

Halima Khatoon Vs. Sayed Rashid Ahmad

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Court : Jharkhand

Decided On : Aug-11-2008

Reported in : [2008(4)JCR124(Jhr)]

Judge : R.K. Merathia, J.

Appellant : Halima Khatoon

Respondent : Sayed Rashid Ahmad

Disposition : Appeal dismissed

Judgement :

ORDER

R.K. Merathia, J.

1. The appeal arises out of the Judgment dated 6.9.2002 passed by 3rd Additional District Judge, Jamshedpur in Title Appeal No. 6 of 1988 affirming the judgment dated 19.2.1988 and decree dated 29.2.1988 passed by the 3rd Sub-Judge. Jamshedpur in Title Suit No. 66 of 1985/39 of 1986.

2. The respondent-plaintiff filed this suit for declaration of his right, title and interest over the Schedule A property and for Khas possession of the same after evicting the defendant (predecessor in interest of the appellant herein); and for declaring that the defendant is no way related with, and he is not the legal heir and

successor of late Abdul Ghani; and for declaring that the decree obtained by the defendant in Title Suit No. 22 of 1977 is not binding on the plaintiff, etc.

3. According to the plaintiff, late Abdul Ghani left India on 27.5.1964 and then died in Pakistan on 13.10.1983 leaving behind his wife Aisha Khatoon, son Mahmood Ahmad, daughter Anisa and the plaintiff being wife's sister's son as his heirs. On 27.1.1985, the said widow Aisha Khatoon came to India being manager of the family of Abdul Ghani and learnt that on the basis of the purported decree passed in Title Suit No. 22 of 1977, the defendant came in possession of the suit property who was not related at all with her and her husband; and that the defendant raised false claim based on fabricated materials and power of attorney; and that he raised illegal claim of adverse possession; and that the story set up by him that Abdul Ghani died in Orissa on 13.10.1975 was false; and that a petition under Order XXI. Rule 58 C.P.C. filed in the Execution Case No. 14 of 1982 arising out of the said Title Suit No. 22 of 1977 was not entertained on the ground that possession was already delivered to the defendant and then a general power of attorney was executed in favour of plaintiff by her to manage the suit property; and this suit was filed.

4. The defendant, inter alia, contended that the suit property never belonged to Abdul Ghani who left India, rather it belong to one Abdul Ghani @ Abdul Jena who was never a Pakistani national and was living in India in Orissa and died there in 1975 and his wife predeceased him without any issue; and that the plaintiff is not relative of Abdul Ghani; and that he acquired title by adverse possession.

5. The trial Court, inter alia, found that the suit property admittedly belonged to Abdul Ghani son of Abdul Aziz who migrated to Pakistani and; the plaintiff being 'bhagina', and by virtue of power of attorney, was the only near relative of Abdul Ghani in India; and that the defendant was not the sarhu of Abdul Ghani as claimed by him: and that the principles of res judicata are not applicable to the present suit; and that the judgment and decree obtained by the defendant in Title Suit No. 22 of 1977 was not binding on the plaintiff; and that the defendant has not acquired title by adverse possession; and that the suit was not barred under Administration of Evacuse Properties Act.

6. In the appeal filed by the appellant, after considering the materials on record, and the grounds raised, by the appellants, the appellate Court affirmed the said findings. Learned Counsel for the appellants is not in a position to challenge the said concurrent findings of facts recorded by the learned Courts below. He could not show that any substantial question of law is involved, in this appeal.

7. Accordingly, this appeal is dismissed.

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