

Ranchhodlal Vandravandas Patvari Vs. the Secretary of State for India

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Court : Mumbai

Decided On : Sep-27-1910

Reported in : (1911)13BOMLR92

Judge : Batchelor and ;Rao, JJ.

Appeal No. : First Appeal No. 169 of 1909

Appellant : Ranchhodlal Vandravandas Patvari

Respondent : The Secretary of State for India

Judgement :

Batchelor, J.

1. This is an appeal against a decree made by the District Judge of Ahmedabad in favour of the plaintiff the Secretary of State for India in Council.
2. The suit was filed to recover possession of a small strip of land about 68 feet long and about 2 feet broad with a Naveli or passage which ran between the defendants' properties on the north and the Dharamshala, of which one Bapuji Jagannath was the trustee in possession, to the south. Although the nominal plaintiff is thus the Secretary of State for India in Council, the real plaintiff who is substantially interested in the fate of the suit is Bapuji the trustee in possession of the Dharamshala.
3. The plaintiff claimed to recover possession of this strip of land after removing from it certain encroachments made on it by the defendants' buildings.
4. Great difficulty was experienced in the Court below in ascertaining the real ground upon which the defendants sought to meet the plaintiff's case. They began by setting up their own title, then they abandoned this ground and in lieu of it relied upon certain allegations as to acquiescence and estoppel on the part of the servants of the plaintiff. Their allegations however upon this head were so vague and loose that the learned District Judge found it necessary to question their legal adviser as to what exactly his position was in this matter.
5. As this action of the District Judge has been subjected to some little criticism here, we take occasion to say that in our opinion that action was not only justifiable but laudable. It was essential to the correct determination of this suit, as it always is essential, that the real controversy between the parties should be ascertained by the learned Judge. After giving the pleader time to consider his attitude the Judge asked him to explain clearly what he meant by saying that the suit was barred by estoppel

and acquiescence. Exhibit 38 records the pleader's answer in full and from it we extract the following sentences. 'The land is not entered in the Government records in any of the land registers relating to the town of Dhandhuka. The land has been in our possession and enjoyment for the last more than forty-eight years We built on the land after receiving permission from the Municipality in 1895. All the Government Officers at Dhandhuka are aware of the fact that we built at Dhandhuka. The building was inspected from time to time by Municipal Officers when it was being erected and they have made reports to that effect. In various maps made by the order of the Municipality and by the orders of the Revenue Authorities the land has been shown as ours, and the Commissioner and the Government have also decided that they cannot eject us. They have not said in those orders that the land is ours '

6. Upon consideration of the pleadings supplemented by the statements given by both pleaders from one of which the foregoing passage is extracted, the learned District Judge came to the conclusion that the defendants had made no case to entitle them to go into inasmuch as their own title-deeds informed them of the fact that the ownership of the disputed strip of land was with the Government and the Government had sixty years period of limitation within which to assert its rights

7. The defendants now appeal here contending that the learned Judge was wrong in shutting them out from the possibility of leading evidence and they urge that, whether they are able or not to establish the proposition for which they contend, they ought at least to be provided with full opportunity of doing so.

8. It seems to us, however, that the District Judge was right in the view which he took of the case. The defendants' own title-deed is Exhibit 61, which we have read and which in plain terms sets out that the strip of land in suit is the property of the Government. The defendants must be taken to be acquainted with their title-deed which is dated 1871 and in consequence to be aware that the Government is the owner of this land. The same statement, moreover, is made also in Exhibit 31, the title-deed of Bapuji and also in Exhibit 29 the mortgage-deed, executed in 1893 by the defendants' predecessors to the defendants themselves.

9. With these statements of the Government's title brought to the defendants' knowledge by these deeds, it seems to us that the ground for invoking such doctrines as estoppel and acquiescence is cut away from under the defendants' feet.

10. As appears from the language of Section 115 of the Evidence Act itself and as was observed by Sir Charles Farran in *Honapa v. Narsapa* ILR (1898) 23 Bom. 406, 'when both parties are equally conversant with the true state of the facts, it is absurd to refer to the doctring of estoppel.'

11. Reference may also be made with advantage to what was said by the Privy Council in *Beni Ram v. Kundan Lal* ILR (1899) All. 496 where their Lordships regretted that a loose and inadequate statement of the rule of equity had obtained currency in the lower Courts. They go on to explain that the proposition of acquiescence if it were supplemented might possibly be made to apply to the case, where the owner of land sees another person erecting buildings upon it, and knowing that such other person is under the mistaken belief that the land is his own property, purposely abstains from interference, with the view of claiming the building when it is erected.'

12. The same propositions were also considered at length by Lord Cranworth in *Ramsden v. Dyson* (1865) L.R. 1 I. A 129 of the report his Lordship says: 'But it will be observed that to raise such an equity two things are required, first, that the person expending the money supposes himself to be building on his own land ; and, secondly, that the real owner at the time of the expenditure knows that the land belongs to him and not to the person expending the money in the belief that he is the owner. For if a stranger builds on my land knowing it to be mine, there is no principle of equity which would prevent my claiming the land with the benefit of all the expenditure made on it. There would be nothing in my conduct, active or passive, making it inequitable in me to assert my legal rights.' And in such a case as we have here, where the building was done with the knowledge that the land belonged to another, there, his Lordship says of the builder, 'he knew the extent of his interest, and it was his folly to expend money upon a title which he knew would or might soon come to an end.'

13. We are of opinion, as the learned Judge below was of opinion, that the case before us is aptly described in the foregoing passages; in other words, that it is a case where the defendants, being perfectly aware that the land in suit was the property of the Government and that they, the defendants, had no rights over it beyond certain easements encroached upon it in the hope that their encroachments upon this small inconspicuous strip of land might escape the notice of the agents of the plaintiff in the town of Dhandhuka. In fact it would seem to have escaped their notice for a period of thirteen years, but the Government have a period of sixty years under the law of limitation and there is no question that the suit is in time.

14. We would observe also that accepting the case as put by the defendants' pleader in the words which we have cited, we think that it makes no case for the admission of evidence. The Secretary of State is in no way concerned with anything which may have been done by the Municipality or the officers of the Municipality. It cannot in the circumstances of this case assist the defendants if in certain maps of the Revenue Authorities made by those Authorities for their own guidance, this strip of land is inaccurately described.

15. As to the assertion that the Commissioner and the Government have decided that they cannot eject the defendants, that is obviously beside the mark. For, the Commissioner's order referred to is Exhibit 30, and all that that Officer decided is that the contending parties, that is to say, Bapuji and the defendants would be wise to decide their difference by a Civil Suit, and in the meanwhile that it was unnecessary for Government to fight the battle of the Dharamshala, and all that the Government did was to approve and confirm this very noncommittal order of the Commissioner.

16. Upon the whole, therefore, we are of opinion that the case made by the defendants themselves put them out of Court and that the learned Judge was right in so deciding and in refusing to allow them to give evidence which could lead nowhere and serve no useful purpose.

17. We, therefore, dismiss this appeal with costs confirming the decree with this variation that instead of possession being awarded for the; usage mentioned in paragraph 2 of the plaint, possession will be awarded subject only to the easements existing over the land in favour of defendants as owners of the northern premises.