

IN THE HIGH COURT OF JUDICATURE AT PATNA

First Appeal No.346 of 1983

(Against the judgment and decree dated 20.04.1983 passed by Subordinate Judge, Biharsharif in title suit No.114 of 1978).

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Sri Arvind Kumar

.... Plaintiff-Appellant

Versus

Smt. Mina Devi & Ors.

.... Defendants-Respondents

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Appearance :

For the Appellant/s : Mrs. Namrata Mishra, Advocate
Mr. Niraj Kumar, Advocate.

For the Respondent/s : Mr. P.N.Shahi, Sr. Advocate
Dr. Anjani Prasad Singh, Advocate.

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CORAM: HONOURABLE MR. JUSTICE MUNGESHWAR SAHOO

C.A.V. JUDGMENT

Date: 31-03-2015

1. The plaintiffs has filed this First Appeal against the judgment and decree dated 20.04.1983 passed by the learned Subordinate Judge, Biharsharif in title suit No.114 of 1978 whereby the court below dismissed the plaintiff's suit for partition.

2. The plaintiffs filed the aforesaid title suit No.114 of 1978 alleging that the parties are descendants of common ancestor and are members of joint Hindu family. The ancestor of the parties had ksth land described in Schedule II of the plaint. The plaintiff and the defendant No.1 are in joint possession of the land since 15.06.1977. Title Suit No.155 of 1957 filed by the plaintiffs was decreed. The title appeal No.81 of 1961 filed against the aforesaid judgment and decree was dismissed. Execution case was filed for



executing the decree and in execution case, the delivery of possession was given to the plaintiffs. In the execution case, the defendant No.1 appeared and filed objection under Section 47 of the Code of Civil Procedure. However, the said miscellaneous case was dismissed with condition that a note shall be made in the delivery of possession that it shall not affect the right, title and interest of the appellant. After mentioning this in the writ of delivery of possession, the possession was handed over to the plaintiffs on 23.04.1965. Since the date of delivery of possession, the plaintiffs were in possession of the same. After delivery of possession in favour of the plaintiffs, the defendant No.1 never took any step for recovery of his land and, therefore also, the plaintiffs have acquired title by adverse possession.

3. The further case of the plaintiffs is that because both the parties were fighting since long and there were many litigations, with the intervention of their well wishers compromise was arrived at and in the compromise, 1/4th share was given to the defendants by the plaintiffs. However, subsequently, they demanded partition of 3/4th share but the defendants refused. Therefore, the suit was filed.

4. According to the written statement filed by the defendant No.1, there is no unity of title and possession between the parties. One, Ambrika Prasad Singh filed money suit No.98 of 1953



which was decreed against Nathuni Singh and others. The said decree was put in execution by Ambrika Prasad Singh. The suit property was auction sold and the properties were purchased by Ambrika Prasad Singh, who got his name mutated. After mutation, the purchaser, Ambrika Prasad Singh started paying rent against the grant of rent receipt. Objection was filed by the father of plaintiff No.1 which was rejected. Ambrika Prasad Singh sold the suit land to the defendant No.1 on 18.06.1962 and since then, the defendant No.1 is coming in possession of the suit land after redeeming the property which was mortgaged. The plaintiffs lost the case upto the High Court and thereafter title suit No.104 of 1954 was filed in which the father of this defendant was party. However, the suit was dismissed on 11.04.1963. It was held that the plaintiff is entitled to recover 4 Annas share but for recovery of his 4 Annas share, the plaintiffs never took any step. The alleged compromise pleaded by the plaintiffs is wrong, false and concocted story. There is no unity of title and possession between the parties nor there was any oral compromise.

5. On the basis of the aforesaid pleadings of the parties, the learned court below framed the following issues:

- I. Is the suit as framed maintainable?
- II. Have the plaintiffs got any cause of action for the suit?
- III. Is their unity of title and community of possession in between the plaintiff and defendants over the land in suit if

so, have the plaintiff's share to the extent of $\frac{3}{4}$ th in the said land in suit?

IV. Have the plaintiff's title to the land in suit and are they coming in possession over the same?

V. To what relief or reliefs, if any, are the plaintiffs entitled?

6. The learned court below after hearing the parties recorded finding that the defendant No.1 is coming in possession over the suit property. The story of oral compromise set up by the plaintiffs is false and likewise, the plaintiff's story of acquisition of title by adverse possession is also falsified. The defendant No.1 has been able to prove his title to the suit land and also has been able to prove continuous possession over the same. On these findings, the court below dismissed the plaintiff's suit.

7. The learned counsel, Mrs. Namrata Mishra appearing on behalf of the appellant submitted that the father of the plaintiff filed title suit No.155 of 1957 for setting aside the auction sale which was decreed and the said decree of the trial court was confirmed by the appellate court in title appeal No.81 of 1961. The said decree was executed by the plaintiffs and possession was given to the plaintiffs in spite of the fact that defendant No.1 filed miscellaneous case under Section 47 of the Code of Civil Procedure but the court below wrongly held that the defendant is in possession of the property without considering this fact that possession has been



delivered in favour of the plaintiffs. The learned counsel further submitted that the learned court below has not properly appreciated the evidences and wrongly dismissed the plaintiff's suit. According to the learned counsel, the specific case of the plaintiffs is that there was compromise between the parties because of the intervention of the well wishers. Since the parties were litigating for long period, the well wishers decided that the plaintiffs should give 1/4th share to the defendant No.1 and accordingly, 1/4th share was given to the defendants by the plaintiffs but subsequently, the defendants started claiming title over whole of the property and refused to partition of the property. According to the learned counsel, the court below has wrongly dismissed the plaintiff's suit.

8. On the other hand, the learned senior counsel, Mr. P.N.Shahi submitted that in the present case, the oral evidences are not at all required to be gone into because the case of the parties can be proved by documentary evidence and admission of the parties itself. According to him, the title suit No.155 of 1957 was filed against another person and in that suit, the defendants were made formal party. No relief was claimed against the defendants. The said suit was decreed against the contesting defendant of that suit. Against that contesting defendant, the execution case was filed. In the said execution case, the defendant No.1 filed objection under Section 47



and then it was held that delivery of possession will be affected but it will not affect the right, title and interest of the defendant No.1. Although, according to the report, delivery of possession was affected with the aforesaid note but the defendants continued in possession of the property. When there was long litigation between the parties, there was no question of oral compromise arises. The plaintiff has in fact, with a view to claim the property has given a false story of oral compromise. The decree or delivery of possession obtained in execution case arising out of title suit No.155 of 1957 is not binding on the plaintiffs. No suit was ever filed by the plaintiffs for setting aside the auction sale against Ambrika Prasad Singh nor the auction sale in favour of Ambrika Prasad Singh was ever set aside. The defendant is purchaser from the said Ambrika Prasad Singh, who is auction purchaser and, therefore, the plaintiffs have got no right, title and interest nor are in possession of the property. The court below has, therefore, rightly found that there is no unity of title and possession between the parties.

9. In view of the above contentions of the learned counsels appearing on behalf of the parties, the points arise for consideration is as to “whether the plaintiffs are entitled for declaration of title and for partition of their share to the extent of 3/4th in the suit property” and “whether the judgment and decree passed by

the court below is sustainable in the eye of law?"

10. From the pleading of the plaintiffs, it appears that the main case of the plaintiffs is that the decree passed in title suit No.155 of 1957 was put in execution and in that execution, the delivery of possession was affected. In the execution case No.125 of 1964, objection under Section 47 C.P.C. was filed which was dismissed and thereafter, there was oral compromise between the parties by which the plaintiffs gave 1/4th share to the defendants. Exhibit 5 is the judgment dated 16.01.1961 passed in title suit No.155 of 1957. From perusal of this judgment, it appears that the ancestor of the plaintiff namely Ram Swaroop Prasad Sharma filed the aforesaid suit against Lakhan Singh for declaration that the auction sale in certificate case No.372/E of 1952-53 held on 28.12.1953 is null and void and it does not bind the plaintiffs and their rights in property sold are not effected by the said auction sale and for confirmation of possession. The aforesaid relief was claimed alleging that the plaintiffs and defendant Nos.3 to 10 were the landlord of tauji No.15334 of village Balchi Chainpur. The plaintiffs have 8 Annas share only and the other 8 Annas was owned by defendant Nos.3 to 10. The entire tauji was sold by auction in auction certificate case No.372/E of 1952-53 for arrears which was purchased by Lakhan Singh, defendant No.1. It appears that the suit was decreed on contest



against the defendant No.1 and it was held that the right, title and interest of the plaintiffs to the extent of $3/4^{\text{th}}$ in the land in suit did not pass under the auction sale dated 28.12.1953. It may be mentioned here that in this suit, no relief was claimed against the defendant Nos.3 to 10 i.e. the present defendants of the suit. When execution case was filed for execution of the decree i.e. for recovery of possession being execution case No.125 of 1964, the defendant No.1 filed objection i.e. Misc. Case No.30 of 1965 vide Exhibit 2. This miscellaneous case was disposed of by terms of order dated 03.04.1965 which is Exhibit 4. From perusal of the order, it appears that the opposite party in miscellaneous case i.e. Ram Swaroop Prasad Sharma did not raise any objection if the delivery of possession is issued with a note on it as prayed by the applicant i.e. the defendant No.1 and accordingly, it was directed that a note shall be made in the delivery of possession that it shall not effect the right and title of the applicant i.e. defendant No.1.

11. It is the specific case of the defendants that Ambrika Prasad Singh had filed money suit No.98 of 1953 against the ancestor of the plaintiffs and obtained a decree. In execution case, the suit property was sold and Ambrika Prasad Singh purchased the property on 21.11.1957. The possession was delivered to Ambrika Prasad Singh on 11.04.1958 and then the defendant No.1 purchased



the same from Ambrika Prasad Singh on 18.06.1962. So far the decree obtained in money suit No.98 of 1953 by Ambrika Prasad Singh is concerned, it was never set aside nor the auction sale was ever set aside. In title suit No.104 of 1954 filed by the plaintiffs was dismissed on 11.04.1963 with a direction to the plaintiffs that he is entitled to recover possession of his interest in the properties sold to the extent of 4 Annas share. Pursuant to this direction which was given by the High Court, the plaintiffs never took any step for recovery of his 4 Annas share. The plaintiff who has been examined as witness being P.W.1 has admitted this fact that Ambrika Prasad Singh was in possession of the property being purchaser in auction sale who sold the property to the defendant No.1.

12. The defendants have produced Exhibit A series which are endorsement made on mortgage deeds. These endorsements sufficiently proved the fact that the defendant No.1 after purchase redeemed the properties and came in possession. These documents have been produced by the defendant No.1 from his custody. Certified copy of the decree of money suit No.98 of 1953 has been filed which has been marked as Exhibit F and Exhibit G is the sale certificate granted in favour of Ambrika Prasad Singh.

13. It will not be out of place to mention here that the plaintiff is claiming on the basis of the decree passed in title suit



No.155 of 1957 which is not against the certified purchaser i.e. Ambrika Prasad Singh. The said suit was against one Lakhan Singh. Therefore, admitted fact is that so far the auction sale by Ambrika is concerned, it was never set aside. By the High Court, only right to plaintiff was given to get his right to the extent of 4 Annas share recovered from auction purchase but he never took any step.

14. So far the alleged compromise pleaded by the plaintiff is concerned, from the above facts, it appears that there was long litigation between the parties and the defendant No.1 purchased the property from Ambrika Prasad Singh and came in possession, there is no question of giving the possession by the plaintiffs to the defendants to the extent of 1/4th share arises. It appears that only bald statements have been made which cannot be accepted by the Court of law, in view of the overwhelming documentary evidences discussed above.

15. In view of the above discussion, I find that the plaintiffs have failed to prove acquisition of title and possession on the basis of the decree passed in title suit No.155 of 1957. In the delivery of possession, it has specifically been mentioned that it will not affect the right, title and interest of defendant No.1 and in fact, I have already found that the defendant No.1 continued in possession. No order of the Court confirming the delivery of possession has been

produced by the plaintiffs. Therefore, the plaintiffs have failed to prove even possession. On the contrary, the defendants have been able to prove acquisition of title through purchase from the rightful auction purchaser, Ambrika Prasad Singh. The defendants also have been able to prove possession over the same. The findings of the trial court on these questions are hereby confirmed.

16. In the result, this First Appeal is dismissed. In the facts and circumstances of the case, there shall be no order as to costs.

(Mungeshwar Sahoo, J)

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