

RAJASTHAN HIGH COURT

Madan Lal

Vs.

Ram Prasad

Civil First Appeal No. 76 of 1980

(Prakash Tatia, J.)

12.09.2001

JUDGEMENT

Prakash Tatia, J.

1. This appeal is against the judgment and decree dated 31-5-1980 passed by the Additional District Judge, Bhilwara in Civil Original Suit No. 20/1977 (12/1973).

2. Brief facts of the case are that the plaintiff-appellant Madan Lal filed a suit for possession of the disputed property described in para No. 4 of the plaint against his brother defendant Ram Prasad on the basis of title alleging that the plaintiff completed his studies in the year 1947 and, thereafter, got the employment and he remained in employment at Udaipur till 1952. Thereafter, the plaintiff came at Bhilwara and started his own business in the name of General Machinery Stores, Bhilwara and also doing the business there in the names of few other firms. According to the plaintiff, the plaintiff purchased the disputed plot measuring 40' x 60' from Sua Lal and Dal Chand on 24-7-1958 by registered sale-deed. The plaintiff got the map of the house approved from the Municipal Board, Bhilwara on 21-3-1960 and invested Rs. 12,000/- for construction of the same. The plaintiff from time to time made additions and alterations in the house and also mortgaged the house with Smt. Anand Kumari on 19-11-1960. After mortgaging the house, the plaintiff took on rent the house in dispute and there are several persons who are tenants of the plaintiff in the disputed house. The plaintiff's father expired on 25-12-1964. When plaintiff's father was sick then the defendant came to the plaintiff along with his family. The plaintiff permitted the defendant to live in this disputed house and only few portions shown in the map were given to the defendant to live as licensee. In the year 1972, on the request of the defendant, the plaintiff gave one more room to the defendant which was in possession

of Shri Vidhyarthi Satyanarayan. The plaintiff further stated that the plaintiff was in possession of three undergrounds (sic) where plaintiff's goods were lying and one room in the house was in occupation of the plaintiff's mother."

3. On 23-12-1972 when the plaintiff went to the house to meet his mother, the defendant and his sons dragged the plaintiff out from the house and they also gave a threat to the plaintiff and closed the doors. It was further alleged that the tenants Raghu Nandan and Kishan Lal handed over possession of their tenanted portion to the defendant. The plaintiff, therefore, filed the suit for possession of the property in dispute and also claimed Rs. 100/- per month for damages for use and occupation.

4. The defendant submitted written statement and stated that the house in dispute is joint Hindu family property and the plaintiff and defendant are having other movable and immovable properties at Bhilwara, Bhopalgarj and Rayala and the property was never partitioned. The defendant submitted that the business in the name of General Machinery Stores was started by the plaintiff and defendant's father Kanhaiya Lal and this firm was joint Hindu family firm. The plaintiff is also member of the joint Hindu family. The plaintiff, defendant and their father were also actively doing the business. It is also stated that out of the income of the firm, the properties were purchased. It was denied that the property has its own income and it is also denied that the firm was of the plaintiff alone. It is further specifically stated that the disputed property was purchased from the income of the General Machinery Stores. The plaintiff was the educated member of the family and there was good faith in the plaintiff and he was doing all the works of correspondence etc. The plaintiff acted as Karta of the family. The defendant shown his ignorance with respects to the fact of mortgage of the property but stated that Smt. Anand Kumari was never in possession of the house in dispute. The defendant in his additional pleas gave details of the joint Hindu property of the plaintiff and the defendant. In sum and substance, the defendant's plea was that he was not living in the house as licensee of the plaintiff but he being co-parcener in the house, has a right to live in the house.

5. The learned Court below framed as many as nine issues. The plaintiff himself appeared as PW-1 and plaintiff's witnesses PW-2 Akhay Ram, PW-3 Ladu Lal, PW-4 Bal Kishan, PW-5 Muldidhar, PW-6 Phool Chand, PW-7 Dalpat Singh, PW-8 Abdul Haki and PW-9 Ganesh Lal were examined, whereas the defendant appeared himself as DW-1 and produced witnesses DW-2 Balu Ram, DW-3 Bhura Lal and DW-4 Ranchod Das. The plaintiff produced as many as 63 documents whereas the defendant

produced 14 documents.

6. The learned Court below dismissed the suit of the plaintiff holding that General Machinery Stores, Bhilwara was of the joint Hindu family firm of the plaintiff and defendant. The property was purchased from the income of the above firm. The plaintiff failed to prove that he raised the construction of the house from his own money and, therefore, held that the plaintiff is not entitled for decree for possession on the basis of the title. Aggrieved against the judgment and decree dated 31-6-1980 of the learned Court below, the appellant has preferred this appeal.

7. The learned counsel for the appellant vehemently submitted that the property was purchased by the appellant by registered sale deed which is Ex.1 and this registered sale deed is of 21-7-1958. Ex. 2 is the receipt by which the advance amount was paid by the plaintiff for purchase of the above house and while receipt Ex. 3, the plaintiff paid the rest of the amount for sale of the plot. The plaintiff also produced Ex. 4 receipt depositing amount in the registration department. The learned counsel for the appellant submitted that, not only this, the property was purchased by the appellant supported by the registered sale deed and the receipts of the payment but, thereafter also, the plaintiff acted as owner of the property and the plaintiff got the plan approved from the Municipal Board, Bhilwara for which the plaintiff produced plaint Ex. 5. The plaintiff also obtained permission of construction of Chabutari from the Municipal Board, Bhilwara which is Ex. 6. These facts are said to be sufficient evidence of raising construction by the plaintiff. The plaintiff treating himself as owner of the property even mortgaged the disputed house by mortgage deed dated 19-11-1960 (Ex. 9). The rent deeds were also from 1961 to 1972 by different tenants which clearly show that the plaintiff acted as the owner of the property after purchasing the same. The plaintiff also produced relevant entries from his note-book to show that from where he got the money and how he invested the money for raising construction. The house was shown as personal property of the plaintiff in Income Tax Assessment Orders and it is submitted that it is clear from the Income Tax Assessment Orders Ex. 34 and Ex. 35 that the plaintiff was the sole proprietor of the firm which is clearly mentioned in the above Assessment Orders which are of the years 1957-58 and 1959-68. Therefore, the firm was not the joint Hindu family firm but it was the sole proprietorship firm of the plaintiff and the plaintiff, if purchased the plot from the income of the above firm, then also the plaintiff is the owner of the property.

8. The learned counsel for the respondent supported the judgment and decree of the Court below and submitted that the plaintiff failed to prove that he is the sole owner of the property in dispute.

9. I considered the rival submissions of both the learned counsel for the parties and also perused the record of the case.

10. The learned Court below decided issue Nos. 1, 5 and 9 together which are with respect to the fact whether the plaintiff is owner of the property and whether the disputed house is joint Hindu family property and the defendant is also one of the coparceners, whereas issue No. 9 is whether the defendant is residing with permission of the plaintiff. The Court below, after considering the evidence and the documents submitted by both the parties, held that the so-called entries produced by the plaintiff are not trustworthy documents and even they cannot be treated as admissible books of accounts as per Section 34 of the Indian Evidence Act. The Court below critically examined the entries made in the above note-book and found that these entries are not regularly made entries. They does not disclose the correct facts. Not only this but even the plaintiff himself had to admit it categorically that the entries were not regularly kept and there are serious contradictions and mistakes in the entries. There is a specific admission of the plaintiff that he was not regularly maintaining the accounts.

11. The plaintiff in his statement before the Court below admitted that the disputed plot was purchased from the income of General Machinery Stores (at Page 28 of the Paper Book), therefore, it is clear that the property was not purchased by the plaintiff by his own income as alleged by the plaintiff in the plaint. Now relevant fact remains is that what was the status of General Machinery Stores; whether it was joint Hindu family business as alleged by the defendant or it was the sole proprietorship business of the plaintiff as alleged by the plaintiff.

12. The plaintiff along with defendant and their father filed one suit No. 193/1955. A copy of the plaint was placed on record by the defendant as Ex. A.1. From this copy of the plaint it is clear that the suit was filed by the plaintiff and defendant along with their father Kanhaiya Lal against Har Lal, Heera Lal and Lalita Prasad for recovery of Rs. 525/-. In the plaint, the plaintiff was shown as the Karta and Manager of joint Hindu family business General Machinery Stores, Bhilwara. The defendant Ram

Prasad was made as plaintiff No. 2 and plaintiff Madan Lal was made as party as plaintiff No. 3 describing him as Manager, General Machinery Stores, Bhilwara. In para No. 1 of the plaint, the plaintiffs, namely, Madan Lal (present plaintiff), Ram Prasad (present defendant) and Kanhaiya Lal (father of the plaintiff and defendant), clearly mentioned that the plaintiffs are doing the joint Hindu family business in the name of General Machinery Stores at Bhilwara. This plaint was signed by all the above three persons, i.e. the present plaintiff, the present defendant and their father. When there is a very specific and categorical admission of fact of the parties then that admission can be used against the party making the admission.

13. The learned counsel for the respondent relied upon the above admission and the learned trial Court also accepted this admission of the plaintiff. The learned trial Court rejected the so-called explanation given by the plaintiff for filing the above suit No. 193/1955 (Ex.A.1) holding that the explanation given by the appellant-plaintiff cannot be accepted. The explanation given by the plaintiff for filing of the suit describing the firm as joint Hindu family property is only that this was the amount of black money and, therefore, to save income-tax, the firm was shown as joint Hindu family property. The learned Court below rightly held that the explanation given by the plaintiff is absolutely ridiculous. The plaintiff failed to even submit how it could have effected their income-tax when the suit is only for Rs. 525/- and when the plaintiff could have filed the suit for recovery of Rs. 525/- then how it will remain the black money because in case any decree will be passed, it will be passed in the name and in favour of the plaintiffs being owner of the above joint Hindu family firm. It is true that admissions if are made and sought to be used against the persons making admissions then the persons making admissions can explain the admissions and the circumstances in which admission was made to show that the admission is not binding upon him. Here in this case, the explanation of the appellant-plaintiff was rightly rejected by the Court below. Then there remains only admission of the plaintiff, that admission too was in the knowledge of the defendant and defendant's father, then the defendant and other family members, if remained satisfied with the admissions and intention of the plaintiff, they need not to doubt the conduct of the plaintiff. In view of the above admission the plaintiff is estopped from saying that the firm M/s. General Machinery Stores was plaintiff's sole proprietorship firm or it was not joint Hindu family firm.

14. The learned counsel for the appellant submitted that if a fact which was not in controversy or was not very much relevant for the purpose of decision of the

controversy and, if at that stage, if a fact is admitted then that cannot be said to be a conscious admission of fact which can bind the person making the admission. The above submission of the learned counsel is not applicable to the facts of this case. There may be some controversy wherein the fact may not be relevant specifically and there may be casual reference of a fact, then the party can explain the admission of fact. For example, if there was no dispute with respect to the paternity of a person and 'A' simply mentioned that 'A' is son of 'B' and if this admission is sought to be used against 'A', then 'A' can certainly explain his admission by saying that 'A' is either born son of 'B' or he is adopted son of 'B' or even he is illegitimate son of 'B', provided, the above facts were not relevant for the purpose of controversy in which the above fact was mentioned by 'A'. In other instance, when the person is admitting some fact to assert his right on the basis of the fact then explanation for that admission requires more strict proof and explanation for admission to back out from the above admission requires further more reasons and proof. Here in this case, the copy of the plaint Ex. A.1, clearly shows that this was an assertion of right of the firm and in that assertion, the plaintiff, defendant and their father disclosed their relationship in the firm to make them entitled to maintain the suit and recover the amount. Therefore, it cannot be said that the fact mentioned in the plaint Ex. A.1 was not relevant at that time to show the constitution of the firm. Therefore, this was a conscious admission of the fact by the plaintiff in the knowledge of the defendant and plaintiff and defendant's father. Hence the plaintiff cannot wriggle out from the above admission and the so-called explanation given by the plaintiff is absolutely unbelievable and virtually no explanation for getting out of admission of fact.

15. The learned counsel for the appellant submitted that suit (Ex.A.1) was filed in the year 1954 but the subsequent documents Ex. 34 and Ex. 35 fully prove that the plaintiff Madan Lal was the proprietor of the firm General Machinery Stores. These Assessment Orders (Ex. 34 and Ex. 35) are of the years 1957-58 and 1959-60. In these orders it is mentioned that Madan Lal, Proprietor attended the office of the Income Tax along with his C.A. and produced books of accounts comprising of ledgers. Therefore, according to learned Senior Counsel Shri Shishodia, these documents are also old and trustworthy documentary evidence and when the above firm was shown as the sole proprietorship firm of the plaintiff then there are sufficient proof for holding that the firm was proprietorship firm of the plaintiff alone.

16. I am unable to accept the above submission of the learned counsel for the

appellant. The above orders are obtained by the plaintiff himself and it is nowhere said by the plaintiff that these orders were obtained by the plaintiff with the knowledge of the defendant and their family members. The correctness of the fact mentioned in the order was also required to be proved by the plaintiff. Mere filing these orders were not sufficient. If we go by these orders then also it is clear that the plaintiff was not keeping the proper books which is mentioned in Ex. 34 and Ex. 35 itself and the Assessment Orders (sic) was passed by the authority concerned. Therefore, even the authority who passed the order probably might not have any material to hold that Mada Lal was the proprietor of the firm. At the same time, it is also relevant to mention here that the plaintiff himself admitted in his statement on oath before the Court below that he was manipulating things which suited him in the facts and circumstances and he was maintaining the books and transaction to suppress the facts from the income tax authorities, then the documents Ex. 34 and Ex. 35 lose their credibility as they cannot be accepted disclosing the true and correct facts with respect to the status of the firm. In view of the admission of the plaintiff himself that neither he was maintaining the regular accounts books nor he was having the accounts books at that time of the Assessments Orders and further admission of the plaintiff that to avoid income tax he has not made entries in the books for the income of Rs. 5000/- which he brought from Udaipur and entered only Rs. 3000/- and his admission of filing of suit Ex. A. 1 to avoid income tax. Therefore, the above documents cannot be sufficient proof of holding that the firm was the proprietorship firm of the plaintiff. The above documents Ex. 34 and Ex. 35 at the most can be said to be admission in his own favour of the plaintiff which is not admissible, apart from the lack of credibility.

17. When it is found that the property in dispute was purchased from the income of the joint family business as alleged by the defendant then the title of the property cannot vest in the plaintiff merely because the plaintiff has shown himself as proprietor of the firm before Income Tax Authorities. the title of the property of joint Hindu family continues so till it separated in accordance with law which is not the case of the plaintiff.

18. The learned counsel for the appellant submitted that the plaintiff acted as owner of the property after purchase of the property, as the plaintiff himself obtained the permission of construction in his own name. He puts tenants in the premises and also mortgaged the property in dispute. It is clear from the sale deed in favour of the plaintiff of the disputed property that there was a registered sale deed in the name of

the plaintiff, therefore, naturally any permission for raising construction will have to be sought in whose name the deed is standing. Therefore, all the actions taken by the plaintiff and his family members, subsequent of having sale deed in the name of plaintiff, are in consonance with the facts mentioned in the registered sale deed. The basic question was whether the property was purchased by the plaintiff himself or not which was found against the plaintiff. Therefore, mere permission of raising construction in the name of the plaintiff or having even mortgage-deed in the name of plaintiff etc. are not sufficient proof to hold that the plaintiff was the sole owner of the property in dispute and it was made known to the defendant and the family members.

19. The learned counsel for the appellant-plaintiff also tried to submit that he raised the construction over the plot in dispute. The learned counsel for the respondent-defendant pointed out that the plaintiff in para No. 4 of the plaint, very specifically submitted that, the above plot was purchased by the plaintiff from his own income and also in para No. 5 stated that he invested Rs. 12,000/-. The plaintiff has not given any explanation from where he got this amount. Therefore, the evidence of the plaintiff with respect to getting money from his wife and in-laws deserves to be rejected. The Court below found the evidence of the plaintiff and his witnesses not sufficient to prove the fact of raising construction by the plaintiff.

20. A bare perusal of the documentary evidence, the entries placed by the plaintiff, it is clear that the plaintiff failed to prove that the house was constructed by the plaintiff and his evidence is not worth relying. There are serious contradictions in the evidence of the plaintiff, rather say, the plaintiff is not a witness of worth reliance. He also failed to produce in-laws to prove that any payment was made to the plaintiff by the in-laws for raising construction of the house. therefore, the plaintiff failed to prove that the house was constructed by the plaintiff from his own income.

21. In view of the above reasonings, I do not find any illegality in the decision given by the learned Court below on issue Nos. 1, 5 and 9.

22. The appellant has not challenged any other finding in arguments recorded by the learned Court below.

23. In view of the above discussion, there is no force in this appeal and the same is hereby dismissed.

Appeal dismissed.