

(1988) 09 MP CK 0022
In the Madhya Pradesh High Court
Case No : Second Appeal No. 196 of 1977

Bala

APPELLANT

Vs

Heeralal and Others

RESPONDENT

Date of Decision : 30-09-1988

Acts Referred:

Madhya Bharat Land Revenue and Tenancy Act, 2007 — Section 70
Transfer of Property Act, 1882 — Section 53A

Citation : (1988) MPLJ 781

Hon'ble Judges : R.C. Lahotia, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

R.C. Lahotia, J.—The facts lie in a narrow compass but the question of law emerging there from does have substantiality.

2. The contending parties both claim under one Bonda who was admittedly the owner of the suit property at one point of time. The plaintiff-appellant claimed to have acquired title from Bonda under a registered deed of sale, dated 18.11.1961 and sued the defendants for possession alleging the possession of the defendants to be unauthorised. The defendants Nos. 11 and 12 who are the principal contestants relied on an unregistered deed of sale, dated 3.7.1950 entitled as an agreement executed by Bonda in their favour whereby Bonda had alienated the land to these defendants, possession was delivered there under and the consideration too was paid by them to Bonda. They submitted that they having been in possession continuously since 3.19.1950 under the said deed claiming to be the owners of the land, firstly their possession was protected by the doctrine of part performance u/s 53-A of Transfer of Property Act and in the alternative they had also perfected their title by adverse possession which would render the suit of the plaintiff filed on 28.6.1972 not maintainable.

3. The lower appellate court found that the deed, dated 3.7.1950 was executed by Bonda in favour of the defendants Nos. 11 and 12; that Bonda had delivered

possession to the defendants under the deed and ever since then the defendants have continued to be in possession; and that though Bonda had executed the registered deed of sale, dated 18.11.1961 in favour of the plaintiff but possession there under was not delivered to the plaintiff as the same was with the defendants Nos. 11 and 12. In arriving at these findings the lower appellate court has not only taken into consideration the evidence of the contesting defendants but has also observed that the admissions made by the plaintiffs witnesses lent support to the defendants' evidence. These findings are basically of facts and unassailable in second appeal. Even the Learned Counsel for the appellant has been fair enough not to challenge the findings of fact. What he has vehemently attacked is the approach of the lower appellate court whereby it has held that the defendants Nos. 11 and 12 would be entitled to protect their possession u/s 53A of Transfer of Property Act and that their possession being adverse to the real owner would ripen into title on lapse of 12 years.

4. The Learned Counsel for the appellant has contended that Section 53A of the Transfer of Property Act would not be attracted and would not help the defendants in protecting their possession because the sale having not been completed in the manner required bylaw, it would be invalid. The Learned Counsel points out that at the material time Ordinance No. 43 of 1949 of United States of Gwalior, Indore and Malwa (Madhya Bharat) was in force, Clause 15 whereof provided that a pattedar tenant could transfer his rights in the whole or in part of his holding by sale to a bona fide agriculturist only with the previous sanction of Suba of the District and after payment to Government by the prospective transferee of the prescribed fee. A transfer effected without a previous sanction could still be validated by the Suba but on payment of the prescribed penalty. It is submitted by the Learned Counsel that neither there was a previous sanction nor a subsequent validation and hence the sale was invalid.

5. This contention loses sight of the fact that the applicability of the doctrine of part performance does not depend on the legality or validity of the transfer. Fourth part of Section 53A itself provides that the doctrine would be attracted notwithstanding that the contract though required to be registered has not been registered or the transfer has not been completed in the manner prescribed there for by the law for the time being in force. The Ordinance No. 43 of 1949 was repealed by the M.B.L.R.T. Act, Samvat 2007 (Act No. 66 of 1950). This act was repealed by M.P. Land Revenue Code, 1959 which came into force on 2.10.1959. Section 70 of the M.B. Act made a similar provision as was contained in Clause 15 of the Ordinance Division Bench of this Court in Laxminarayan v. Sitabai and Anr. LPA No. 3/67 decided on 11.4.1969, Indore, decision published in 1972 Vikram Revenue Nirnay (1)43 had an occasion to consider the provisions contained in Section 70 of the M.B. Act and it was held that in spite of the repeal of the M.B. Act by the M.P. Code the right to have the sale-deed validated was preserved and for that purpose appropriate proceedings could be taken despite the repeal of the Act. It was further held that mere repeal of the old Act was not sufficient to come to the conclusion that the right to get the sale deed validated

even under the old Act disappeared the very day the old Act stood repealed. Their Lordships further observed that it is a mere quibbling in words whether to call such a right a privilege or a mere concession granted; when even a concession is granted by law to a person and he is given a right by a prescribed procedure to enforce that concession, such concession has the status of a right. It, therefore, follows that the sale in favour of the defendants though not accompanied by a previous sanction or a subsequent validation cannot totally be ignored because it would still be open to any of the parties to the sale to have the same validated. It may be mentioned that Clause 15 of the Ordinance did not prescribe any period of limitation for moving an application for such validation.

6. The applicability of the doctrine of part performance in connection with a deed hit by Section 70 of M.B.L.R.T. Act came up for consideration before the Apex Court in *Nathulal Vs. Phoolchand*, , and their Lordships held that Section 70 creates no bar to defence of part performance.

7. A Single Bench decision of this Court in *Vahid Khan v. Gangaram and Ors.* 1978 J LJ SN 67, appears to take a contrary view. A reading of the facts, as short noted, indicates that even this decision may not advance the contention of the Learned Counsel for the appellant. In that case a plea attracting the applicability of the law laid down by the Apex Court in *Nathulal's* case was not raised at all before the court, secondly, an application for sanctioning the particular transfer was moved but was rejected and, therefore the court expressed an opinion that the refusal of sanction rendered the agreement to sell void and incapable of being acted upon. The petition would have been different if no steps had been taken towards obtaining the sanction. Moreover, *Vahid Khan's* decision was rendered in a review petition wherein. His Lordship declined to reconsider his own earlier decision because of having formed an opinion that failure to notice the decision of the Supreme Court in *Nathulal's* case did not amount to a mistake apparent on the face of the record.

8. It, therefore, follows that where a deed of transfer has been executed though in violation of the law prescribing for a previous sanction or subsequent validation by a competent authority and though not registered would still attract the applicability of the doctrine of part performance.

9. The next question is whether the possession of the defendants commencing under an invalid deed of transfer of title would be adverse. The Learned Counsel for the appellant submits that such possession must be deemed to be permissive because unless and until the transfer was validated it must be deemed that the person in possession was holding under the rightful owner. There is no warrant for such a proposition. It has been held in *Peer Khan v. Hamirsingh* 1979-1 MPWN 58 , that possession commencing under invalid deed of transfer can be adverse. In *Peer Khan* this Court relied on the law laid down by the Apex Court in *State of West Bengal Vs. The Dalhousie Institute Society*, . The possession was held under a grant which was not shown to have been made in the manner required by law. Quoting from an earlier decision in *Collector of Bombay Vs.*

Municipal Corporation of The City of Bombay and Others, , their Lordships stated the law by saying that a person having no legal title, but nevertheless holding possession of the land under colour of an invalid grant, such possession not being referable to any legal title is prima facie adverse to the owner from the very moment of taking possession of the land under the invalid grant. The view is consistent with the dictum of their Lordships of the Supreme Court in Nair Service Society Ltd. Vs. Rev. Father K.C. Alexander and Others, , wherein it was held that "A person in possession of land in assumed character of owner and exercising peaceably the ordinary rights of ownership has a perfectly good title against all the world but the rightful owner; and if the rightful owner does not come forward and assert his title by the process of law within the period prescribed by the provisions of the Statute of Limitation applicable to the case, his right is forever extinguished and the possessory owner acquires an absolute title."

10. An unreported decision of this Court in Chainsingh and Ors. v. Rama and Ors. S.A. No. 491 of 1996, decided on 25.2.1977 at Indore, may also be noticed. Relying on an unreported decision of the Apex Court in Sunder singh and Anr. v. Narayansingh and Ors. C.A. No. 816 of 1966, decided on 3.7.1969, it has been held that when a person is put in possession of the property pursuant to an agreement of sale, the proposition that his possession is permissive until he is able to establish by definite evidence the point of time from which his possession became adverse against the owner cannot be regarded as laying down the correct law.

11. It, therefore, follows that where a person holds possession under an invalid deed of transfer of title, he holds in, and prescribes, his own title as an owner. It cannot be said that he holds under the previous owner by permission. Hence, his possession is hostile from the first day.

12. The courts below were right in upholding the contentions raised by the defendants in their written statements. No fault can be found with the judgments and decrees of the courts below. The appeal is accordingly dismissed. In view of the legal controversy involved, there shall be no order as to costs.