

SUPREME COURT OF INDIA

Gurudwara Sahib

Vs.

Gram Panchayat Village Sirthala

C.A.No.8244 of 2013

(K.S.Radhakrishnan and A.K.Sikri JJ.)

16.09.2013

JUDGMENT

A.K.SIKRI,J.

1. Leave granted.

2. The appellant herein is the original plaintiff which had filed the suit for decree of declaration to the effect that it had become owner of the suit property by adverse possession. Declaration was also sought to the effect that the Revenue record showing ownership of respondent No.1 herein i.e. Gram Panchayat (defendant in the suit) is liable to be corrected in the name of the appellant and the auction already held by the Gram Panchayat of the land in dispute is null and void. Consequential relief of permanent injunction restraining Gram Panchayat from dispossessing the appellant from the disputed land was also prayed for. This suit was partly decreed by the trial court granting relief of injunction. First Appeal against that part of the judgment whereby relief of declaration was denied was dismissed by the learned Additional District Judge and the Second Appeal preferred by the appellant has also been dismissed by the High Court of Punjab and Haryana vide judgment dated 22nd September 2011. Undeterred by successive failures, the appellant has knocked at the door of this Court with the plea that its suit be decreed in entirety.

3. The appellant claims ownership by adverse possession on the ground that it is in possession of the land in dispute for sufficiently long period which fact has been established and, therefore, his suit could not be dismissed. We, however, find that this relief of declaration has been denied on the ground that suit for such a prayer

was not maintainable inasmuch as declaration to this effect on the basis of adverse possession cannot be sought and the plea of adverse possession is available only as a defence to the defendant.

4. On the basis of pleadings of the parties, the trial court had framed the following issues:

1. Whether the plaintiff is in adverse possession of the suit land since 13.4.1952 as alleged? (OPP)
2. If issue No.1 is proved, whether adverse possession of the plaintiff has matured into ownership? (OPP)
3. Whether plaintiff is entitled to declaration as prayed for? (OPP)
4. Whether the plaintiff is entitled to injunction as prayed for?(OPP)
5. Whether the suit is not maintainable in the present form?(OPP)
6. Relief.

5. In so far as first issue is concerned, it was decided in favour of the plaintiff returning the findings that the appellant was in adverse possession of the suit property since 13.4.1952 as this fact had been proved by plethora of documentary evidence produced by the appellant. However, while deciding the second issue, the court opined that no declaration can be sought on the basis of adverse possession inasmuch as adverse possession can be used as a shield and not as a sword. The learned Civil Judge relied upon the judgment of the Punjab and Haryana High Court in Gurudwara Sahib Sannuali vs. State of Punjab PLR page 756 and thus, decided the issue against the plaintiff. Issue No.3 was also, in the same vein, decided against the appellant. In so far as issue no.4 pertaining to relief of injunction is concerned, the learned Civil Judge held that as long uninterrupted possession of the appellant was established, the appellant was entitled to the decree of injunction and the respondents were restraining from dispossessing the appellant forcibly and illegally from the suit land and also restrained from damaging the building of Gurudwara Sahib. Issue No.5 was decided against the respondent on the ground that no evidence was led to show how the suit was not maintainable in the present form. While granting relief, the learned Civil Judge partly decreed the suit holding as under:

“It is held that plaintiff is in adverse possession over the suit property since 13.4.1952 and defendants are restrained from dispossessing the plaintiff forcibly and illegally from the suit property and further restrained from damaging the building of Gurudwara Sahib except according to due process of law. As discussed above, the remaining relief as sought by the plaintiff is dismissed. Decree sheet be prepared. File be consigned to the record room.”

6. It is pertinent to note that the respondents accepted the judgment and decree pertaining to prohibiting injunction. It is the appellant who filed the First Appeal. Obviously, the confines of the said appeals related to the issue pertaining to declaration of ownership of adverse possession. The First Appellate Court while dismissing the appeal observed as under:

“The respondents have not challenged the judgment and decree dated 6.1.2009 passed by the Id. Civil Judge (Jr. Div.), Khanna, which means that they have accepted that the appellant was in adverse possession of the suit land since 13.4.1952. The issue whether adverse possession of the appellant/plaintiff had matured into his ownership is purely a question of law and it is a settled that no declaration of title can be sought on the basis of adverse possession. Ld. Trial court has rightly relied upon the case titled Gurudwara Sahib Sannauli vs. State of Punjab PLR 756 wherein it is held that no declaration can be sought by the plaintiff with regard to adverse possession because such a plea is available only to the defendant. Since the appellant was not the lawful owner of the property in dispute, therefore, respondent No.1 was within its rights to auction a part of the same, on 19.12.2003 in favour of respondent No.2. Respondent No.1 has proved that land measuring 13B-12B was auctioned on 19.12.2003 in the presence of BDPO Doraha and Ranjit Singh was declared as the last bidder and the auction was struck in his name of a consideration of Rs.1,11,000/- and the land measuring 6B on which the building of Gurudwara Sahib had been constructed, was not auctioned.

In view of my above discussion, I find no material illegality or irregularity in the judgment and decree dated 6.11.2009 passed by Id. Trial court and therefore the appeal is dismissed and the findings of the Id. trial court are affirmed. Decree sheet be prepared. File of lower court be returned forthwith. File be consigned to the record room.”

7. In the Second Appeal, the relief of ownership by adverse possession is again denied holding that such a suit is not maintainable. There cannot be any quarrel to

this extent the judgments of the courts below are correct and without any blemish. Even if the plaintiff is found to be in adverse possession, it cannot seek a declaration to the effect that such adverse possession has matured into ownership. Only if proceedings filed against the appellant and appellant is arrayed as defendant that it can use this adverse possession as a shield/defence.

8. However, we also find from the reading of the judgment of the High Court that the High Court has refused the injunction observing that the appellant was not entitled to the same as it is the Gram Panchayat which is the owner of the property in dispute and as the appellant is in possession without any right, it has no right to seek injunction against the Gram Panchayat. This finding is totally perverse and, in fact, unnecessary. In the first instance, there was no occasion or reason for the appellant's counsel to seek this prayer in the Second Appeal. As pointed out above, the relief of injunction had already been granted by the Civil Court and this portion of the decree had not been challenged by the respondents. Decree to this extent in favour of the appellant had attained finality. The First Appellate Court also specifically recorded this fact and observed that by not challenging the judgment and decree passed by the learned Civil Judge, the respondents accepted that the appellant was in adverse possession of the land since 13.4.1952. We, thus, clarify that observations of the High Court that the appellant is not entitled to injunction, were unnecessary and beyond the scope of the appeal .

9. As the appellant is in possession of the suit property since 13.4.1952 and has been granted the decree of injunction, it obviously means that the possession of the appellant cannot be disturbed except by due process of law. We make it clear that though the suit of the appellant seeking relief of declaration has been dismissed, in case respondents file suit for possession and/or ejection of the appellant, it would be open to the appellant to plead in defence that the appellant had become the owner of property by adverse possession. Needless to mention at this stage, the appellant shall also be at liberty to plead that findings of issue No.1 to the effect that the appellant is in possession of adverse possession since 13.4.1952 operates as res- judicata. Subject to this clarification, the appeal is dismissed.