

Court of 1st Addl. District Judge Jamshedpur

T. Appeal No - 30/06

S.K. Banerjee - Vs - State of Jharkhand.

District :- East Singhbhum.

IN THE COURT OF THE 1ST ADDITIONAL DISTRICT JUDGE,
AT JAMSHEDPUR

Dated, Jamshedpur, the 10th the day of February, 2009.

TITLE APPEAL NO. 30 OF 2006

(Appeal against the Judgment dated 7th August 2006 and Decree dated 21.8.2006 passed by Munsif, Jamshedpur in Title Suit no. 90 of 2007).

1. Sushil Kumar Banerjee, Son of Late Amulya Charan Banerjee.
2. Pratim Banerjee, Son of Sushil Kumar Banerjee.

- Both by faith Hindu, by occupation - Business, resident of 17, Rajendra Nagar Colony, P.O. and P.S.-Sakchi, Town-Jamshedpur, District - Singhbhum East..... APPELLANTS/PLAINTIFFS.

-VERSUS-

The State of Bihar (Jharkhand), represented through the Deputy Commissioner, East Singhbhum at Jamshedpur..... RESPONDANT/DEFENDANT.

For the Appellant :- Shri T.K. Mitra Advocate
Shri A. Choudhary, Advocate.

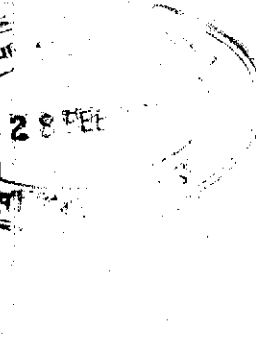
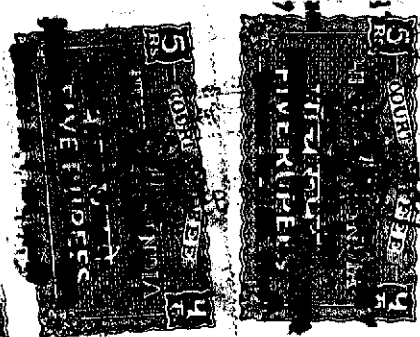
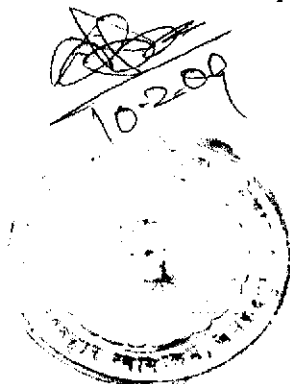
For the Respondent :- Shri Indranil Chatterjee, G.P.

Present :- LAKSHMIKANT SHARMA,
1ST ADDITIONAL DISTRICT JUDGE,
CIVIL COURTS, JAMSHEDPUR.

JUDGMENT

1. This Appeal stands directed against the judgment dated 7.8.2006 and decree dated 21.8.2006 passed by Munsif, Jamshedpur in Title Suit No. 90 of 2000 through which the suit of the plaintiff was dismissed without cost.

2. Being aggrieved at and dissatisfied with the judgment and decree passed by the learned lower court, the Plaintiffs/ Appellants filed an Appeal before the District Judge, Jamshedpur, who transferred this Appeal to the file of First Additional District Judge, Jamshedpur for disposal.

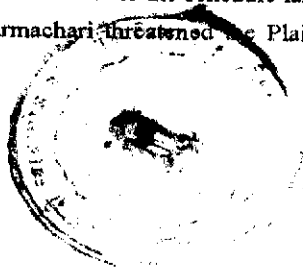


3. The Plaintiffs' case before the lower court was as follows :-

The plaintiff had filed a suit for declaration of title, confirmation of possession and for permanent injunction against the defendants. According to the plaintiff the land described in the Schedule is situated in Mouja-Mango present Municipal Khatian no. 727, present Plot no. 211 corresponding to Old Plot no. 20 and 23 under Old Khata no. 1 with house premises measuring 0.09 hectares including pucca house and boundary wall in Notified Area Committee, Town-Jamshedpur within the jurisdiction of this Court. Originally, the land was purchased by Md. Umar Usman from its previous owner by Registered Sale-Deed no. 53 dated 4.1.1958 and since then he was in peaceful possession over the suit land. Md. Umar Usman transferred ten kathas of land, out of this land to Aftab Ahmad Khan and Niyaz Ahmad Khan through a Registered Sale-Deed no. 3952 dated 27/8/1960 under Dhi-Bari right and delivered the actual physical possession to the purchasers. On the same day i.e. on 27.8.1960 the said Umar Usman sold the remaining five kathas of his purchased land to Hasnat Ahmad Khan by Registered Sale-Deed ~~to Hasnat Ahmad Khan~~ by Registered Sale-Deed No. 3953 dated 27.8.1960 and delivered the peaceful possession. During this peaceful possession Aftab Ahmad Khan and Niyaz Ahmad Khan sons of Barkat Ahmad Khan, Harkat Ahmad Khan son of late Haffiz Abdul Jabbar and Hasmat Ahman Khan sons of Hafij Abdul Jabbar Khan transferred the land through Barkat Ahmad Khan registered Lawful Attorney of LS/31, Dhatkidih, Jamshedpur by Sale-Deed No. 4577 dated 12.4.1974. During last municipal survey the lands has erroneously been recorded in the name of State of Bihar in Khata No. 727, Plot no. 211 showing the possession of Aftab Ahmad Khan and Niyaz Ahmad Khan, son of Barkat Ahman Khan, Hasnain Ahman Khan son of Hafiz Abdul Jabbar Khan since 1960, measuring an area of 0.09.99 hectares. The plaintiff, the present occupant being in possession of the land continuously for more than last thirty years and the present occupant acquired perfect and indefeasible title of the schedule land. This is further case of the plaintiff that the land described in Schedule below at the preliminary stage of recent survey has been recorded as raiyati land and preliminary purcha was granted to the Vendor Aftab Ahmad Khan and others. The entry in the survey record is wrong and erroneous as it has been recorded in the name and raiyati right by the purchasers in interest of Aftab Ahmad Khan and others. The wrong entry in the said Survey Khatian in respect of the land in the name of State of Bihar have not affected right, title and interest of the plaintiff and her predecessors in interest. The plaintiff is still in peaceful possession over the schedule land. On the basis of wrong and erroneous entry the Area Karmachari threatened the Plaintiff on 15.4.2000 for settlement of the



10/2/09



scheduled land to somebody else. The State of Bihar has got no right, title and interest over the suit land. The threatening of the Area Karmachari casted a cloud of peaceful title and possession of the plaintiff. Hence, this suit. The cause of action for this suit arose on 15.4.2000, the date of threatening. The plaintiffs served the Notice to the Defendant under Section 80 C.P.C, which was posted on 19.5.2000. The suit is valued at Rs. 25,000/- and after paying the court-fees, the suit has been filed.

4. Summons were issued upon the defendant to which the defendant has filed his written statement. According to the defendant, the suit is not maintainable in its present form, is bad for non-joinder and mis-joinder of parties, barred by Specific Relief Act and C.N.T.Act. The suit is under-valued. The value is not less than Rs. 1,00,000/-. The suit is barred by C.P.C. as no valid notice was served upon the defendants. This defendant has denied the allegations made in the Plaint. According to the defendant, the statement made in para-1 of the plaint is wrong. The suit-land has been recorded in the present Survey, Plot no.211 corresponding to Old Plot no. 20 and 23 under Khata No.1 with boundary wall with house premises in the name of State of Bihar and is Government land. The claim of petitioner is wrong. The statements made in para -2 is wrong. It is wrong to say that the plaintiff is in peaceful possession of the suit land on the basis of sale-deed purchased by him which is in violation of CNT Act, CPC as well as under the Municipal Act. The petitioner has no right, title or interest over the suit land. He has denied paras-3,4 and 5 of the Plaint and according to him the land is recorded in the name of State of Bihar. The Statements made in para-6 is wrong. The statements made in para-7 is also wrong and denied by the defendants. The statements made in para-8 is partly correct, but land was recorded in the name of raiyati right and the predeceased and in the year 1950 the entire suit-land vested to the State of Bihar under B.L.R. Act and since then the land is recorded in the name of State of Bihar. When the land was vested there was "khanapuri" by the Revenue Department and the karmachari, Circle Inspector as well as the Amin of the Circle Officer visited house to house, but in the record no where the name of plaintiffs appears. The statement made in para-9 of the plaint is wrong. The name of the State of Bihar is correct. The State of Bihar has got right, title and interest and possession of the land and the plaintiff is in illegal possession of the land and she is liable to be evicted under B.P.L.E. Act. The statements made in para-11 is wrong. The Area Karmachari has rightly asking the plaintiff to vacate the land as the land has been recorded in the name of State of Bihar. The statements made in para-12,13,14 and 15 are wrong and denied by the defendant. The valuation of the suit is



wrong. The present valuation of the suit-land is not less than Rs.1,00,000/- and unless advalorem court-fees is paid the suit is not maintainable and so he has prayed for dismissing the suit.

ISSUES

1. Whether the suit as framed is maintainable ?
2. Whether the plaintiff has got any cause of action to file this suit?
3. Whether the suit is barred by Limitation, Principle of Waiver, Estoppel, acquiescence or under the C.N.T. Act?
4. Whether the suit is bad for non-joinder and/or mis-joinder of necessary parties?
5. Whether a valid notice u/s 80 CPC has been served upon the defendant?
6. Whether the suit is under-valued and proper advalorem court fees has not been paid?
7. Whether the entries in the present survey settlement in the name of State of Bihar are not correct ?
8. Whether the plaintiff is in possession of the suit land for more than 30 years, and if so, has he acquired any valid right, title or interest over the suit property ?
9. To what relief, if any, the plaintiff is entitled for ?

FINDINGS

4. On perusal of the record it transpires that the plaintiff has examined four witnesses PW-1 Sushil Kumar Banerjee, PW-2 Dilip Kumar Prasad, PW-3 Harekrishna Mahto and PW-4 Shyamal Kumar Sur.

The plaintiffs have proved some documents :-

- Ext.1-Sale Deed No.4577 dated 12/4/74.
- Ext.1/a - Certified copy of Sale Deed Deed No. 53 dated 4/1/58.
- Ext.1/b - Certified copy of Sale Deed No. 2712 dated 27/3/60.
- Ext.1/c - Certified copy of Sale Deed No. 3953 dated 27/3/60.
- Ext. 2 - Khatian of Khata No. 727 present Municipal Survey.

10/2/09.

- Ext.3 – Notice Under Section 80 C.P.C.
- Ext.4 – A.D. of Notice U/s 80 C.P.C.
- Ext.5 – Postal Receipt No. 4706 dated 8/5/2000.
- Ext.6 – Letter dated 14/2/2006 issued from Suronta Banerjee to the Electrical Engineer, Mango.
- Ext.7 Series – are Receipts of Electrical Bills.
- Ext.8 Series – are Electrical Bills.
- Ext.9 – Notice u/s 89 of the C.N.T. Act dated 03/07/1976.
- Ext.9/a- Notice to Aftav Ahmad and Neyaz Ahmad Khan son of Barakat Ahmad Khan dated 6/4/63 issued by Revenue Officer.
- Ext.9/b- Notice dated 6/4/73 issued by Revenue Officer to Hasnath Ahmad Khan son of Hafiz Abdul Zabar Khan.
- Ext.10 – Raiyati Purcha in the name of Aftab Ahmad Khan, Neyaz Ahmad Khan son of Barakat Ahmad Khan.
- Ext.11 – Certified Copy of form of Application for copy dated 14/12/2001.

Issue Nos. 7 and 8 :- These issues were related with each other and the learned lower court has taken it jointly for consideration. After discussing the entire things the learned lower court has decided these issues against the Plaintiffs/Appellants. It seems that the Plaintiffs/Appellants' case is that he is in possession since 1974 and prior to him the Vendor of the plaintiff were in possession. It is also the case of the plaintiff that in the present Municipal Survey, Khata No. 727 was opened in the name of State of Bihar, but in the remarks column it has been mentioned as 'Abaidh-Dakhal' of the vendors of the plaintiff since 1960. So, according to the plaintiff, if the record of right is taken to be correctly, prepared, then the possession of the vendors will be presumed since 1960. The learned lawyer appearing on behalf of the Plaintiffs/Appellants has submitted that he has given a date that on 4.1.1958, the original tenant of this land transferred this land to the vendor of the plaintiff and later on the plaintiff has purchased it. The Revenue Authorities have also found the possession of the vendor of the plaintiff at the time of Survey settlement and after purchase the plaintiff is in possession then the possession of the Plaintiffs/Appellants will be deemed from the date of purchase of their vendors i.e. from 4.1.1958. The learned lawyer further submits that the learned lower court has accepted his possession, but he has not taken into the consideration about the possession

28 FEB 2006

28 FEB 2006

1092109



of the vendors of the Plaintiffs/Appellants. He has relied upon a decision reported in AIR 1964, Patna Page 31 in which the Division Bench of the Hon'ble Patna High Court in Johan Uraon(Ekka) and Anr. -versus- Sitaram Sao(Bhaget) and Ors has held "the possession of the defendant in Article 144 includes also the possession of the person from or through whom the defendant derived his liability to be sued and as such the defendant is entitled to tack his possession with that of his predecessor in-interest for the purpose of computing the statutory period of limitation for determining whether or not a perfected right has been acquired." So, the learned lawyer submits that in computing the possession of the Plaintiffs/Appellants the possession of the vendors from whom he has derived his possession should be counted and in this case it is a specific case of the plaintiff that on 4.1.58 through the Deed No. 53 Umar Usman purchased this land from the original owner and came in possession. Later on, he sold it to Aftab Alunad Khan and ors. On 27.8.1960 and these ~~predecessors~~ ^{predecessors} from Umar Usman sold the land to the Plaintiffs/Appellants. So, according to the learned lawyer the Plaintiffs Appellants will be presumed to be in possession since 4.1.1958. So, according to the learned lawyer these issues be decided in favour of the plaintiff and against the defendants.

The learned G.P. appearing on behalf of the Defendant Respondant has submitted that it is clear that the defendant has purchased this land on 12/4/74 so the possession will be counted from the date of purchased by the plaintiff only. He has further submitted that as the land was previously owned by a Member of Schedule Tribe So, without permission from the proper authority the sale or purchase by Umar Usman is illegal.

It is clear that while computing adverse possession, the Court has to see whether the party is in possession since the last thirty years and the possession must be opened to all. While perusing Ext.2 it seems that the Revenue Authority have found the possession of the vendor of the Plaintiff since 1960. So, if the version of this Revenue Authority is taken to be true, then also the possession of the plaintiff upto the filing of this suit becomes adverse to all i.e. it is for more than thirty years. As to the legality of Sale deed of 1958 is concerned, it is true that the plaintiff is not ~~not~~ ^{not} the purchaser, but he has come to declare his title on the basis of illegal possession over the suit land and on the basis of adverse possession of the plaintiff. So, differing with the view of the learned lower court I find and hold that the plaintiff is in possession of the suit land since more than thirty years and has acquired valid right, title and interest over the suit property. And the entry, in the khatian has not affected the right, title and interest of the plaintiff. So, these two issues are decided in favour of the plaintiff and against the defendant.

10/2/09

6. Issue No. 4 and 6 :- These issues were not pressed before the lower court as well as now also it has not been pressed.

7. Issue No. 5 :- This Issue has been decided in favour of the Plaintiffs/Appellants by the lower court itself. So, it remained intact.

8. Issue No. 3 :- Since, the plaintiff has amended the relief portion and he has not challenged the entry in the record of right, but he has amended the plaintiff and his sought relief that in the entry in the Record of Right has not the right, title and interest of the plaintiff. So, while deciding the Issue nos. 7 and 8 I have already stated that the entries of record of right have not affected the right, title and interest of the plaintiff over the suit land. So, this issue is decided in favour of the plaintiff.

Issue No. 1, 2 and 9 :- Considering this fact it is clear that the suit as framed is maintainable and the plaintiff has got cause of action for the suit and is entitled to the reliefs claimed. So, the appeal is allowed on contest without cost. The Judgment and Decree passed by the learned lower court is set-aside and the right, title and interest of the Plaintiffs over the suit-land is declared and the possession of the plaintiff is continued and it is also held that the entry in the record of right have not affected the right, title and interest and possession of the plaintiff over the suit-land.

(Dictated and corrected by me)

[Signature]

(LAKSHMIKANT SHARMA)
1st Additional District Judge
Jamshedpur

Dated, Jamshedpur, the 10th February, 2009

[Signature]

(LAKSHMIKANT SHARMA)
1st Additional District Judge
Jamshedpur

Dated, Jamshedpur, the 10th February, 2009.

Date of Application: 18.02.09 (Eighteenth Feb. Two Thousand Nine)
Date of Estimate: 20.02.09 (Twentieth Feb. Two Thousand Nine)
Date of Supply: 20.02.09 (Twenty Eighth Feb. Two Thousand Nine)
Date of Receipt: 28.02.09 (Twenty Eighth Feb. Two Thousand Nine)
Date of Making Estimate: 28.02.09 (Twenty Eighth Feb. Two Thousand Nine)

ADIA, FEB 2009

101.00
[Signature]

COMPARED BY
[Signature]
COMPARING CLERK

[Signature]

PREPARED BY
[Signature]
28/2/09
TYPIST



[Signature]
28/2/09
District
Jamshedpur
Authoris

Court of 1st Addl District Judge Jamshepur

T. Appeal No. 30/06

S.K. Banerjee - Vs. State of Jharkhand

is declared and the possession of the plaintiff is confirmed and it is also held that the entry in the record of right have not effected the plaintiff over the suit land.

Schedule XII-A Form No. 19-30

DECREE IN APPEAL

[Order XLI, Rule 35, Code of Civil Procedure]

DISTRICT East Singhbhum

IN THE COURT OF 1st Addl District Judge AT Jamshepur

Sri Sushil Kumar Banerjee, late Amulya Charan Banerjee (2) Sri Pradim Banerjee, late Sri Sushil Kumar Banerjee, both by faith Hindu, by occupation business, resident of 17, Rajendra Nagar Colony, P.O. and P.S. Sakchi, Jamshepur, District - Singhbhum East

State of Bihar / Jharkhand, represented through the Deputy Commissioner, East Singhbhum at Jamshepur.

Note - The addresses given above are the addresses for service filed by the parties under rules 19 and 22 of Order VII, or under rules 11 and 12 of Order VIII, of the first Schedule to the Code of Civil procedure, with the exception of who did not appear or omitted to file their addresses.

Appeal filed on 18-09-06

Suit valued at Rs 25,100/-

Appeal valued at Rs 25,100/-

Muhamarrir

Title Appeal No. 30 of 20 06 from the decision of the Court of Munsif Jamshepur dated the 7th day of August 20 06

This appeal coming on for hearing on the 10th day of February

District Jamshepur before Sri Sakshi Kant Sharma, 1st Addl. in the presence of for the Appellant and of

Sri T. K. Mitra, Advocate. Sri A. Chaudhary, Advocate. Sri Indranil Chatterjee, G.P.

*Here specify clearly the relief granted of other adjudication made

appeal is allowed on contest without costs. The judgement and decree passed by the learned lower court is set aside and the right, title and interest of the plaintiff over the suit land

04 MAR

