

S U P R E M E C O U R T O F I N D I A
RECORD OF PROCEEDINGS

CIVIL APPEAL NO. 5961 OF 1999

ALIZAN MIAN

Appellant (s)

VERSUS

NARO DUSADH & ORS

Respondent(s)

(With prayer for interim relief)

Date: 17/02/2005 This Appeal was called on for hearing today.

CORAM :

HON'BLE MR. JUSTICE ASHOK BHAN
HON'BLE MR. JUSTICE A.K. MATHUR

For Appellant(s)

Mr. Anil Kumar Sangal, Adv.
Mr. Nalin Sangal, Adv.
Mr. D.P. Mohanty, Adv.
Ms. Priyanka Agarwal, Adv.

For Respondent(s) Mr. M.K. Choudhary, Adv. For
Mr. S.K. Verma, Adv.

UPON hearing counsel the Court made the following
O R D E R

The appeal is dismissed with no order as to costs.

(J.S.Rawat)

(Kanwal Singh)

Court Master

Court Master

(Signed order is placed on the file)

IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO. 5961 OF 1999

Alizan Mian

Appellant (s)

Versus

Naro Dusadh & Ors.

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O R D E R

Aggrieved against the judgment of confirmation passed by the High Court of Patna, Ranchi Bench (as it then was) in Appeal from Appellate Decree No. 123/81(R), one of the plaintiffs-appellants (hereinafter referred to as "the appellant") has filed the present appeal.

According to the appellant, his ancestor Hari Mian had acquired the suit land, namely, Plot No. 1343 measuring .53 acre comprising Khata No. 9 in village Dasaro-Khurd as "raiyati" on rent of 8 anas (50 paise). That the defendants-respondents (hereinafter referred as "the respondents") wanted to disturb their possession on the plea that the land had been entered in the name of the respondents in the revenue record during the recent survey operations. On verification, the appellant found that the respondents had surreptitiously got the land entered in their names under the survey operations.

According to the appellant, entries in the khatian, i.e. Revenue record in the survey operation, was a mistake as the Authorities had

entered the respondents as " raiyatis" without due verification. That the entries made in the survey operation were not binding on the appellant. The appellant filed the suit being T.S. No. 16/78 in the Court of Munsif, Kodarma at Hazari Bagh, inter alia, seeking the following reliefs:-

"(a) That the plaintiffs' title over the suit land be declared and their possession over the same be confirmed;

(b) That it is declared that the entry of the land in dispute in the names of the defendants is wrong and not binding on plaintiffs."

The respondents in their written statement controverted the averments made by the appellant. It was asserted that a few years before the last cadestral survey and settlement operations the old plot No. 1343 was given to Hari Mian and during the last cadestral survey and settlement operations, Hari Mian was recorded as a "Dar-raiyati" That a few years after the survey and settlement operation, the said Hari Mian gave up his Dar-raiyati possession to one Nagwa Dusadh, the predecessor-in-interest of the respondents and henceforth, Nagwa Dusadh came in 'Khas' (actual) possession over plot no. 1343 and remained so till his death. After the death of Nagwa Dusadh, his successors-in-interest have continued to be in possession.

On the pleadings of the parties, the Trial Court framed issues.

Parties led their evidence.

The trial Court vide its judgment and decree dated 31st March, 1979 decreed the suit filed by the appellant. It was held that the appellant was the 'raiya' and was in possession of the suit land. The respondents being aggrieved against the judgment and decree of the trial Court, filed the First Appeal in the Court of the Ist Additional Sub-ordinate Judge, Hazari Bagh which was numbered as Title Appeal No. 46/79. The Appellate Court on re-appreciation of evidence, reversed the findings recorded by the trial Court and held that the appellant was 'dar-raiya' whereas the respondents were the 'raiya's'. It further held that the respondents were in 'Khas' possession of the suit land. Accordingly, the appeal was accepted, judgment and decree passed by the trial Court was set aside and the suit filed by the appellant dismissed.

The appellant being aggrieved, filed the Appeal From Appellate Decree being AFAD No. 123/81(R). At the time of admission, the following two questions of law said to be arising in the appeal from the judgment of the First Appellate Court, were framed:-

"(i) Whether the failure on the part of the courts below to frame an issue regarding the surrender of the disputed land by Hari Mian to Nagwa Dusadh resulted in miscarriage of justice?

(ii) Whether the learned lower appellate court was justified in believing the case of the defendants in the absence of reliable evidence on the point of surrender?"

The High Court did not interfere with the findings of fact recorded by the first Appellate Court. The High Court agreed with the findings recorded by the First Appellate Court to the effect that the respondents were the 'raiyatis' and the appellant was 'dar-raiyati' and further that the respondents were in 'Khas' possession of the suit land.

The findings recorded by the Appellate Court were findings of fact which were not perverse. The Court had neither failed to take into consideration the relevant evidence on record having material bearing on the findings recorded which could have resulted in the change of the decision nor had the Court misread the evidence. The High Court rightly dismissed the appeal as no substantial question of law had arisen therein.

For the foregoing reasons, we do not find any merit in the appeal. The same is dismissed with no order as to costs.

.....J
(ASHOK BHAN)

New Delhi;
J.
February 17, 2005.

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(A.K. MATHUR)