Chandrapur Thana Bazar Committee and Others Vs Haren Saikia and Another

Court: Gauhati High Court

Date of Decision: Jan. 12, 2007

Acts Referred: Constitution of India, 1950 â€" Article 226

Citation: (2007) 3 GLR 880

Hon'ble Judges: I.A. Ansari, J

Bench: Single Bench

Final Decision: Dismissed

Judgement

I.A. Ansari, J.
This second appeal has arisen out of the judgment and decree, dated 14.12.2000, passed by the learned Civil Judge (Sr.

Division) No. 2, Guwahati, in Title Appeal No. 55/1999, decreeing the suit in favour of the plaintiff-respondents by reversing the judgment and

decree, dated 30.9.1999, passed in Title Suit No. 08/1999, by the learned Civil Judge (Jr. Division), Pragjyotishpur, whereby the suit had been

dismissed. As the learned appellate Court has decreed the suit, the defendants are, now, before this Court with this second appeal.

2. The case of the plaintiffs may, in brief, be described thus: The suit land is covered by three dag numbers of two different pattas shown in

Schedules "A" and "B" to the plaint. The suit land, described in Schedule "A" to the plaint, originally, belonged to Late Tutula Keot, father of the

plaintiff No. 1. On his father"s death, the plaintiff No. 1 and his three other brothers inherited the suit land along with the land described in

Schedule "B" to the plaint. As far as the plaintiff No. 2 is concerned, he has executed a power of attorney in favour of the plaintiff No. 1. The

plaintiffs are, thus, owners of the suit land and have been in the possession and enjoyment thereof by paying requisite land revenue thereof. As

there was no place for the purpose of holding daily market, the local people started using the land of the plaintiffs for the purpose of selling their

products or goods. Subsequently, the defendant No. 1, that is Bazar Committee, was formed with defendant Nos. 2 and 3 as its President and

Secretary respectively. The plaintiffs did not raise any objection to the running of the said bazaar inasmuch as the same was temporary. In the early

part of the year 1996, while the plaintiff No. 1 was away from home, the defendant Nos. 2 and 3, functioning under the defendant No. 1, raised

some permanent structures, in the form of sheds, over the suit land and let out the same to different people and started collecting rents from the

sheds so rented out. The plaintiffs, then, approached the defendants and asked them as to why their land had been so occupied; in response

thereto, the defendants told that they would shift the bazaar on 31.8.1996. But as the bazaar was not shifted on 31.8.1996, the plaintiffs met the

defendants to know about the shifting of the bazaar, but this time the defendants told the plaintiffs that they would neither shift the market nor would

they give rent to the plaintiffs. In this factual scenario, the plaintiffs instituted a suit for declaration of their rights, title and interest over the suit land

and for recovery of khas possession thereof and also for permanent injunction restraining the defendants and their agents from entering/carrying out

any activity over the suit land.

3. The defendants contested the suit by filing their written statement, wherein it was contended, inter alia, that the suit was barred for nonjoinder of

necessary parties, the case of the defendants being, briefly stated, thus : On 7.6.1980, the local people of Chandrapur, in a public meeting,

resolved and established a bazaar and a Committee was formed by the name of Shiv Mandir Bazar Committee and established two bazaars - one

daily and one bi-weekly. Initially, a daily bazaar was established by the side of the PWD road. By the side of the daily bazaar, the suit land was

lying vacant as a plot of land with jungles growing thereon. The bazaar Committee cleared the jungles and started a weekly bazaar by raising

permanent sheds there. In the year 1981, one Balendra Sharma and the plaintiff, Haren Saikia, raised claim over the suit land and demanded that

the same be vacated; but the local people declined to vacate the land. In a general meeting held on 21-06-1995, the plaintiff, Haren Saikia, too

was present and in this meeting, even Haren Saikia aforementioned promised to construct a bazaar permanently along with the bazaar Committee.

In a subsequent meeting held on 15.7.1996, the plaintiff, Haren Saikia, gave a proposal for naming the bazaar in his deceased father''s name and

he took 15 days'' time to give final proposal in this regard; but no proposal was given by the plaintiff, Haren Saikia. As the bazaar has been

functioning on the suit land since 1980, the said bazaar Committee has got possessory right over the land and by their adverse possession, the title,

if any, of the plaintiffs stand extinguished; hence, the suit deserves to be dismissed.

4. Following issues were framed in the suit by the learned trial court:

(i) Whether there is cause of action for the suit ?

(ii) Whether the plaintiffs have right, title and interest over the suit land?

(iii) Whether the suit is barred by adverse possession of the defendants ?

(iv) Whether the plaintiffs are entitled to the relief, prayed in the plaint and/or any other relief ?

5. Both parties adduced evidence in support of their respective cases. The learned trial court held to the effect that the plaintiffs" suit was not

barred by adverse possession. The issue Nos. 1 and 3 were accordingly decided in favour of the plaintiffs. The learned trial court, however, held

that since the plaintiff No. 1 had three brothers, his said three brothers were co-sharers in the suit land and they were necessary parties to the suit.

Having, thus, held that the plaintiff No. 1, not being the sole owner of the suit land, could not have instituted the suit alone and the suit, therefore,

suffered from non-joinder of necessary parties, the learned trial court answered the issue numbers 2 and 4 against the plaintiffs and dismissed the

suit. A decree accordingly followed.

6. In the appeal, as the learned first appellate court found that the suit was maintainable even without impleading the other co-sharers and that the

suit was also not barred by adverse possession of the defendants, the appeal was allowed and the impugned decree accordingly followed.

7. This second appeal has been admitted on the following substantial question of law:

1. Whether the learned appellate court can decide the issue No. 2 declaring the right, title and interest of the plaintiff in the absence of the other co-

pattadar/co-sharers of the suit land.

2. Whether the defendants acquired right and interest over the suit land by right of adverse possession in view of the admission by the plaintiff in his

pleadings and on the basis of ex. Ka and Kha.

8. I have heard Mr. P.K. Kalita, learned Counsel for the defendant-appellants, and Mr. H.K. Deka, learned Senior counsel, appearing on behalf

of the plaintiffs-respondents.

9. It has been submitted by Mr. P. Kalita that since the plaintiff No. 1 was not the sole owner of the suit land and his three brothers were co-

sharers thereof, the suit could not have proceeded without impleading all the co-sharers of the suit land and the learned trial court was correct in

holding that the suit was bad in law for non-joinder of necessary parties. In support of his submissions that the suit was not maintainable for non-

joinder of necessary parties, Mr. Kalita has placed reliance on Chupa Temsu Ao and Ors. v. Nangponger and Ors. (1994) 1 GLR 424 and

Rajiba Khatoon and Ors. v. Rafiqul Hussain Bhuyan (1998) 4 GLT 464.

10. It is further submitted by Mr. Kalita that contrary to what the plaintiffs had claimed, the defendants had been in possession of the suit land since

the year 1980 and the defendants, having established the bazaar in denial of title of the true owners of the land, the title, if any, of the plaintiffs

stood extinguished by adverse possession and, hence, the suit deserved dismissal.

11. Repelling the submissions made on behalf of the appellant, Mr. H.K. Deka, learned senior counsel, has submitted that in a case of present

nature, when the plaintiffs had sought for eviction of the defendants, who were trespassers, to the suit land, it was not necessary to make all the co-

sharers of the suit land parties to the suit, for, the interest of the plaintiffs is not adverse to their co-sharers. Support for his submission is sought to

be derived by Mr. Deka from the case of Ajmer Singh Vs. Shamsher Singh and Others, and Padmini Mahanta v. Narayan Choudhury and Ors.

(2002) 1 GLT 178.

12. As regards the contention of the appellant that the suit was barred by adverse possession of the defendants, it is submitted by Mr. Deka that

even according to the case of the defendants themselves, they had, as late as in 1996, recognized the plaintiffs as the owners of the suit land and, in

such circumstances, it cannot be said that the defendants had occupied the land in exercise of their own right and in denial of the plaintiffs'' title to

the suit land. In support of his submission that the possession of the suit land by the defendants does not, in a case of present nature, constitute

adverse possession, Mr. Deka places reliance on the case of Shri R. Ibohal Singh v. Shri Ch. Iboyaima Singh and Ors. (1993) 1 SC 51.

13. While considering the present appeal, what needs to be noted is that in Deputy Commr., Hardoi, in charge Court of Wards, Bharawan Estate

Vs. Rama Krishna Narain and Others, , two tests have been laid down for deciding the question as to who can be regarded as a necessary party,

the tests being (1) that there must be a right to some relief against such a party in respect of the matter involved in the proceeding, in question, and

(2) that it should not be possible to pass an effective decree in the absence of such a party. In Udit Narain Singh Malpaharia Vs. Additional

Member, Board of Revenue, Bihar, , the Constitution Bench has indicated that the necessary party is one, without whom no order can be

effectively passed; whereas a proper party is one in whose absence, an effective order can be made, but whose presence is necessary for

complete and final decision of the questions involved in the proceeding.

14. I may, however, hasten to add that though Udit Narain Singh Malpaharia (supra) is a case arising out of a writ petition under article 226, the

fact remains that it does settle the principle as to who shall be regarded as a necessary party. From what have been laid down in Rama Krishna

Narain (supra) and Udit Narain Singh Malpaharia (supra), it becomes abundantly clear that a necessary party is one in whose absence, no

effective order or 1 decree can be passed. The two tests, laid down in Rama Krishna Narain (supra), shows that in a civil suit, in order to hold*

that a certain person is a necessary party to the suit, the court has to ask itself if any relief has been sought, directly or indirectly, against such a

party and if it would be possible to pass an effective decree in the absence of such a party ? When the answers to the questions, so posed, are

found in the negative, the party would not be regarded as a necessary party. In short, thus, when no relief is claimed against a person or an

effective decree can be passed in the absence of a person, such a person would not be regarded as a necessary party.

15. Bearing in mind as to who can be considered as a necessary party, when I turn to the facts of the present case, what attracts the eyes is that

there is no dispute that the plaintiff No. 1 is not the sole owner of the suit land. The question, therefore, is as to whether all other co-sharers of the

suit land were necessary parties to the suit. While considering this aspect of the case, what is necessary to note is that no relief has been claimed by

the plaintiffs against their co-sharers. This apart, the plaintiffs had sought for, as already indicated above, declaration of their rights, title and interest

over the suit land, delivery of khas possession and permanent injunction restraining the defendants and their agents from entering into, and carrying

on any activities over, the suit land. For granting a decree, as had been sought for, and/ or for executing the decree, if so granted, presence of the

co-sharers was not necessary. It is also noteworthy that the plaintiffs had not sought for declaration of their rights, title and interest to the exclusion

of all other co-sharers. The plaintiffs'' case was essentially a case for recovery of possession based on title. In such a case, the other co-sharers

were not necessary parties.

16. I may also point out that in a case of present nature, where recovery of possession is sought for by evicting a trespasser, co-sharers are not

necessary parties, for, the action of such a plaintiff would not be to the prejudice of the other co-sharers of the property. It is not the case of the

defendants that they are in possession of the suit land by consent of the other co-sharers of the suit land. There was, thus, no conflict of interest

between the plaintiffs, on the one hand, and their co-sharers, on the other. In such a circumstances, the co-sharers could not have been treated to

be necessary parties to the suit.

17. The case of Rajiba Khatoon (supra), which Mr. Kalita relies upon to support his plea that all co-sharers were necessary parties to the present

suit, what needs to be noted is that Rajiba Khatoon (supra) is a case, which arose out of a suit for partition. In a suit for partition, all those, who

inherit the property to be partitioned, are necessary parties, for, in a suit for partition, the interest inter se of the co-sharers is required to be

determined and such determination cannot be effective until all the co-sharers are made parties. It is for this reason that this Court, in Rajiba

Khatoon (supra), holds that in a suit for partition, all co-sharers are necessary parties. The present one was not a suit for partition and since there

was no question of determining interest inter se of the co-sharers of the suit land, the non-joinder of all the co-sharers of the suit land could not

have been treated, and has not been rightly treated by the learned appellate court, as fatal.

18. As far as the case of Chupa Temsu Ao (supra) is concerned, this case too does not help the appellants'' case inasmuch as what has been laid

down, in Chupa Temsu Ao (supra), is that if, in a suit, a necessary party is not added, the suit cannot survive. In the case at hand, since I have

already held that in the absence of the co-sharers of the suit land, an effective decree could have been passed and the co-sharers were not

necessary parties, the decision, rendered in Chupa Temsu Ao (supra), does not help at all the case of the appellants.

19. As regard the reliance placed by Mr. Deka on the cases of Padmini Mahanta (supra) and Ajmer Singh (supra) is concerned, none of these two

cases can be said to be entirely relevant to the case at hand, for, in Padmini Mahanta (supra), as well as in Ajmer Singh (supra), the suit for

recovery was based on possession and not on title; whereas the case, at hand, is a suit for recovery of possession, based not only on title, but even

a decree declaring title to the suit land has been sought for. Be that as it may, in view of the fact that I have already held that in the case of present

nature, a co-sharer is not a necessary party, the learned trial court''s conclusion that the suit was bad for non-joinder of necessary parties was an

erroneous finding and the learned first appellate court committed no error in reversing this finding.

20. Adverse possession means possession by a man, who holds the land on his own behalf or on behalf of someone other than the true owner

having a right to immediate possession. It implies that not only that the true owner is out of possession, but also that the trespasser is in the

possession denying, expressly or by implication, the title of the true owner. The hostile title, so set up, shall be adequate in continuity, in publicity

and in extent. A mere possession of a land, howsoever long, would not constitute adverse possession.

21. In the case at hand, when the evidence on record is carefully scanned, it becomes abundantly clear that the plaintiffs owned the suit land and

the defendants, at no stage, possessed the suit land in denial of the plaintiffs'' title thereto. As a matter, of fact, even the written statement of the

plaintiffs discloses that in the general meeting, held on 21.6.1995, of the Bazaar Committee, the plaintiff, Haren Saikia, had allegedly promised to

construct the bazaar along with the bazaar Committee and that in the general meeting, the plaintiff, Haren Saikia, gave a proposal to name the

bazaar in his deceased father''s name and took 15 days'' time to offer a final proposal, in this regard, after consulting his other family members. The

written statement also reflects that the bazaar Committee awaited for the final proposal of the plaintiffs, but instead of giving a final proposal, the

plaintiffs instituted the present suit. These facts more than eloquently speak that the bazaar Committee did not deny the plaintiffs'' title to the suit

land. In such circumstances, even if the bazaar Committee had the possession of the suit land for more than 12 years preceding the date of

institution of the suit, such possession cannot be treated as adverse possession and cannot defeat the plaintiffs'' title to the suit land.

22. Because of what have discussed and pointed out above, I find no infirmity in the conclusions reached and/or the reliefs granted by the learned

first appellate court. This appeal, therefore, fails, and the same shall accordingly stand dismissed with costs.

23. Send back the LCRs.