

BECHAN PANDEY & ORS.

v.

DULHIN JANKI DEVI & OTHERS

March 9, 1976

[H. R. KHANNA AND P. K. GOSWAMI, JJ.]

Practice and procedure—Old litigation—Must come to an end—No remand.

The plaintiff-appellants filed a suit against defendants for a declaration of their title to the land in question, admeasuring 142 bighas. The trial Court dismissed the suit in respect of land admeasuring 28 acres and decreed the suit in respect of the remaining land. The plaintiffs' suit was held to be barred in respect of that land on account of the doctrine of waiver and acquiescence. The plaintiffs were also held entitled to recover mesne profits.

On an appeal filed by some of the respondents, the High Court accepted the appeal and dismissed the suit in its entirety. The High Court held that it was not shown that the disputed land was the same as had been purchased by Mina Kuer in auction sale. The High Court also held that the plaintiffs' suit for possession was barred by limitation.

The appellants contended,

(1) The respondent did not dispute that the suit land was the same which was purchased by Mina Kuer as per sale certificate dated 26-2-1935.

(2) In any case the matter may be remanded for determining the above issue.

Dismissing the appeal,

HELD : (1) The appellants have failed to establish that the land in dispute is the same as has been purchased in auction by Mina Kuer as per sale certificate dated 26-2-1935. The contention of the appellant that the respondents did not dispute that the suit land is the same as the one purchased by Mina Kuer is not correct. The respondents did deny this fact in their written statement. The land which is the subject matter of the present litigation is situate in the State of Bihar on the right bank of the Ganges. Although the land is subject to river action, the onus to prove that the land in dispute in Bihar State represents the land in U.P. which got submerged as a result of river action was upon the appellants. The appellants have failed to discharge this onus. [557F, H, 558A, E]

(2) The prayer of the appellants for remand of the case is rejected because there was no valid basis for the assumption of the appellants that the appellants did not dispute the identity of the land. The suit was filed as long ago as in January, 1950. During the pendency of this litigation many of the original plaintiffs and defendants have died and are now represented by their legal representatives. It is time that we draw the final curtain and put an end to this long course of litigation between the parties. If the passage of time and laws of nature bring to an end the lives of men and women it would perhaps be the demand of reason and dictate of prudence not to keep alive after so many years the strife and conflict started by the dead. To do so would in effect be defying the laws of nature and offering a futile resistance to the ravage of time. If human life has short span, it would be irrational to entertain a taller claim for disputes and conflicts which are a manifestation of human frailty. The Courts should be loth to entertain a plea in a case like the present which would have the effect of condemning succeeding generation of families to spend major part of their lives in protracted litigation. [558G—H, 559A—D]

Sant Narain Mathur v. Rama Krishna Misston A.I.R. 1974 S.C. 2241 reiterated.

A CIVIL APPELLATE JURISDICTION : Civil Appeal No. 1432 of 1968.

(From the judgment and decree dated the 26-10-1959 of the Patna High Court in appeal from Original decree No. 280 of 1953.)

Sarjoo Prasad with *D. Goburdhun*, for the appellants.

B *V. S. Desai* with *D. P. Mukherjee* for respondents 3, 4, 5, 6(a) 14 and 15.

Ex parte, for respondents 1, 2, 6, 7 to 13 & 16-17.

The Judgment of the Court was delivered by

C KHANNA, J.—The plaintiff-appellants filed a suit in the Court of Subordinate Judge Arrah against 41 defendants for a declaration of their title to land measuring 142 bighas, 17 kathas described in the schedule to the plaint situated in village Shivpur Diar in District Shahbad. Prayer was also made for delivery of possession of the land and for mesne profits amounting to Rs. 4,100. The trial court dismissed the suit in respect of land measuring 28.36 acres out of plot No. 3863/41. Suit in respect of the remaining land was decreed. The plaintiffs were also held entitled to recover mesne profits from defendants who might be found in possession of the land decreed. On appeal by defendants 3, 7, 12 and 14 the Patna High Court accepted the appeal and dismissed the suit in its entirety. The plaintiffs have come up in appeal to this Court against the judgment and decree of the High Court on certificate granted under article 133 (1) (a) of the Constitution.

E Village Shivpur Diar consists of five Mahals, Shivpuur Diar Nambari, Shivpur Diar Gangbarar Shumali, Shivpur Diar Gangbarar Janubi, Shivpur Diar Sarju Barar and Shivpur Diar Naubarar. Each of the two Mahals, Shivpur Diar Gangbarar Shumali and Shivpur Diar Nambari has 18 pattis. Proprietorship rights in each patti were calculated as 16 annas. One Brahmdeo Singh had a share of 5 annas 4 pies in patti Bhrihgunath Singh in the above Mahals. He also held different shares in the other pattis of the two Mahals. Brahmdeo Singh mortgaged with possession his share in the said lands in favour of Sitaram Sahu and Sheogulam Sahu by means of several mortgage deeds. As the mortgagees were dispossessed from some of the lands mortgaged in their favour, they filed a suit for recovery of the mortgage amounts. Final decree was awarded in that suit on June 13, 1925. In execution of that decree proprietary interest of Brahmdeo Singh in Mahal Shivpur Diar Nambari and Mahal Shivpur Diar Gangbarar Shumali were auctioned on June 15, 1932 and was purchased by Maina Kuer, widow of Sitaram Sahu mortgagee. Sale certificate was granted to Maina Kuer auction purchaser on February 26, 1935. She got delivery of possession of the land sold in her favour on March 19 and 20, 1935. On November 9, 1936 Sheo Prasad Singh, who held general power of attorney from Maina Kuer, executed a patta (lease) for seven years in respect of 135 bighas, 15 kathas out of the land purchased by Maina Kuer in favour of Mahadeo Rai and others. On September 27, 1940 Sheo Prasad Singh

executed on behalf of Maina Kuer a deed for perpetual lease of land measuring 134 bighas, 17 kathas out of the land purchased by her in favour of plaintiffs 1 to 9, 14, 16 to 18 and father of plaintiffs 10 to 13. Three days later on September 30, 1940 Sheo Prasad Singh executed another deed for perpetual lease in respect of the remaining land measuring 8 bighas in favour of plaintiff No. 15. On May 16, 1941 Mahadeo Rai and others, in whose favour lease deed of the land had been executed for seven years, relinquished their rights under the lease in favour of the plaintiffs. On July 13, 1942 Maina Kuer sold her proprietary interest which she had acquired under the auction sale to Rajendra Prasad Singh and others.

The plaintiffs in whose favour deed for perpetual lease of the land purchased by Maina Kuer had been executed filed the present suit in January 1950 against the defendants, on the allegation that defendants 1 to 18 had taken wrongful possession of the land. Prayer was also made, as mentioned above, for recovery of Rs. 4,100 as mesne profit. It was also mentioned by the plaintiffs that proceedings under section 145 of the Code of Criminal Procedure in respect of the land in dispute had been initiated but as those proceedings were dropped the plaintiffs had to seek redress by means of the present suit.

The suit was resisted by the defendants who denied the title of the plaintiffs or Maina Kuer to the land in dispute. It was also stated that the said land had not been partitioned. Plea was also taken that the defendants had all along remained in possession of the land and the plaintiffs suit was barred by limitation.

The trial court dismissed the suit in respect of 28.36 acres of land on the ground that the defendants had built their houses on that land. The plaintiffs suit was held to be barred in respect of that land on account of the doctrine of waiver and acquiescence. The suit in respect of the remaining land, as already mentioned, was decreed.

On appeal the High Court held that the plaintiffs had failed to prove their title to the land in dispute. The land in dispute, it was held, was not shown to be the same as had been purchased by Maina Kuer in auction sale. The plaintiffs suit for possession of the land was also held to be barred by limitation.

In appeal before us Mr. Sarjoo Prasad on behalf of the appellants had made a number of contentions, but in our opinion, it is not necessary to go into all of them for the appeal is liable to be dismissed on the short ground that the plaintiff-appellants have failed to establish that the land in dispute is the same as had been purchased in auction by Maina Kuer as per sale certificate dated February 26, 1935 and was thereafter leased on her behalf in favour of the appellants as per two lease deeds dated September 27 and 30, 1940. It is not disputed that if on the above view of the matter the appellants are found to have not proved their title to the land in dispute, the question of going into other contentions would not arise. Mr. Sarjoo Prasad, however, submits that the defendant-respondents did not dispute in the trial court that the land in dispute was the same which had been purchased by Maina Kuer in auction sale and had been leased in favour of the

A plaintiffs. We find it difficult to accede to this submission. In para 15 of their written statement defendants 2, 3, 12 and 14 stated as under :

B “That Maina Kuer was not at all auction purchaser of the property in dispute nor was she a proprietor nor Zamindar nor was she at any time in possession and occupation of the lands in dispute. The allegation of the plaintiff in respect of these facts are altogether wrong.”

C In the same language is couched para 15 of the written statement of defendant No. 7 who filed a separate written statement. It was incumbent in view of the averments in para 15 of the written statements for the plaintiff-appellants to establish by clear evidence that the land in dispute was the same which had been purchased in auction sale by Maina Kuer and had been subsequently leased by her in favour of the appellants. The learned Judges of the High Court discussed the oral and documentary evidence which had been adduced in the case and came to the conclusion that there was no cogent material to show that the land in dispute was the same which had been purchased by Maina Kuer and had been leased by her in favour of the appellants.

D After hearing Mr. Sarjoo Prasad we find no sufficient ground to take a different view. The land which had been purchased by Maina Kuer in the auction sale as per sale certificate dated February 26, 1935 was situated in Balia district in the State of Uttar Pradesh on the left bank of the Ganges. The land which is the subject matter of the present litigation is situated in Shahbad district in the State of Bihar on the right bank of the Ganges. Although the land is subject to river action, the onus to prove that the land in dispute in Shahbad district represents the land which got submerged as a result of the river action in Balia district was upon the plaintiff-appellants. The appellants have failed, as held by the High Court, to discharge this onus.

F Mr. Sarjoo Prasad took us through the evidence of Ram Pachise Lall (DW 3) and Nanku Lall Singh (DW 5), but the evidence of these witnesses is far from proving that the land in dispute is the same as was purchased by Maina Kuer. The evidence of Raghunath Prasad (PW 6), to which also passing reference was made, is not sufficient to connect the land in dispute with sale certificate dated February 26, 1935.

G Prayer has also been made by Mr. Sarjoo Prasad for the remand of the case to the trial court as the plaintiff-appellants were labouring under the impression that the defendant-respondents had not disputed that the land in dispute was the same as had been purchased by Maina Kuer. It is urged that because of that impression, material which could have clearly proved that the land in dispute was the same as had been purchased by Maina Kuer could not be brought on the record.

H We find it difficult to accede to this prayer. As already pointed out above, the contesting defendants clearly stated in their written statements that Maina Kuer was not the auction purchaser of the land in dispute. In view of that unequivocal averment, there was no valid

basis for the assumption or the impression under which plaintiff-appellants are stated to have laboured. Apart from that, we find that the suit out of which the present appeal has arisen was filed as long ago as January 1950. From the title of the appeal we find that many of the original plaintiffs and defendants have during this period of more than a quarter of century departed and are no more in the land of the living, having bowed as it were to the inexorable law of nature. They are now represented by their legal representatives. To remand the suit to the trial court would necessarily have the effect of keeping alive the strife between the parties and prolonging this long drawn litigation by another round of legal battle in the trial court and thereafter in appeal. It is time, in our opinion, that we draw the final curtain and put an end to this long meandering course of litigation between the parties. If the passage of time and the laws of nature bring to an end the lives of men and women, it would perhaps be the demand of reason and dictate of prudence not to keep alive after so many years the strife and conflict started by the dead. To do so would in effect be defying the laws of nature and offering a futile resistance to the ravage of time. If human life has a short span, it would be irrational to entertain a taller claim for disputes and conflicts which are a manifestation of human frailty. The courts should be loth to entertain a plea in a case like the present which would have the effect of condemning succeeding generation of families to spend major part of their lives in protracted litigation. It may be appropriate in the above context to reproduce what was said in the case of *Sant Narain Mathur & Ors. v. Rama Krishna Mission & Ors.*(¹) :

It is time, in our opinion, that we draw the final curtain on this long drawn litigation and not allow its embers to smoulder for a further length of time, more so when the principal contestants have all departed bowing as it were to the inexorable law of nature. One is tempted in this context to refer to the observations of Chief Justice Crewe in a case concerning peerage claim made after the death without issue of the Earl of Oxford. Said the learned Chief Justice :

“Time hath its revolutions; there must be a period and an end to all temporal things—an end of names, and dignities and whatsoever is terrene, and why not of De Vere? For where is Bohun? Where is Mowbray? Where is Mortimer? Why, which is more and most of all, where is Plantagenet? They are all entombed in the urns and sepulchers of mortality.”

What was said about the inevitable end of all mortal beings, however eminent they may be, is equally true of the affairs of mortal beings, their disputes and conflicts, their ventures in the field of love and sport, their achievements and failures for essentially they all have a stamp of mortality on them.”

(1) A.I.R. 1974 S.C. 2241.

A One feels tempted to add that if life like a dome of many coloured glass stains the white radiance of eternity, so do the doings and conflicts of mortal beings till death tramples them down.

The appeal fails and is dismissed but in the circumstances without costs.

B P.H.P.

Appeal dismissed.