

## PATNA HIGH COURT

Khemi Mahatani

Vs

Charan Napit

A.F.A.D. No. 835 of 1949

(Narayan, J.)

09.03.1953

### JUDGMENT

#### **Narayan, J.**

1. The plaintiff is the appellant, and the appeal arises out of a suit for partition. The plaintiff claims to be the purchaser of one-half share in 31 bighas of land which are the subject-matter of the suit and which are recorded in khatian No.171 of the survey record. The plaintiff's allegation is that she had purchased the one-half share belonging to the sons of Arjun and the grandsons of Hridaya. The lands had been recorded in the survey in the names of Arjun and Nagar, the father of Arjun and Nagar being first cousin. The defendant is the son of Nagar, and according to the plaintiff's allegation the sons of Arjun were in possession of the one-half share until the transfer of it to her through a sale deed dated 5-6-1944.
2. The defendant contested the suit on the pleas that Sashi and Moti the two sons of Arjun, had no interest in the property and were never in possession thereof and that Arjun had in his own lifetime sold his one-half share in the khata to Nagar through an unregistered document dated the 17th Jaistha 1321 B.S., which would correspond to May 1914, and had left the village for good. According to the defendant's allegation he and his father had been in possession of the entire khata even since the year 1914.
3. The Court of first instance had once dismissed this suit, and on an appeal having been preferred by the plaintiff against its decision there was a remand of the suit with the direction that the suit should be decided afresh after taking the sale-deed propounded by the defendant into evidence. After the remand the document of sale propounded by the defendant was admitted into evidence, and the decision which had been originally arrived at was reaffirmed by the learned Munsif. The plaintiff again preferred an appeal to the District Judge, and the appeal was heard by Mr. S.B. Ahmad, Additional Subordinate Judge, Purulia, who agreed with the learned Munsif that ever since the year 1321 B.S. the defendant had been in possession of the entire khata.
4. Mr. R.S. Chatterji appearing for the plaintiff-appellant has contended that the document of sale

propounded by the defendant should not have been admitted into evidence because it was unregistered and an unstamped document and was also hit by Section 46, Chotanagpur Tenancy Act. The learned counsel has further submitted that if this document is left out of consideration, then the possession of the defendant or his father over the interest which was once possessed by Arjun and his sons cannot be deemed to be adverse.

5. There is no difficulty in repelling the contention that the document should be rejected because it is unstamped. Section 36, Stamp Act, lays down that where an instrument has been admitted in evidence, such admission shall not, except as provided in Section 61, be called in question at any stage of the same suit or proceeding on the ground that the instrument has not been duly stamped. Mr. Chatterji has contended that if the document has been admitted after objection, this section will not apply. Firstly, it is now settled by several authoritative decisions that Section 36 would be applicable whether the document has been admitted with or without objection. This was the view taken by a Division Bench of this Court as early as in 1927 - *'Jagdip Singh v. Firangi Singh'*<sup>1</sup>. Rankin, C.J., in - *'Nirode Basini v. Sital Chandra'*<sup>2</sup>, (1), observed as follows :

"On the merits of the appeal, it appears to me that Section 36, Stamp Act, makes it reasonably clear that the instrument having once been admitted in evidence is not to be called in question at any stage of the same suit. The special Judge has seen this section but has thought to avoid the consequence of it by taking notice of an affidavit in which it is said that the tenure-holders did object when the document was tendered and that there was a discussion as to its admissibility. The learned Judge has entirely failed to see that, under Section 36, it matters nothing whether it was wrongly admitted or rightly admitted or admitted without objection or after hearing or without hearing such objection. These stamp matters are really no concern of the parties and if the objection was taken at the time when the record was made up by the trial Court, there it might be rejected if not, the matter stopped there."

This observation was quoted with approval by a Division Bench of this Court in - *'Krishna Kumar v. Mt. Jagpati Kuer'*<sup>3</sup>, The Allahabad High Court in - *'Noor Ahmad v. Irshad Ghaus'*<sup>4</sup>, followed the dictum laid down by the eminent Chief Justice. Secondly, it is not correct to urge that this document (ext.C) was admitted into evidence in spite of an objection raised on behalf of this plaintiff. The exhibit list is on the record and it shows that it was admitted into evidence without any objection on the part of the plaintiff. In fact, a remand had been ordered by the learned Subordinate Judge for the purpose of taking this document into evidence. There was no appeal or civil revision preferred against the order of remand passed by the learned Subordinate Judge on 26-4-1947, and even if the plaintiff did not move any higher Court against the order of remand, he was not prevented from taking exception to the admissibility of the document at the time when the learned Munsif, after remand, admitted it. The Privy Council case cited by the learned counsel, - *'Ram Rattan v. Parma Nand'*<sup>5</sup>, is not a case where unregistered documents had been admitted into evidence. The judgment of Sir John Beaumont shows that the documents had been merely marked for identification. In any view of the matter, therefore, the document cannot be rejected on the ground that it is unstamped.

6. I think, as has been pointed out in very recent decision of this Court, - *'Girija Nandan v.*

*Girdhari Singh*<sup>6</sup>, "that unregistered documents have been so used for collateral purposes in evidence is borne out by a very large number of decisions".

The case of - *Baldeo Singh v. Sheikh Muhammad Akhter*<sup>7</sup>, is a direct authority in support of the view that although an unregistered sale-deed is not admissible in evidence to prove title, nevertheless it could be referred to as explaining the nature and character of the possession thenceforth held by the party. Their Lordships in this case relied on a Privy Council decision in - *Varada Pillar v. Jeevarathnammal*<sup>8</sup>, in which it was held that a gift, though invalid as not being made by a registered document, could be looked into as explaining the nature and the character of possession thenceforth held. Authorities on this point need not be multiplied and, in my opinion, the Courts below were perfectly justified in taking this document into evidence for the purpose of explaining the nature and the character of the possession held by the defendant. The document conclusively shows that after the transferring of his one-half share to the defendant's father, Arjun had left the village and had gone over to a place called Sasangtanr. From Sasangtanr he went to another place called Bansha, and when the sale-deed in favour of the plaintiff was executed Sashi and Moti, the vendors of the plaintiff, lived in Bansha, and they are still living in that village. The learned Subordinate Judge has, after considering the evidence, come to the conclusion that the plaintiff has hopelessly failed to prove that Arjun or his sons were in possession of the lands after 1321 B.S., and he has also correctly observed that though the sale-deed propounded by the defendant did not confer any title on him, it is evidence of the fact that the defendant was asserting a hostile title against Arjun and his sons ever since the execution of this document. This is not a case in which it can reasonably be urged that possession is "referable to a state of mind in consonance with the honest intention of holding the estate in safe custody for the true owner who is traceless", and therefore the observation of Ray, J. in - *Dipnarain v. Pundeo*<sup>9</sup>, has got no application whatsoever in this case. Here, the established facts are that the co-sharer who held one half interest had parted with his interest as early as in 1321 B. S., and ever since then the other co-sharer had in his possession the lands of the entire khata.

7. Section 46, Chotanagpur Tenancy Act, as it stood at the time when the transfer in favor of the defendant was effected no doubt completely prohibited the transfer by the raiyat of his right in his holding by sale. Sub-section (3) of Section 46 further laid down that no transfer in contravention of sub-section (1) shall be registered, or shall be in any way recognized as valid by any court, whether in the exercise of civil, criminal or revenue jurisdiction. The position, therefore, is that no such transfer could be effected according to law, nor could such transfer be registered, but in a series of decisions it had been pointed out that if there is a transfer effected in violation of the law, the transferee would be deemed to be in adverse possession ever since the date of the transfer. The case of the defendant, therefore, that he has acquired an indefeasible title to the property by adverse possession gets strengthened by reference to Section 46, Chotanagpur Tenancy Act.

8. The contentions urged by the learned Counsel for the appellant are, therefore, not fit to succeed, and I would accordingly dismiss this appeal with costs.

Appeal dismissed.

Cases Referred.

- <sup>1</sup> AIR 1928 Pat 155
- <sup>2</sup> AIR 1930 Cal 577
- <sup>3</sup> AIR 1937 Pat 73
- <sup>4</sup> AIR 1933 All 821
- <sup>5</sup> AIR 1946 PC 51
- <sup>6</sup> AIR 1951 Pat 277
- <sup>7</sup> AIR 1939 Pat 488
- <sup>8</sup> AIR 1919 PC 44
- <sup>9</sup> AIR 1947 Pat 99