

SUPREME COURT OF INDIA

Shakir Hussain

Vs.

Administrator, Nagar Palika, Mandsaur

(G Ray and G Pattanaik JJ.)

17.03.1998

ORDER

1. This appeal is directed against the judgment dated 30-6-1982 passed by the Madhya Pradesh High Court, Indore Bench in Second Appeal No. 208 of 1982. The plaintiff-appellant instituted a suit being Civil Suit No. 432-A of 1980 in the Court of the learned Additional Civil Judge Class II, Mandsaur (M.P.) for declaration of title to the suit property and for permanent injunction restraining the respondent-Nagar Palika, Mandsaur from interfering with the possession of the plaintiff in respect of the suit land. The trial court decreed the said suit and the defendant-respondent thereafter preferred Civil Appeal No. 53-A of 1981 in the Court of the First Additional Judge, Mandsaur. The lower appellate court by the judgment dated 22-3-1982 allowed the said appeal and dismissed the suit, inter alia, on the finding that the plaintiff had failed to establish title to the suit property and possession of the same. It may be stated here that the case of the plaintiff is that the plaintiff had purchased an open plot on 22-2-1978 by registered sale deed from Bashir Khan and obtained possession of the same. The plaintiff relied on the title of the suit property on the basis of such purchase by the registered sale deed Ex. P/1 and a map also annexed to the sale deed being Ex. P/2. The boundaries were mentioned in the sale deed. The lower appellate court has indicated in the judgment that the boundaries as mentioned in the sale deed, do not tally with the boundaries mentioned in the deed of gift on the basis of which Bashir Khan, the vendor of the plaintiff had obtained the suit property from the admitted owner. In order to establish possession of the suit land the plaintiff stated that in the suit land there was a latrine. The lower appellate court has indicated that in the sale deed existence of a latrine was not mentioned. As the plaintiff failed to establish the title to the suit land and possession in respect thereof by leading convincing evidence, the lower appellate court dismissed the said suit. The plaintiff-appellant thereafter preferred the said second

appeal before the High Court and as aforesaid, the appeal was dismissed. The High Court held that whether the suit property had been purchased or not and whether or not the plaintiff had possessed the same, were questions of fact. Such questions of fact had been determined by the lower appellate court and since such determination by the lower appellate court was not erroneous, no interference against finding of fact in second appeal was called for,

2. Mr Bagga, the learned Senior Counsel appearing for the appellant, has submitted that the names of the owners of boundary lands mentioned in the deed of gift and such names in the sale deed differed because of a long lapse of time. The present neighbours were examined by the plaintiff for the purpose of establishing that the plaintiff had owned and possessed the suit property. He has also submitted that the municipality was in possession of the records showing the lands owned and possessed by the municipality and also the records showing municipal rates and taxes paid by different owners. In the aforesaid circumstances, it was the duty of the municipality to produce such records and the municipality not having done so, an adverse inference should have been drawn against the municipality. In support of such contention, Mr Bagga has referred to the decision of this Court in *Gopal Krishnaji Ketkar v. Mohd. Haji Latif*, It has been held in the said decision that even if the burden of proof does not lie on a party, the court may draw an adverse inference if such party withholds important documents in his possession which can throw light on the facts in issue. It has also been indicated in the said decision that it is not a sound practice for those desiring to rely upon a certain state of affairs to withhold from the court the best evidence which is in their possession which could throw light upon the issues in controversy and to rely upon the abstract doctrine of onus of proof. In our view, the said decision does not help the plaintiff-appellant in the facts and circumstances of the case. Even if adverse inference is drawn against the municipality for not producing the documents in its possession, the plaintiff cannot succeed unless the plaintiff establishes the plaintiff's title to the suit property and also possession in respect of the same. In the instant case, it has been held by the lower appellate court that neither the possession of the suit property either by the predecessor-in-interest of the plaintiff or by the plaintiff nor the title to the same had been established by leading any cogent evidence. The boundaries mentioned in the document of sale and in the document of gift are different. It has not been established by any reliable evidence that the very same property was conveyed to the predecessor-in-interest of the plaintiff and the plaintiff got the same by virtue of the sale deed. The existence of a latrine was also not mentioned in the sale deed. In the aforesaid circumstances, the finding of the lower appellate court cannot be held to be perverse for which interference by the High Court in a second appeal was warranted. We, therefore, do not find any reason to interfere in this appeal and the same is dismissed without any order as to costs.