

Supreme Court of India

Basudeo Prasad Sinha vs Genda Mahto And Anr. on 11 March, 1969

Equivalent citations: 1969 (2) UJ 318 SC

Author: Grover

Bench: Shah, Grover

JUDGMENT Grover, J.

1. This is a plaintiff's appeal by special leave from the judgment and decree of the Patna High. Court in a suit instituted by the Koeri Hitkarini Punchit Hat Samiti for a declaration that it was the owner of the building of the 'Gola' and the 'Sahan' described in the plaint and that the defendants who were originally tenants at will of these properties had become trespassers and were liable to be ejected and for possession thereof.

2. The facts may be stated. In the year 1927, the Koeri community of "Pachhim Jewar" of Patna decided to construct a Hat (market) for which subscriptions were raised and lands were purchased. There was a meeting of the general body and the aims, objects, rules and Constitution of the Hat were settled. Although the Society was named as the Koeri Hitkarini Panchit Hat Society it was not registered until the year 1953 as a Society under the Societies Registration Act 1960. Out of the lands which were purchased for the Hat there were certain plots which were acquired from Nathu Mahto the father of Genda Mahto and Thakur Mahto defendants. The persons who carried on the work of the Society and in whose names the sale deeds of the lands were executed were Known as 'Panches', The father of the defendant Nathu Mahto was one of such Panches. Since the defendants wanted to start a vegetable business in the said Hat it was necessary to raise a structure. An agreement was entered into between the Samiti and the defendants the main terms of which were that the defendants were to construct a 'Gola' at a cost of approximately Rs. 1500/-. They were to pay an annual rent of Rs. 100/- for the 'Gola' and the amount of Rs. 1500/- was to be adjusted towards the rent. After full adjustment the Gola was to become the property of the Samiti.

The real controversy which will be presently considered has centered on the status of the defendants, namely, whether they were defendants at will or permanent tenants.

3. It appears that it was decided that since the sale deeds by which the lands had been acquired for the Hat had been executed in the names of the Panches, the ownership of those lands in the name of the Samiti in the municipal registers be got mutated. For that purpose a petition was filed on May 19, 1928 before the Vice-Chairman of the Patna City Municipality (Exh. D-1).

The was signed by the two defendants and four other Pacnesh. The following paragraphs of that petition may be reproduced:

"(3) It has been decided unanimously by all the panches that the names of Gendi Mahto, Dargahi Mahto, Jitu Mahto, Pillu Mahto and Loknath Mahto which are mentioned in the register may be cancelled and in lieu thereof the name of Koeri Hitkarini Hat may be registered.

(4) Gendi Mahto son of Nathu Mahto, resident of Musallahpur thana Pirbahore, one of the quarters of Patna town aforesaid has spent Rs. 1500/- (one thousand five hundred) from his own pocket in constructing a Gola towards east. Rs. 100/- will be paid annually as rent thereof and after Rs. 1500%--is paid, the gola will belong to the panches.

(5) It was decided by the panchas in respect of the Gola , towards the east constructed by Gendi Mahto that Gendi Mahto and Thakur Mahto sons of Nathu Mahto and their heirs and representatives will remain in possession and occupation thereof generation after generation both in male and female lines on payment of Rs. 100/- (one hundred) annually and they will appropriate the income and the produce thereof generation after generation. At no time, the panches will have the right to enhance the rent."

On June 3, 1945 the accounts were gone into between the defendants and the Samiti about the expenses which had been incurred on the construction of the Gola and the rent which was due to the Samiti It was found that after adjustment of the rent towards the cost of construction a sum of Rs. 139-11-0 was payable by the defendants till 1945 which amount was paid by them. On April 2, 1945 the defendants got a resolution passed to the effect that they were tenants at a fixed rent of Rs. 125 for the Gola and the Sahan. Later on a meeting of the general body was called on June 25, 1946 which was attended by 215 members including the defendants. It was resolved at that meeting that the earlier resolution of April 2, 1945 which was illegal should be cancelled. On September, 2, 1955 the plaintiff sent a letter to the defendants asking them to pay up the arrears and take a fresh settlement of the Gola but the defendants sent a reply taking up the position that they were permanent tenants. On November 16, 1955 the plaintiff called upon the tenants to with-draw their claim of permanent tenancy, pay the dues and give up possession of the Gola by November 20, 1955. The defendants sent a reply on. September 3, 1955 reiterating that they were permanent tenants and that there was no question of their giving up possession.

4. In the plaint all the above facts were mentioned but the assertion of the plaintiff was that according to the agreement by which the defendants had constructed the Gola and entered into possession there-of as also of the Sahan they were tenants at will and their claim about being permanent tenants was baseless and unfounded. It was pleaded that the status of the defendants after the notice which had been served on them in the year 1955 was that of trespassers and they were liable to pay damages for wrongful use and occupation. In the written statement apart from other assertions the main plea was founded on the application which was filed in the municipal committee in May 1928 with particular reference to paragraph 5 according to which the defendants, their heirs and representatives were declared entitled to remain in possession and occupation of the Gola generation after generation on payment of Rs. 100/-. Reliance was also placed on the resolution which had been passed at the meeting held on April 2, 1945. The factum and validity of the second resolution dated June 25, 1946 were denied There were a number of preliminary pleas, the one relating to limitation may be set out.

This suit is barred by the general and special law of limitation. The plaintiff has got no right to institute this false suit against these defendants (?) have been in p session and occupation of the aforesaid Gola and Sahan for more than twelve years. Therefore this suit is fit to be dismissed."

On the pleadings of the parties the issues as recast by the trial judge were as follows:

- (1) "Is the suit as framed maintainable ?
- (2) Is the suit barred by estoppel and limitation ?
- (3) Is the pltft. entitled to evict the defendants and recover possession of the Gola and Sahan ?
- (4) Is the pltft. entitled to recover the arrears of rent claimed and damages?
- (5) To what relief, if any, is the plaintiff entitled ?

The trial judge held that there was nothing wrong with the frame of the suit nor was the suit barred by estoppel. As regards limitation all that was said was, 'In my opinion the defendants could not prescribe against themselves so long as they were the owners of the structure. It was only in 1945 that the cost of construction had been adjusted and the suit has been instituted within 12 years from that date.' On issue No 3 it was found that even on the assumption that there was a permanent oral lease created in 1927 which was acknowledged in the petition filed before the municipality in 1928 a permanent -lease could not come into existence without a registered instrument by virtue of the provisions of the Transfer of Property Act. The suit was consequently decreed.

5. The High Court reversed the decision of the first court with regard to the Gola although the decree was confirmed as regards the Sahan. The learned Judges constituting the division bench concurred in the view of the trial Judge that a permanent tenancy could not have been created orally (vide Section 107) and owing to the provisions of Section 106 of the Transfer of Property Act the document, Exh. D-1, could be deemed to have created a tenancy from month to month only. The division bench, however, went into the question of adverse possession of the defendants and held that so far as the Sahan was concerned they had not acquired any rights by having remained in adverse possession. The learned Judges went into a lengthy discussion of the applicability of Section 10 of the Indian Limitation Act vis-a-vis the question of adverse possession and negated the contention urged on behalf of the plaintiff that the pro-parties were held in trust by the Panches including Nathu Mahto the father of the defendants. After a consideration of the various authorities in the light of facts established in the present case it was held that right of permanent tenancy had been acquired in respect of the Gola by lapse of time i.e. by adverse possession.

The provisions of Section 53A of the Transfer of Property Act were also pressed into service in favour of the defendants.

6. The learned Judges of the High Court, with respect, do not appear to have given proper consideration to the pleadings on the question of adverse possession. In the written statement the plea relating to limitation was contained in para 2 which has already been reproduced. This pleading can hardly be regarded as a proper pleading for the purpose of raising a defence of the right of permanent tenancy having been acquired by adverse possession. It was incumbent on the part of the defendants to have specifically and clearly stated all the relevant facts in the matter of setting up the

claim that rights of permanent tenancy were being prescribed for a stated or specified period and that they had become tenants by having been in continuous and uninterrupted and hostile possession for the prescribed period. Indeed it appears that before the trial judge the case which was laboriously built up before the High Court of adverse possession was hardly pressed except in a faint and casual manner. It would seem that only a general argument was advanced in passing that the suit was barred by limitation. The real case which was built up in the plaint and was pressed before the trial judge was based on the other pleas which had been specifically raised in the written statement. We do not consider that the learned Judges of the High Court were, in these circumstances, justified in going into the question of adverse possession and coming to the conclusion that the defendants had become permanent tenants by lapse of time. It must be remembered that it was never the case of the defendants that they had become owners by prescription. In the judgment it has been noticed that as no rent was paid in cash till June 13, 1943 there could be no occasion for asserting the right of permanent tenancy at the time of payment but other facts and circumstances were considered sufficient for the purpose of establishing that a hostile assertion of a right of such tenancy had been made from a point of time long before June 1945. It was also considered that the defendants had derived advantages consistent with their claim of permanent tenancy in respect of the Gola. Now all these matters were essentially of such a nature that in the absence of the necessary pleas in the written statement the plaintiff could not be expected to meet a case a proper indication of which was not given in the written statement. We are satisfied that the manner in which the question of adverse possession writing was disposed of by the High Court could not be and has not been supported by principle or authority.

7. It is equally difficult to agree with the learned Judges of the High Court that the provisions of Section 53A of the Transfer of Property Act were applicable. It is the admitted case of the defendants (it is reiterated even in the statement of the case filed in this court) that the original agreement by virtue of which the defendants became permanent tenants took place in the year 1927. The document, Exh. D-1, which was filed in the municipality clearly shows that such an agreement which was apparently oral was entered into prior to its date which was May 19, 1928. Section 53A of the Transfer of Property Act provides that where any person contracts to transfer for consideration any immovable property by writing from which the terms necessary to constitute the transfer can be ascertained with reasonable certainty and the transferee has in part performance of the contract, taken possession of the property or any part thereof or the transferee being already in possession continues in possession in part performance, of the contract, then notwithstanding that the contract, though required to be registered has not been registered, the transferor shall be debarred from enforcing against the transferee and persons claiming under him any right in respect of the property by which the transferee has taken or continued in possession.

8. On the assumption that Exh. D-1 contained a contract between the defendants and certain other Panches of the Samiti for creating rights of permanent tenancy in their favour we are unable to hold that the aforesaid Panches had any locus standi or authority to bind the Samiti by executing any document. As has been pointed out before, the Society came to have a legal status only in 1953 when it was got registered under the Societies Registration Act. The Panches who were signatories to Exh. D-1 have not been shown to have any authority by which they could bind the Samiti by entering into an agreement or contract or executing an instrument creating rights of permanent tenancy. The

High Court referred to certain rules framed by the general body of the Samiti on December 18, 1927 and agreed that even under those rules Loknath Mahto who was one of the Presidents had no authority to make a permanent settlement of the Gola. But the learned judges proceeded to say.

"The position, however, was that the Panches who had taken the sale deed (Ext. 11/b) were parties to that petition and they represented the general body then. One of them, namely, Loknath happened to be one of the Presidents and it can be easily appreciated that he also was made to join in that capacity."

While discussing the applicability of Section 53A, learned Judges did not examine this aspect of the matter whether the Panches who had signed Ext D-1 had any legal or valid authority to bind all the members of the Samiti which was an unregistered body. It seems to have been taken for granted in view of the portion which has been extracted that these Panches had the necessary and requisite authority. Learned counsel for the defendants, however, has not been able to refer to any document or other material from which any such authority could be attributed to the Panches who had signed Exh. D-1. The net result is that so far the agreement, alleged to have taken place in 1927, is concerned Section 53A of the Transfer of Property Act can have no application because of the express provision that the contract must be in writing. As regards the document Exh. D-1 it has not been established that the Panches who had signed it had any legal and valid authority to bind the entire body, namely, the Samiti in the year 1928. This document, therefore, could not be used for the purpose of proving any terms and conditions by invoking the doctrine of part performance or for showing the nature of the defendants' possession.

9. For the above reasons this appeal must succeed and it is allowed. The judgment and decree of the High Court are set aside and those of the trial court restored with costs throughout.