

Ghulam Rasool and Another

Vs

State of Jammu and Kashmir and Another

Civil Appeal No. 825 of 1978

(A. N. Sen, Ranganath Misra JJ)

14.09.1983

JUDGMENT

RANGANATH MISRA, J. -

1. This appeal by special leave at plaintiffs' instance assails the reversing second appellate judgment of the Jammu and Kashmir High Court in a suit for injunction against the State and one of its officers based upon possession.

2. The suit was filed in respect of two items of property - 6 kanals appertaining to survey No. 192 on the basis of possession from 1946 and 2.10 kanals in survey No. 626 on the basis of acquisition of title by purchase. The plaintiffs contended that they had raised plantations over both the lands. When the Block Development Officer started interfering with their possession, the plaintiffs gave notice under Section 80 of the Code of Civil Procedure to the State and sued for injunction.

3. The trial court as also the appellate court came to find that plaintiffs had title to 2.10 kanals in survey No. 626. They also found that plaintiffs were in possession as claimed from 1946 in respect of 6 kanals appertaining to survey No. 192 and had raised plantations thereon. On these findings the trial court decreed the suit and granted injunction against the State from interfering with the plaintiffs' possession and enjoyment of the property and that decree was affirmed in appeal. In second appeal the High Court came to find that the notice under Section 80 of the Code of Civil Procedure had not been given to the Block Development Officer and, therefore, even if plaintiffs were owner of 2.10 kanals of land appertaining to survey No. 626, they could not obtain a decree against the public officer. While affirming the decree of the appellate court in regard to this item of property against the State, the High Court reversed the decree and dismissed the suit as against the Block Development Officer for want of notice. In regard to the other item appertaining to survey No. 192, the High Court took the view that the plaintiffs were rank trespassers and their possession was, therefore, not available to be protected. The plaintiffs' suit in regard to this property was, therefore, dismissed.

4. Mr. Altaf Ahmed for the State fairly conceded that once notice was issued to the State under Section 80 of the Code of Civil Procedure there could really be no force in the stand of the Block Development Officer that he had no notice. The suit as framed was one against the State and the Block Development Officer had been impleaded as the State's agency of interference with the plaintiffs' possession. In respect of this item (2.10 kanals in survey No. 626) the High Courts decision has, therefore, to be reversed and injunction granted in the trial and appellate courts must be sustained.

5. The trial court as also the court of appeal had recorded a clear finding that the plaintiffs were trespassers in regard to 6 kanals of land appertaining to survey No. 192. The State admittedly is the real owner. The finding in the courts below that the plaintiffs have been in possession of the property from 1946 being one of fact, has rightly not been challenged either in the High Court or before us. It is on the basis of such possession that plaintiffs' counsel contended that the plaintiffs were entitled to protection against forcible dispossession. The suit was instituted on December 29, 1961. Plaintiffs who came to possession of the property in 1946 had, therefore, not perfected title to the property by the date of the suit. Plaintiffs' cause of action for the suit with reference to the property in survey No. 192 was mainly on account of interference by the Block Development Officer with regard to the trees grown by them. Keeping in view the fact that the State was owner of the property and the land was required for a public purpose as stated by Mr. Ahmed in course of the hearing, we suggested to the plaintiffs' counsel that the plaintiffs should give up possession of the property in favour of the real owner and they could, if they so liked, remove the trees raised by them on this property. Mr. Mehta for the appellants agreed that given six months' time for removal of the trees grown on 6 kanals of land appertaining to survey No. 192 plaintiffs would agree to give up vacant possession. Mr. Ahmed, however, in the absence of instructions from the State was not prepared to concede to this arrangement. We have already indicated that the clear finding in the trial as also the appellate court is that the plaintiffs have grown the trees being in possession from 1946. The plaintiffs would, therefore, be entitled to appropriate the trees after removal and the State would not be entitled to raise any claim to the plantations. We are of the view that six months' time should be allowed to the plaintiffs to cut and remove the standing trees from the six kanals of land appertaining to survey No. 192 and they should deliver vacant possession of that property to the State through its public officers on or before April 1, 1984 as agreed to by their counsel.

6. This appeal is disposed of with the aforesaid direction. There would be no order for costs.

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