BepIn Behari Dandapat and ors. Vs. Trailokya Nath Dandapat and ors.

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Court : Kolkata

Decided On : Dec-02-1926

Reported in : 102Ind.Cas.398

Judge : Mukerji and ;Graham, JJ.

Appellant : BepIn Behari Dandapat and ors.

Respondent : Trailokya Nath Dandapat and ors.

Judgement :

Mukerji, J.

1. The principal defendants are the appellants in this appeal. The appeal arises out of a, suit for declaration of title and confirmation of possession. The suit has been decreed by both the Courts below. Plaintiffs' case shortly stated was that the land in suit had been purchased by them under a kabala, dated 1294, from a person who in his turn had made a purchase in respect of it in 1290. The plaintiffs alleged that after their purchase they were in possession of the land through a tenant named Haru, that thereafter they were in possession thereof through another tenant named Mahipati, and that the latter surrendered in 1317 corresponding to 1910 and that since then they were in khas possession. In 1916 the lands were recorded in the Record of Rights in the names of the defendants and as the plaintiffs title and possession were thereby jeopardised they instituted the present suit for declaration of title and confirmation of possession.

2. In support of the plaintiffs' case, amongst other documents, the plaintiffs relied upon the kabala of their purchase, dated 1294, that of their vendors' purchase, dated 1290, a plaint and a decree in suit for rent against their tenant Haru, dated 1897, a chitta of the Irrigation Department showing Mahipati's possession before and during 1915 16, receipts and copies of Registers of the Irrigation Department showing payment of water-rate for this land as well as other lands, collection papers, some counterfoils of rent receipts and a kabuliyat dated 1922, which the plaintiffs had executed in favour of the Irrigation Department for payment of Irrigation charges. On a consideration of these documents as well as of the other evidence, oral and documentary, that was adduced in the case the Courts below came to the conclusion that the plaintiffs had title to the land in suit and were also in possession of it.

3. The learned District Judge has held that the boundaries given in the kabalas of 1290 and 1294 may be reconciled on three sides, that the plaint and decree of the rent suit of 1897 give the same bounds aries and that none of the other documentary evidence with the exception of the kabuliyat of 1922 gives the boundaries of the land they deal with. He does not appear to have been very much impressed by the oral

evidence by which plaintiffs' possession through tenants was sought to be proved. He relied a good deal upon the kabuliyat of 1922, which gives the boundaries of the land as they exist at present, and contains the signature of the defendant No. 1, as an attesting witness. On the whole he accepted the plaintiffs' case as true and affirmed the decree of the trial Court decreeing the plaintiffs' suit.

4. The learned Vakil appearing on behalf of the appellants in this case has taken several grounds for the purpose of challenging the decree passed by the learned District Judge. Amongst these grounds three may be mentioned as being worthy of consideration.

5. One of these grounds relates to the kabuliyat of 1922 which is referred to in the judgment of the learned District Judge. The kabuliyat from the list of documents appears to have been marked as Ex. 6 in the case. It is, however, not on the record before us. What may be gathered as to the contents of this kabuliyat seems to be that there are recitals in this document which go to show that the plaintiffs were in possession of the land in suit. If it was merely the recitals in this document which were sought to be used in favour of the plaintiffs and against the defendants the objection that could legitimately be taken to the use of this document would be that the recitals are not admissible in evidence. The more so because they would amount only to an admission made by a party in his own favour.

6. Another objection relates to the finding of the learned District Judge as regards knowledge on the part of the defendant No. I because of the fact that his name appears as an attesting witness to this kabuliyat. The learned Judge does not appear to have found any facts or circumstances which would go to indicate that the defendant No. 1 when he put his name down on the kabuliyat as an attesting witness had knowledge of its contents and in the absence of facts and circumstances which would indicate such knowledge, as has been repeatedly laid down, mere attestation is not sufficient for the purpose, of imputing to an attesting witness knowledge of the contents of the document attested by him.

7. These two objections to our mind seem to be not altogether without substance. But apart from them there is a more serious one to which I shall presently refer and on a consideration of that objection it seems to me that the case must be sent back for a re-hearing of the appeal. The Record of Rights, as I have stated, shows that the defendants were recorded as being in possession of the lands in the year 1916 or at least that was the year in which the Record of Rights was finally published. In the judgment of the learned District Judge nothing appears from which it can be gathered that he was allowing the defendants the benefit of the presumption which arises from the entry in the Record of Rights. It is true that on a consideration of the documentary evidence in the case coupled with such oral evidence as he considered reliable he came to the conclusion that the plaintiffs' title was proved and that their possession had been established. But this presumption which the law allows and which, in my opinion, is a very important piece of evidence and is conclusive until it is rebutted by evidence adduced on the side of the plaintiffs does not appear to have been properly taken into account by the learned District Judge. It being an admitted feature of the case that excepting the kabuliyat of 1922 there is no documentary evidence posterior to 1897 which shows plaintiffs' possession, the Record of Rights of 1916 is a very important piece of evidence the exact value of which should be appraised in deciding the case.

8. I am accordingly of opinion that the decree passed by the learned District Judge must be set aside and the case sent back to his Court so that he may now proceed to re-hear the appeal and deal with it in accordance with the observations made above.

9. Costs of this appeal will abide the result

Graham, J.

10. I agree.