

IN THE HIGH COURT OF JUDICATURE AT PATNA

Second Appeal No.499 of 1989

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Late Sheo Nandan Prasad through L.Rs & Ors

.... Appellant/s

Versus

Mahadevi @ Matia Devi & Ors

.... Respondent/s

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Appearance :

For the Appellant/s : Mr. Dhruv Narain, Sr. Adv.
: Mr. Devi Das Srivastava, Adv.

For the Respondent/s : Mr. S.S.Dwivedi, Sr. Adv.
: Mr. M.K. Ambastha, Adv.

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CORAM: HONOURABLE MR. JUSTICE BIRENDRA KUMAR
CAV JUDGMENT

Date: 20-12-2017

Heard learned counsel for the parties.

2. This appeal is directed against the judgment and decree dated 16.09.1989 passed in Title Appeal No.01 of 1989/44 of 1980 by the learned 5th Additional District Judge, Gaya, whereby the judgment and decree dated 28.03.1980 passed in Title Suit No.30 of 1980/148 of 1972 by the learned Trial Judge was reversed.

3. This appeal was admitted for hearing on following substantial question of law:

“Whether the question of maintainability of the suit has been correctly decided by the court below?”

4. In another word whether the plaintiff-appellant was required to seek further relief of recovery of possession in



pursuance of requirement of Section 34 of the Specific Relief Act, which reads as follows:

“34. Discretion of Court as to declaration of status or right.---*Any person entitled to any legal character, or to any right as to any property, may institute a suit against any person denying, or interested to deny, his title to such character or right, and the Court may in its discretion make therein a declaration that he is so entitled, and the plaintiff need not in such suit ask for any further relief:*

Provided that no Court shall make any such declaration where the plaintiff, being able to seek further relief than a mere declaration of title, omits to do so.

Explanation.---*A trustee of property is a “person interested to deny” a title adverse to the title of some one who is not in existence, and for whom, if in existence , he would be a trustee.”*

5. The plaintiffs-appellants filed Title Suit No. 148 of 1972 for a relief of declaration of title and confirmation of possession as well as for a decree of permanent and mandatory



injunction. Mandatory injunction was sought for as direction to the defendants-respondents to close the door which the defendants had opened in their eastern wall towards the land of the plaintiffs cow-shed as well as for a direction to the respondent for restoration of the damage portion of the northern wall of the suit land. The suit land is 16 ½ decimals of Plot No. 485 under Khata No. 97 marked as 'A' to the plaint schedule. The plaintiff claimed the aforesaid land by purchase through oral settlee from the descendants of the ex-landlord. The plaintiff further stated that from his original house standing over a portion of the same land purchased earlier through registered sale deed, the plaintiff opened the door towards the suit land and constructed the cowshed and the remaining vacant land was being used for cultivation. It is further pleaded that the defendants who are members of a Joint Hindu Mitakshra family, have got their residential house adjacent to the suit land on Plot No.484. Taking advantage of the absence of the male members of the plaintiffs family in the night on 25.04.1972, the defendants stealthily opened the door in their eastern wall of house opening into the cowshed of the plaintiff with malafide motive to have access to the land of the plaintiff and further demolished a portion of the northern boundary wall of the suit land. This was done with motive to create evidence to show user of the suit land. The



highhandedness of the defendants seriously evaded the privacy of the female apartment of the plaintiff's residence. Thereafter the plaintiff No.3 filed a petition under Section 144 Cr.P.C., the police reported the possession of the plaintiff over the disputed land as well as the fact that the defendants have opened wall into the plaintiff's cowshed. In para-15 of the plaint, it is specifically stated that the cause of action for the suit arose on 25.04.1972 when the defendants opened the door in their western wall and opening into the plaintiffs' Goshala when the defendants threatened to disturb the possession over the suit land.

6. In their written statement, the defendant-respondents refuted and disputed the case and claim of the plaintiffs, inter alia, on the ground that the suit is barred under the provisions of Specific Relief Act. The defendants further asserted that the oral Hukumnama said to be granted by Harun Rashid , the ex-landlord, was a forged and fictitious document. In respect of the said oral Hukumnama, the defendants further asserted that Harun Rashid and Qaiyumunnisa had never orally settled the suit land to anyone rather after death, the son Layeek Khan sold the suit land through registered sale deed on 23.12.1959 to Syed Abas Akhtar. The defendants purchased from Syed Abas Akhtar and Hamida, the daughter of Qaiyumunnisa through registered



sale deed of 22.08.1970 and 17.11.1971 respectively .They further claimed that after purchase, they came in possession over the suit land and are continuing as such. They further stated that the cowshed is in peaceful possession of the defendant-respondents.

7. On consideration on oral and documentary evidence, the learned trial court believed the case and claim of the plaintiffs-appellant that the oral settlement in favour of the vendor of the plaintiff was a genuine transaction, as such the plaintiff has got title over the suit land. On the point of possession, the learned trial court observed in paragraph-19 of the judgment as follows:

“ It was argued that since the plaintiffs are not in possession mere declaration of title will not serve any purpose. On the other hand it was argued that under the circumstances of the suit a decree for recovery of possession may be granted even if not specifically prayed for. The plaintiffs have prayed for declaration of title with consequential relief of confirmation of possession and injunction. Hence it is not merely a suit for declaration restoration of possession is relief equal to the reliefs for



confirmation of possession and hence such a relief may be granted as an equitable relief. Therefore, I find and hold that the suit is not barred under the provisions of Specific Relief Act and the plaintiffs are entitled to a decree for recovery of possession of the suit properties. Hence these two issues stand decided accordingly.”

8. The learned trial court accordingly decreed the suit.

9. The learned lower appellate court found that the plaintiffs failed to prove the case of oral settlement in favour of the vendor of the plaintiff, as no document of Hukumnama was produced during trial and the learned trial court on conjectures and surmises presumed oral settlement. Accordingly, the trial court came to the conclusion that since the vendor of the plaintiff had no title, the plaintiffs did not acquire any title rather the defendants proved their purchase from a rightful owner and accordingly found title of the defendants-respondents on the suit land.

10. The learned lower appellate court considered the aforesaid question of law in the impugned judgment in para-32, as point No.3 chalked out for consideration in the appeal. Point No.3 was whether the suit is barred under the



provisions of the Specific Relief Act.

Para-32 of the judgment is as follows:

“Point No.3:-Now I will consider the question whether the suit is barred under the provisions of Specific Relief Act. Admittedly the defendants have their doors, windows, Goshala and Baithka in the eastern wall and also on the suit land. Even if it was found that the argument sake by the Court that the plaintiffs had right, title and interest in the suit land (block-A) this suit must have failed on account of the fact that there was no prayer for consequential relief under Section 34 of the Specific Relief Act for recovery of possession”.

11. The learned lower appellate court reversed the finding of the trial court and set aside the judgment passed by the trial court and allowed the appeal.

12. Learned senior counsel for the appellants submits that the finding of the learned lower appellate court is based on misappreciation of evidence. Learned lower appellate court has not met with the reasons assigned by the learned trial court while accepting the case and claim of the plaintiffs-appellants. Learned senior counsel further submits that the



learned lower appellate court has not considered that in the facts and circumstances of this case, there was no need for prayer of consequential relief by the plaintiffs-appellants.

13. On the other hand, learned senior counsel for the respondents has taken this Court to the judgment of learned lower appellate court and the evidence brought on the record thoroughly and submits that the erroneous finding of the trial court has been meted out by the learned lower appellate court with cogent evidence and cogent reasons, which requires no interference.

14. Learned senior counsel for the respondents took this Court to the evidence of plaintiffs' witnesses to substantiate his argument that the plaintiffs are not in possession of the suit land. P.W.16, Shivnandan Prasad is party to the suit and has admitted in para-32 of his deposition that in absence of this witness, the defendants opened the door towards the suit land in the night. No criminal prosecution was launched for the aforesaid occurrence of the defendants and thereafter the defendants are in possession of Goshala. The rest land is vacant. P.W.9 Saryu Prasad has deposed that he had seen the defendants' exit towards east since 1973-74 vide para-6. However he did not ask the defendants about the reason for opening the outlet towards the suit land. P.W.10 Shyamlal Bhuiya deposed that since long he is seeing the



eastern door of the defendants towards the suit land and beyond the door towards east, there is outer house of Jagdish etc (defendants). In the past, there was Goshala. However, later on it was converted into Baithka and in the parti land, there is Khalihan of Jagdish, the defendant side). P.W.11 Baidehi Kant Saran has stated in para-7 that towards the eastern side of the defendant's house, the defendants have opened the Rasta in the year 1973. The witness has denied that the Gate was opened long back. However, asserted that the Gate was opened 8-9 years back. Almost similar is the statement of P.W.13 Kesar Singh in para-6 and 11.

15. It is not disputed that the plaintiffs never made any prayer for amendment of pleading for relief of recovery of possession nor any court fee was paid for grant of consequential relief. The pleading and material on the record clearly establishes that the plaintiffs-appellants were not in possession of the suit land on the date of institution of the suit. As such, they were required to pray for consequential relief, in view of the provisions of Section 34 of the Special Relief Act. A similar question was there before the Hon'ble Apex Court in ***Union of India Vs. Ibrahim Uddin & Anr***, reported in **(2012) 8 SCC 148** . Para-55 to 57 are being reproduced below.

55. The section provides that courts have discretion as to declaration of status or right,



however, it carves out an exception that a court shall not make any such declaration of status or right where the complainant, being able to seek further relief than a mere declaration of title, omits to do so.

56. In Ram Saran V. Ganga Devi, (1973)2 SCC 60: AIR 1972 SC 2685 this Court had categorically held that the suit seeking for declaration of title of ownership but where possession is not sought, is hit by the proviso of Section 34 of the Specific Relief Act, 1963 (hereinafter called “ the Specific Relief Act”) and, thus, not maintainable. In Vinay Krishna V. Keshav Chandra, 1993 Supp. (3) SCC 129: AIR 1993 SC 957 this Court dealt with a similar issue where the plaintiff was not in exclusive possession of property and had filed a suit seeking declaration of title of ownership. Similar view has been reiterated observing that the suit was not maintainable, if barred by the provision to Section 34 of the Specific Relief Act. (See also Gian Kaur Vs. Raghubir Singh, (2011) 4 SCC 567: (2011)2 SCC (Civ)



366).

57. In view of the above, the law becomes crystal clear that it is not permissible to claim the relief of declaration without seeking consequential relief”.

16. In view of the aforesaid legal position, the pleadings and evidences brought on record as discussed above, there is no hesitation to record that the plaintiffs-appellants were not in possession of the suit land on the date of institution of the suit and was required to seek for consequential relief of recovery of possession which they did not ever seek for. Hence, the suit was fit to be dismissed. The substantial question of law is answered against the plaintiffs-appellants and it is held that the learned lower appellate court has rightly decided that the suit for declaration of title and confirmation of possession was not maintainable in absence of the specific prayer for recovery of possession as required by Section 34 of the Specific Relief Act. Accordingly, this appeal stands dismissed and the judgment of the lower appellate court stands affirmed.

17. Learned senior counsel for the appellants relied upon the following cases, which are not applicable in view of the judgment of the Hon'ble Supreme Court aforesaid or for the reason that they were delivered in different facts and



circumstances of the case. Learned senior counsel for the appellants has relied on judgment of **B.Ayyaparaju Vs. Secretary of State**, reported in **AIR 1915 Madras 29**. In that case, the question before the High Court was whether the plaintiff was required to seek for recovery of possession, if it was found that the plaintiff was in possession within 12 years and was dispossessed by a trespasser. In the present case, defendants- respondents claimed the suit land by virtue of purchase from title holder. The learned lower appellate court on consideration of the evidence has found the case of the defendants-respondents acceptable as purchaser from rightful owner and in possession of the suit property. Hence, the aforesaid case is not applicable.

18. The appellants further relied on the case of **Gajadhar Singh Vs. Hari Singh & Ors, reported in 1925 Allahabad 421**. That was a suit by mortgagor to declare his title and the Allahabad High Court held that there was no need for prayer of further relief of redemption of mortgage.

19. Similarly the judgment of Privy Council in the case of **Adusumilli Kristnayya & Anr Vs. Adusumilli Lakshmipathi & Ors**, reported in **Law Reports Indian Appeals 1919-20 Vol-XLVII** and the judgment delivered in the case of **Babu Lal Vs. Kanhai & Ors**, reported in **AIR (39) 1952 Allahabad 303** is not applicable in the present facts



and circumstances of the case as discussed above.

20. Accordingly, this appeal stands dismissed.

However, without any cost.

(Birendra Kumar, J)

Nitesh/-

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