

HIGH COURT OF MADHYA PRADESH,
PRINCIPAL SEAT AT JABALPUR
(SINGLE BENCH : HON'BLE SHRI JUSTICE J.P.GUPTA)
Second Appeal No.451/1993

Ramayan Prasad (since deceased) through LRs Smt. Sumitra and
Others
Vs.
Smt. Indrakali and others

Shri R.K. Verma, Senior Advocate with Shri Ram Murthi Tiwari
and Ms. Anjali Shrivastava, Advocate for the appellants.
Shri J.P. Dhimole, Advocate for LRs of respondent no.2,
respondents no.3,6, LRs A, B, C, D and E of respondent no.7,
respondents no.8 and 9.

Whether approved for reporting : (Yes/No).

J U D G M E N T
(__ .07.2019)

This second appeal has been preferred under Section 100 of the Code of Civil Procedure against the judgment and decree dated 20.09.1993 passed by First Addl. Sessions Judge, Sidhi in Civil Appeal No.27-A/1984, confirming the judgment and decree dated 17.2.1984 passed by Additional Civil Judge, Class I, Sidhi in Civil Suit No.455-A/1983 whereby respondents/plaintiffs' suit for declaration of title, possession and perpetual injunction for restraining to interfere in the possession of the suit premises has been decreed.

2. Facts giving rise to filing of the present appeal, briefly stated, are that on 20.7.1977, original plaintiff filed a suit for

declaration and perpetual injunction before the trial court against the respondents with regard to the suit land bearing Khasra No.71, area 0.36 acres, Khasra No.73 area 0.65 acres, situate at village Gulbaspur, Tahsil Churhat, District Sidhi, stating that grandfather of the appellant Laxmi Narayan was the *Bhoomiswami* of the land and after his death, his son Ramgulam father of the appellants became the *Bhoomiswami* of the land and Ramgulam was missing more than seven years and none heard about him that whether he was alive or not. Deeming him to be dead, the appellants, being the heirs of Ramgulam sold the aforesaid land to the father of plaintiff nos.3 to 5 Mukutdhari for Rs. 216/- on 28.5.1950 and the sale deed was executed and possession was delivered. Mukutdhari purchased the aforesaid land as a property of Joint Hindu Family of plaintiffs, therefore, the plaintiffs are owners of the suit land and have joint possession. There was a dispute between plaintiffs and defendants with regard to mutation in revenue record which was disposed of in favour of the appellants/defendants by the Board of Revenue on 18.12.1970 but it was not in the notice of the plaintiffs. The plaintiffs are in continuous possession of the suit premises since 28.05.1950 as owners, therefore, also on the ground of adverse possession, they accrued title on the land before filing the suit. The appellants/defendants interfered in the possession of the plaintiffs, therefore, instant suit has been filed for declaration of title and possession on the land and perpetual injunction to restrain appellants/defendants to interfere in the possession of the respondents/plaintiffs.

3. Appellants/defendants have filed their written-statement contending that they never executed the sale deed and when their father was alive, they had no title over the property, therefore, question of transferring the suit land by sale deed does not arise and no title and interest occurred by the so called sale deed. The appellants/defendants are in possession of the suit land and the

suit is time barred, proceeding for mutation was pending from 1961 and the Board of Revenue decided it finally by its order dated 18.12.1970 which was in the knowledge of the plaintiffs, therefore, the suit for declaration is time barred and on the suit land, the plaintiffs have no adverse possession, therefore, suit be dismissed.

4. That, after trial, learned trial Court has held that the appellants/defendants executed the unregistered sale deed on 28.5.1950 in favour of Mukutdhari and also delivered possession to him and on the basis of the aforesaid sale deed, plaintiffs became owners of the property and they have legal possession on the suit premises and the suit is not time barred. In the appeal, learned First Appellate Court confirmed the findings of the trial Court with regard to execution of the sale deed by the appellants/defendants and in addition also held that plaintiffs are owners of the property on the ground of adverse possession.

5. Appellants/defendants have challenged the aforesaid findings of both the Courts below on the ground that admittedly the sale deed is an unregistered document of more than Rs.100/- and in absence of registration on the basis of sale deed, it cannot be deemed that title was transferred in favour of Mukutdhar, on behalf of him the plaintiffs are claiming the title. So far as claim of title based on adverse possession is concerned, there is no specific averment and evidence on record and also no issue was framed by the trial Court on this point, therefore, no evince has been led by any party. The possession in pursuance of the sale deed was permissive, it cannot be held to be adverse possession. Apart from it, on the basis of adverse possession, plaintiffs cannot claim relief for declaration of title. Only the defendant can take plea of adverse possession to protect their possession. The findings of both the Courts below are also contrary to the law with regard to considering the suit of the plaintiffs within time as it is

categorically time barred in view of Articles 58 and 100 of the Limitation Act. Hence, the judgment and decree passed by both the Courts below deserve to be set aside.

6. This Court has admitted this appeal by order dated 8.12.1995 on the following Substantial Questions of Law:-

- (i) “Whether under the facts and in the circumstances of the case, the suit of the plaintiff is barred by limitation?”
- (ii) Whether, under the facts and in the circumstances of the case, in view of the findings recorded by the learned first appellate Court that execution of Ex.P-1 is not legally proved, could it be held that the plaintiffs are owners of the property?”

Having heard arguments of both the parties, on 8.5.2017, further following additional Substantial Questions of Law have been framed :-

- (i) “Whether the Courts below are justified in granting decree in favour of respondents/plaintiffs on the ground of adverse possession for want of specific pleadings, evidence perfecting adverse possession?”
- (ii) “Whether, the Courts below are justified in granting decree on the basis of adverse possession whereas the suit was filed for grant of decree on the ground of sale deed dated 28.5.1950 (Ex.P/1) which has already been discarded by the Courts below?”

7. Learned counsel appearing on behalf of the respondents/plaintiffs has submitted that the findings of both the Courts below are in accordance with law. There is a specific plea with regard to adverse possession and the plaintiffs are in peaceful possession since 28.5.1950 and plaintiffs are entitled to get decree on the basis of adverse possession and concurrent findings of both the Courts below do not require any interference; hence the appeal be dismissed.

8. The appellants/defendants have raised an objection that the suit was time barred and it is contended that in view of Article 100 of the Limitation Act, the suit should be filed within a year after the order of the Board of Revenue dated 18.12.1970 and as per the provisions of Article 58 of the Limitation Act, the suit should have been brought within three years after the order of the Board of Revenue which is 18.12.1970 and the suit was filed on 20.7.1977, therefore, it is time barred and both the Courts below have committed grave legal error in not considering the aforesaid aspect of the case. On behalf of the plaintiffs/respondents, it is submitted that their counsel did not inform about the order of the Board of Revenue, therefore, they were not aware about the order and the suit has been filed when the appellants/defendants interfere in the possession of the land. It is further submitted that the suit is not merely for declaration of title but it is also for injunction based on the possession on the property and, therefore, it is within three years from the date of the cause of action, i.e. 20.7.1977.

9. Having considered the aforesaid contentions, it is found that in this case, Article 100 of the Limitation Act does not attract as the present suit is not for declaration of the order of the Board of Revenue as *null and void*. In this regard, learned counsel for the

appellants has placed reliance on the judgment of this Court passed in the case of **State of M.P. Vs. Najmuddin, 2015 M.P.L.J. 376** which is based on the applicability of Article 100 of the Limitation Act, therefore, this case is not beneficial to the appellants as the present case comes in the purview of Articles 50 and 113 of Limitation Act. This suit has been filed for declaration and injunction on the basis of title and possession on the suit property. For the relief of declaration, suit should be within three years as per Article 58 of the Limitation Act when the right to sue first accrues. In this case, it is not disputed that the proceeding with regard to mutation was pending from 1961 to 1970 and in the aforesaid proceeding, the appellants/defendants challenged the title of the plaintiffs/respondents and the proceeding was finally disposed of in favour of the appellants/defendants by order dated 18.12.1970 passed by the Board of Revenue. The aforesaid proceeding was bi-party proceeding, therefore, after passing of the order on 18.12.1970, within three years the suit for declaration of title should have been filed, therefore, this suit for the relief of declaration is time barred and learned both the Courts below have committed legal error in not considering the aforesaid aspect.

10. The plaintiffs have also filed this case for perpetual injunction based on possession and it is proved that plaintiffs/respondents are in possession since 28.5.1950 and it is pleaded that on 16.7.1977 the appellants/defendants interfered in their possession, therefore, the suit has been filed, hence this suit for perpetual injunction is within limitation, in other words, within three years of the cause of action as required under Article 113 of the Limitation Act. Hence, it cannot be said that if the suit is time barred for declaration of title, then later on, a suit for perpetual injunction based on possession cannot be filed as both have separate and distinct cause of action.

11. Learned counsel appearing on behalf of appellants has placed reliance on the judgment of the Apex Court in the case of **Khatri Hotels Pvt. Ltd. Vs. Union of India and Others** reported in **(2011) 9 SCC 126** in which suit for declaration and permanent injunction for restraining interference on the possession of the immovable property has found time barred in view of Article 58 of the Limitation Act but the facts of the aforesaid case is different. The title was challenged and interference in possession was also made near about it. In the circumstances, suit for both the relief found as time barred, therefore, the suit was declared to be time barred. Here as mentioned earlier, the interference in possession was made in the year 1977, therefore, here the suit for injunction cannot be said to be time barred. Learned counsel appearing on behalf of the appellants has emphasized on the words used "first accrues" in Article 58 and contended that when right to sue first accrues, it will run and the suit based on multiple cause of action, suit has to be filed on the basis of first cause of action accrues and in this regard also, reliance is placed on the judgment of **Khatri Hotel (supra)** but in view of this Court, in the aforesaid judgment, it has not laid down that for other relief based on different cause of action, the suit cannot be brought on the basis of right to sue accrues later on. The aforesaid words used in Article 58 would govern only the suit for the relief of declaration and it will not cover other relief governed by other Articles of the Limitation Act.

12. In view of the aforesaid discussion, plaintiffs/respondents' suit for declaration is time barred but the suit for perpetual injunction is not time barred. Accordingly, substantial question of law no.1 is answered.

13. Having heard learned counsel for the parties and on perusal of the record, it is found that it is not disputed that the sale deed (Ex. P/1) executed by the appellants in favour of Mukutdhari on 28.5.1950 is an unregistered sale deed of the suit land for Rs. 216/-, therefore, the registration of the sale deed is must as per the provisions of the Indian Registration Act. In absence of the registration in view of the provisions of Section 49 of the said Act, the transfer of title cannot be effected, hence, on the basis of the aforesaid unregistered sale deed, the plaintiffs/respondents cannot claim the title and no title can be declared on the basis of such unregistered sale deed.

14. It is also the concurrent finding of both the Courts below that the plaintiffs/respondents are in possession of the suit land since the date of execution of the aforesaid unregistered sale deed Ex. P/1 dated 28.5.1950 and they are claiming the possession as owner on the basis of the sale deed and this fact has remained in the knowledge of the appellants/defendants and the mutation proceedings started in the year 1961. The plaintiffs/respondents are claiming the ownership on the basis of the aforesaid unregistered sale deed Ex. P/1 and their possession completed more than 12 years before filing of the suit and the learned First Appellate Court considering the aforesaid facts decided that the plaintiffs/respondents have acquired title on the suit land on the basis of adverse possession and, therefore, they are entitled to decree of declaration of title.

15. Learned counsel appearing on behalf of the appellants has contended that in absence of specific pleading with regard to adverse possession and without framing any specific issue, without giving opportunity to adduce evidence, on the basis of adverse possession, the suit cannot be decreed. It is further submitted that possession based on an unregistered sale deed

cannot be considered to be adverse possession. It was permissive possession, therefore, it will be ever remaining permissive possession till it is not established that it turned in hostile possession from specific date. It is further submitted that plaintiffs/respondents cannot claim declaration of title on the basis of adverse possession. The plea of adverse possession is available only to a defendant as a shield/defence of his possession as held by the Apex Court in the case of **Gurdwara Sahib Vs. Gram Panchayat at Village Sirthala 2014(3) MPLJ 36 SC.**

16. Learned counsel appearing on behalf of the plaintiffs/respondents has submitted that there is a specific plea in the plaint that the plaintiffs are in continuous possession since 28.5.1950 on the basis of the aforesaid unregistered sale deed as owner and their possession are peaceful and on the basis of adverse possession they have acquire title on the suit property and the appellants/defendants stated that the plaintiffs/respondents were never in possession of the suit property and both the parties after considering the aforesaid pleadings have adduced their evidence deeming that the issue of adverse possession is involved in the suit, therefore, merely on the ground that trial Court has not framed specific issue, it cannot be said that the issue of adverse possession cannot be dealt with by the Appellate Court and the first Appellate Court has not committed any error considering the plea of adverse possession and relying on the judgment of this Court passed in the case of **Sukhibai and others Vs. Limya and Others 1987 JLJ 159** in which it is held that long possession for over 12 years as a owner under unregistered document will be deemed to be adverse possession and right accrues in favour of the purchaser.

17. The perusal of the record in the light of the aforesaid contentions in view of this Court, it cannot be said that in this

case, there is no pleading with regard to adverse possession. Similarly it cannot be said that parties are not aware about the involvement of issue of adverse possession in this case and parties have also adduced the evidence and it is found that the fact that plaintiffs/respondents are in possession of the suit land since 28.5.1950 as owner, was in the knowledge of the appellants/respondents since beginning and later on since 1961 while the proceedings for mutation were commenced, therefore, the appellants/defendants have a right to get the possession back within 12 years has been ceased as held by this Court in the aforesaid judgment of Sukhibai (**supra**). Apart from it, this Court in another judgment **Abdul Karim Vs. Nanda MPWN 1986(1) SN 48** also held that possession given under invalid sale deed and suit for restoration of possession not filed within 12 years, the title of the purchaser perfected by the adverse possession. In view of the aforesaid discussion in this case, there is no hesitation to held that the plaintiffs/respondents' possession on the suit land matured by adverse possession and right of the appellants/defendants ceased by the provisions of Section 27 of the Indian Limitation Act.

18. Now the question is whether the plaintiffs/respondents can claim relief of declaration of title on the basis of the adverse possession. In this regard, concept of law has been changed and Hon'ble the Apex Court in the case of **Gurdwara Sahib (supra)** has held that

“the suit for relief of adverse possession is not maintainable even if the plaintiff is found to be in adverse possession it cannot seek a declaration to the effect that such adverse possession as matured into ownership. Only if proceedings are filed against person found in adverse possession he can

use his adverse possession as a shield/defence. The Apex Court in this case also made it clear that though the suit of the appellant seeking relief of declaration has been dismissed, in case respondents file suit for possession and/or ejectment of the appellant, it would be open to the appellant to plead in defence that the appellant had become the owner of the property by adverse possession. Needless to mention at this stage, the appellant shall also be at liberty to plead that findings of issue No.1 to the effect that the appellant is in possession of suit property since 13.4.1952 operates as res judicata. Subject to this clarification, the appeal is dismissed”.

(emphasis supplied)

19. In view of aforesaid enunciation of law by the Apex Court, it is clear that the plaintiffs cannot claim the decree for declaration of title on the basis of adverse possession. The plea of adverse possession can be considered only as shield/defence by the defendants to protect the possession, therefore, learned first Appellate Court has committed legal error in granting the decree of title on the basis of the adverse possession and to that extent, the decree deserves to be set aside.

20. In view of the above discussion, it is held that the suit filed by the plaintiffs is time barred for the relief of declaration but for the relief of injunction, it is within time. The plaintiffs/respondents do not get title on the suit premises on the basis of the unregistered sale deed and they are also not entitled to get declaration of title on the basis of adverse possession. However, they have completed adverse possession on the suit land for more than 12 years before filing of the suit, in the light of the

law laid down by the Apex Court in the case of **Gurdwara Sahib (supra)** the plaintiffs/respondents are entitled to get relief of perpetual injunction to protect their possession on the suit land against the appellants/defendants.

21. The aforesaid substantial questions of law are answered accordingly and resultantly, the judgment and decree of both the Courts below are set aside to the extent of declaration of title of the plaintiffs/respondents on the suit premises and the judgment and decree is confirmed with regard to perpetual injunction against the appellants/defendants to restrain them from interfering in the possession of respondents/plaintiffs on the suit land without following due process of law.

22. In the facts and circumstances of this case, the parties to appeal will bear their own cost.

(J.P.Gupta)
JUDGE

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HIGH COURT OF MADHYA PRADESH :
PRINCIPAL SEAT AT JABALPUR

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| 1 | Case Number | Second Appeal No.451/1993 |
| 2 | Parties Name | Ramayan Prasad (since deceased) through LRs Smt. Sumitra and Others Vs. Smt. Indrakali and others |
| 3 | Date of Order | 30/07/2019 |
| 4 | Bench Constituted of | Hon. Shri Justice J.P. Gupta |
| 5 | Judgment delivered by | Hon. Shri Justice J.P. Gupta |
| 6 | Whether Approved For Reporting (AFR) | YES |
| 7 | Name of the counsel for the parties | Shri R.K. Verma, Senior Advocate with Shri Ram Murthi Tiwari and Ms. Anjali Shrivastava, Advocate for the appellants. Shri J.P. Dhimole, Advocate for LRs of respondent no.2, respondents no.3,6, LRs A, B, C, D and E of respondent no.7, respondents no.8 and 9. |
| 8 & 9 | Law Laid down & Significant paragraph numbers 10 to 12, 16, 17 & 15. | i) The suit filed for declaration of title may be barred under Article 58 of the Limitation Act even though it may be within time under Article 113 of the Limitation Act for the relief of perpetual injunction, if both the reliefs are separate and have a distinct cause of action. ii) Possession on the basis of unregistered sale-deed is not permissive possession. It will be deemed to be adverse possession. (See Sukhibai and others Vs. Limya and Others 1987 JLJ 159, Abdul Karim Vs. Nanda MPWN 1986(1) SN 48). iii) The plaintiff cannot claim relief of declaration of title on the basis of adverse possession. Plea of adverse possession can be taken only by the defendant to protect his possession (see Gurdwara Sahib Vs. Gram Panchayat at Village Sirthala 2014(3) M.P.L.J. 36 SC) |

(J.P.GUPTA)
JUDGE