

IN THE HIGH COURT OF JUDICATURE AT PATNA

Second Appeal No.289 of 1997

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1. Kanti Gupta.
 2. Shanti Gupta.
 3. Usha Gupta.
 4. Asha Gupta.
 5. Pushpa Gupta.
 6. Mina Gupta.
 7. Shakuntala Gupta.

All are daughters of late Thakur Prasad and are residents of Mohalla-Sahebganj, P.O.-Chapra, P.S.-Chapra, Town, District-Saran.

.... Appellants

Versus

1. Krishna Prasad Jaiswal.
2. Shyam Prasad Jaiswal.
3. Smt. Shobha Jaiswal, Wife of Shyam Prasad Jaiswal.

All are residents of Village-Revilganj, Naya Tola, P.S.-Revilganj, District-Saran.

. Respondents

Appearance :

For the Appellant/s :	Mr.Keshav Srivastava, Sr.Adv Mr. Manoj Ranjan Sinha, Adv. Mr. Bhubneshwar Prasad, Adv.
For the Respondent/s :	Mr.T.N.Maitin, Sr.Adv. Mr. Shambhu Sharan Singh, Adv. Mr. Umesh Kumar Singh, Adv. Mr. Rajiv Shanker Dwivedi, Adv. Mr. Binay Kumar Choubey, Adv. Mr. Usha Basant, Adv.

CORAM: HONOURABLE MR. JUSTICE V. NATH

ORAL JUDGMENT

Date: 18-11-2016

Heard Mr. Keshav Srivastava, learned senior counsel appearing for the appellants and Mr.T.N.Maitin, learned senior counsel appearing for the respondents.



This appeal has been filed by the plaintiff questioning the legal acceptability of the judgment and decree passed by the appellate court below after the remand order dated 12.07.1995 by this Court in S.A.No. 154/1989.

The facts in detail need no notice for the purpose of this appeal and suffice it to state that the plaintiff filed the suit for eviction of the defendants under the Bihar Building (Lease, Rent & Eviction) Control Act (hereinafter referred to as B.B.C.Act) on the ground of default in payment of rent and personal necessity also. The defendant contested the relief as prayed by the plaintiff denying the relationship of landlord and tenant and claiming their own title over the suit premises. The trial court came to the conclusion that there was no relationship of landlord and tenant in between the plaintiff and defendant but granted the decree for eviction on equitable grounds of plaintiff having title over the suit property. In appeal by the defendants, the appellate court concurred with the findings of the trial court regarding the absence of relationship of landlord and tenant in between the plaintiff and the defendant but affirmed the grant of decree for eviction. The appeal by the defendants was thus dismissed. The defendants, however, preferred S.A.No.154/1989 before this Court against the judgment and decree of eviction as passed by the courts below. The S.A.No.154/1989 was allowed by judgment and order dated 12.07.1995 and there was limited remand of the matter



back to the appellate court with directions. It would be pertinent here to take into notice the parts of the order passed by this Court in the S.A.No.154/1989 as follows:

16. “The finding is that defendants were in possession over the building etc., not as a tenant, but in the independent capacity. Defendants were in possession are findings of fact which have become final as plaintiffs did not challenge them. They can not be disturbed.

17. “In view of the premises aforesaid and applying Aristotelian and Baconian reasonings this Second Appeal succeeds and the same is allowed. It is remanded back to the lower appellate court with the direction that lower appellate court would determine the duration of possession of defendants and in case it is more than the prescribed period, the suit shall be dismissed...”

By the impugned judgment and decree, after remand, the appellate court below has come to the conclusion that the defendants are in possession over the suit property for more than the stipulated period of limitation. Accordingly, the appeal has been allowed and the judgment and decree passed by the trial court has



been set aside.

This appeal has been admitted by order dated 06.04.1999 on the following substantial question of law:

- i) Whether a tenant in possession, can acquire right by adverse possession?
- ii) Whether Article 64 of the Limitation Act shall apply in case of possession by tenant for more than 12 years. and,
- iii) Whether a sale-deed of 1937 shall be held to be forged and sham without evidence on record?.

While criticizing the impugned judgment, Sri Srivastava, learned senior counsel appearing for the appellants, has submitted that the findings recorded by the learned court below are not in consonance with the evidence on record. It has been contended that there had been no pleading on behalf of the defendants to be in adverse possession over the suit premises but the appellate court below has wrongly held the suit to be barred by limitation. The learned counsel has also placed the deposition of D.W.17 (one of the defendants) to show that the defendant had admitted their permissive possession over the suit premises. It has also been contended that the finding of fact regarding the period of defendant's possession over the suit property is vulnerable and not supported by the evidence on record. The learned senior counsel, however, has accepted that the suit



would be governed by Article 64 of the Limitation Act which prescribes a period of 12 years from the date of dispossession for filing the suit for recovery of possession. No other submission has been made on behalf of the appellants.

Mr.Maitin, learned senior counsel appearing for the respondents, has supported the findings of the appellate court below and has submitted that those findings are based upon the appreciation of evidence and therefore binding in the second appellate jurisdiction.

After considering the rival submissions and perusal of the impugned judgment and decree, it is manifest that in view of the stand by the learned senior counsel on behalf of the appellants that the suit would be governed by Article 64 of the Limitation Act, the substantial question of law in that regard does not arise for consideration. Sequentially, the question of adverse possession by a tenant over the tenanted premises also does not arise for consideration in this backdrop. Further, it has been also accepted on behalf of the appellants that the finding by the courts below regarding absence of relationship of landlord and tenant in between the plaintiff and the defendant has attained finality in between the parties. The said position has also been noticed by this Court in its order passed in S.A.No. 154/1989 as referred above.

The appellate court below, on the basis of the material evidence on record, has proceeded to determine the date of possession



of the defendant over the suit premises in order to find out as to whether the suit has been filed within a period of 12 years from the date of possession of the defendants over the suit premises. At this juncture, even at the risk of repetition, it is pertinent to mention that there is no contest on behalf of the appellants during submission in this appeal that the period of limitation for filing the suit by the plaintiff was 12 years from the date of possession of the defendants over the suit premises. In view of the submissions on behalf of the appellants, this Court presently therefore is only to find out as to whether the finding of fact as recorded by the appellate court below, on the issue of date/period of possession of the defendants over the suit premises is perverse or unreasonable in any manner.

It would be pertinent to mention here that the plaintiffs in their plaint have not disclosed the date or the year when the defendants were inducted as tenants in the suit premises. This fact has also been accepted during the course of submission on behalf of the plaintiff-appellants. However, in view of the absence of specific pleading in that regard, the appellate court below in order to judicially explore the period of possession of the defendants over the suit premises has referred to some of the averments made in the plaint and the depositions of the witnesses examined on behalf of the plaintiffs. As noticed, it was the case of the plaintiffs that the suit property was the ancestral property of the plaintiffs. Tracing their title



over the suit property, it was asserted that by a registered deed of partition of the year 1928, the suit property was allotted to Badri Narayan Prasad who sold it by sale deed dated 04.03.1937 to Ram Awatar Ojha. It was further case of the plaintiffs that subsequently Ram Awatar Ojha sold the suit property to Gopal Ji Prasad by sale deed dated 06.05.1940, and in the family partition, the suit property was ultimately allotted to the share of Thakur Prasad who died in 1966. It is relevant to mention here that the plaintiffs are the descendants of the said Thakur Prasad. It was also averred by the plaintiff in paragraph-8 and 9 of the plaint that previously the suit premises was on rent to Maheshi Lal and later on Maheshi Lal gave his business to his son-in-law Ramdeo Babu. It had been further pleaded in paragraph-10 of the plaint as noticed by the appellate court below that Ramdeo Babu died and the defendants were his heirs and were carrying on the business of liquor in the suit premises. The aforesaid averments by the plaintiff have been scrutinized by the appellate court below on the basis of the depositions made by the plaintiffs' witnesses particularly P.W.1 Pancharatna Prasad who stated in paragraph-56 of his deposition that Thakur Prasad died in the year 1966 and Gopal Ji Prasad died three years back. In paragraph-59, the said witnesses has further stated that he came to know from Gopal Ji Prasad that Ramdeo Babu was in occupation of the house as a tenant. The deposition of other witnesses on the same line have also been



considered by the appellate court below and on that basis the appellate court below has come to the finding that as Gopal Ji Prasad died in the year 1963, the possession of the defendants over the suit premises at least from 1963 was evident. The appellate court below has also taken into consideration the deposition of the witnesses examined on behalf of the defendants and the deed of partition (Ext.1) dated 26.03.1966 in between Gopal Ji Prasad and Thakur Prasad. The attention of this Court has also been drawn to the further averment by the plaintiff as noticed in paragraph-3 of the impugned judgment where the plaintiff had accepted that the suit premises was under the tenancy of Maheshi Lal who used to pay rent to Gopal Ji Prasad and later on handed over the business to his son-in-law Ramdeo Babu who used to pay rent. The finding of fact regarding the date/period as recorded by the appellate court is demonstrably on the basis of pleadings and evidence which were acceptable and could have been relied upon.

The submission on behalf of the appellants that the appellate court below has not considered the deposition of D.W.17 (one of the defendants) has got no substance as during the course of submissions, nothing in the said deposition could be pointed out on behalf of the appellants which would dilute the statements made by the plaintiffs' witnesses and also the averments in the plaint. The emphasis however has been laid by Mr. Srivastava, learned senior counsel for the appellants, on the part of the statement made by



D.W.17 that he had paid rent till 1976. This Court does not find that the aforesaid statement can have any material bearing on the issue before the appellate court below regarding the date/period of possession of the defendant over the suit premises which was the only point to be examined in view of the remand order of this Court which had attained finality between the parties. In any view of the matter, however, as the specific case of the plaintiffs that the defendants were the tenants of the plaintiffs in the suit premises was disbelieved by both the courts below concurrently and the said finding having admittedly attained finality between the parties the non-consideration of the deposition of D.W.17 by the appellate court below regarding payment of rent to the plaintiffs has manifestly no relevance for determining the period of possession of the defendants over the suit premises as directed by this Court in the limited remand order passed in S.A.No.154/1989. The issues determined and direction issued by this Court in the said order is no more open to question and in view of the stand on behalf of the appellants that the suit would be governed by Article 64 of the Limitation Act, no judicial exploration of the nature of possession of the defendants over the suit premises is required by this Court nor the impugned judgment of appellate court below can be faulted on that score.

For the aforesaid reasons and discussions, this Court concludes that there is no perversity or unreasonableness in any



manner in the findings of fact that the defendants are in possession over the suit premises at least from 1963 and the suit is barred by the statutory period of limitation. As no other submission has been made on behalf of the appellants, the substantial questions of law as formulated are answered against the appellants.

This appeal, sans merit, is accordingly dismissed.

(V. Nath, J)

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