
AIR 1933 Patna 627 : 148 Ind. Cas. 413

Patna High Court

Case No: None

Ramgahan Missir

APPELLANT

Vs

Musammat Ramdasi
Kuar and Others

RESPONDENT

Date of Decision: Aug. 24, 1933

Acts Referred:

Civil Procedure Code, 1908 (CPC) – Section 145

Citation: AIR 1933 Patna 627 : 148 Ind. Cas. 413

Hon'ble Judges: Macpherson, J; Agarwala, J

Bench: Division Bench

Judgement

Agarwala, J.

This is an appeal by the plaintiff from a decision of the (Subordinate Judge of Arrah, dismissing the plaintiff's suit for

declaration of title and recovery of possession. The following genealogy will assist in understanding the dispute between the parties:

CHHAKAURI MISSIR

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Parsidh Padarath

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Dudhnath=Gangajali Kuar |

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Basgit Ramkewal

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Rambhulawan=Ramdasi Kuar Ramgahan

(defendant (plaintiff)

No. 1.)

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Rambhogi.

Parsidh and Padarath separated. Out of the ancestral property Parsidh obtained 31 bighas 15 kathas in khata No. 10 and 2 bighas 2 kathas in

khata No. 61. Padarath obtained 32 bighas 19 khatas in khata No. 19 and 3 bighas 2 katas in khata No. 62. In the Record of Rights, which was

finally published in 1910, Dudhnath was recorded in respect of the lands in khatas Nos. 10 and 61 and Ramgahan and Rambhogi jointly in respect

of the lands in khatas Nos. 19 and 62, Basgit, -Ramkewal and Rambhulan having died prior to 1910. Dudhnath died about 1917 and his widow

Gangajali in 1921. Rambhogi died in November, 1923.

2. If the decision of the present dispute depended on these facts alone, there would be no doubt that Ramgahan inherited Dudhnath's properties

when Gangajali died in 1920 and succeeded to the interest of Rambhogi in the ancestral properties on the latter's death in 1923. But Musammat

Ramdasi Kuer (defendant No. 1), the mother of Rambhogi, alleges that there was a partition of the ancestral properties between her husband

(Rambhulawan) and his uncle, Ramkewal, the father of Ramgahan (the plaintiff), and that after the death of Dudhnath the latter's property was

amicably divided between Rambhogi and Ramgahan. On May 27, 1917, Musammat Ramdasi, purporting to act on behalf of her minor son

Rambhogi, executed a mortgage of about 4 1/2 bighas in favour of Ralpanarain (defendant No. 3), on July 20, 1919, a mortgage of about 1 1/2 bighas

in favour of Sheonarain Kahar (defendant No. 4), and on June 20, 1924, a mortgage of 9 bighas of land in favour of Balgobind Missir (defendant

No. 2). In each case the land mortgaged, amounting all to 15 bighas and 15 katas and was for the greater part land recorded in khata No. 19

which had been allotted to Padarath and which the plaintiff claims as ancestral land. This land is specified in Schedule D-I to the plaint. There was a

proceeding between the parties u/s 145, Criminal Procedure Code with respect to the mortgage plots of khata No. 19 and also 10 bighas odd of

khata No. 10 which the plaintiff claims to have inherited from Dudhnath. This land is specified in Sen. D-2 to the plaint.

3. The dispute was decided against the plaintiff on March 30, 1926 and the plaintiff alleges that in consequence of this decision the defendants

dispossessed him on Jeath 15, 1333-Fasli from the lands mentioned in Schedule D-1 and D-2 (with the exception of plot No. H 6, item No. 24

Schedule D-2 which is not claimed by either, party to the present suit) and from 1 bigha 14 kathas of land recorded in khata No. 62 which the

plaintiff alleges to be part of his ancestral land and which is specified in Schedule. E. Part of this land is included in Ram Narain's mortgage of

1917 and part of it in Sheo Narain's mortgage of 1919. The suit was instituted on February 14, 1927, for a declaration of the plaintiff's title, for

recovery of possession, for mesne profits and for an order permitting the plaintiff to withdraw from the criminal Court Rs. 45 which had been

realized by sale of the crops standing on the land at the time of the proceeding u/s 145, Criminal Procedure Code. The Court below held that the

ancestral properties had been divided between Rambhogi and Ramgahan by their mothers while they were minors, and that the partition had been

accepted by them after attaining majority, after which they had also divided between themselves the properties of Dudhnath. In appeal these

findings are challenged and it is also contended, on behalf of the plaintiff-appellant, that even if the ancestral properties and the properties of

Dudhnath have been divided he is not bound by the division as he was a minor at the time. The age of the plaintiff has been in contest, the plaintiff

alleging that he was only 20 when, the suit was instituted in July, 1927 and the defendants asserting that he had attained majority many years

earlier. The defendant's evidence regarding the date of the alleged partition of the ancestral properties is very discrepant. The survey entry of 1910

shows that at that time the plaintiff Ramgahan and Rambhogi were joint. The onus therefore lay on the defendants to prove the partition. The

evidence on this point of Ramdasi Kuar (defendant No, 1), mother of Rambhogi, is thoroughly unreliable. On August 26, 1924, while deposing in

a criminal case in which accused Ramgahan was convicted of theft of paddy which she alleged had been grown by her son, she stated that she and

the mother of the plaintiff had partitioned the ancestral properties ""10 or 12 years ago,"" i.e., between 1912 and 1914; that Ramkewal and her

husband Rambhulan were both dead; that the partition took place in the presence of Dudhnath and Damri; and that 34 bighas had been allotted to

each of the parties.

4. The latter statement is obviously false because the total area of ancestral lands to be divided was only about 36 bighas. About a year later, on

October 21, 1925, while deposing in a civil Court, she stated at one place that her husband had died about 1905 and at another that he was alive

at the time of the partition and that the only other person present was Damri. On this occasion also she asserted that Rambhulan was allotted 34

bighas and that Rambhogi and Ramgahan were separately recorded in the survey khatian. This is falsified by the khatian which shows they were

recorded jointly. In the written statement which she filed in the present suit on May 6, 1927, she alleged that her husband and the plaintiff had

separated ""28 years back."" i.e., about 1899 and that all the ancestral properties, movable and immovable, were divided between them. She also

asserted that the plaintiff was 34 years old although in 1925 she had deposed that he was 18 or 19 at the time of the alleged separation which

would make his age in 1927 to 47. In 1924, she had Reposed that the plaintiff was three or four years younger than her son and that the latter had

died at the age of 22 in November, 1923. If these statements were true, the plaintiff was not born at the date of the alleged partition in 1893 and

was 23 years old when the written statement was filed.

5. In 1925 however she deposed that her son died at the age of 17 and if this is true, then plaintiff was 18 years old when the written statement

was filed and had not been born in 1899 at the time when she now states that he and Rambhulawan separated and partitioned the ancestral

properties. The plaintiff himself asserts that he was 20 years old at the time the suit was instituted and examined a doctor, P.W. No. 1, whose

opinion supports the plaintiff on this point. The only criticism of this evidence is that the plaintiff's deposition in the proceedings u/s 145, Criminal

Procedure Code, states his age as 26 in 1926. In Criminal proceedings the statement of a witness's age forms no part of his deposition and is not

usually the statement of the witness himself but an estimate of the Court. I therefore see no reason for not accepting the evidence of the plaintiff and

the opinion of the doctor that the former was about of when the present suit was instituted and we find accordingly. While giving evidence in the

present suit defendant No. 1 made an attempt to reconcile her various discrepant statements by alleging that her husband and the father of the

plaintiff separated in mess and used to divide the produce of the lands, but that the lands themselves remained joint until she and plaintiff's mother

had them partitioned by Dudhnath which she says occurred when the plaintiff was eight years old. After further discussing the evidence, his

Lordship held that there was no partition of the ancestral lands and the mortgage in favour of Balgobind was not a genuine transaction. With

respect to the lands mortgaged by the deeds of 1917 and 1919, his Lordship held that Ram-dasi was merely put into possession of these lands by

a family arrangement in lieu of maintenance and proceeded. With regard to the properties of Dudhnath the defendants case now is that on the

death of Dudhnath, Ramdasi and Rambhogi left the ancestral house in which they had hitherto been living and removed to Dudhnath's house and

that in 1920 on the death of Gangajali, the widow of Dudhnath, Rambhogi took possession of Dudhnath's property and remained in possession of

it for one year, after which the land was divided between Rambhogi and Ramgahan by punches. Their as on which she gives for her removal from

the ancestral house to the ""house of Dudhnalh is that Gangajali did not like living alone and therefore invited Ramdasi and her son to live in her

house. This, is entirely inconsistent with the case set up in para. 8 of her written statement in which she alleged that Rambhogi went to live with

Dudhhath and his wife during the lifetime of Dudhnalh and that the latter and his wife treated Rambhogi as their son and intended that their property

should be inherited by him. After examining the evidence, his Lordship held that it was not sufficient to establish that Ram-gahan gave up half share

in the lands of Dudhnath which he inherittd and proceeded. There remains however to consider the effect of the chaukidari receipts which have

been filed. We do not know what chaukidari tax was paid by Ramgahan in 1921, but up to 1917 he had apparently been assessed at Rs. 2-15-0

(see Ex. 10 series). In 1922 his assessment was increased to Rs. 6-8-0, while Rambhogi Avas assessed at Re. 1-2-0. This, it will be noticed, is

the year in which it is alleged that Ramgahan interfered with Rambhogi's possession of Dudhnath's lands. In the following year 1923, Ramgahan

and Rambhogi were each assessed at Rs. 4 while in 1924 Ramgahan's assessment was Rs. 6 and Ramdasi's Rs. 2. What Ramgahan paid in 1925

does not transpire, but Ramdasi paid Rs. 2 as chaukidari tax in that year. The substantial increase in the assessment of Ramgahan in 1922 suggests

a corresponding accretion to his property. It is significant that Dudhnath has been assessed at Rs. 6 in his lifetime and that after his death Gangajali

was assessed at Rs. 3-10-0. It is contended however by the defendants that the fact that Ramgahan and Rambhogi were each assessed at Rs. 4 in

1923 supports their contention that by the time the assessment of that year was made the partition of Dudhnath's property had been effected.

7. On behalf of the plaintiff-appellant it is contended that no reliance should be placed on this because the assessor panch, Tapsi Upadhaya (D.W.

No. 5) was in a position to make entries which would support Ramdasi's claim to half of Dudhnath's property and that he was interested in doing

so by reason of his relationship with Balgobind, one of the mortgagees from Ramdani. It appears that Tapsi's niece is married to one Saligram

Missir, the grandson of Ramrekha. Ram-rekha is the uncle of defendant Balgobind. Tapsi admits that Damri Missir one of the panches of the

chaukidari union declined, to sign the assessment register and it is significant that this man, Damri Missir, who is stated to have taken an active part

in the partition both of the ancestral properties and the property of Dudhnath, has not been produced in support of the defendants case. In these

circumstances I am not prepared to draw any inference favourable to the defendants from the assessment of 1923. Nor am I able to place any

reliance on the canal receipts produced by the defendants. Changes in the canal khasras are made without inquiry on the statements of the

sattadars. Ramrekha is a sattadar (vide evidence of P.W. No. 13, Gopeswar Prasad, clerk in the canal office). The chaukidari assessments of

1922 and 1921 however in my opinion support the case of the plaintiff and would I accordingly hold that it has not been established that by family

arrangement or otherwise Ramgahan gave up half of the lands which he had inherited from Dudhnath.

8. In view of the finding that Ramdasi was in possession of portions of the ancestral property by arrangement the question arises whether there was

any legal necessity for Ramdasi to execute the mortgage deeds of 1917 and 1919. Neither of these mortgagees was represented at the hearing of

the appeal. On the question of legal necessity Issue No. 7 was framed in the lower Court but was not dealt with by that Court in view of its finding

that all the properties had been partitioned. It will therefore be necessary now to remand this suit for disposal under Order XLI, Rule 23 so far as

the two mortgages of 1917 and 1919 are concerned. In the result I would set aside the decree of the Court below, give the plaintiff a decree for a

declaration of his title to all the disputed properties and for recovery of possession of Dudhnath's lands. With regard to the ancestral lands, the

plaintiff will be given possession of the lands covered by Balgobind's mortgage and the lands covered by such of the other two mortgages (i.e. of

1917 and 1919) as may be found to have been executed without legal necessity. With respect to such lands and also in regard to Dudhnath's

lands and the lands covered by Balgobind's mortgage, the plaintiff is entitled to mesne profits and also to the sale proceeds of the crops realised in

the proceeding u/s 145, Criminal Procedure Code. As plaintiff has succeeded with regard to his claim to the lands of Dudhnath and the lands

covered by Balgobind's mortgage, he is entitled to costs proportionate to his success, i.e., the value of the suit less the value of the mortgages of

1917 and 1919. If the latter are found to have been executed without legal necessity he will also be entitled to the remainder of the costs.

Macpherson, J.

I agree.