

(2000) 03 SC CK 0181

In the Supreme Court Of India

Case No : Civil Appeal No. 2456 of 1997

Bhura Mogiya and Others

APPELLANT

Vs

Satish Pagariya and Others

RESPONDENT

Date of Decision : 30-03-2000

Acts Referred:

Citation : (2000) 9 SCC 392

Hon'ble Judges : V. N. Khare, J; Doraiswamy Raju, J

Bench : Division Bench

Final Decision : Dismissed

Judgement

1. The appellants herein were the defendants in a suit filed by the respondents under Sections 88 and 188 of the Rajasthan Tenancy Act before the Sub-Divisional Officer, Rajasamand District, Udaipur. The suit was for declaration that the plaintiff-respondents are the recorded tenant and for injunction and alternatively, for possession of the land, if the plaintiffs were not found in possession. It is not disputed that the plaintiffs entered into an agreement with the father of the defendant-appellants for sale of land measuring 90 bighas. It is also not disputed that the plaintiffs received the earnest money and they delivered possession of the land to the father of the defendants. What is disputed is that since the defendants did not pay the balance amount a dispute arose and as a result of a settlement Ex. 4 came to be arrived at. The case of the plaintiffs was that as a result of Ex. 4 the defendants gave back the possession of the land to them. It further appears that the proceedings under Section 145 CrPC were initiated and the Magistrate found that the defendants were in possession over the land. Consequently the possession of the land was delivered to the defendants.

2. Under these circumstances, a suit came to be filed by the plaintiff-respondents. The defendant-appellants pleaded in their written statement that they came in possession over the land by virtue of an agreement and alternatively it was also pleaded that they had acquired title by adverse

possession. The trial court found that Ex. 4 was a fictitious document and in fact it is the defendants who were in possession and therefore the suit was dismissed. Appeal preferred against the said judgment was also dismissed. The Board of Revenue, on second appeal being filed by the plaintiffs allowed the appeal and decreed the suit. The writ petition filed by the appellants was dismissed by the High Court of Rajasthan. It is against the aforesaid judgment the appellants are in appeal before us.

3. The learned counsel appearing for the appellant urged that the Board of Revenue could not have passed an order for ejectment of the defendant-appellants without having framed an issue in that regard as contemplated under Section 209 of the Act. Section 209 of the Act runs as under:

"209. In any suit or proceeding, the court may, on the application of the plaintiff and after framing the necessary issues, grant any relief which the court is competent to grant and to which it may find the plaintiff entitled, notwithstanding that such relief may not have been asked for in the plaint or application: Provided that, after framing such issues, the court shall, on the request of either party, grant reasonable time for the production of evidence."

4. It is true that Section 209 provides that in any suit on the application of the plaintiff the court after framing necessary issues may grant any relief which the court may deem fit and find the plaintiffs are entitled. The issue before the Revenue Court was about the title of the parties. In the plaint, the plaintiffs have sought relief for ejectment of the defendants from the land in case they are not found in possession. The Board of Revenue found that the plaintiffs are entitled to be recorded as sah-khatedars. The plea of the plaintiffs being in possession having not been found correct the Court has invoked its jurisdiction under Section 209 of the Act. We, therefore, reject the arguments of the learned counsel for the appellant.

5. Learned counsel then urged that in any case the defendants having remained in possession for a considerable period of time, more than 12 years, thereby acquired title by adverse possession. Admittedly, the defendants came into possession on the basis of agreement, which was a permissible possession. Once the defendants' possession was by virtue of an agreement it is not open to them to take a plea that they acquired title by adverse possession. Permissible possession cannot be converted into adverse possession unless it is proved that the person in possession asserted and acquired adverse title to the property to the knowledge of the true owner for a period of 12 years and above. We do not find any merit in the contention of the learned counsel for the appellant.

6. For the aforesaid reasons, we find no merit in the appeal. The appeal is dismissed. There shall be no order as to costs.