

SUPREME COURT OF INDIA

Rajnarayan Sharma

Vs.

Sirnam Sharma

C.A.No.7444 of 2009

(Arun Mishra and Mohan M.Shantanagoudar,JJ.,)

12.09.2017

JUDGMENT

Mohan M.Shantanagoudar,J.,

1. This appeal arises out of the impugned judgment dated 12.12.2005 passed by the High Court of Madhya Pradesh, Bench at Indore in Second Appeal No. 189/1999, setting aside the judgment passed by the Additional District Judge, Gohad in C.F.A No. 65/98, consequently confirming the judgment and decree passed by the Civil Judge, Class-I, Gohad in Civil Suit In effect, the High Court, by the impugned judgment, has restored the judgment of the trial Court, decreeing the suit, filed by the plaintiffs. Order of review dated 04.12.2006 passed by the High Court has also been challenged in this appeal.

2. The plaintiffs (respondent nos. 1 and 2 herein) filed Civil Suit No. 8-A/87 for declaration of title and injunction, and for cancellation of the sale deed dated 16.7.1984 (exhibit D-2), executed by Banshi(Banshi)in favour of defendant no.1-Raghunath, as well as, sale deed dated 21.9.1989(exhibit D-1), executed by defendant 1-Raghunath in favour of Rajnarayan Sharma (appellant herein) in respect of the land bearing survey(new) numbers 123, 322, 426, 863, 1375 and 1413, admeasuring 7 Bighas 17 Biswas, situated in the village Chandhara, Tehsil Gohad, District Bhind, Madhya Pradesh (hereinafter referred to as the 'suit land'). The plaintiffs claimed that they were in possession of the suit land as sub-lessee of Banshi(Banshi) after paying Rs.5,000/- to Banshi(Banshi) in Samvat 2030 and since then they continued to be in possession of the suit land; they acquired rights of occupancy tenants; Banshi(Banshi)/holder of the suit land could not have executed the sale deed in favour of the first defendant, firstly, because Banshi(Banshi) was not in possession of the suit property, and that the plaintiffs were in continued possession of the property, and secondly, because Banshi(Banshi) was mentally ill. The case of the defendants is, that Raghunath (original defendant no.1) purchased the suit land from Banshi(Banshi) through a registered sale deed (exhibit D-2) dated 16.7.1984, and in turn, Raghunath sold the suit property to Rajnarayan Sharma (appellant herein) through registered sale deed (exhibit D-1) dated 21.09.1989.

3. The trial Court, after framing the issues, recording the evidence and hearing the parties, decreed the suit filed by the plaintiffs. As mentioned supra, the first appellate Court reversed the judgment and decree passed by the trial Court and dismissed the suit filed by the plaintiffs, concluding that the plaintiffs have neither proved their ownership nor possession over the suit land. The High Court, while allowing the appeal filed by the plaintiffs in part, concluded that the plaintiffs have got no right, title or interest whatsoever over the suit land, but are in possession of the property and therefore they cannot be dispossessed, except in accordance with law. The plaintiffs have not assailed the impugned judgment of the High Court holding that they do not have any right, title or interest whatsoever over the suit land and therefore the said finding of the High Court has attained finality and is binding on the parties.

4. The only question to be decided in this appeal is with regard to the possession over the suit property. The first appellate Court, as well as, the High Court have categorically recorded a finding on due consideration of the entire material on the record in proper perspective, that there is nothing on record to show that the plaintiffs were sub-lessees of Banshi(Banshi) at any point of time. The alleged payment of Rs.5,000/- by the plaintiffs to Banshi(Banshi) is also not proved, inasmuch as, there is no documentary evidence to support such case of the plaintiffs. Neither lease deed executed between the plaintiffs and Banshi(Banshi), nor any rent receipt is forthcoming on the record. Even the alleged rate of rent was not fixed between the plaintiffs and Banshi(Banshi). Therefore, though the High Court was justified in concluding that the plaintiffs have not proved any right, title or interest over the suit land, the High Court has erred in concluding that the plaintiffs are in possession of the suit land since last few years and they cannot be dispossessed, except in accordance with law.

5. The plaintiffs solely rely upon khasra entries filed by the defendants before the first appellate Court as an additional evidence, which came to be accepted for the years Samvat 2036-2040 and 2041-2045, i.e., 1974-1979 and 1980-1985, to show that they are in possession of the suit property. As mentioned supra, the plaintiffs claimed that they were in possession of the suit land from Samvat 2030, but there is nothing on record to show that they entered into the possession of the suit land in Samvat 2030. It is no doubt true, that the names of the plaintiffs were forthcoming in the certified copies of khasra entries for Samvat 2036-2040 and 2041-2045 in the column of particulars, however, the Sub-Divisional Officer, Gohad has passed an order cancelling the names of the plaintiffs in respect of those years, inasmuch as, the khasra entries in the revenue record were found to be incorrect. Except those khasra entries, no other documentary material is forthcoming to prove the possession of the plaintiffs over the suit property at any point of time.

6. Per contra, the sale deed dated 16.7.1984 (exhibit D-2), executed by Banshi(Banshi) in favour of Raghunath (original first defendant), and the sale deed dated 21.9.1989 (exhibit D-1), executed by the first defendant in favour of the appellant herein are not questioned by anybody including the plaintiffs till date. The sale deed dated 16.7.1984 (exhibit D-2) depicts that the possession of the suit land was handed over by Banshi(Banshi) to Raghunath, i.e., the predecessor-in-interest of respondent nos. 3 to 5 herein. On receiving consideration of

Rs.15,000/-, the possession of the suit land was handed over to Raghunath on the spot. On 13.5.1985, by the order of Sub-Divisional Officer, Gohad, the revenue records were mutated on the application of original vendor Banshi(Banshi). Subsequently thereafter the names of defendant no.1- Raghunath on the basis of sale deed dated 16.7.1984 (exhibit D-2) and subsequent purchaser Rajnarayan Sharma (the appellant herein) on the basis of sale deed dated 21.9.1989 (exhibit D-1) were mutated in the revenue records. Even after the second sale deed dated 21.9.1989, the name of Rajnarayan Sharma was entered into the revenue records as in possession over the suit land and he is cultivating the land in question.

7. Having regard to the position narrated above, it is clear that there is no documentary evidence to show that the plaintiffs are in possession of the suit property and their case is only based on oral evidence, which is controverted by the defendants in their oral evidence, in our considered opinion, the High Court was not justified in holding that the plaintiffs are in possession of the property. The High Court has fully relied on the revenue entries of Samvat 2036-2040 and 2041-2045 to conclude that the plaintiffs are in possession of the property. While, doing so the High Court had erred in overlooking the important factor that such entries were cancelled by the superior revenue officer, as mentioned supra. In view of the same the High Court fell into error in coming to wrong conclusion. Hence, the said part of the impugned judgment needs to be modified.

8. Accordingly, the instant appeal is allowed, the finding recorded by the High Court that the plaintiffs are in possession of the suit property and they cannot be dispossessed except in accordance with law stands set aside, and the suit No. 8-A/87 is dismissed in toto. No order as to costs.