

IN THE HIGH COURT OF JUDICATURE AT PATNA
Second Appeal No.187 of 2013

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1. Janardan Pandey S/O Late Gauri Shankar Pandey Resident Of Village Rahasi Chak, P.S. Buxar Mofassil, District Buxar.
 2. Hari Shankar Pandey S/O Late Sudama Pandey Resident Of Village Rahasi Chak, P.S. Buxar Mofassil, District Buxar.

- Plaintiffs-Respondents- Appellants.

Versus

1. The State Of Bihar Through The Collector, Buxar.
2. Circle Officer, Buxar Circle, District Buxar.

-Defendant-Appellant-Respondents.

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Appearance :

For the Appellant/s : Mr.

For the Respondent/s : Mr.

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CORAM: HONOURABLE MR. JUSTICE V. NATH

ORAL JUDGMENT

10 07-04-2015

Heard Mr J.S.Arora, the learned counsel for the appellants.

The plaintiffs have filed this second appeal against the judgment and decree of reversal allowing the appeal and overturning the decree passed in the suit.

The suit land admittedly has been recorded as Anabad Bihar Sarkar in the recent survey khatian and also in the consolidation records of rights. The plaintiffs' claim is that the suit land is adjacent to their residential plot of land and they have been coming in peaceful possession of the same since long. It is also the case of the plaintiffs that the rent fixation for the suit land was done in their name in the year 1962-63 and accordingly Jamabandi was also created in their names. It has, however, been accepted by

the plaintiffs that the recent survey khatian for the suit land in the name of the State of Bihar was prepared prior to the rent fixation case and accordingly the Jamabandi was also corrected in the name of the State of Bihar after the publication of the recent survey khatian. The plaintiffs have also claimed their title over the suit land on the basis of adverse possession.

The defendant-State of Bihar contested the claim of the plaintiff and has denied the acquisition of title and possession over the suit land by the plaintiffs.

The trial court returned the findings in favour of the plaintiffs and decreed the suit. The appellate court, on reappraisal of pleadings and evidence, has overturned the findings recorded by the trial court, allowed the appeal and dismissed the suit.

Mr Arora, the learned counsel for the appellants, has submitted that the appellate court below has ignored the fact that the estoppel was operating against the defendant-State of Bihar as the rent was fixed in the name of the plaintiff for the suit land and rent was also realized by the State of Bihar. It has been thus canvassed that the appellate court below has erroneously recorded the finding against the plaintiffs ignoring the well settled principle of estoppel. It has also been submitted that the plaintiffs

have been coming in possession over the suit land uninterruptedly for several 12 years and thus they have also perfected their title over the same by adverse possession. It has also been submitted that the appellate court below has failed to frame the points for determination and has also failed to meet the reasonings of the trial court.

After perusal of the judgments of both the courts below and considering the submissions, it is manifest that the suit land is a public land and has been recorded in the C.S.Khatian as Gairmajarua Malik. In the recent survey khatian as well as the consolidation records also, the suit land has been recorded in the name of State of Bihar. It is not the case of the plaintiff that the suit land has ever been settled with the plaintiffs either by the ex-landlord or the State of Bihar. Evidently the plaintiffs' claim of title over the suit land is based upon their possession simpliciter over the same as no title deed has been relied or produced by the plaintiffs.

It is apposite to notice the dictum of the apex court in the case of **R.Hanumaiah Vs. State of Karnataka, (2010) 5 SCC 203**, wherein also that the claim of title and permanent injunction was made in respect of a piece of government land. Their Lordships have laid down as follows:



“...Suits for declaration of title against the Government, though similar to suits for declaration of title against private individuals differ significantly in some aspects. The first difference is in regard to the presumption available in favour of the Government. All lands which are not the property of any person or which are not vested in a local authority, belong to the Government.....

.....The second difference is in regard to the period for which title and/or possession has to be established by a person suing for declaration of title. Establishing title/possession for a period exceeding twelve years may be adequate to establish title in a declaratory suit against any individual. On the other hand, title/possession for a period exceeding thirty years will have to be established to succeed in a declaratory suit for title against the Government.....



..... *Many a time, its own officers who are expected to protect its properties and maintain proper records, either due to negligence or collusion , create entries in records to help private parties to lay claim of ownership or possession against the Government. Any loss of government property is ultimately the loss to the community. Courts owe a duty to be vigilant to ensure that public property is not converted into private property by unscrupulous elements...*

“...Whether the Government contests the suit or not, before a suit for declaration of title against a Government is decreed, the plaintiff should establish, either his title by producing the title deeds which satisfactorily trace title for a minimum period of thirty years prior to the date of the suit (except where title is claimed with reference to a grant or transfer by the Government or a statutory development

authority), or by establishing adverse possession for a period of more than thirty years...”

“...A court should necessarily seek an answer to the following question, before it grants a decree declaring title against the Government: whether the plaintiff has produced title deeds tracing the title for a period of more than thirty years; or whether the plaintiff has established his adverse possession to the knowledge of the Government for a period of more than thirty years, so as to convert his possession into title. Incidental to that question, the court should also find out whether the plaintiff is recorded to be the owner or holder or occupant of the property in the revenue records or municipal records, for more than thirty years, and what is the nature of possession claimed by the plaintiff, if he is in possession-authorized or unauthorized; permissive; casual and occasional; furtive

and clandestine; open, continuous and hostile; deemed or implied (following a title)..."

"...In order to oust or defeat the title of the Government, a claimant has to establish a clear title which is superior to or better than the title of the Government or establish perfection of title by adverse possession for a period of more than thirty years with the knowledge of the Government. To claim adverse possession, the possession of the claimant must be actual, open and visible, hostile to the owner (and therefore necessarily with the knowledge of the owner) and continued during the entire period necessary to create a bar under the law of limitation. In short, it should be adequate in continuity, publicity and in extent. Mere vague or doubtful assertions that the claimant has been in adverse possession will not be sufficient. Unexplained stray or sporadic entries for a

year or for a few years will not be sufficient and should be ignored...”

“...As noticed above, many a time it is possible for a private citizen to get his name entered as the occupant of government land, with the help of collusive government servants. Only entries based on appropriate documents like grants, title deeds, etc or based upon actual verification of physical possession by an authority authorized to recognize such possession and make appropriate entries can be used against the Government. By its very nature, a claim based on adverse possession requires clear and categorical pleadings and evidence, much more so, if it is against the Government...”

From the pleadings and evidence adduced on behalf of the plaintiffs it is transparent that there is no document of title in favour of the plaintiff for the suit land and the claim is based only on possession. The order in the rent fixation case has admittedly been made even when the revisional survey proceeding



had already started wherein the records of rights have been finally published in the name of State of Bihar for the suit land. The consolidation records of rights for the suit land has also been prepared in the name of State of Bihar. The plaintiffs have challenged the entries made in the consolidation records of rights on the basis of the order in the rent fixation case. But the order in the rent fixation case, admittedly made during the survey proceeding, cannot be the basis of title of the plaintiffs over the suit land. Moreover after the preparation of survey records of rights in the name of defendant-State of Bihar, the order in rent fixation case lost its force. The plaintiffs have also accepted that the Jamabandi (revenue records) was corrected in accordance with survey records of rights. Though it is the case of the plaintiffs that Jamabandi was later restored in their names but in view of the principles enunciated by the apex court in **R. Hanumaiah (Supra)**, **this** Court is not persuaded to accept that creation of Jamabandi for the suit land in the name of the plaintiff for a year or for some years would be sufficient basis for grant of a decree for declaration of title in absence of a case of acquisition of title coupled with evidence supporting the same. The plaintiffs have also not disclosed the basis for fixation of rent in their names for the suit land and have only stated that the same was done on the

basis of possession as reported by Halka Karamchari. The submission on behalf of the appellants that the order passed in the rent fixation case would operate as estoppel against the defendant-State of Bihar cannot be sustained in these facts and circumstances.

With regard to the claim on the basis of adverse possession it is suffice to notice that the plaintiffs have nowhere pleaded to have asserted their hostile title over the suit land to the knowledge of the State of Bihar for thirty years. To the contrary, it is their own case that they have been paying rent to the State of Bihar since 1962. The appellate court below has, on correct application of the principles, rejected the claim of the plaintiffs on the basis of adverse possession.

The learned counsel for the appellants has laid much stress on the fact that the plea taken by the defendant-State of Bihar in their written statement has not been proved but the plaintiff cannot succeed on the weakness of the defendant's case as held by the apex court in the case of **Union of India Vs Vasai Co-op. Housing Society Ltd, AIR 2014 SC 937**, where their Lordships have ruled that “...*the plaintiff in a suit for declaration of title and possession could succeed only on the strength of its own title and that could be done only by adducing sufficient*

evidence to discharge the onus on it, irrespective of the question whether the defendants have proved their case or not...”

Impugned judgment of the appellate court below demonstrates that the entire facts, evidence and the reasoning assigned by the trial court have been carefully analyzed after formulating the points for determination and thereafter the findings of fact have been recorded. This Court has not been persuaded to hold that those findings are unreasonable or perverse in any manner.

Ex consequenti, this Court does find any substantial question of law arising for consideration in this appeal, which is, accordingly, dismissed.

(V. Nath, J)

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