

Chandrika Misir and Another

Vs

Bhaiya Lal

Civil Appeal No. 2032 of 1968

(D. G. Palekar, a. Alagiriswami JJ)

31.07.1973

JUDGMENT

PALEKAR, J. -

1. This is an appeal by special leave against the Judgment and decree of the Allahabad High Court in Second Appeal No. 2128 of 1963. The plaintiffs brought the suit against one Bhaiya Lal, the present respondent, in respect of certain Bhumidhari plots. The plots had been purchased in the name of one Markandey - the uncle of the plaintiffs. After the death of Markandey, who died without issue, the plots were recorded in the name of his widow Jagdamba. Jagdamba died in 1948. The plaintiff's as the next reversioners claimed title to the property. They alleged that the respondent was interfering with their possession and hence they prayed for a permanent injunction. In the alternative, they also asked for the relief of possession. The suit was filed on September 5, 1955.
2. Several pleas were taken on behalf the defendant one of them being a plea of limitation. The courts were unanimously of the opinion that the plaintiffs, being the next heirs, had sufficient title to the property while the defendant had none whatsoever. The learned Munsif in whose court the suit was filed, however, held that the suit was barred by limitation. In appeal the learned Additional Civil Judge, Varanasi, held that the plaintiffs claim was not barred by limitation. Accordingly, possession was decreed in favour of the plaintiffs.
3. In second appeal the High Court found that the question of limitation could not be properly determined unless there was a specific finding on two issues one relating to the commencement of the possession of the defendant and the other to the age of plaintiff No. 1, Chandrika Misir, at the time of filing the suit. The High Court remanded these two issues to the First Appellate Court for a finding. The finding on the first issue was that the defendant took actual possession of the plots in 1951-52. The finding on the second issue was that plaintiff No. 1 Chandrika Misir was a minor when Jagdamba died in 1948 and that he attained majority in the year 1955 and not before that.
4. When the case again came before the learned Chief Justice for the disposal of the appeal, these finding were accepted as they were findings of fact. The only point that the High Court had to decide was whether the suit which had been filed on September 5, 1955, i.e. the year in which the plaintiff No. 1 had attained majority was in time. In an ordinary suit filed in a Civil Court for possession on the ground of dispossession the question of limitation, on the above facts, would have hardly arisen. Jagdamba had died in 1948 and plaintiff No. 1 the next reversioner came of age in 1955. The period of limitation would be 12 years and the suit would be obviously in time. But the High Court was of the view that the period of limitation was not the one which was prescribed in the Limitation Act but the one which was laid down in the Appendix to The Uttar Pradesh

Zamindari Abolition and Land Reforms Rules, 1952 which was two years from July 1, 1952 which was the date of vesting under the U.P. Zamindari Abolition and Land Reforms Act (Act No. 1 of 1951). The High Court further held that the fact that the plaintiff No. 1 was a minor at the time of filing of the suit did not help him because Section 6 of the Indian Limitation Act, 1908 did not govern suits falling under U.P. Act No. 1 of 1951.

5. Accordingly, the suit was dismissed.

6. It is from this order that the present appeal has been filed by special leave. It is to be noticed that the suit had been filed in a Civil Court for possession and the Limitation Act will be the Act which will govern such a suit. It is not the case that U.P. Act No. 1 of 1951 authorises the filing of the suit in a Civil Court and prescribes a period of limitation for granting the relief of possession superseding the one prescribed by the Limitation Act. It was, therefore, perfectly arguable that if the suit is one properly entertainable by the Civil Court the period of limitation must be governed by the provisions of the Limitation Act and no other. In that case there would have been no alternative but to pass a decree for possession in favour of the plaintiffs. But the unfortunate part of the whole case is that the Civil Court had no jurisdiction at all to entertain the suit. It is true that such a contention with regard to the jurisdiction had not been raised by the defendant in the trial court but where the court is inherently lacking in jurisdiction the plea may be raised at any stage, and, it is conceded by Mr. Yogeshwar Prasad, even in execution proceedings on the ground that the decree was a nullity. If one reads Sections 209 and 331 of the U.P. Act No. 1 of 1951 together one finds that a suit like the one before us has to be filed before a Special Court created under the Act within a period of limitation specially prescribed under the rules made under the Act and the jurisdiction of the ordinary Civil Courts is absolutely barred. Section 209 so far as we are concerned reads as follows :

"209. Ejectment of persons occupying land without title. - (1) A person taking or retaining possession of land otherwise than in accordance with the provisions of the law for the time being in force, and -

(a) where the land forms part of the holding of a bhumidhar, sirdar or asami, without the consent of such bhumidhar, sirdar or asami, and

(b).....

shall be liable to ejectment on the suit in cases referred to in clause (a) above, of the bhumidhar, sirdar or asami concerned,

..... and shall also be liable to pay damages.

(2) To every suit relating to a land referred to in clause (a) of sub-section (1) the State Government shall be impleaded as a necessary party."

(7) In the present case it has been held that the defendant has been retaining possession of the land contrary to law, being a trespasser; that the land is bhumidhari land and the plaintiffs are bhumidhars. Therefore, the suit was of a description falling under Section 209. Section 331 so far it is relevant is as follows :

"331. Cognizance of suits, etc., under this Act. - (1) Except as provided by or under this Act no court other than a Court mentioned in Column 4 of Scheduled II shall,

notwithstanding anything contained in the Civil Procedure Code, 1908, take cognizance of any suit, application, or proceedings mentioned in Column 3 thereof."

8. Schedule II at serial No. 24 shows that a suit for ejectment of persons occupying land without title under Section 209 should be filed in the court of the Assistant Collector, First Class, which is described as the Court of Original Jurisdiction. In view of Section 331(1) quoted above it is evident that the suit made cognizable by a special court, i.e. the Court of the Assistant Collector, First Class, could not be field in a Civil Court and the Civil Court was, therefore, inherently lacking in jurisdiction to entertain such a suit.

9. It is unfortunate that this position in law was not noticed in the several courts through which this litigation has passed, not even by the High Court which ad specifically come to the conclusion that the period of limitation was the one laid down by the rules under U.P. Act No. 1 of 1951. Since the Civil Court which entertained the suit suffered from an inherent lack of jurisdiction, the present appeal filed by the plaintiffs will have to be dismissed.

10. As regards costs, we do not think that this is a fit case in which the defendant should get his costs in any of the courts. Though he had no title to the property, he was trying to set up a title. But his attempt was negatived by all the courts. He did not urge also the contention with regard to the jurisdiction of the court at any stage except in this Court. Therefore, while dismissing the appeal we further direct that the plaintiffs and the defendant shall bear their own costs throughout.

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