SUPREME COURT OF INDIA

Sheodhari Rai and Others

v.

Suraj Prasad Singh and Others

(Das J. and others)

December 01, 1950

Judgment

Das J.

1. This is an appeal by the defendants first party against the judgment and decree of the High Court of Patna (Manohar Lall and Ray JJ.) dated February 23, 1948, which reversed the decree of the Subordinate Judge at Chapra, dated April 05, 1945, and decreed the suit in favour of the plaintiffs.

2. The suit out of which the present appeal has arisen was instituted by the plaintiffs for a declaration of their title to, and confirmation of their possession of, certain lands and other ancillary reliefs. The plaintiffs claimed to have derived their title to the lands in suit by purchase from the defendants second party by and under a registered deed of sale dated July 19, 1942. The relationship of the defendants second party was shown in a pedigree-table annexed to the plaint and reproduced below:

(Pedigree table as given in the source:) MILIK RAI | Sheo Sahai Rai Ram Sahay Rai | | | Doma Rai-Mst. Bhagjogna | | Kari Rai- Budha Kuer ---| | | | | Janki Risal Udit Sudit Pargas Sharda Rai Rai Rai Rai Rai Rai | | | | Gobind Bator Bishun Soman Rai Rai Rai Rai -Mst. Malda Kuer (Defdt. 4) -Adhikari Kuer Singhasan Rai (Defdt. 6) (Def. t. 5)

3. Janki Rai and Sharda Rai apparently left no issue.

4. The plaintiffs' case was that on the deaths of Maida Kuer widow of Gobind Rai and of Budha Kuer widow of Kari Rai, Bator Rai (defendant 4) and Singhasan Rai (defendant 5) as their nearest reversioners inherited the shares of Gobind Rai and Kari Rai in the properties in suit. Thus at the date of the deed of sale in favour of the plaintiffs the defendants second party, namely, Bator Rai (defendant 4), Singhasan Rai (defendant 5) and Mt. Adhikari Kuer (defendant 6) had the entire 16 annas share in the properties in suit and the plaintiffs were *bona fide* purchasers for value from them and as such filed the suit for the reliefs already mentioned. The suit was contested by the defendants first party. They disputed the correctness of the pedigree-table annexed to the plaint and in paras. 7 and 8 of their written statement purported to set out what, according to them, was the real genealogical table. They claimed in para. 18 of the written statement that on the deaths of Maida Kuer and Budha Kuer, the father of the defendants 1 and 2 came into possession of the shares of Gobind Rai and Kari Rai as their nearest reversioner and that Bator Rai (defendant 4) or Singhasan Rai (defendant 5) had no connection or concern with those shares. They further pleaded in para. 19 of the written statement that the lands of Bator Rai (defendant 4) and Singhasan Rai (defendant 5) were in the possession of the defendants first party as Shikmidars for over 20 years and that they had acquired occupancy rights in those lands according to law. It will be observed that *Shikmi* rights were claimed under Bator Rai (defendant 4) and Singhasan Rai (defendant 5) with respect to their respective shares in the lands in suit and not with respect to the shares that were of Gobind Rai or Kari Rai. Indeed, it was categorically pleaded that Bator Rai (defendant 4) and Singhasan Rai (defendant 5) had no concern or connection with the shares of Gobind Rai and Kari Rai.

5. The learned Subordinate Judge held that the pedigree-table set out in the plaint was correct and that the defendants first party or the father of defendants 1 and 2 did not inherit the shares of Gobind Rai or Kari Rai on the deaths of their respective widows Maida Kuer and Budha Kuer but that Bator Rai (defendant 4) and Singhasan Rai (defendant 5) inherited those shares as the nearest reversioners of Gobind Rai and Kari Rai and consequently by and under the registered deed of sale the plaintiffs acquired title to the lands in dispute. The Subordinate Judge, however, came to the conclusion that Bator Rai (defendant 4) and Singhasan Rai (defendant 5) made a *Shikmi* settlement not only of their original share in the lands but also of the shares of Gobind Rai and Kari Rai which on the deaths of their respective widows they (the defendants 4 and 5) had inherited as the nearest reversioners. The learned Subordinate Judge was conscious that no such case was made in the written statement but felt bound to arrive at that conclusion which seemed to him to afford the only rational explanation for the defendants first party being in possession of the lands of Maida Kuer and Budha Kuer and paying their rents to the superior landlords ever since 1333 F. S. In the result, the learned Subordinate Judge, while declaring the plaintiffs' title, declined to make a decree for possession in their favour because the defendants first party were Shikmidars in respect of the lands in suit and could not be ejected therefrom.

6. The plaintiffs appealed. The High Court pointed out, quite correctly we think, that it was not right for the trial Court to make out a new case for the defendants first party with respect to the shares of Gobind Rai and Kari Rai, which was not only not made in their written statement but was wholly inconsistent with the title set up by the defendants. The High Court found that the fact of payment of rent by the defendants first party to the superior landlords as evidenced by the rent receipts (Ex. E series) produced by the defendants first party from their own custody was quite consistent with their having permissive occupation of the lands under an amicable arrangement with the defendants second party without there being any relationship of landlord and tenant between the two sets of defendants. The High Court found support for this conclusion in the evidence of Jagarnath Rai defendant No. 2 himself, relevant parts of which are quoted in the High Court judgment. On a review of the evidence on record the High Court came to the following conclusions:

> *"In the ultimate analysis the position reduces itself to this: (1) that settlement of the disputed lands with the defendants first party in* Shikmi *has not been established; (2) nor has it been established that they have ever paid any rent as Shikmidars in respect of the disputed lands; (3) that as kinsmen of the defendants second party, they were cultivating the lands and paying rents payable in respect of them to the proprietors by virtue of an arrangement for permissive occupation; (4) that any relationship of landlord and tenant was never contemplated between them; (5) that the contesting defendants do not set up a case of right by adverse possession; (6) that even if assumed that they do set it up, they cannot have it because the rent receipts produced by them would go to show that they have been acknowledging the title of the defendants second party till within 12 years of the institution of the suit; (7) that it was not open to the trial Court to make a case which was not set up by the parties; and (8) that it is clear that the defendants have not been able to prove any title or right to possession in themselves in respect of the lands in suit so as to be able to successfully resist the plaintiffs' claim for declaration of title and recovery of possession."*

7. Learned Advocate for the appellants has taken us through the pleadings and the evidence on record but our attention has not been drawn to anything which may be said to throw any doubt on any of the above findings of the High Court which, we are satisfied, are quite well-founded. Learned Advocate for the appellants contended that the plaintiffs having made a case of dispossession, no decree for possession could possibly be made in their favour as it was not proved that they were in possession at some time within 12 years prior to the date of the suit. There is no

substance in this contention in view of the findings of the High Court. The possession of the defendants first party being only permissive, the defendants second party must be regarded as having been in possession through the defendants first party until the latter asserted an adverse possession which, however, was only shortly before the date of sale of the lands to the plaintiffs.

8. The result, therefore, is that we dismiss this appeal with costs.

Case Number(s)
Not stated in the source

Advocate(s)
Not stated in the source text.
(P) – Provisional