

SUPREME COURT OF INDIA

Om Prakash Ram

Vs.

State of Bihar

C.A.No.3936-3937 of 2019

(N.V.Ramana and Mohan M.Shantanagoudar,JJ.,)

15.04.2019

JUDGMENT

Mohan M.Shantanagoudar,J.,

SLP(Civil)No.9929-9930 of 2019

1. Delay condoned.

2. Leave granted.

3. The father of the fifth respondent herein, Sidheshwar Prasad, i.e. the late Brhamdeo Narayan, at the first instance, filed Title Suit No. 105/1970 for declaration of title, restoration of possession and for eviction of the predecessor-in-interest of the appellant and certain other persons in the year 1970 in respect of the disputed property, which came to be dismissed on Brhamdeo Narayan, filed another suit in the year 1988 (i.e. after 17 years) for declaration and for injunction against the appellant herein and the State Authorities in respect of the disputed property. The said suit (renumbered as Title Suit No. 32/1993), with the fifth respondent and his mother and brother brought on record as the legal representatives of the original plaintiff after his death by means of substitution, came to be decreed ex-parte against the appellant and others on 06.06.1994. No notice was served on the defendants in the said suit. On 21.11.1994, the appellant herein filed what eventually came to be numbered as Miscellaneous Case No. 6/1999, for setting aside the ex-parte judgment and decree dated 06.06.1994 passed against him. After a long-drawn trial in Miscellaneous Case No. 6/1999, the same came to be allowed on 21.05.2003, and consequently the ex-parte decree passed against the appellant and others on 06.06.1994 in Title Suit No. 32/1993 was set aside, and the said title suit was restored to its original file and number. It was specifically held that notice had not been served on the appellant herein (a defendant in the Title Suit No. 32/1993). On 29.08.2006, the said suit (by now renumbered as Title Suit No. 01/2003) was dismissed.

4. Meanwhile, taking advantage of and based on the ex-parte decree dated 06.06.1994, the fifth respondent initiated three proceedings (i.e. demarcation, writ and contempt). He first

initiated Demarcation Case No. 49/1997 before the demarcation Court, praying for the demarcation of R.S. Plot No. 313 (i.e. the disputed property), for the erection of a boundary wall, and for the fixing of permanent pillars. In the said demarcation case, neither the appellant nor his predecessor-in-interest were made parties. The demarcation case was allowed on 08.01.1998, with directions for getting R.S. Plot No. 313 demarcated and for the submission of a report. Though such direction was issued by the demarcation Court on 08.01.1998 in favour of the fifth respondent, the same was not implemented by the concerned authorities, probably due to the pendency of Miscellaneous Case No. 6/1999. Hence, the fifth respondent next approached the High Court of Judicature at Patna in CWJC No. 3221/2003 for a direction to implement the order passed in Demarcation Case No. 49/1997. In the said writ petition also, the fifth respondent did not implead either the appellant or his predecessor-in-interest. The writ petition came to be allowed on 10.01.2008 by the High Court of Judicature at Patna with a direction to implement the order passed in Demarcation Case No. 49/1997. However, the order passed in this writ petition was also not implemented. Hence, finally, the fifth respondent moved a contempt petition in the form of Miscellaneous Jurisdiction Case No. 5323/2011 before the High Court of Judicature at Patna, in which a direction was issued on 16.12.2015 to the District Magistrate, Gaya as well as the Superintendent of Police, Gaya to implement the order of demarcation in Case No. 49/1997, and order dated 10.01.2008 in CWJC No. 3221/2003. The orders passed in the demarcation case and the writ petition were subsequently implemented. The possession of the demarcated property was also handed over in favour of the fifth respondent, that is to say, the appellant came to be dispossessed pursuant to the order dated 16.12.2015. It is relevant to note that the appellant was not made a party in Title Suit No. 01/2003, CWJC No. 3221/2003 or Miscellaneous Jurisdiction Case No. 5323/2011, and consequently, the appellant did not have notice with respect to any of these proceedings. However, the appellant did file Civil Review No. 21/2011 in CWJC No. 3221/2003 on gaining knowledge of the order dated 10.01.2008, highlighting the suppression of material facts by the fifth respondent as noted above, but the same was dismissed with the clarification that if the orders underlying the demarcation proceedings had been superseded subsequently, the later adjudication would naturally prevail, and the appellant could point out the same to the relevant authorities involved in the dispute. The appellant thus came to be dispossessed based on the orders passed in the above proceedings. As mentioned supra, the orders passed in Demarcation Case No. 49/1997, CWJC No. 3221/2003 and Miscellaneous Jurisdiction Case No. 5323/2011 were all passed based on the ex-parte decree dated 06.06.1994.

5. We may repeat for the sake of convenience that Miscellaneous Case No. 6/1999 filed by the appellant praying for setting aside the ex-parte decree passed on 06.06.1994 in Title Suit No. 32/1993 (renumbered later as Title Suit No. 01/2003, as noted previously) was ultimately allowed on 21.05.2003, holding that notice was not served on the defendants in the said title suit, including the appellant herein, and the ex-parte decree was set aside and restored to its original file and number. Furthermore, the Title Suit No. 01/2003 was dismissed vide order dated 29.08.2006. If it is so, the order passed in Demarcation Case No. 49/1997 and the subsequent orders passed in CWJC No. 3221/2003 and Miscellaneous Jurisdiction Case No. 5323/2011, which were passed based on the ex-parte decree in the title suit, are also liable to be set aside, and possession needs to be restored in favour of the

appellant.

6. In this backdrop, the appellant filed CWJC No.1806/2016 before the High Court of Judicature at Patna for recalling the order dated 10.01.2008 passed in CWJC No. 3221/2003 and the order dated 16.12.2015 passed in Miscellaneous Jurisdiction Case No. 5323/2011. Unfortunately, the High Court dismissed the writ petition vide order dated 29.03.2016 with costs of Rs.25,000/-, with a direction to the District Collector, Gaya to recover the amount from the appellant. The said order was partly confirmed by the Division Bench of the High Court of Patna in LPA No. 831/2016 vide order dated 06.06.2016, only being modified in terms of setting aside the costs imposed, as the counsel for the appellant had limited his argument to this issue. The same was confirmed in Civil Review No. 563/2016 vide order dated 20.11.2017, dismissing the appellant's prayer to decide the matter on merits. These two orders are impugned in these appeals.

7. As mentioned supra, the entire exercise by the fifth respondent to get the disputed property demarcated and to secure possession thereof was based on the ex-parte decree dated 06.06.1994 passed in Title Suit No. 32/1993. Though Miscellaneous Case No. 6/1999 had been filed by the appellant for setting aside the ex-parte decree and was pending before the District Court, the fifth respondent suppressed the said fact and got the property in Demarcation Case No. 49/1997 demarcated, and thereafter in spite of the ex-parte decree being set aside, obtained possession of the property in question by virtue of the orders of the High Court in CWJC No. 3221/2003 and Miscellaneous Jurisdiction Case No. 5323/2011. Though Miscellaneous Case No. 6/1999 for setting aside the ex-parte decree was allowed on 21.05.2003 and the ex-parte decree dated 06.06.1994 was set aside, the proceedings on the basis of the order passed in the demarcation case continued before the learned single Judge and the contempt Court, with a clear suppression of material facts by the fifth respondent. Therefore, the orders passed by the concerned officer in Demarcation Case No. 49/1997, the orders passed by the High Court of Judicature at Patna in CWJC No. 3221/2003, (including the order dated 27.02.2013 passed in Civil Review No. 21/2001 in CWJC No. 3221/2003), the order dated 16.12.2015 passed in Miscellaneous Jurisdiction Case No. 5323/2011 and the order dated 29.03.2016 passed in CWJC No. 1806/2016, are liable to be set aside. Consequently, the impugned orders dated 06.06.2016 and 20.11.2017 are also set aside.

8. It is evident that the possession of the property in question needs to be restored in favour of the appellant, inasmuch as he was dispossessed based on the ex-parte decree dated 06.06.1994 which ultimately came to be set aside, and as the underlying suit (viz. Title Suit No. 01/2003) itself came to be dismissed vide order dated 29.08.2006, as mentioned supra.

9. The appeals are allowed with the above observations. It is open to the appellant to get back possession of the property in question in accordance with law in terms of this judgment.