

Padmini Bai

Vs

Tangavva and Others

Civil Appeal No. 399 of 1969

(R. S. Sarkaria, O. Chinnappa Reddy JJ)

30.01.1979

JUDGMENT

SARKARIA, J. –

1. Tatyia died on February 2, 1955. The respondents, Tangavva and Sundra Bai are the co-widows of Tatyia. They were co-plaintiffs in the original suit.
2. The suit lands originally belonged to one Dev Gonda Patil who gifted the same by a registered deed, dated October 13, 1902 to Smt. Aku Bai. Aku Bai died survived by her son, Tatyia and a daughter, Padmini, who is the appellant before us. Tatyia died issueless on February 2, 1955, survived by his co-widows, Tangavva and Sundra Bai.
3. The co-widows (who are respondents 1 and 2 in this appeal) filed Suit No. 25 of 1967 for recovery of possession of the suit lands admeasuring 15 acres and 16 gunthas, bearing Survey Nos. 137, 138 and 238, situate in Mouza Shirti. The plaintiffs' case was that on the death of Aku Bai (which according to the evidence took place sometime in 1905 or 1906), their husband Tatyia became the owner of the entire suit lands, and continued in exclusive possession thereof till his death in 1955. After Tatyia's death, Padmini, the sister of Tatyia, got her name mutated in the records in her favour and forcibly entered into possession of the suit lands. Subsequently, by an amendment of the plaint, it was pleaded that after Aku Bai's death, Tatyia remained in adverse possession of the suit land for a period of 40-50 years till his death, and had thus become a full owner thereof, and the plaintiffs being co-widows of Tatyia, succeeded him to the exclusion of defendant 1.
4. Defendant 1 resisted the suit and pleaded that the suit property was stridhan property of her mother Aku Bai, and under Hindu Law, on her mother's death, the defendant became its owner in preference to her brother, Tatyia. She denied that Tatyia was in possession of the suit lands as an owner or that he was in its adverse possession. In the alternative, she pleaded that Tatyia was in possession and enjoyment of the suit land as her guardian during her minority and thereafter because of her cordial relations with Tatyia, she allowed the latter to remain in possession of the land.
5. The trial Court by its judgment dated October 19, 1968, held that the land in suit was the stridhan property of Aku Bai and according to Hindu Law, Padmini Bai, being the daughter, was preferential her to the suit property to the exclusion of the son, Tatyia. Therefore, on the death of Tatyia, the plaintiffs had no claim to the suit land as his heirs.
6. In regard to the question of adverse possession, the trial Court found that Tatyia had absconded as

he was suspected of the murder of one Parsia and that the evidence of the plaintiff's witnesses regarding the possession of Tatyia during that period, was not credible. The trial Court, however, came to the conclusion that from 1941 onwards till his death in 1955, Tatyia was proved to be in adverse possession of the suit lands and had become an owner by prescription. It was further held that the suit was within time as it had been brought within 12 years from the death of Tatyia. In the result, the trial Court decreed the suit of the plaintiff.

7. Padmini Bai, defendant, went in appeal to the High Court of Bombay. A Bench of two learned Judges of the High Court summarily dismissed the appeal by a speaking order.

8. Against that order, dated January 14, 1969, of the High Court, Padmini Bai has come in appeal to this Court after obtaining special leave under Article 136 of the Constitution.

9. We have heard Mr. Mehta, learned Counsel for the appellant, at length, and have gone through the record. We find no merit in this appeal. The overwhelming oral and documentary evidence of a creditworthy character on the record shows that Tatyia was in continuous possession of the suit lands adversely to the appellant for a period of about 40 years. It is common ground that Tatyia was not an heir of Aku Bai. Under the Hindu Law then governing the parties, Padmini Bai, being the daughter of Aku Bai, was entitled to succeed to property to the exclusion of her brother, Tatyia.

10. Aku Bai died in or about 1905-1906. At that time, Padmini Bai and Tatyia, both were minors. After obtaining majority, Tatyia was cultivating the land sometimes personally and sometimes through tenants. Exhibits 85 to 91 are Kabuliyats (lease deeds) relating to the years 1905, 1913, 1916, 1937, 1938, 1945 and 1946 covering, in all, a total period of about 41 years, which shows that it was Tatyia only who was leasing out these lands to various tenants from time to time. These Kabuliyats show that even during his minority, Tatyia was in possession of the suit lands through tenants. Extracts from the records of rights (Exs. 45 to 49) relating to the period from 1932 to 1946 were also produced in evidence. In those records, Tatyia has been entered as sole occupant of the suit lands. These records of rights are presumptive evidence of Tatyia's possession of the suit land, at any rate from 1932 onwards. There was nothing on record to show that Tatyia's possession was ever disturbed by defendant 1 at any time during his lifetime. Then, a number of land revenue receipts (Exs. 56 to 72) relating to the period 1941 to 1955 were brought in evidence. It was evident therefrom that during that period of 14 years, land revenue was always paid on account of Tatyia and not defendant 1.

11. We have, therefore, no hesitation in holding in agreement with the courts below that Tatyia had acquired title by remaining in exclusive and open possession of the suit lands adversely to Padmini Bai for a period far exceeding 12 years, and this possession was never interrupted or disturbed. He had thus acquired ownership by prescription.

12. For these reasons, the appeal fails and is dismissed with no order as to costs.

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