Supreme Court of India
Kuldip Mahaton And Others vs Bhulan Mahato And Others on 30 November, 1994
Equivalent citations: 1995 SCC (2) 43, 1994 SCALE (5)339
Author: K Ramaswamy
Bench: Ramaswamy, K.

PETITIONER:
KULDIP MAHATON AND OTHERS

Vs.

RESPONDENT:
BHULAN MAHATO AND OTHERS

DATE OF JUDGMENT30/11/1994

BENCH:
RAMASWAMY, K.
BENCH:
RAMASWAMY, K.
VENKATACHALA N. (J)

CITATION:
1995 SCC (2) 43 1994 SCALE (5)339

ACT:

HEADNOTE:

JUDGMENT:

ORDER

1.One Upasi Mahato is the common ancestor. He had four sons, out of them Mohit Mahato and Chaturi are his first and third sons. Fargudi and Sukan pre-deceased him leaving no heirs. Therefore, the question of their genealogy does not arise. Mohit Mahato had two sons, namely, Bigu and Bihari. Bigu died. Bigu's wife is Smt Munnia. Chaturi had two sons, Deni Mahato and Raghubir. First defendant Bhulan is the son of Deni Mahato. Raghubir's children are the plaintiffs/appellants before us. The appellants laid a suit against Bhulan and his alienees claiming title to and possession of the suit property inherited by their father Raghubir Mahato or in the alternative to get the land of Munnia on her demise as reversioners. It is the case of Bhulan, the first defendant, that he was adopted by Munnia, widow + From the Judgment and Order dated 3-8-1977 of the Patna High Court in S.A. No. 51 of 1975 of Bigu when he was young and he was entitled to the possession of the property in his own right as an adopted son of Bigu. Therefore, the appellants are not entitled to the possession. Though the trial court decreed the suit, the appellate court while disbelieving the version

of Bhulan held that he was not the adopted soil of Munnia and that the appellants would get the property as reversioners. But it had dismissed the suit on the finding that Bhulan had acquired title to the property by prescription. Therefore, the appellants are not entitled to the possession. The Second Appeal No. 51 of 1975 was dismissed by the High Court of Patna in limine on 3-8-1977. Thus this appeal by special leave.

2. The undisputed facts that emerge from the findings and the genealogy are that Munnia inherited the property of Bigu as limited owner to enjoy the property for her life. Admittedly, she died in 1932 before the Hindu Women's Right to Property Act, 1937 had come into force. On her demise, succession to the property held by Bigu opened to the reversioners i.e. both the respondent/1st defendant and the appellants. Thereby, they became coowners of the property left by Munnia. It is not the case of Bhulan, as found by the appellate court, that after the succession to the reversioner was opened on the demise of Munnia, he ousted the appellant from possession of the lands or he had set up his own hostile title to the knowledge of the reversioners, namely, the appellants and they had acquiesced to that exercise of the right. In the absence of such a pleading and proof, necessary presumption is that all the co-owners continued to be owners of the property and Bhulan remained in possession of the suit property as co-owner. It is settled law that one co-owner cannot plead adverse possession against another co-owner unless, as stated earlier, there is an express plea and proof of hostile title asserted to and remained in possession in assertion of that right to the knowledge of the appellants. In the absence of such a pleading and proof, the finding of the appellate court that Bhulan had acquired the title to the property by prescription is clearly illegal.

3. Since the finding of adverse possession is not sustainable, what would be the relief that could be granted in the suit is the question. The appellants claimed possession as owners. In view of the above finding, they have title as reversioners of Bigu for undivided half share in the plaint schedule properties while Bhulan had half share in the property. Therefore, the decree of the trial court, appellate court and the High Court are set aside. The suit must be treated to be one for partition. There shall be a preliminary decree in this behalf with mesne profits for three years prior to date of suit. The trial court is directed to draw the final decree on an application to be made in this behalf by the appellants and enquiry into mesne profits should be conducted. During the pendency of this appeal, Respondents 4 to 6 died. By an order of this Court dated 11-2-1991, since the Legal Representatives of Respondents 4 to 6 were not brought on record, the appeal as against them stood dismissed. Since they are purchasers from the first defendant, the property sold to them stood now allotted to his share and must be computed to the share of the first defendant. Equally of the lands sold to other defendants/respondents do not bind the appellants. The land sold to them is in excess of the share of Bhulan. The trial court should work out the rights of the purchasers equitably among themselves, determine their liabilities to the appellants. In drawing the final decree and allotting the properties, the court should take into consideration quality and value of the property. A decree for payment of compensation to the appellants be made. Enquiry into mesne profits be made and a final decree should be passed accordingly within one year from the date of making the application. The appeal is accordingly allowed. Parties are directed to bear their own respective costs throughout.