

(1925) 01 PAT CK 0023

Patna High Court

Case No: None

Sir Rameshwar Singh
Bahadur and
Maharajadhiraj of
Darbhanga

APPELLANT

Vs

Rit Lal Singh and
Others

RESPONDENT

Date of Decision: Jan. 28, 1925

Citation: 86 Ind. Cas. 771

Hon'ble Judges: John Bucknill, J; B.K. Mullick, J

Bench: Division Bench

Judgement

B.K. Mullick, J.

We think that the judgment and the decree of the learned Subordinate Judge must be set aside and the appeal re-heard by him.

2. The plaintiff sued for recovery of possession of plot No. 959 alleging that the defendant first party had been in permissive occupation of it while the land was in the possession of the plaintiff's thikadar. The defendant first party pleaded in his written statement that the land was not the khudkashat of the plaintiff, but was the jote of the defendants and that they had acquired an occupancy right in- the same. The second party defendants were sued because they were the raiyats of plot: No. 932 and because they had mortgaged that land to the defendants first party and the defendants first party had by some arrangement with the thikadars exchanged plot No. 932 for plot No. 959. It was the plaintiff's case that, with the expiration of the terms of the thika, the title of the first party to remain in possession of plot No. 959 by virtue of the exchange ceased to operate and that the plaintiff was accordingly entitled to resume possession of the land. The second party defendants did not file any written statement and the suit was contested by the first party defendants only. At the trial these defendants set up the case that they had been inducted into plot No. 959 by the manager of the plaintiff in the year 1313 F.S. and had

paid rent to him. Their case, therefore, was not one of adverse possession but of a lease from the plaintiff. The learned Munsif found that the case that the defendants first party had been inducted as tenants by the manager was false. He also found that in 1313 the plaintiff was in khar possession, the thika having expired in 1312 and being renewed again in 1314. The learned Munsif finds that although the defendants first party were not inducted by the manager, they in 1313 set up a right to occupy as limitation began to run from that date, the suit is barred. In the opinion of the learned Munsif the fact that the factory obtained a thika again with effect from 1314 and were in possession till 1322 does not prevent limitation from continuing to run.

3. In appeal before the Subordinate Judge the only point that was argued was the question of limitation. The learned Judge held that as the plaintiff had not proved possession within 12 years of the suit which was brought in 1327, the suit was barred.

4. In second appeal it is urged on behalf of the plaintiff that there has been no proper trial of the case in the Court below. The plea that the defendants became tenants by contract having been proved to be false, the onus is upon the defendants to show some title which will either extinguish or diminish the extent of the plaintiff's title. If the defendants fail then the plaintiff is entitled to a decree. If the defendants plead adverse possession the onus is upon them and they must show what was the date from which such possession began to run." Now, upon this point there is no finding by the Subordinate Judge. The learned Munsif does find that the defendants have acquired an occupancy right by adverse possession, but it is not shown upon what evidence he has come to this finding. It is not known whether the right which he the defendant set up in 1313 was the right to retain possession of plot No. 959 in lieu of plot No. 932 of which they were the mortgagees. If so, they cannot claim a right to occupy plot No. 959 as an occupancy raiyat.

5. It is true that a limited interest can be acquired by adverse possession, but the facts necessary to such possession must be found, there is no finding by either Court when the declaration of the right to hold plot No. 959 as a raiyat was first made.

6. In this case the plaintiff's suit cannot be dismissed till the precise title acquired by adverse possession has been determined. The judgment of the lower Court is set aside and the appeal will be decreed with costs.

John Bucknill, J.

7. I agree.