

Netramani Patel and others Vs Sukadev Bhainsal and another

Court: ORISSA HIGH COURT

Date of Decision: Feb. 12, 2018

Acts Referred: [Code of Criminal Procedure, 1973](#), [Section 144](#) - Power to issue order in urgent cases of nuisance or apprehended danger

Hon'ble Judges: A.K.Rath

Bench: Single Bench

Advocate: Byomkesh Sahoo, R.C.Rath

Judgement

1. This appeal is by defendants 1 to 3 against a reversing judgment.

2. The plaintiff-respondent-1 instituted the suit for declaration of right, title, interest over the suit property, recovery of possession, permanent

injunction and mesne profit. The case of the plaintiff was that Chhelia Bhainsal had two sons, namely, Labanidhar and Natabar. Hrushikesh and

Sukadev, plaintiff, are sons of Labanidhar. Jambobati, defendant no.4 is the daughter of Hrushikesh. Natabar and his wife-Malabati died issueless.

Chhelia, Labanidhar and Hrushikesh are dead. According to the plaintiff, Labanidhar and Natabar were separated in mess and property. The lands

were separately recoded in their names in Sabik Record of Right. Natabar and his wife-Malabati died issueless. Hrushikesh and the plaintiff

succeeded to the share of Natabar. Both of them were in possession of the ancestral lands separately for the sake of convenience. There was no

partition by metes and bounds. As per the amicable arrangement between two brothers, the plaintiff remained in possession of the suit land.

Hrushikesh died in jointness with the plaintiff in or about the year 1969. The plaintiff inherited the entire ancestral family property including the suit

lands to the exclusion of Jambodati daughter of Hrushikesh, defendant no.4. The defendants 1 to 3 have no semblance of interest and possession

over the suit land. They initiated a proceeding under Section 144 Cr.P.C. in respect of the suit land and got the ex parte order on 7.11.1982. The

order made absolute on 1.1.1983. Being emboldened with the said order, defendant no.1 forcibly removed eight quintals of paddy raised by the

plaintiff over the suit land and thereby caused a loss of Rs.1,000.00. With this factual scenario, the suit was instituted seeking the relief mentioned

supra.

3. Defendants 1 to 3 filed written statement pleading, inter alia, that Hrushikesh and the plaintiff were separated in mess and property. They were in

possession of their respective shares of land separately. According to them, the suit land was sold by Natabar and his wife-Malabati to their

father-Bidyadhar in or about the year 1937 and 1943. The plaintiff admitted the same in an agreement dated 6.6.1969. They claimed title to the

suit land by way of adverse possession. Defendant no.4 was set ex parte.

4. On the inter se pleadings of the parties, the learned trial court struck seven issues. The parties led evidence, oral and documentary to

substantiate their case. The learned trial court dismissed the suit holding, inter alia, that defendants 1 to 3 perfected title by way of adverse

possession. The unsuccessful plaintiff filed T.A.No.24 of 1985 before the learned District Judge, Sundargarh. The learned appellate court came to

a conclusion that defendants 1 to 3 had no right, title and interest over the suit land. Held so, it allowed the appeal.

5. The Second Appeal was admitted on the substantial questions of law enumerated in ground nos. B (I) to B (V) of the appeal memo. The same

are :

I. Whether the learned lower appellate Court acted contrary to law by ignoring the Ext.E which is a certified copy of a public document as illegal

in view of Sections 76, 77, 78 and 79 of the Indian Evidence Act and as such the appellate Court's judgment being based on such erroneous

conclusion, is liable to be set aside.

II. Whether the learned lower appellate court acted illegally by discarding the certified copy of Amin report under Ext.F which is a public

document by stating that the document has not been formally proved in view of Sections 74 and 77 and 79 of the Indian Evidence Act.

III. Whether the lower appellate court committed serious error apparent on the face of record by coming into conclusion that Ext.H does not relate

to suit plot. When Ext.H is the yadast of the village in which the plaintiff has put his signature and which shows that suit plot does not belong to the

plaintiff.

IV. Whether the lower appellate courts judgment can be sustained in view of Ext.E, F & F and H which shows defendant nos.1 to 3's possession

on the suit land since 1969.

V. Whether the judgment of the court below is erroneous and illegal in view of the fact that having coming into conclusion that the defendants in

possession of the suit land since 1969 that the possession is permissive when the case of the plaintiff is that the defendants were never in

possession. Therefore, whether such permission can be construed to be adverse to the plaintiff.

6. Heard Mr. Bymokesh Sahoo, learned Advocate for the appellants and Mr. R.C. Rath, learned Advocate for respondent no.1.

7. Mr. Sahoo, learned Advocate for the appellants submitted that Ext.H is the Yadast of the village. The plaintiff had put his signature over the

same. The suit plot does not belong to the plaintiff. He further submitted that defendants 1 to 3 are in possession of the suit land since 1963

peacefully, continuously and with the hostile animus to the plaintiff and, as such, have perfected title by way of adverse possession. The learned

appellate court on untenable and unsupportable grounds upset the finding of the learned trial court. Hence, the judgment is vitiated.

8. Countering the submissions of the learned Advocate for the appellants, Mr. Rath, learned Advocate for respondent no.1 submitted that adverse

possession is a mixed question of fact and law. The learned appellate court, on an analysis of the evidence on record, held that the defendants have

not perfected title by way of adverse possession. There is no perversity or illegality in the said finding.

9. The stand of defendants 1 to 3 is that Natabar sold a portion of the suit land in favour of their father-Bidyadhar Patel. Transaction took place

from 1937 to 1943. The sale deed executed by Natabar and his wife is not traceable. The plaintiff is not in possession of the suit land. The father

of the defendants purchased the suit land long since. The defendants and their father were in possession of the suit land as of their own right for

more than the prescribed period and, as such perfected title by way of adverse possession.

10. The claim of title to property and adverse possession are in terms contradictory. In Annasaheb Bapusaheb Patil and others Vrs. Balwant alias

Balasaheb Babusaheb Patil (dead) By Lrs. and heirs and others, (1995) 2 SCC 543, the apex Court made an indepth analysis of claim of title and

claim to adverse possession over the property. The apex Court in paragraph-15 of the said report held: ""Where possession can be referred to a

lawful title, it will not to be considered to be adverse. The reason being that a person whose possession can be referred to a lawful title will not be

permitted to show that his possession was hostile to another's title. One who holds possession on behalf of another, does not by mere denial of

that other's title make his possession adverse so as to give himself the benefit of the statute of limitation. Therefore, a person who enters into

possession having a lawful title, cannot divest another of that title by pretending that he had no tide at all.

11. The apex Court in the case of Mohan Lal (deceased) through his LRs. Kachru and others Vrs. Mirza Abdul Gaffer and another, (1996) 1

SCC 639 held:

As regards the first plea, it is inconsistent with the second plea. Having come into possession under the agreement, he must disclaim his right

thereunder and plead and prove assertion of his independent hostile adverse possession to the knowledge of the transferor or his successor in title

or interest and that the latter had acquiesced to his illegal possession during the entire period of 12 years, i.e., up to completing the period of his

title by prescription nec vi nec clam nec precario. Since the appellant's claim is founded on Section 53-A, it goes without saying that he admits by

implication that he came into possession of the land lawfully under the agreement and continued to remain in possession till date of the suit. Thereby

the plea of adverse possession is not available to the appellant.

12. Mere possession of the suit land for long time is not sufficient to hold that the defendants have perfected title by way of adverse possession,

unless the classical requirements of adverse possession nec vi, nec clam, nec precario are pleaded and proved. There is neither any pleading nor

evidence on record to show that the defendants are in possession of the suit land peacefully, continuously and with the hostile animus to the

plaintiff. Reliance placed on Ext.H is totally misplaced. Recording the name in the Yadast neither creates nor extinguishes title. The substantial

questions of law are answered accordingly.

13. In the ultimate analysis, the appeal fails and is dismissed. There shall be no order as to costs.