Rai Sahib Dr. Gurdittamal Kapur

Vs

Mahant Amar Das Chela Mahant Ram Saran and Others

Civil Appeal No. 471 of 1963

(K. N. Wanchoo, J. R. Madholkar, S. M. Sikri JJ)

19.03.1965

JUDGMENT

MUDHOLKAR, J.

The short point which falls to be considered in this appeal by special leave from a judgment of the High Court of Punjab dismissing the appellant's appeal in limine is whether the suit for possession instituted by the plaintiff-respondent No. 1 is within time. There are ten respondents to the appeal out of whom only two, the plaintiff-respondent No. 1 Amardas and respondent No. 11 Union of India are represented. While the appeal is contested by the first respondent it is supported by the Union of India,. The fact which are not disputed before us are briefly these :

> The appellant has a share of 122 1/2/143 1/2 in the land in suit. The occupancy tenant of this land is Akhara Nirbansar of Sultanwind Gate, Amritsar. The second respondent Ram Saran Das was Mahant of this Akhara till the year 1950 when he was removed by virtue of an order made by a civil court in a suit under s. 92 of the Code of Civil Procedure, confirmed in appeal on September 11, 1950. On December 29, 1953 respondent No. 1 was appointed as Mahant in place of respondent No. 2.

On September 15, 1939 the appellant instituted a suit in a revenue court under ss. 38 and 39 of the Punjab Tenancy Act (hereafter referred to as the Act) for possession of 141 kanals 8 marlas of land on the ground that he had granted a sub-lease thereof for the manufacture of bricks to someone by utilising earth dug up from that land. This, according to the appellant, was in contravention of the provisions of s. 39 of the Act and entitled him to eject respondent No. 2. The Revenue Court held that out of the land sub-leased by respondent No. 2 only a certain portion was dug up by the sub-lessee and, therefore, the ejectment of the second respondent was confined to that area of land which had been dug up. The date of the ejectment decree was June 3, 1940. The second respondent preferred an appeal before the Collector from that decree which was dismissed on October 19, 1940. Shortly thereafter the appellant obtained possession of the land from which the second respondent was ordered to be ejected. The lessee of the second respondent, however, continued to dig up the rest of the land and, therefore, the appellant instituted a second suit for the ejectment of the second respondent therefrom. The Assistant Collector who tried the suit granted a decree to the appellant in respect of the entire land which was left with the second respondent after he was dispossessed from a part of the land leased to him under the earlier decree. In appeal, however, the Collector modified the order of ejectment by leaving out of the land 29 kanals and 14 marlas. This order was made on May 31, 1943. Shortly thereafter the appellant obtained possession of the land with respect to which the Collector had confirmed the order of ejectment in the appeal.

On March, 18, 1957 the first respondent instituted a suit against the appellant and the second respondent. According to respondent No. 1 Akhara Nirbansar was not bound by the actions of Mahant Ram Saran Das, the second respondent, which were tantamount to alienation of the land which, according to him, were neither for legal necessity nor for the benefit of the estate. He contended that on the contrary the action of Ram Saran Das in alienating the land was unauthorised and illegal and because what he did was not for legal necessity nor for conferring any benefit on the estate.

The appellant contested the suit on two main grounds. The first was that the land in question was never attached to the Akhara but that Mahant Ram Saran Das, the second respondent, was its occupancy tenant and that as the sub-lessee of the land had dug it up and rendered it unfit for cultivation the appellant as the owner of the land was entitled to eject respondent No. 2 by forfeiting the lease. He denied that the land was wakf property and contended that the occupancy rights existing in favour of the second respondent were extinguished by the orders of the revenue courts which still hold good. The second point was that as the appellant was in continuous possession of the land in suit as owner in his own right for more than 12 years preceding the suit openly and to the exclusion of the second respondent and respondent No. 1 the suit was barred by time.

In his replication respondent No. 1 reiterated that the property in suit belongs to and is owned by the Akhara Nirbansar as its occupancy tenant and that the second respondent was never its occupancy tenant. Therefore, according to him, there was no question of extinguishment of occupancy right in consequence of the two decrees made by the revenue courts. He contended that the action of the second respondent in leasing out the land for digging up earth was a transfer which, not being for legal necessity nor for the benefit of the estate, was unauthorised. According to him the mere fact that the appellant was in possession of the land for more than 12 years makes no difference to the suit and that the land being trust property a suit for its recovery could be brought within 12 years from the date of "death, resignation or removal" of the manager of such a property. He added that there was no question of the appellant being in possession in his own right of the land for more than 12 years. The suit was decreed by the trial court and its decision was upheld in appeal by the second Additional District Judge, Amritsar. The appellant's second appeal was dismissed in limine by the High Court.

Upon the view which we take on the question of limitation it has become unnecessary to decide the other points.

The learned Solicitor General who appears for the appellant relies strongly upon the averments of the appellant in his written statement that he is occupying the land in suit for a period of over 12 years from the date of the institution of the suit as owner in his own right and not as an occupancy tenant and that even if his occupation is regarded to be that of an occupancy tenant as alleged by the first respondent, he has acquired the proprietary rights in this property by operation of statute. The Solicitor General relies on the further averments to the effect that the original occupancy tenant of the land was the second respondent and not the Akhara and also contended that whether it was one or the other made no difference. For, the tenant's occupancy rights were extinguished by the decrees passed in the ejectment suits and consequently there was no cause of action for the present suit. As pointed out by the learned Solicitor General, respondent No. 1 in his replication has not disputed the fact that the appellant was in possession for more than 12 years before the institution of the suit and that the only way in which he tried to meet it was by saying that this fact made no difference to his case.

It seems to us clear that upon the eviction of respondent No. 2 from a part of the land in the year 1940 and the rest of it in the year 1943 the occupancy right with respect to the land merged in the right of ownership of the appellant. Apart from that it is clear that the actual physical possession of the land having been continuously with the appellant to the exclusion of the occupancy tenant, whether it was respondent No. 1 or the Akhara itself, for a period more than 12 years before the institution of the suit that right was extinguished.

Mr. Gupta, learned counsel for respondent No. 1, however, sought to meet this position by urging that the second respondent's act amounted to an alienation, that it was not established that it was for legal necessity and that, therefore, respondent No. 1 as the successor of respondent No. 2 to the office of Mahantship of the Akhara could institute a suit within 12 years of his succession to the office. This succession to his office must, according to him, be deemed to have occurred when upon the dismissal in the year 1950 of the appeal preferred by respondent No. 2 against the decision of the trial court removing him from Mahantship; later the respondent No. 1 was appointed a Mahant. That was on December 12, 1953. The suit having been filed within 12 years of that date, so Mr. Gupta contends, must be held to be within time. The simple answer to this contention is that what happened in this case was the forfeiture of the occupancy tenancy by the appellant as landlord. In no sense can this be regarded as, or even likened to alienation, which is a voluntary act of the alienor in favour of the alienee. The appellant is thus not an alienee from the respondent No. 2 Ram Saran Das.

Mr. N. C. Chatterjee who also appeared for the first respondent raised a novel contention. According to him, adverse possession against the Akhara, which was the real occupancy tenant, could not commence till respondent No. 1 was appointed as Mahant because during the interval there was no person who was competent to institute a suit on behalf of the Akhara for the possession of the lands of which the appellant was in adverse possession. In support of the contention he has placed reliance upon the decision in Dwijendra Narain Roy v. Joges Chandra De [A.I.R. 1924 Cal. 600]. In particular learned counsel has relied upon the following observations of Mookerjee J., who delivered the judgment of the Court. They are :

> "The substance of the matter is that time runs when the cause of action accrues, and a cause of action accrues, when there is in existence a person who can sue and another who can be sued..... The cause of action arises when and only when the aggrieved party has the right to apply to the proper tribunals for relief. The statute (of limitation) does not attach to a claim for which there is as yet no right of action and does not run against a right for which there is no corresponding remedy or for which judgment cannot be obtained. Consequently the true test to determine when a cause of action has accrued is to ascertain the time when plaintiff could first have maintained his action to a successful result." (p. 609).
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> He further brought to our notice that these observations have received the approval of this Court in F. Lakshmi Reddy v. L. Lakshmi Reddy [[1957] S.C.R. 195], at p. 206. In the case which came up before this Court the facts which are set out in the head note were as follows :
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> "V died an infant in 1927 and H, an agnatic relation filed a suit for the recovery of the properties belonging to V which were in the possession of third parties, on the ground that he was the sole nearest male agnate entitled to all the properties. During the pendency of the suit a Receiver was appointed for the properties in February,

> 1928. The suit having been decreed H obtained possession of the properties from the Receiver on January 20, 1930, and after his death in 1936, his nephew, the appellant, got into possession as H's heir. On October 23, 1941 the respondent brought the present suit for the recovery of a one-third share of the properties from the appellant on the footing that he and his brother were agnatic relations of V of the same degree as H, that all the three were equal co-heirs of V and that H obtained the decree and got into possession on behalf of all the co-heirs. The appellant resisted the suit and contended that the respondent lost his right by the adverse possession of H and his successor and that for this purpose not only the period from January 20, 1930 to October 23, 1941 was to be counted but also the prior period when the Receiver was in possession of the properties during the pendency of H's suit. It was found that the respondent's case that H obtained the decree and got possession from the Receiver on behalf of the other co-heirs was not true."

The facts of that case were different and it was on these facts that this Court held that the respondent did not lose his right by adverse possession. It is in the context of these facts that the learned Judges cited with approval the observations of Mookerjee J., which we have set out. Assuming these observations are sound, it cannot be said in the case before us that at any point of time there was no person who was competent to institute a suit on behalf of the Akhara. Respondent No. 2 was still the Mahant and could well have instituted a suit on behalf of the Akhara if in fact there was any cause of action for such a suit. Further, in the course of the suit the possession was with a Receiver who had been appointed by the court and was thus competent in law to institute a suit.

We may point out that a Mahant of an Akhara represents the Akhara and has both the right to institute a suit on its behalf as also the duty to defend one brought against it. The law on the subject has been stated very clearly at pp. 274 and 275 in Mukherjea's Hindu Law of Religious and Charitable Trust, 2nd, ed. It is pointed out that in the case of an execution sale of debutter property it is not the date of death of the incumbent of the Mutt but the date of effective possession as a result of the sale from which the commencement of the adverse possession of the purchaser is to be computed for the purposes of art. 144 of the Limitation Act. This is in fact what the Privy Council has laid down in Sudarsan Das v. Ram Kirpal [L.R. 77 I.A. 42]. A similar view has been taken by the Privy Council in Subbaiya v. Mustapha [L.R. 50 I.A. 295]. What has been said in this case would also apply to a case such as the present. Thus if respondent No. 2 could be said to have represented the Akhara in the two earlier suits, decrees made in them would bind the respondent No. 1 as he is successor in office of respondent No. 2. On the other hand if respondent No. 2 did not represent the Akhara, the possession of the appellant under the decree passed in these suits would clearly be adverse to the Akhara upon the view taken in the two decisions of the Privy Council just referred to. The first respondent's suit having been instituted after the appellant has completed more than 12 years of adverse possession must, therefore be held to be barred by time. For these reasons disagreeing with the courts below we set aside the decrees of the courts below and instead dismiss the suit of respondent No. 1 with costs in all the courts.

Appeal allowed.

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