
(2022) 12 PAT CK 0046

Patna High Court

Case No: Miscellaneous Appeal No. 1097 Of 2017

Arun Kumar Srivastava And Ors

APPELLANT

Vs

State Of Bihar And Ors

RESPONDENT

Date of Decision: Dec. 15, 2022

Acts Referred:

- Code of Civil Procedure, 1908 - Section 151, Order 39 Rule 1, Order 39 Rule 2

Hon'ble Judges: Rajiv Roy, J

Bench: Single Bench

Advocate: Pankaj Kumar, Shobha Chaubey

Final Decision: Dismissed

Judgement

1. Heard learned counsel for the appellants as also the State.

2. The appellant is aggrieved by the order dated 28.11.2017 in Title Suit No. 254 of 2017 passed by the learned Sub-Judge-XIII, Patna by which the claim of the appellants on the suit land was incorporated.

3. The matrix of facts giving rise to present appeal is/are as follows:

4. Vide notification no. 198 (A) dated 1912 declaration was made in a Calcutta Gazette dated 17.01.1912 declaring as follows:

“The 15th January 1918,- Whereas it appears to the Lieutenant -Governor in counsel that land is required to be taken by Government at

the Public expense for a public purpose viz for the construction of Government offices and staff quarters in the Village of (1) Mahuli,

Thana No. 6(a) Dhakanpura, Thana No. 7(3) Bharanllapur thana No. 5, (4) Paharpur, thana No. 14, (5) Badhappara, Thana No. 15, (6)

Dhirachak, Thana No. 16, (7) Chit Kohra, thana No. 17 (8) Yarpur, Thana No. 18 and (9) Mithapur, Thana No. 19, in thana Phulwari

Zilla-Patna, it is hereby declared that for the above purpose a piece of land measuring more or less 9,425 bigha and 18 collahs of standard

measurement, equivalent to 3,116 acres bounded on the-

North- By the southern boundaries of Village (1) Dujara, Thana No. 3, (4) Mainpur, Thana 2.

East- by the western boundaries of village- Bankipur Thana No. 21 and Aurra Thana No. 20

South- By the mutual distributory

West- By the eastern boundaries of village (1) Bhaikpura, thana No. 9, (2) Samanpura, Thana 12 (3) Auti Karhar, Thana No. 13 (4) old

Phulwari, Thana No. 35,

Is within the aforesaid villages of (1) Mahuli, (2) Dhakanpura, (4) Paharpur, (5) Badhampura, (6) Dhira Chak, (7) Chitkohra, (8) Yarpur

and (9) Mithapur. This declaration is made under the provision of section 6 Act I of 1394 to all whom it may concern.

A plan of the land may be inspected in the office of the Collector of Patna.

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Secy. To the Govt. of Bengal

5. On the said land, the residence of the Executive Engineer, Building Division, Patna was constructed as also some temporary staff quarter were

made for the staffs who were working with the Executive Engineer.

6. The appellant herein moved in Title Suit No. 254 of 2017 claiming that they are residing inside the same campus for more than 30 years

continuously and as such, they are entitled for the relief sought for.

7. The State contested the matter making statement that the land already stands acquired in 1912 and they are simple encroachers. The further

submission of the State was that one of the plaintiff, appellant no. 4, Rajendra Prasad Singh was an employee of the Building Division, Patna and by

virtue of being an employee, he was occupying one of the staff quarters and after retirement as he had no other place of accommodation was allowed

on compassionate ground to over stay and thus that it cannot be a case of adverse possession.

8. The learned Court after hearing the parties vide an order dated 28.11.2017 came to the following conclusion:

“Heard both sides and perused the suit record. On perusal of the same it transpires that the plaintiffs have filed this suit for declaration

of title and confirmation of possession over the suit land. The plaintiffs have stated in their petitions that they are in physical possession

over the suit land more than 30 years and invested huge amount in construction. Photo copy of letter issued by department vide letter no.

6758 dated 30.11.2017, order of District Magistrate, Patna vide letter no. 6753 dated 03.11.2017. The defendants stated that the plaintiffs

have no right title over the suit land and suit property absolutely belong to the defendants. They are in possession since last 50 years over

the suit land. The defendants filed copy of reply from Shri Saligram Prasad Estate Officer, Building Construction Department asserting the

property in the suit is government property and also containing direction of Hon'ble High Court in C.W.J.C. No. 0515/2015 letter dated

18.07.2017 written by Estate Officer to Executive Engineer Building Construction, Patna Division. The suit land has been acquired by the

State Government vide notification no. 198 (A) dated 15.01.2012 published in Calcutta Gadget of page 49 total measuring an acre

1612.025 of the purpose of different planning. Plot no. 111, 112 and 113 are the land of defendants. Hence for above discussions, it is

clear that there is no prima facie case is made out for petitions filed dated 28.07.2017 and 31.10.2017 under Order XXXIX Rule 1,2 and

Section 151 C.P.C. So petitions filed on behalf of the plaintiffs dated 28.10.2017 and 31.10.2017 Under Order XXXIX Rule 1,2 and Section

151 C.P.C. are hereby rejected.”

9. Aggrieved, the present appeal has been filed.

10. The main contention of the learned counsel for the appellants is/are that being in occupation of the said land for more than 30 years, they are

entitled to the relief sought for by virtue of adverse possession. It is to be noted that the learned Court has observed that at one stage, they said that

the they are in possession of the suit land for 50 years at other place they said 80 years and finally in the appeal they have come down to 30 years.

11. It is also an admitted fact that one of the appellant, i.e. the appellant no. 4, Rajendra Prasad Singh was an employee of the said Department and as

such, was occupying one of the temporary flat that was made for the staffs of Executive Engineer. As he retired and had no other place to live, on

compassionate ground, he was allowed to continue that gave him a leverage to accommodate some others too and claim the acquired land as their by

virtue of adverse possession.

12. This fact has also been incorporated in the counter affidavit filed by the State in paragraph 7 wherein it has been specifically stated that they are in

possession of the suit land more than 80 years but in the petition filed before the Executive Engineer, Building Division, Patna on 17.03.2016, their

stand was that they are staying last 60 years whereas the petition filed on 22.09.2016, they scaled it down to 30 years. It clearly shows that they are

encroachers and nothing else.

13. The map has also been attached with the counter affidavit to show that it is a campus of Building Division Office, Patna.

14. When confronted, learned counsel for the appellants submit that he has no other ground save and accept that of adverse possession.

15. This Court has gone through the facts of the case, the counter affidavit filed by the State as well as the reasoned order of the Court of learned

Sub-Judge-XIII, Patna in Title Suit No. 254 of 2017 and do not find any error in the order dated 28.11.2017.

16. The M.A. No. 1097 of 2017 fails and is accordingly, dismissed.

I.A. No. 6710 of 2018

In view of the fact that the M.A. No. 1097 of 2017 stands rejected, the I.A. No. 6710 of 2018 has become infructuous and the same is accordingly

dismissed.