

IN THE HIGH COURT OF MADHYA PRADESH
AT JABALPUR
BEFORE
HON'BLE SHRI JUSTICE DWARKA DHISH BANSAL
ON THE 29th OF FEBRUARY, 2024
SECOND APPEAL No. 616/1994

BETWEEN:-

- 1. UMA PRASAD, S/O RAM DULARE, R/O
BODA, TAHSIL - HUZUR, DISTRICT
REWA (MADHYA PRADESH)**

.....APPELLANT

(SHRI VIPIN YADAV AND SHRI RAUNAK YADAV - ADVOCATES)

AND

- 1. SHYAM LAL SINGH (DIED THROUGH LR_s)**
- 1A. JABBAR SINGH S/O SHYAM LAL SINGH,
AGED ABOUT 48 YEARS.**
- 1B. GYANEDRA SINGH S/O SHYAM LAL SINGH,
AGED ABOUT 40 YEARS.**
- 1C. SATYENDRA SINGH S/O SHYAMLAL SINGH,
AGED ABOUT 36 YEARS.**

**[ALL SONS OF SHYAMLAL SINGH
RESIDENTS OF BADA, TAHSIL, HUJUR,
DISTRICT REWA]**

- 2. SHIV PRATAP (DIED THROUGH LR_s)**
- 2A. SATYA NARAYAN S/O SHIV PRASAD, AGED
45 YEARS.**

2B. BALMIK S/O SHIV PRASAD, AGED 35 YEARS.

2C. KAUSALYA D/O SHIV PRASAD AGED ABOUT 50 YEARS. Wd/O RAM BIHARI, R/O VILLAGBE SENDHAHAI, TAH. HUZUR, DISTT. REWA (M.P)

2D. SMT. TARA DEVI D/O SHIV PRASAD W/O RAMGARI R/O VILLAGE AGDAL, TAH. HUZUR, DISTT. REWA.

[2A AND 2B ARE RESIDENTS OF BODHA TAHSIL HUZUR DISTRICT REWA (M.P)]

3. DALCHAND S/O BACHULAL, R/O BUDDAR, ROAD, SHAHDOL (M.P)

.....RESPONDENTS

(NONE)

This appeal coming on for final hearing this day, the court passed the following:

J U D G M E N T

This second appeal has been preferred by the appellant/plaintiff challenging judgment and decree dated 13.07.1994 passed by District Judge, Rewa in Civil Appeal No.72-A/1984 affirming judgment and decree dated 30.04.1984 passed by First Civil Judge Class-II, Rewa in Civil Suit No.83-A/1971 whereby appellant/plaintiff's suit for declaration of title, recovery of possession and permanent injunction in respect of

agricultural land Survey Nos. 220, 221, 223, 225, 226, 227, 240, 235 & 236 situated in Village Boda, Tahsil Huzur, District Rewa was decreed partly, in respect of the land Survey Nos. 220, 221, 223, 225, 226, 227 & 240 which in civil appeal filed by defendants 1-2 (Shyamlal and Shiv Pratap) was reversed, dismissing the suit in its entirety.

2]. Facts in short are that, plaintiff instituted the suit with the allegations that the land in question belonged to plaintiff's grandfather-Vanshgopal and was mortgaged by him with defendant 3's father-Bachchulal and after getting redeemed the mortgage on 19.06.1943, he took possession over the land. It is also alleged that thereafter Vanshgopal sold Survey No. 235 & 236 to Ram Kumar and Survey No. 222 to defendant 1-Shyamlal Singh but, Vanshgopal remained in possession till his lifetime, who died in the year 1946, thereafter plaintiff's father Ram Dulare (i.e. son of Vanshgopal) remained in possession, who died in the year 1950, thereafter mother of plaintiff took care of the land, but she also left the Village Boda in the year 1957 in the minority of plaintiff, thereafter the plaintiff's cousin Harihar Prasad took care of the land. It is alleged that the defendant 1 in addition to the land survey no.222 also got the land Survey Nos. 235, 236, 220, 221, 223, 226 & 227 mentioned in the sale deed dated 19.06.1943 and started claiming himself to be owner

and the defendant 2 took forcible possession over the land Survey Nos.226, 227 & 240 in the month of July 1958 and got recorded the same in Khasra showing it to have been received from defendant 1 in exchange. The defendant 1 in connivance with father of defendant 3 got the land Survey Nos. 223, 225 & 240 mutated in his name on 25.04.1959. Alleging the defendant 1 to be in illegal possession, the suit was filed.

3]. The defendants 1-2 filed joint written statement denying the plaint allegations and contended that Vanshgopal sold the land Khasra Nos.220, 221, 222, 223, 225 & 227 on 19.06.1943 to the defendant 1 and handed over possession, however it is contended that land of Khasra No.235 & 236 was not sold but these numbers were mentioned mistakenly in the sale deed. Similarly the land Khasra No.225 was left from mentioning in the sale deed. It is contended that w.e.f. 19.06.1943 grandfather or father of plaintiff did not remain in possession, but the defendants 1-2 are in continuous possession. It is also contended that the defendants have also acquired title by adverse possession and their possession deserves to be protected under Section 53-A of the T.P. Act and the suit is barred by limitation. With these contentions the suit was prayed to be dismissed.

4]. Despite service of summons, the defendant 3 did not appear and was proceeded ex-parte.

5]. On the basis of pleadings of the parties, trial Court framed as many as 14 issues and recorded evidence of the parties. The plaintiff in support of his case examined himself-Uma Prasad (PW-1), Ram Sharan (PW-2), Shibba (PW-2), Buddh Sen (PW-3), Ramesh Kumar Dwivedi (PW-4), Hanuman Prasad (PW-5), Gaya Prasad Singh (PW-6), Bhagwanti (PW-7), Harihar Prasad (PW-8), Badri Prasad (PW-9), Shiv Prasad (PW-10), Nand Kumar (PW-11) and produced documentary evidence (Ex.P-1 to P-42). Similarly the defendants examined Darbarilal Shrivastava (DW-1), Ram Sajeevan Mishra (DW-2), Shyamlal Singh (DW-3), Shiv Pratap (DW-4), Ramkumar (DW-5), Harihar Prasad (DW-6), Sugreev Singh (DW-7), Balmik Singh (DW-8), Ram Swaroop Singh (DW-9) and produced documentary evidence (Ex.D-1 to D-29).

6]. Upon consideration of aforesaid material available on record, trial Court vide judgment and decree dated 30.04.1984 decreed the suit partly holding the plaintiff to be bhoomiswami and entitled for possession of land Survey Nos.220, 221, 223, 225, 226, 227 & 240 and dismissed the suit in respect of land Survey Nos. 222, 235 & 236 holding it to have been sold to the defendant 1 vide sale deed dated 19.06.1943 (Ex.D-2).

7]. Against the aforesaid judgment and decree dated 30.04.1984 Civil Appeal No.72-A/1984 was filed by defendants which came to be decided

on 14.12.1984 and matter was remanded to trial Court for inquiry in relation to possession of the parties to the suit during the year 1943 to 1955.

8]. In pursuance of said judgment of remand, trial Court vide judgment and decree dated 18.02.1985 held that despite execution of sale deed, the plaintiff remained in possession of entire land and decreed the suit in its entirety.

9]. Against judgment and decree dtd. 18.02.1985, defendants preferred appeal which came to be decided on 12.09.1985 and by allowing the appeal, the suit was dismissed.

10]. At the instance of plaintiff, matter came in Second Appeal No. 612/1985 which was decided on 22.03.1993 and by allowing the same, matter was remanded to first appellate Court with the direction to decide the civil appeal on merits after appreciating entire evidence and by recording specific findings regarding possession.

11]. Thereafter first appellate Court again decided the civil appeal vide judgment and decree dated 13.07.1994 and by holding the defendants to be in possession of the suit property, dismissed the suit in its entirety by setting aside the judgment and decree of trial Court dated 30.04.1984.

12]. Against the judgment and decree dtd. 13.07.1994 passed by first appellate Court, instant second appeal was preferred and was admitted for final hearing on 18.01.1995 on the following substantial questions of law.

“i. Whether the finding recorded by the lower appellate Court holding the adverse possession of plaintiff by perfecting the title is correct ?

ii. Whether the lower appellate Court has wrongly decided that the suit was barred by limitation ?”

13]. Learned counsel for the appellant/plaintiff submits that the substantial question of law no.1 has been formulated wrongly and in place of the word ‘*plaintiff*’ mentioned therein, it needs to be corrected and read as ‘*defendant*’ and submits that first appellate Court has wrongly held that since after execution of sale deed dated 19.06.1943, plaintiff’s grandfather, plaintiff’s father and thereafter the plaintiff did not remain in possession. He submits that the defendant cannot take plea of adverse possession because he is claiming himself to be owner on the basis of sale deed (Ex.D/2). He further submits that there is no requisite pleadings in the plaint regarding acquisition of title by adverse possession, therefore, first appellate Court has erred in setting aside the judgment and decree of trial Court and in holding the defendant 1 to have acquired title by adverse possession. In support of his submissions he

placed reliance on decision of Hon'ble Supreme Court in the case of Govt. of Kerala vs. Joseph and others, **2023 INSC 693** and in the case of Shri Uttam Chand (D) Through Lrs. vs. Nathu Ram (D) Through LRs. & ors. in **Civil Appeal no. 190 of 2020** decided on 15.01.2020. He also submits that first appellate Court has just contrary to the provisions contained in Article 65 of the Limitation Act, 1963, committed illegality in holding the suit to be barred by limitation. With these submissions he prays for allowing the second appeal and to decree the civil suit by restoring the judgment and decree of trial Court.

14]. Despite service of summons, none has appeared for the respondents/defendants.

15]. Heard learned counsel for the appellant/plaintiff and perused the record.

16]. As has been mentioned above, in pursuance of order/judgment of remand dated 14.12.1984, matter was remanded for the purpose of inquiry in relation to possession of parties to the suit from the year 1943 to 1955 and ultimately vide order dated 22.03.1993 passed in Second Appeal No. 612/1985 again the matter was remanded to first appellate Court to record aforesaid finding of possession after appreciating the entire evidence available on record.

17]. In pursuance of order dtd. 22.03.1993 passed in S.A. 612/1985 first appellate Court vide impugned judgment and decree dated 13.07.1994 appreciated evidence of the parties in detail and on the basis of admissions of witnesses of the plaintiff namely, Shiv Prasad and Nand Kumar (PW-10 & PW-11) held that after execution of sale deed dated 19.06.1943 (Ex.D/2), neither grandfather nor father of plaintiff remained in possession, but the defendant 1 has been in possession.

18]. Apparently, no substantial question of law has been framed in the instant second appeal in respect of any perversity in the finding of possession recorded by first appellate Court, and the counsel for the appellant has also failed to point out any perversity in the finding of possession, therefore, the finding of possession recorded by first appellate Court in favour of defendant 1 becomes final. Even otherwise finding on the question of possession being a pure finding of fact is not assailable in the second appeal, as has been held by Supreme Court in the case of Mohanlal vs. Nihal Singh **(2001) 8 SCC 584**.

19]. In the present case, sale deed (Ex.D/2) was executed by Vanshgopal in favour of defendant 1 on 19.06.1943, in which Survey No. 222, 235, 236, 220, 221, 223, 226, 227 & 240 are mentioned and at the same time, the deed is shown to be registered in respect of Khasra Nos.

235, 236 & 222. However, possession is said to have been delivered on all the khasra numbers. Taking into consideration this aspect of the matter, trial Court decreed the suit in respect of land Khasra Nos. 220, 221, 223, 225, 226, 227 & 240 holding the sale of the land only in respect of land Khasra Nos. 235, 236 & 222. It was also held that the plaintiff is in possession of the land except the land Survey Nos. 235, 236 & 222. The question of possession was agitated by the defendants since beginning claiming themselves to be in possession of the land of all the survey numbers, therefore, the matter was sent for inquiry on the question of possession of the parties during the years in between 1943 to 1955 and ultimately first appellate Court has found the defendant to be in possession of entire disputed land.

20]. In view of the aforesaid factual finding of defendant's possession from the year 1943, the provisions of old Limitation Act, 1908 would apply. Relevant provision of old Act in respect of filing of the suit for possession of immovable property is quoted as under:-

“**142.**—For possession of immoveable property when the plaintiff while in possession of the property, has been dispossessed or has discontinued the possession.”

Under Article 142 of the old Act, limitation was ‘*Twelve years*’ from the date of the dispossession or discontinuance.

21]. In respect of the aforesaid controversy, relevant provision has been made in the Limitation Act, 1963 vide section 31 of the Act, which is quoted as under :

“31. Provisions as to barred or pending suits, etc.—Nothing in this Act shall,—

(a) enable any suit, appeal or application to be instituted, preferred or made, for which the period of limitation prescribed by the Indian Limitation Act, 1908 (9 of 1908), expired before the commencement of this Act; or

(b) affect any suit, appeal or application instituted, preferred or made before, and pending at, such commencement.”

22]. Upon arising same controversy, Hon’ble Supreme Court in the case of *T. KALIAMURTHI & ANR. VERSUS FIVE GORI THAIKAL WAKF & ORS., (2008) 9 SCC 306* considered the scope of section 31 of the Limitation Act and held as under :

“36. Section 31 of the Limitation Act, 1963 provides that nothing in the Limitation Act, 1963 shall enable any suit, appeal or application to be instituted, provided or made, for which the period of limitation prescribed by the Limitation Act, 1908 expired before the commencement of this Act. Section 31 of the 1963 Act assumes great importance which was completely overlooked by the first appellate court. Admittedly, in the present case, the suits were filed long after the death of the Muthavalli and the suit properties were transferred as far back as in 1927, therefore, the suits were barred under the Limitation Act, 1908. In other words, in the present case, the period of limitation prescribed under the 1908 Act had already expired before the commencement of the 1963 Act and, therefore, in view of the clear mandate of Section 31 of the Limitation Act, 1963, suits could not have been instituted by taking the plea that the same was within the limitation under the 1963 Act.”

23]. If pure finding of fact of defendants’ possession is taken into consideration in the light of said provision contained in Article 142 of the old Limitation Act, the limitation of 12 years would start running from

19.06.1943 itself, when the defendants came in possession and have also been found in possession continuously till the date of filing of the civil suit on 13.09.1971. As such, even if for the sake of argument, the plea of adverse possession is ignored, then also there is no room available for the plaintiff to get decree of possession in his favour. In view of the aforesaid factual scenario, both the decisions (supra) cited by learned counsel for the appellant, are not applicable to the instant case.

24]. Pleadings in the plaint are to the effect that after execution of sale deed on 19.06.1943, Vanshgopal died in the year 1946, thereafter his son namely Ram Dulare died in the year 1950 and then his wife left the Village Boda in the year 1957 in the minority of plaintiff. As to why any action was not taken firstly by Vanshgopal himself, then by Ram Dulare and thereafter by mother of the plaintiff, nothing is on record. As such in my considered opinion, first appellate Court has not committed any illegality in holding the suit to be barred by limitation. Accordingly, the ***substantial question of law No.2*** is decided against the appellant and in favour of the respondents.

25]. In the present case, except filing of the suit on 13.09.1971, nothing appears to have been done by the plaintiff, his mother, father and grandfather within 12 years from 19.06.1943. Further, the act of

cultivation is not a secret act. Sufficient evidence is available on record to hold that the defendants remained in possession of the land asserting themselves to be owner/bhoomiswami thereof, which is sufficient to acquire title by a person on the basis of adverse possession. Resultantly, the finding of acquiring title by defendants on the basis adverse possession does not appear to be illegal or perverse.

26]. Although, no substantial question of law has been framed in respect of acquisition of title on the basis of adverse possession by the defendant, but in view of the aforesaid discussion, the ***substantial question of law No.1*** formulated by this Court is also decided against the appellant and in favour of the respondents.

27]. Resultantly, this second appeal fails and is hereby **dismissed**.

28]. However, no order as to cost.

29]. Pending application(s), if any, shall stand dismissed.

(DWARKA DHISH BANSAL)
JUDGE