

Somnath Burman

Vs

Dr. S. P. Raju and Another

Civil Appeal No. 2342 of 1966

(J.C. Shah, K.S. Hegde JJ)

16.10.1969

JUDGMENT

HEGDE, J. –

1. The appeal had been brought by the first defendant in O. S. No. 210 of 1958 on the file of the first Additional Judge, City Civil Court, Hyderabad. That was a suit brought by the first respondent-plaintiff for possession of the suit property. That suit was dismissed by the Trial Court but in appeal the High Court of Andhra Pradesh reversed the decree of the Trial Court and decreed the plaintiff's suit for possession. Thereupon this appeal has been brought after obtaining a certificate under Article 133(1)(a) of the Constitution.

2. The subject-matter of the suit is a piece of land in Himayatnager measuring 2,856 Sq. yards. The plaintiff's case is that he purchased this land from one Jamsheer Khan with other plots in the vicinity under two sale deeds marked Exs. P-2 and P-3; thereafter he was in possession of the same. When he was in possession, the second defendant trespassed into the said property and took possession of the same, thereafter he illegally sold the same to the first defendant. The defendants denied the plaintiff's allegations. They denied that the plaintiff had an title to the suit property or that he was in possession of the same at any time. On the other hand they pleaded that the second defendant who had acquired title to the suit property by adverse possession had sold the same to the first defendant in the year 1946.

3. The Trial Court came to the conclusion that the plaintiff has not established his title to the suit property. It also held that the plaintiff has not satisfactorily proved that he was in possession of the suit property at any time. In view of those findings it thought that it was not necessary to go into the defendant's plea of adverse possession. In the result it dismissed the plaintiff's suit. In appeal the High Court agreed with the Trial Court that the plaintiff has not proved his title to the suit property. It rejected the plea of the defendants that they have perfected their title to the suit property by adverse possession. But differing from the Trial Court it came to the conclusion that the plaintiff was put into possession of the suit property by possession of the same till about the year 1945, when the second defendant trespassed on the same and took possession of it.

4. In view of the concurrent finding reached by the Trial Court and the High Court that the plaintiff has not proved his title, that question was not reopened in this Court. The finding of the High Court that the defendants have not established their plea of title by adverse possession was challenged though feebly. It was contended before us that the plaintiff who based his suit on title and prior possession having failed to establish his title, his suit has to fail. Further the finding of the High Court that the plaintiff was in possession of the said property between 1930 to 1945 was also

assailed before us.

5. The appellant claims that he came into the possession of the suit property on the strength of the sale deed executed by the second defendant in his favour on 1-10-1946. The suit from which this appeal arises was initially instituted on the original side of the High Court of Hyderabad in the year 1949. Therefore to establish his claim of title by adverse possession, the first defendant must primarily depend on the fact that the second defendant was in possession of the suit property for a period of over nine years before he sold the same to him. Though the second defendant filed a written statement supporting the case of the first defendant and though he was present at the time of hearing on several occasions, he was not examined as a witness in this case to support the plea of adverse possession put forward by the defendants. No explanation is forthcoming for his non-examination. This circumstance goes a long way to discredit the defendant's plea of adverse possession. The first defendant's evidence as regards adverse possession is of very little significance as his knowledge of the suit property prior to the date he purchased the same is very little. The only other evidence relied on in support of the plea of adverse possession is that of D. W. 2, Shambhu Prashad who claims to have taken the suit property on lease from the second defendant. The lease deed said to have been executed by him is marked as Ex. D/1. It is not explained how the first defendant came into possession of Ex. D/1. Though the suit was filed as far back as 1949, Ex. D/1 was produced into for the first time in the year 1960. No explanation has been given for this inordinate delay in producing Ex. D/1, (an unregistered document) in Court. According to D. W. 2, the first defendant knew about this document as far back as 1950. Under these circumstances, the High Court was fully justified in rejecting the testimony of D. W. 2 and not relying on Ex. D/1. The other evidence adduced by the first defendant relating to the plea of adverse possession was not commended for our acceptance. Therefore we need not consider the same. hence we agree with the High Court that the defendants have failed to establish their plea of adverse possession.

6. Now coming to the evidence relating to the plaintiff's possession of the suit property from the year 1930 to 1945, we have firstly the oral testimony of the plaintiff. The High Court has accepted the plaintiff's evidence as credit worthy. The plaintiff is a responsible person. He held important offices both under the State Government as well as under the United Nations. Prima facie his evidence is worthy of acceptance. This would be particularly so in view of the non-examination of the second defendant. The question before the Trial Court and the High Court was whether the plaintiff was in possession of the suit property between 1930 to 1945 or whether the second defendant was in possession of the same during that period? On this aspect, the evidence is really one sided. The evidence of the plaintiff that he came into possession of the suit property under Exs. P-2 and P-3 is supported by the recitals in those documents. In considering the question whether Jamsheer Khan, the vendor under Exs. P-2 and P-3, had put the plaintiff into possession of the suit property, the fact that Jamsheer Khan had no title to the same is not very material. There is no reason to think that the recitals contained in Exts. P-2 and P-3 as to the delivery of possession are false recitals. There is documentary evidence to show that the plaintiff paid the "Nazul" for the properties purchased by him under Exts. P-2 and P-3 after his purchase. It is true that those documents do not show how much 'Nazul' was paid in respect of the suit property but the second defendant as produced no documents to show that he had paid any 'Nazul' in respect of the suit property. Ex. P-4 is a stamped revenue receipt on a Printed form executed in favour of the plaintiff by the Maqtadar on August 16, 1939 for Rs. 331/14/4 pies. It relates to the lands which belonged to Jamsheer Khan and situate at Narayanguda. Evidently that recital refers to the lands covered by Exts. P-2 and P-3. It recites that a sum of Rs. 331/14/4 pies was received from the plaintiff as 'Nazul' for the period from 15th Aban 1338 Fasli to the end of the Aban 1346 Fasli at the rate of Rs. 41/4/5 pies per year. The sale under Exts. P-2 and P-3 was made in 1930. Evidently the 'Nazul' in

respect of those properties was in arrear till 1939. The 'Nazul' due under Exts. P-2 and P-3 comes to Rs. 41/- and odd per year as seen from Ext. P-6.

7. Ex. P-5 is a letter, dated December 11, 1937, received by the plaintiff from Mr. J. D. Dean (P. W. 2), First Divisional Engineer, Hyderabad City. It relates to the construction of a road from Musheerabad to Bashir Bagh. It states that under the Ferman, dated 29th Shaban 56 Hijri, H. E. H. The Nizam was pleased to accord sanction to the acquisition of 20 per cent. of the land without any compensation for the construction of road, from the owners of the land and that for the excess land required, compensation will be paid. That letter further mentions that total area of the land belonging to the plaintiff was 7,815 sq. yards out of which 2,112 sq. yards were required for the construction of the road; out of that 1,563 sq. yards being the 20 per cent. of the entire area was to be taken without any compensation and the value of the remaining 349 sq. yards will be paid to the plaintiff. That letter further informed the plaintiff that the value of the additional area which might finally be determined after the marking may be obtained from the department. It is established that road from Musheerabad to Bashir Bagh was laid not only across the plot covered under Ex. P-3 but also across the site purchased under Ex. P-2 in which the suit land is situate. That was obvious because if the road did not touch any portion of Ex. P-2 the entire area of the land belonging to plaintiff would have been only 5,114 sq. yards and not 7,815 sq. yards as mentioned in Ex. P-5. It also establishes that the plaintiff was recognised by the City Improvement Board as the person entitled to compensation in respect of that land. Evidence further discloses that the plaintiff was paid compensation in respect of the land taken from him in excess of 20 per cent. Referred to earlier. The oral evidence adduced in the case coupled with Ex. P. 2, P-4, and P-5 satisfactorily establishes the fact that the plaintiff was in possession of the suit property till about 1945.

8. In addition to the evidence referred to earlier, the High Court has also relied on two other documents namely Exts. D-8 and D-9, but those documents were produced as additional evidence in the High Court. Their connection with the suit property is not satisfactorily established. Therefore we have excluded them from consideration. If we bear in mind the fact that the question for decision is whether the plaintiff or the second defendant was in possession of the suit property between the year 1930 to 1945, there is hardly any doubt that the preponderance of evidence is in favour of the plaintiff's case. As seen earlier, the defendants have not produced any reliable evidence to support their case. Hence we agree with the High Court that the plaintiff has succeeded in establishing that he was in possession of the suit property prior to 1945.

9. It was next contended on behalf of the appellant that in a suit for possession brought on the basis of title, the plaintiff cannot succeed unless he proves his title to the suit property as well as its possession with twelve years. According to the appellant, except in a suit under Section 9 of the Specific Relief Act, the plaintiff of succeeding in the suit, has to prove both existing title to the suit property and its possession within twelve years. We are unable to accept this contention as correct. In our opinion the possession of the plaintiff prior to 1945 is a good title against all but the true owner. The defendants who are mere trespassers cannot defeat the plaintiff's lawful possession by ousting him from the suit property. Possessory title is a goods title as against everybody other than the lawful owner. In *Ismail Arriff v. Mahomed Ghouse*, the Judicial Committee came to the conclusion that a person having possessory title can get a declaration that he was the owner of the land in suit and an injunction restraining the defendant from interfering with his possession. Therein it was observed that the possession of the plaintiff was a sufficient evidence of title as owner against the defendant.

10. In *Narryana Row v. Dharmachar* a bench of the Madras High Court consisting of Bhashyam

Ayyangar and Moore, JJ., held that possession is, under the Indian, as under the English law, good title against all but the true owner. Section 9 of the Specific Relief Act is in no way inconsistent with the position that as against a wrong doer, prior possession of the plaintiff, in an action of ejectment, is sufficient title, even if the suit be brought more than six months after the act of dispossession complained of and that the wrong-doer cannot successfully resist the suit by showing that the title and right to possession are in a third person. The same view was taken by the Bombay High Court in *Krishnara'v Yashvant and Others v. Vasudev Apa'ji Ghotikar (deceased)* by 1. Rs. That was also the view taken by the Allahabad High Court - see *Umrao Singh v. Ramji Das and Others' Wali Ahmed Khan and Others v. Ajudhia Kandu*. In *Subodh Gopal Bose v. Province of Bihar and Others* the Patna High Court adhered to the view taken by the Madras, Bombay and Allahabad High Courts. The contrary view taken by the Calcutta High Court in *Debi Churn Boldo v. Issur Chander Manjee; Ertaza Hossein and Another v. Bany Mistry; Purmeshur Chowdhry and Others v. Brij Lal Chowdhry and Nisa Chand Gaita and Others v. Kanchiram Bagani* in our opinion does not lay down the law correctly.

11. In the result this appeal fails and the same is dismissed with costs. We see no reason to accept any additional evidence in this Court. Hence C. M. P. No. 3588 of 1968, is dismissed; but no costs.

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