a well considered and supported by reasons cannot be said to be mechanical. The decision of the Supreme Court in State of Rajasthan (supra), referred to by learned Counsel for the appellants, has got no application to the facts of this case. Both the Courts have recorded concurrent findings on thorough appraisal and consideration of evidences on record. No error, in the said finding, could be pointed out by the learned Counsel which may lead to any substantial question of law to be framed and decided in this second appeal. I, therefore, find no merit in this appeal, which is, accordingly, dismissed.

SooperKanoon - India's Premier Online Legal Search - sooperkanoon.com