

SUPREME COURT OF INDIA

Jit Ram

Vs.

Satnam Singh

C.A.No.9087 of 2019

(Uday Umesh Lalit and Vineet Saran, JJ.,)

28.11.2019

JUDGMENT

Uday Umesh Lalit, J.,

SLP (Civil) No. 13835 of 2019

1. Leave granted.
2. This Appeal is directed against the judgment and order dated 28.03.2019 passed by the High Court of Punjab and Haryana at Chandigarh in Regular Second Appeal No. 3809 of 2013 (O&M).
3. One Banta, father of Jit Ram and Sibbo, died on 02.07.1992. Sibbo, though married, was not staying with her husband, but used to reside with her father Banta. After the death of Banta, Sibbo filed Civil Suit No. 143 of 1993 for declaration that she had become the owner and was in possession of land admeasuring 5 kanals out of land admeasuring 9 kanals 14 marlas owned and possessed by Banta on the basis of Will dated 26.06.1992 executed by Banta. Sibbo also sought a decree for permanent injunction to restrain Jit Ram from interfering with her possession and from alienating the land or any portion thereof. The Suit was dismissed by the Additional Civil Judge (Senior Division), Garhshankar, by his judgment and decree dated 28.04.1998. It was held that the Will, on the basis of which the claim was raised, was highly suspicious and that Sibbo had failed to prove her case.
4. The aforesaid judgment was challenged by Satnam Singh, a relation of Sibbo and Jit Ram, by filing First Appeal in the court of the Additional District Judge, Hoshiarpur. It was submitted that with the consent of Banta he had erected a kachha structure in the land in question and that he was in occupation of that structure in his own right. The contentions were rejected and the First Appeal was dismissed by the Lower Appellate Court by its judgment and order dated 14.01.2003. No further challenge was raised and thus, the decree became final as against Sibbo and Satnam Singh, the Respondent herein.

5. Thereafter, Civil Suit No.293 of 2003 was filed by Jit Ram against the Respondent for possession of portion of the property over which that kachha structure marked as 'ABCD' in the site plan was situate. The matter was contested by the Respondent by filing his written statement submitting inter alia that by virtue of a Will executed by Sibbo in favour of him, the Respondent had an independent interest in the property. A plea of adverse possession was also taken in the alternative. The Trial Court dismissed said Suit by its judgment and decree dated 11.04.2011 holding inter alia that the Respondent had perfected his title by adverse possession and the Suit was barred by limitation.

6. Jit Ram, being aggrieved, preferred Civil Appeal No. 45 of 2011 in the Court of Additional District Judge, Hoshiarpur, which was allowed by Judgment and Decree dated 19.07.2013. The Appellate Court found that the claim of Sibbo having been dismissed in the earlier round, she could not have conferred any title with respect to the property by a Will in favour of the Respondent. It was also found that the possession of the Respondent was purely permissive and that the claim on the ground of adverse possession was completely untenable.

7. The Respondent, being aggrieved, filed Regular Second Appeal No.3809 of 2013 (O&M) in the High Court. Jit Ram having expired during the pendency of said Appeal, his heirs were substituted in his place. By its Judgment and Order dated 28.03.2019 said Second Appeal was allowed by the High Court. The High Court approved the findings of the Appellate Court insofar as it was held that the Respondent could not have succeeded to the suit property on the basis of any will executed by Sibbo. However, the finding as regards issue of adverse possession was reversed and the finding of the Trial Court was restored. It was observed that the Respondent had remained in open and hostile possession of the Suit property which he had constructed in the year 1989.

8. In this Appeal we have heard Mr. O.P. Bhadani, learned Advocate for the Appellant and Ms. Tina Garg, learned Advocate for the Respondent.

9. The record clearly indicates that the possession of the Respondent of portion marked 'ABCD' and his occupation of the structure was purely permissive in character. At no stage the possession was hostile to the owners of the property. The element of hostility was completely missing. The finding rendered by the Appellate Court was, therefore, absolutely correct and there was no occasion for the High Court, while exercising second appellate jurisdiction, to set aside that finding. In our view, the High Court clearly erred in accepting the Second Appeal.

10. The fact however remains that the structure was put up by the Respondent. Pursuant to the interim direction issued by this Court the pictures of the structure have been shown to the Court. The structure is completely dilapidated and in our view the value of the structure may not have been more than Rs.5,000/-. However, considering the fact that the money was spent by the Respondent in the year 1989, in our view, ends of justice would be met if the Appellants are directed to pay a sum of Rs.50,000/- (Rupees Fifty Thousand Only) towards the cost of the structure.

11. In the circumstances, we allow this appeal, set aside the Judgment and Order under Appeal to the extent it held against the Appellants on the issue of adverse possession and we restore the Judgment and Decree dated 19.07.2013 passed by the Appellate Court subject to the Appellants paying Rs.50,000/- to the Respondent within four weeks from today. The amount shall be deposited in the Trial Court and shall be released to the Respondent if he vacates and hands over possession of the structure to the Appellants within two weeks after the deposit, where after the Respondent shall cease to have any interest in the structure. In case he refuses to vacate and hand over such possession, the Respondent shall not be entitled to the sum so deposited and the sum could then be withdrawn by the Appellants, who shall then be entitled to execute the decree dated 19.07.2013 passed by the Appellate Court.

12. The Appeal stands allowed accordingly. No costs.