

# SUPREME COURT OF INDIA

Ram Das

Vs.

Salim Ahmed

(G Ray and S R Babu JJ.)

26.02.1998

## ORDER

1. This appeal is directed against the judgment and decree dated 17-10-1981 passed by the Madhya Pradesh High Court (Gwalior Bench) in SA No. 60 of 1972. The predecessor-in-interest of the respondent Karimbux instituted a title suit being Case No. 18-A/65/OC in the Court of the Civil Judge, Bhind for the declaration of title and permanent injunction, inter alia, contending that the said Karimbux acquired title to the suit property consisting of a well and the adjoining land by virtue of his purchase from one Sari fan who acquired the title in turn from Bandi Jaan on the basis of a Will. The predecessor-in-interest of the appellant denied the title of the plaintiff by contending that the plaintiff had no title to the said property. On the contrary, the defendant claimed title to the property by adverse possession and also contended that the well in question was dedicated to the public at large. The said suit was dismissed by the trial court on a finding that the title to the property could not be established by the plaintiff and the Will alleged to have been executed by Bandi Jaan was also not produced.

2. The plaintiff thereafter preferred an appeal before the lower appellate court being Civil Appeal No. 12-A of 1971. The learned District Judge, Bhind in disposing of the said appeal, inter alia, came to the finding that the title to the property could not be established by the plaintiff although the plaintiff claimed title through Bandi Jaan and Bandi Jaan claimed title through Hira, eunuch. It was found that the plaintiff failed to lead evidence in support of claim of title to the disputed property. It was also indicated by the learned District Judge that PW 2 Mustfa Khan who was examined by the plaintiff in support of the claim of title deposed to the effect that he had no personal knowledge

about the ownership of the suit land and his knowledge was only based on the information given by some person to him. It appears that the title was also claimed on the basis of some inscription on the well but the learned Judge came to the finding that the inscription by itself was not sufficient to indicate that the well in question was the exclusive property of Hira, eunuch. It was also held by the lower appellate court that there is no evidence to the effect that Bandi Jaan had inherited the title of Hira, eunuch. Therefore, the appeal was dismissed by the lower appellate court.

3. The plaintiff thereafter preferred the aforesaid second appeal before the High Court, The High Court has held that the copy of the Will was produced and since the Will was an old one and nobody had objected against the validity of the Will any subsequent challenge to the Will at a later date was barred by limitation. The High Court therefore held that Sari fan got title to the property in question and the well as full owner. The suit was therefore decreed by the High Court.

4. It, however, appears to us that although the High Court indicated in the impugned judgment that the defendant's claim of easement right and also the claim of title by way of adverse possession could not be accepted, such weakness in the defendant's title to the suit property cannot establish the plaintiff's title. The High Court has failed to consider the specific finding made by the lower appellate court that the plaintiff had failed to establish the plaintiff's title. It may be noted that the plaintiff was not entitled to get declaration of title if such title could not be established by the plaintiff by leading convincing evidence. The lower appellate court had considered the evidence in detail and by giving cogent reasons had come to the finding that the plaintiff failed to establish the title to the property. Such finding was not reversed by the High Court by indicating any reason for such reversal but indicating the weakness of the defendant's title the plaintiff's suit was decreed. Even if it is assumed that the property in question was bequeathed by Bandi Jaan by executing the Will, the title to the suit property cannot be declared in favour of the plaintiff unless the title of the executor of the Will is fully established. In the aforesaid facts, the impugned judgment of the High Court cannot be sustained and the same is therefore set aside by allowing this appeal. The judgment and decree of the lower appellate court are restored. There will be, however, no order as to costs.