

Equivalent citations: AIR 1988 Pat 141

Bench: S Sandhawalia, S Jha

Baij Nath Singh And Ors. vs Teju Singh And Ors. on 17/9/1986

JUDGMENT

S.K. Jha, J.

1. This is one of these second appeals where I can easily say that fantasy and reality is not a rare thing, lightness for touch for levity or assumption of an illogical fantasy as a mere tale is just a moment of relaxation.

2. This Second Appel has been referred to a Division Bench for probing a question relating to the ouster of the jurisdiction of the civil court in matters which have been precluded by final orders passed under the Bihar Public Land Encroachment Act, 1956 as amended up-to-date (hereinafter referred to as the Act for the sake of brevity). On the facts and in the circumstances of the case, this question does not arise at all and, with utmost respect to the learned Single Judge referring the case to the Division Bench and the counsel persuading the learned Single Judge to do so, I am afraid, I may be presumptuous enough to say that the question is of no consequence whatsoever in so far as the present case is concerned and pales into insignificance.

3. This is a, plaintiffs appeal against the judgment and decree of affirmance of the 2nd Additional Subordinate Judge, Sasaram, dt. 18th Feb., 1977 passed in Title Appeal No. 11/99 of 1972/76 affirming the judgment and decree passed by the 1st Additional Munsif, Sasaram on 15-2-1972 in Title Suit No. 164/86 of 1964/68. The appellants initiated the action by highlighting the relief for their declaration of title and confirmation of possession over 8 decimals of land appertaining to plot No. 460/99 of village Jagebaraon under Bhabhua police station and consequentially for a permanent injunction against the defendant-respondents restraining the latter from interfering with their possession and also from realising the damages as awarded by the competent authority in a case under the Act. The appellants rested their claim on the ground that plot No. 174 (R.S. Plot No. 459/460 of Khata No. 59 (new) = old Khata No. 216) of the aforementioned village stood recorded as gair majarua malik in the cadastral survey. In that survey record of rights plot No. 99 corresponding to R.S. Plot No. 460 of the old Khata No. 60 = R.S. Plot No. 224 were situate in the same village but the latter plot was recorded as gair majarua malik. One Ramdeni Singh (deceased) father of the appellant No. 4 and grandfather of plaintiffs 1 to 3 and Badri Singh (deceased father of plaintiffs Nos. 1 to 3) had taken settlement of 7 decimals of land about forty years ago in plot No. 459/174 and about 8 decimals of land in plot No. 360/99, and they were coming in possession of the same after amalgamating both the aforesaid plots.

4. Shorn of other details, it may be worthwhile to state here that a proceeding under the Act was initiated against the appellants for removal of the alleged encroachment over the aforesaid land which was registered as case No. 54 L.E. of 1959 with damages of Rs. 200/- payable to the State of Bihar by the appellants and an order was passed against the appellants ordering them to remove the encroachments complained of. They went up in appeal to the Collector, Shahabad (Arrah). That was also dismissed on 23-1-64, but for default. An application for restoration was filed by the appellants which too was rejected on 23-3-64 as being time barred. The appellants contended in the instant suit that they had acquired title by prescription by being in adverse possession over 8 decimals of land in plot No. 460/99 as they had been coming in peaceful and uninterrupted possession over the suit land openly to the knowledge of all concerned. It was incidentally also mentioned in the plaint that the orders passed by the Land Reforms Deputy Collector, Bhabhua and the Collector, Shahabad at Arrah were wrong and without jurisdiction and were liable to be set aside.

5. In nut shell, the foundation of the appellants' title which could follow the other ancillary or subsidiary reliefs was based upon a title acquired by adverse possession.

6. It is well settled by now that in order to perfect a title by adverse possession (prescription) two ingredients are inseparable : corpus possidendi and animus possidendi. The latter, in its turn, implies nec vi, nec clam, nec precario. In plain language it means the physical possession (corpus possidendi) on the one hand and the intention (animus of such possession) to exclude the adversary from possession overtly without attempt at any concealment and must be adequate in continuity. In short the possession of the corpus must be adequate in continuity, publicity and extent. Therefore, it has always been said that a squatter cannot be permitted to put the owner to a negative proof upon the point of possession. It is equally well settled that the question of ouster is a pure question of fact.

7. Both the Courts below have concurrently found that the appellants have failed to prove the title set up by them as having perfected their title by adverse possession. Such a finding is based upon an appraisal of all the relevant materials on record and does not warrant any interference under Section 100 of the Civil P.C. Once we come to the conclusion that the appellants have failed to prove their title in the manner as set up by them, the suit was bound to fail and they have rightly failed in the Courts below, irrespective of the question as to whether any illegal (assumed though not admitted) order passed under the Act was illegal or without jurisdiction. The Courts below have categorically found that the appellants have failed to prove that they had been in possession for over 30 years prior to the date of institution of the suit and that too without the knowledge of State of Bihar who was the original owner of the gair majarua Aam lands. So much the worse for the appellants since the corpus possidendi, if any, was not in conjunction with animus possidendi, namely, with an intention to exclude the respondents from possession and, therefore, it was not adequate in continuity, publicity and extent.

8. That is sufficient to non-suit the appellants and the matter with regard to going into the question of validity or jurisdiction of the Land Encroachment Authorities under the Act is of no consequence.

9. I am, accordingly, constrained to hold that the appellants have not been able to make out any semblance of a case whatsoever to sustain their claim. It was in this context that I have observed at the outside that it is an illogical fantasy as a mere tale for a moment of relaxation.

10. This appeal, accordingly, must fail and is dismissed but, in the circumstances of the case, I shall make no order as to costs.

S.S. Sandhawalia, C.J.

11. I, agree.