

SUPREME COURT OF INDIA

Mohammed Yassin

Vs.

Ramizabi

C.A.No.2261-2262 of 2012

(Ranjan Gogoi and N.V. Ramana, JJ.,)

29.10.2015

JUDGMENT

Ranjan Gogoi, J.,

1. Aggrieved by the impugned judgment and order dated 26th February, 2010 passed by the High Court in Second Appeal reversing the decrees passed in favour of the plaintiff by the courts below the present appeals have been lodged by the plaintiff in the suits being O.S. No.760 of 1996 and eviction suit being O.S. No.761 of 1996. The facts in brief are as follows:

2. The respondents in the two appeals before us as plaintiff Nos.5 and 6, along with four others, had instituted a suit [O.S. No.295 of 1981] against the appellant and other co-owners for declaration of title and injunction on the basis of adverse possession. The suit was dismissed by the learned trial Court on 1st October, 1982 and the said decree of dismissal was affirmed by the First Appellate Court on 30th March, 1984. The aforesaid judgment has attained finality in law inasmuch as it was not put to any further challenge. The dismissal of the suit in question i.e. O.S. No.295 of 1981 was founded on the principal basis that the plaintiffs therein (respondents in the present appeals) could not establish that they had acquired title by continuous possession which was adverse in character.

3. Thereafter, the present appellant, as the plaintiff, instituted a suit i.e. O.S. No.551 of 1983 for eviction of four of the plaintiffs who had filed O.S. No.295 of 1981. The said suit was decreed and the said decree was confirmed by the High Court in Second Appeal No.1854 of 1991. Pursuant to the said decree the appellant had taken possession of the suit property.

4. As part of the suit property remained in possession of the co-sharers who executed a release deed in favour of the present appellant on 3rd June, 1994, the appellant, as the plaintiff, after issuing legal notice instituted O.S. Nos.760 and 761 of 1996 against the respondents for declaration of title and recovery of possession of the property mentioned in the schedule to the suits. Both these respondents, as noticed, were the plaintiff Nos. 6 and 5 respectively in Suit No.295 of 1981.

5. The learned trial Court as well as the first appellate Court decreed both the suits filed by the appellant-plaintiff on the ground that the issues therein stood concluded by the findings in the earlier suit i.e. O.S. No.295 of 1981. Aggrieved, the respondents instituted the Second Appeals wherein the impugned order has been passed.

6. We have heard the learned counsels of the parties.

7. A reading of the orders of the High Court would go to show that the primary ground on which the High court thought it proper to reverse the decrees passed by the two courts below is that though possession of the respondents may have been permissive initially, after 30th March, 1984 i.e. the date on which the decree in O.S. No.295 of 1981 became final, the possession of the respondents, which continued, was adverse to the appellant and as the suits were filed on 5th September, 1996 i.e. after expiry of period of 12 years from 30th March, 1984 the respondents have perfected their title by adverse possession. Accordingly, the reversal orders were passed by the High Court.

8. To counter the submissions advanced by Shri Vijay Hansaria, learned Senior Counsel appearing for the appellant – plaintiff that there is no material on record to show that the initial permissive possession of the respondents has become hostile to the appellant – plaintiff after 30th March, 1984 and that the conclusions recorded in this regard by the High Court are plainly wrong, Shri V. Prabhakar, learned counsel for the respondents defendants has urged that the finding of the learned trial Court in O.S. No.295 of 1981 and of the appeal Court in the appeal arising therefrom is that the respondent in Civil Appeal No.2261 of 2012, who was the plaintiff No.6 in the said suit, was a licensee. Pointing out to the essential difference between a lease and a licence and the rights of a lessor and those of a licensee and relying on a decision of this Court in *Associated Hotels of India Ltd. Vs. R.N. Kapoor* (1960) 1 SCR 368, Shri Prabhakar has urged that post 30th March, 1984 the possession of the said respondent (plaintiff No.6 in O.S. No.295 of 1981) was in respect of the property as distinguished from the earlier possession which merely conveyed a right to enjoy the property.

9. While the distinction between the lease and the licence need not detain a Court, we find no material to accept the aforesaid distinction made by Shri Prabhakar. There is no material to hold that post 30th March, 1984, the nature of possession of the respondent was, in any way, different from the earlier possession or that such possession was adverse. It also relevant to be noticed that insofar as the respondent in Civil Appeal No.2262 of 2012 is concerned (plaintiff No.5 in O.S No.295 of 1981) the finding of the learned Courts is that said respondent was a tenant under the appellant-plaintiff.

10. Shri Prabhakar has also urged that the finding of the learned trial court and the first appellate Court with regard to the title of the plaintiff is without any basis. It is also pointed out that the first appellate Court had verbatim reproduced the findings of the learned trial Court in this regard. The reading of the judgments in question cannot sustain the above contention. We have also noticed that the High Court had not discussed the aforesaid aspect

of the case in the impugned judgments, notwithstanding which no grievance has been raised by the respondents defendants by filing a separate appeal or even by filing a cross objections in the present appeals.

11. For the aforesaid reasons, we are of the view that the High Court was not correct in reversing the decrees passed by the learned trial Court which decrees were affirmed by the first appellate Court. We, therefore, set aside the orders of the High Court and restore the orders of the courts below decreeing the suits (O.S. Nos.760 and 761 of 1996).

12. The appeals are allowed in the above terms.

13. In the light of the above, the contempt petitions are also closed.