

A

BALKRISHAN
v.
SATYAPRAKASH AND ORS.

JANUARY 22, 2001

B

[S.S.M. QUADRI AND RUMA PAL, JJ.]

Land Laws:

Madhya Pradesh Land Revenue Code, 1959:

C

Section 250—Adverse possession— Suit land under orders of attachment was purchased by plaintiff from its owners—In the auction sale of the suit land R purchased it—Application filed by R for restoration of possession of land—Despite orders of Tehsildar to put R in possession of suit land plaintiff remained in possession—Subsequently R sold suit land to defendants—Suit

D

for declaration of title filed by plaintiff —Trial court held that the plaintiff had been in continuous possession of the suit land and perfected his title by adverse possession—First appellate court affirmed the decree—However, High Court allowed the second appeal—Correctness of—Held: A person claiming title by adverse possession must show that his possession is adequate in continuity, in publicity and in extent—Despite order of Tehsildar the plaintiff continued in possession and, therefore, his possession was neither interrupted nor lost—Order of Tehsildar to handover possession does not cause discontinuation of possession—Hence, High Court erred in setting aside the judgment of the first appellate court—Limitation Act, 1963, Art. 65.

E

The appellant purchased the suit land, which was under attachment by orders of the Tehsildar. In the auction that followed the attachment, the suit land was purchased by R. Thereafter, R filed an application under Section 250 of the M.P. Land Revenue Code, 1959 against the appellant claiming restoration of possession of the suit land. Despite the order of the Tehsildar to put R in possession of the suit land, the appellant remained in possession. Subsequently, R. sold the suit land to the respondents.

F

G

The appellant filed a suit for declaration of title and permanent injunction. The trial court held that the appellant had been in continuous possession of the suit land and perfected his title by adverse possession. The first appellate court confirmed this decision. However, the High Court set aside this judgment. Hence this appeal.

H

On behalf of the respondents it was contended that there was an order of the Tehsildar to handover possession of the suit land to the respondents and, therefore, the appellant could not claim to be in continuous uninterrupted possession. A

Allowing the appeal, the Court

HELD : 1. A person claiming title by adverse possession has to prove three "nec"-nec vi, nec clam and nec precario. In other words, he must show that his possession is adequate in continuity, in publicity and in extent. B

[483-G-H]

S.M. Karim v. Mst. Bibi Sakina, AIR (1964) SC 1254, relied on. C

2.1. The fact remained that in spite of the order of the Tehsildar against the appellant, which was not acted upon, nor executed, the appellant continued in possession of the suit land and, therefore, the continuity of his possession of the suit land was neither interrupted nor lost. Mere passing of an order of ejection against a person claiming to be in adverse possession neither causes his dispossession nor discontinuation of his possession, which alone breaks the continuity of possession. [484-G-H; 485-A] D

2.2. The fact that under Section 250(2) of the M.P. Land Revenue Code, 1959 read with Section 38 thereof the Tehsildar was bound to restore possession of the suit land would make no difference and it is difficult to accept the contention that failure of the Tehsildar in handing over possession would have the effect of causing discontinuation of possession of the suit land by the appellant so as to prevent such possession from ripening into adverse possession after the statutory period. [285-B] E

Singaravelu Mudaliar v. Chokka Mudaliar, AIR (1923) Mad 28 (2) and *Shaik Mukbool Ali v. Shaik Wajed Hoossein*, AIR (1923) Mad 88 (2), approved. F

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 4031 of 1995. G

From the Judgment and Order dated 1.9.94 of the Madhya Pradesh High Court in C.S.A.No. 161 of 1991.

Niraj Sharma for the Appellant.

M.P. Verma, K. Pandey and Ms. Anita Pandey for the Respondents. H

A The Judgment of the Court was delivered by

SYED SHAH MOHAMMED QUADRI, J. This appeal, by special leave, is from the judgment and decree of the High Court of Madhya Pradesh (Bench at Gwalior) in Civil Second Appeal No.161 of 1991 dated September 1, 1994. The plaintiff in the suit (Case No.51-A/86 in the court of Second Civil Judge Class I, Guna, Madhya Pradesh) is the appellant. He laid the suit for declaration of his title on the ground that by adverse possession he perfected his title to the agriculture land bearing Survey No.1216, admeasuring 1.902 hectares (Khasara No.1216 area 9 bighas 2 bisvas) situated in village Guna, Tehsil and District Guna, Madhya Pradesh (hereinafter referred to as, 'the suit land') and for permanent injunction against respondent Nos.1 to 4 on December 6, 1986.

The following facts need to be noticed for understanding the controversy between the parties. The appellant claimed that he purchased the suit land for consideration of Rs. 451 from Sukhlal and Phulchand who were said to be the owners thereof on August 25, 1960. The suit land was under attachment by orders of the Tehsildar, Guna and in the auction that followed the attachment, one Mohan Singh purchased it in the name of his minor son Rajendra Singh in 1963. Rajendra Singh through guardian -his father Mohan Singh - filed an application under S.250 of Madhya Pradesh land Revenue Code, 1959, before the Tehsilar, Guna, against the appellant claiming restoration of possession of the suit land. On the alleged ground of interference in his possession, the appellant instituted a suit (for declaration praying for declaration and injunction) (Civil Suit No. 82A/64) in the court of Civil Judge, Class II, against Rajendra Singh & Mohan Singh and his vendors (Sukhlal & Phoolchand) in 1964. On December 23, 1966 the suit was dismissed holding that the sale in his favour was not valid. Notwithstanding the dismissal of that suit, he remained in possession of the suit land. On June 20, 1971, the Tehsildar ordered the appellant to put the said Rajendra Singh in possession of the suit land. Against that order the appellant filed an appeal before the Sub-Divisional Officer who dismissed the appeal on September 4, 1973. While so Rajendra Singh sold the suit land to respondent Nos. 2 and 4; respondent No. 1 is husband of respondent No. 2 and respondent No. 3 is the husband of respondent No. 4. The appellant, however, continued to remain in the possession of the suit land. The said respondents resisted the suit denying the possession of the appellant and pleading that Mohan Singh and Rajendra Singh were in continuous possession of the suit land and that the appellant acquired no title to the suit land. They stated that the appellant failed in the Civil Court, Revenue Court, and before the Executive Magistrate and therefore

that suit was also liable to be dismissed. A

After considering the evidence placed before it the trial court found that the appellant had been in continuous possession of the suit land and perfected his title by adverse possession. Accordingly, the suit of the plaintiff was decreed by the trial court. Against the judgment and decree of the trial court, respondent Nos.1 to 4 filed appeal (Civil Appeal No. 97-A/1990) before the IInd Additional District Judge, Guna. On 30 July, 1991, the First Appellate Court dismissed the appeal. The said respondents filed Civil Second Appeal No. 161 of 1991 in the High Court of Madhya Pradesh (Bench at Gwalior), which was allowed, setting aside the judgment and decree of the First Appellate Court, by the impugned judgment and decree. B C

Mr. Niraj Sharma, the learned counsel appearing for the appellant contended that inasmuch as the trial court as well as the First Appellate Court found that the appellant had perfected his title by adverse possession, the High Court erred in reversing the well-considered judgments of the lower courts on the ground that possession of the appellant was not sufficient in the eye of law to confer the title by adverse possession. D

Mr. M.P. Verma, the learned senior advocate appearing for the respondents, contended that the earlier suit of the appellant was dismissed and that there was an order of the Tehsildar directing him to handover the possession of the suit land to the respondents, therefore, the appellant could not claim to be in continuous uninterrupted possessions as such the High Court rightly held that the appellant did not perfect his title by adverse possession and dismissed the suit of the appellant. E

The short question that arises for consideration in this appeal is : F whether the High Court erred in holding that the appellant had not perfected his title by adverse possession on the ground that there was an order of Tehsildar against him to deliver possession of the suit land to the auction purchasers? .

The law with regard to perfecting title by adverse possession is well settled. A person claiming title by adverse possession has to prove three "nec"- nec vi, nec clam and nec precario. In other words, he must show that his possession is adequate in continuity in publicity and in extent. In *S.M. Karim v. Mst. Bibi Sakina*, AIR (1964) SC 1254 speaking for this Court Hidayatullah, J. (as he then was) observed thus: G H

A *“Adverse possession must be adequate in continuity, in publicity and extent and a plea is required at the least to show when possession becomes adverse so that the starting point of limitation against the party affected can be found.”*

B In the instant case, the trial court on appreciating the evidence produced by the parties recorded the following among other findings:

(i) *Accordingly it is decided that since 23.12.1966 negating the title of actual Bhumiswami, the plaintiff has been in continuous, uninterrupted and open possession of the suit land;*

C (ii) *As a result the plaintiff had acquired the rights of Bhumiswami on the basis of the adverse possession of the suit land.*

D The First Appellate Court on reappraisal of the evidence on record found that the appellant was in continuous possession from the date of the purchase i.e., August 25, 1960, but as the predecessor-in-interest of the respondents, Rajendra Singh, initiated the proceedings under S.250 of the M.P. Land Revenue Code, 1959 before the Tehsildar, Gunna, against the appellant for recovery of possession so the period from August 25, 1960 till initiation of proceedings and from 1.12.1964 to 4.9.73 during which the proceedings remained pending, cannot be counted for perfecting the title of the plaintiff so his adverse possession would commence from 4.9.1973 and the period of 12 years was completed on 4.9.85 before the purchase of the suit land by the respondents on 11.12.85. The present suit was filed on December 6, 1986, therefore, the appellant perfected his title by adverse possession.

E The High Court while accepting those findings of the courts below, F however, held :

“In spite of the fact that the plaintiff continued in possession in spite of the order against him in proceedings under Section 250 M.P.L.R. Code, his possession cannot be said to be sufficient in the eye of law to confer a title upon him by adverse possession, as claimed.”

G In our view this conclusion of the High Court is erroneous. The fact remained that in spite of order of the Tehsildar against the appellant which was not acted upon, nor executed, the appellant continued in possession of the suit land and therefore, the continuity of his possession of the suit land was neither interrupted nor lost. Mere passing of an order of ejection H against a person claiming to be in adverse possession neither causes his

dispossession nor discontinuation of his possession which alone breaks the continuity of possession. A

The fact that under Section 250(2) of the M.P.L.R. Code read with S.38 thereof the Tehsildar was bound to restore possession of the suit land would, in our view, make no difference and it is difficult to accept the contention that failure of the Tehsildar in handing over possession would have the effect of causing discontinuation of possession of the suit land by the appellant so as to prevent such possession from ripening into adverse possession after statutory period. B

In *Singaravelu Mudaliar v. Chokka Mudaliar*, AIR (1923) Madras 282 the Madras High Court took the view that an adjudication that the true owner had a good title to possession is entirely consistent with the fact that actual possession is with party who ousted the true owner and has been holding possession as against the true owner on his own behalf. It is difficult to understand as to how a decree which negated the first defendant's right could possibly be regarded in the nature of an interruption of the continuity of possession. C D

In *Shaik Mukbool Ali v. Shaik Wajed Hoossein*, AIR (1923) Madras 882 the High Court held :

"Whatever the decree might have been, the defendant's possession could not be considered as having ceased in consequences of that decree, unless he were actually dispossessed. The fact that there is a decree against him does not prevent the statute of limitation from running." E

In our view, the Madras High Court correctly laid down the law in the aforementioned cases. F

It will be apt to note here the decision of Privy Council in *A.S.S. Subbaiya Pandaram v. Mohammed Mustafa Maracayar*, AIR (1923) PC 175 which was approved by this Court in *Soni Lalji Jetha (deceased) through his L.Rs. v. Soni Kalidas Devchand and others*, AIR (1967) SC 978. In that case, in 1913 a suit was brought by the appellant against the respondents for possession of immovable property in question. In 1890 the appellant's grandfather created a trust of his properties including the property in question. That property was purchased by the respondents in execution of a decree against the appellant's father in 1898. The purchaser and other respondents H

A claiming under him had been in possession since the date of purchase. In a subsequent suit, filed in 1904 in which the respondents were parties, a decree was passed declaring that the trust created by the appellant's grandfather was valid. However, no steps were taken pursuant to the decree to dispossess the respondents prior to filing of the suit by the appellant. The Privy Council negated the contention that the decree in the suit holding the property as trust property was *res judicata* as against the respondents so as to preclude them from asserting title in the property. The Privy Council observed as follows :

C *"At the moment when it was passed the possession of the purchaser was adverse and the declaration that the property had been subject to a trust disposition, and therefore ought not to have been seized, did not disturb or affect the quality of his possession; it merely emphasised the fact that it was adverse. No further step was taken in consequence of that declaration until the present proceedings were instituted, when it was too late."*

D From the above discussion it follows that the judgment and decree of the High Court under challenge cannot be sustained. They are accordingly set aside and the judgment and decree of the First Appellate Court confirming the judgment and decree of the trial court is restored. The appeal is accordingly allowed but in the circumstances of the case without costs.

E V.S.S.

Appeal dismissed.