
(1997) 08 MP CK 0029
In the Madhya Pradesh High Court
Case No : S.A. No. 418 of 1996

Lal Bahadur Singh

APPELLANT

Vs

State of M.P.

RESPONDENT

Date of Decision : 14-08-1997

Acts Referred:

Limitation Act, 1963 — Article 112, 27
Madhya Pradesh Land Revenue Code, 1959 — Section 248, 248(1)

Citation : (1998) 2 MPLJ 26

Hon'ble Judges : S.C. Pandey, J

Bench : Single Bench

Advocate : K.P. Mishra, for the Appellant; A.P. Shukla, Dy. G.A., for the Respondent

Final Decision : Allowed

Judgement

S.C. Pandey, J.

This appeal u/s 100 of the CPC is directed against the judgment and decree dated 17-4-96, passed by Ist Addl. Judge to the Court of District Judge, Sidhi, in Civil Appeal No. 10-A of 1995, arising out of judgment and decree dated 29-3-1995, passed by First Civil Judge Class-II, Sidhi, in Civil Suit No. 28-A of 1992.

This is plaintiff's appeal, whereby he assails the judgment and decree passed by the lower Appellate Court, which reversed the decree of the Trial Court, in favour of the appellant, and dismissed his suit. The case of the appellant was that he was in possession of the suit land, aving an area of 21 x 63", approximately, 0.03 acres which is part of new Khasra No. 437 situated at Village Kotarkalan, Tahsil Gopadbanas, District Sidhi. According to the appellant, the old Khasra No. of the aforesaid place of land was 282/1. The claim of the appellant was based on the allegation that he was in adverse possession of the suit land for over 30 years and, therefore, he had perfected his title by adverse possession. It was claimed by the appellant that he had constructed a house on the suit land which

belonged to one Mangal Bahelia. Subsequently, this land was acquired by the State. But the ruler of the erstwhile State of Rewa, did not dispossess the father and uncle of the appellant as they had already constructed a house upon it. It was also stated in the plaint that earlier, in the year 1968-69 proceedings u/s 248 of the M. P. Land Revenue Code (hereinafter referred to as "Code" in short), were instituted. These proceedings were decided in his favour. There was second round of proceedings u/s 248 of the Code in the year 1983-84. These proceedings too were not pursued in view of the earlier order. It was the claim of the appellant that he was in open, hostile and continuous possession of the land in dispute for the last 40 years. The limitation for perfecting title against State is 30 years as per Article 112 of the Limitation Act, 1963, (hereinafter referred to as "Act" for short). The period for limitation was to be counted from the day on which Mangal Bahalia placed the appellant's father in possession. Therefore, as per Article 112 of the aforesaid Act, the time began to run against the respondent from that date as per Column 3 of Article 112 of the Act. It was claimed that after 30 years the respondent had no power to evict him from the land involved in suit. The appellant claimed to have perfected his title by adverse possession against the State of Madhya Pradesh, on the date of filing of the suit i.e. on 20-4-1992.

The respondent, on the other hand, claimed that the appellant had not perfected the title by adverse possession, even though, the appellant may have been in possession for a long time. It was claimed that running of time was arrested by taking up proceedings against the appellant u/s 248 of the Code (in the years 1968-69 and 1983-84).

The trial Court decreed the suit of the appellant and declared that the appellant had become Bhumiswami of the suit land having perfected his title by adverse possession.

In appeal, the order passed by the trial Court was reversed by the lower appellate Court on the ground that there was an arrest of running of time against the respondent because the respondent took steps to evict the appellant by initiating eviction proceedings u/s 248 of the Code in the year 1968-69, and again in 1983-84. The appellant had already constructed a house on the suit land in the year 1951 and, therefore, it was not in dispute before the lower appellate Court that at least from 1951, the appellant was in possession of the suit land and his actions showed that the possession was adverse to the respondent. This is a finding of fact and is binding on this Court in second appeal. That apart the State also did not challenge the finding of lower Appellate Court. For this reason this Court assumes that the finding of the lower appellate Court is correct for the purpose of this second appeal. In view of this matter, the following substantial question of law arise in this appeal.:

"Whether the appellant had perfected his title by adverse possession in respect of the suit land on the date of filing of the suit on 20th April, 1992?"

It is clear that if limitation is counted from 1951, thirty years expired in the year 1981 and, therefore, the possession of the appellant was open, continuous and hostile for more than 30 years, which would give him a right to perfect his title by adverse possession. It is not disputed by the respondent before me that the appellant could perfect his title by adverse possession if he remained in possession adverse to the State for over 30 years in view of Section 27 of the "Act" read with Article 112 thereof. The only question now left to be decided is whether the filing of proceedings u/s 248 of the Code on the part of the respondent in the years 1968-69 and 1983-84 interrupted or arrested the running of time against the respondent so as to bar the claim of the appellant on the ground of adverse possession.

It cannot be disputed that in case the real owner of the property allows another person to be in adverse possession for a period limited by the "Act" (in this case 30 years), the right and title of the real owner is extinguished. This follows from Section 27 of the "Act" corresponding to Section 28 of the Limitation Act, 1908. A Full Bench of this Court in case of Kashiram Gopal Gari v. Nathu Hira and Anr. 1981 MPLJ 368 (FB) at page 372 held that by being in adverse possession for the period prescribed, a person can acquire title and overruled the decision of Division Bench of this Court reported in case of Mst. Sultan Jahan Begam v. Gul Mohd. and Ors. 1972 MPLJ 969 on this point. The following passage from that Full Bench brings out the law laid down by it on the point at page 372 :

"In view of the above categorical pronouncements of their Lordships of the Privy Council it is clear that if an owner of a property suffers another person to be in adverse possession thereof for more than 12 years his right or title to the said property is extinguished in favour of the person in adverse possession and the later person acquires title to the same. In the circumstances, in our opinion, the proposition No. 4 stated in the aforesaid Division Bench judgment of this Court in Mst. Sultan Jahan Begum and Ors. v. Gul Mohd and Ors. (supra) with respect is not correctly stated and the first contention raised by the learned counsel for the appellant is not well founded."

Once it is held that the title of true owner is extinguished by adverse possession, the appellant shall succeed if it is held that appellant had perfected his title by adverse possession if running of time was not arrested by starting proceedings u/s 248 of the Code in the years 1968-69, and 1983-84. It was not disputed before me that proceeding taken up in the year 1983-84 were started earlier than 1981. Therefore, these proceedings can also be considered for arresting the running of time against the respondent. In this case the facts reveal as per Ex.P/1 dated 27-6-1971, that the proceedings against Brijbhan Singh, who was the uncle of the appellant were dropped on the ground that it was his brother Dan Bahadur who had constructed the house. Dan Bahadur was the father of the appellant. The proceedings of 1983-84 (Ex.P/13) were again taken against Brijbhan Singh. The proceedings were dropped again as per Ex.P/13 dated 26-3-85, passed by Additional Tahsildar.

The question is whether taking up of proceedings u/s 248 of the "Code" would stop running of time against the respondent. It may be stated here that both the cases u/s 248 of the "Code" culminated in favour of the appellant. The appellant and members of his family, were unaffected by the proceedings taken by the State Government. Assuming that filing of proceedings u/s 248 of the "Code" could be equated with the filing of a civil suit, it could be held that time was arrested if the proceedings were filed within the 30 years of dispossession. However, what would be the result if such a suit is dismissed after being filed within twelve years (or thirty years against State)? It may not be dismissed on merits furnishing a defence *res judicata* in subsequent suit but on one of the technical grounds like rejection of plaint under Order 7 Rule 11 of Civil Procedure Code. Could a person take advantage of arrest of time in a civil suit filed within limitation in a subsequent suit by asserting that merely because he had filed the suit earlier, the running of time for adverse possession must be given a go by and defendant must start over again to claim taken by adverse possession? If this be the law, nobody shall be able to perfect his title by adverse possession provided the opposite party files a suit on the last day of expiry of limitation, and claims in the subsequent suit that "time stood arrested." In the opinion of this Court where a person files a proper suit claiming the relief of possession within a period of limitation, prescribed therefor, say 12 years or 30 years as the case may be, the time taken in the decision of the civil suit, shall enure to the benefit of the plaintiff in that suit only. Provided he obtains a decree for possession. In that case the decree obtained shall relate back to the date of filing of the suit. Conversely running of time shall not be arrested because dismissal of that, suit shall be from the date of filing of plaint. It shall not affect the adverse possession of the defendant. On the other hand the dismissal of the suit emphasizes the adverse possession. It is well known that when a person claims adverse possession for the prescribed period, he says that his possession was open hostile and continuous. This continuity can be broken by the real owner by filing a successful suit. On the failure of the suit, the attempt to take possession is abortive like an unsuccessful siege. The continuity of possession could not have been broken by surrounding the suit property within the prescribed period of limitation. It could be broken only by occupying it for some time, and dispossessing the person in occupation. The dismissal of suit to recover possession filed within the period of limitation is comparable to an attempt to take possession. Only when the attempt succeeds the running of time is arrested or interrupted. The ultimate failure of that suit is as disastrous as an unsuccessful siege. Time is not arrested from the date of filing of the suit. It makes the adverse possession of the opposite party more emphatic for the Courts holds that the plaintiff had no right to take possession on the date of filing of the plaint. Thus, the doctrine of interruption or arrest of time can only be applied in the suit only where the plaintiff obtains a decree. It cannot be used in a different suit when he fails to obtain decree or order of eviction. Therefore, the respondent cannot take advantage of filing of proceedings u/s 248 of the "Code" for claiming arrest or interruption of time. These proceedings at their best were

mere abortive attempts to evict the appellant.

The attention of this Court was drawn to the case of Sultan Khan v. State of Madhya Pradesh and Anr. 1991 MPLJ 81. The facts of this case indicated that the plaintiff/appellant occupied the suit land since 1944. The State filed an application u/s 248 of the "Code". The Naib Tahsildar passed an order of eviction which was confirmed by the Collector. The proceedings were started within limitation of 30 years and the eviction order of Naib Tahsildar was passed on 10-8-72. Therefore, it was held that the time was arrested during the pendency of proceedings till 10-8-72. In this case, the State succeeded in its attempt and proceedings were not abortive. The suit was thereafter filed by the appellant u/s 248 (2) of the "Code". This Court treated the proceedings u/s 248 of the "Code" akin to the suit for possession and, therefore, held that the pendency of proceedings and passing of the order of eviction was akin to decree of possession. Thus, in effect, the State had successfully arrested or interrupted the possession. This case is clearly distinguishable for the reason that the State succeeded in this case to obtain an order in its favour. In the case at hand the contrary is the position.

On this point the leading case of Privy Council is reported in the case of A. S. S. Subbaiya Pandaram v. Mohamad Mustafa Maracayar and Ors. AIR 1923 PC 175. On July 1913, a suit was brought to recover immovable property. The suit property was subject matter of trust made by the settlor in favour of Arunachallam the father of the appellant, Subbaiya. This property was sought to be sold in execution of decree obtained by creditors against Arunachallam for recovery of debt. The property was ultimately sold after some resistance and the sale was confirmed on 11-8-1898. The purchasers were placed in possession soon thereafter. However, in another suit filed as 1897 was decreed on 31-12-1900. The decree was to the effect that property attached was part of the trust property. The appellant filed a petition on 6th August 1910, that Arunachallam be removed from the office of trustee. On 21st of July 1913, the appellant obtained a decree for removing Arunachallam. Thereafter, a suit was filed on 23rd July 1913, making purchaser as a party to the suit. In this case, it was held that purchasers were in possession since 11 August 1898. On the date of filing the suit for recovery of possession, they had perfected the title by adverse possession :

"There is no doubt that whatever period of limitation be assigned, the full period had run before these proceedings were instituted, unless it could be alleged that by virtue of the proceedings to which reference has been made, there was some interruption in the period.

Now the real argument in favour of the appellant was that in the presence of the purchasers it was declared that the trust has been validly created and that the property was, in fact, trust property, and it is suggested that this effects res judicata as against the respondents and prevents them from now asserting that the property is their own. Their Lordships do not think that the decree had that

effect. At the moment when it was passed, the possession of the purchaser was adverse, and the declaration that the property had been properly made 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."

In case of AIR 1945 5 (Privy Council) , it was held that, even if plaintiff was restrained in earlier suit by temporary injunction, which was confirmed by decree, mainly to the effect that plaintiff shall not interfere with the possession of the defendants or obstruct him from enjoying the usufruct; time for filing the suit was not arrested. The plaintiff should have filed the suit within twelve years. It was barred by time.

Both these cases were approved by the Supreme Court in case of Rajender Singh and Others Vs. Santa Singh and Others, . In this case their Lordships held that, doctrine of lis-pendens did not help a plaintiff who did not file the suit to arrest the running of time. The case of Sultan Jahan Begam (supra), which has been partially overruled by the Full Bench, as already stated earlier, also does not help the State, because possession was adverse from 1943 and suit for declaration and possession was brought within 12 years in the year 1954. The suit was decreed and the decree was executed. It was, therefore, held that the time taken in litigation could not be counted for adverse possession. Time was arrested and the decree related back to the date of filing of the suit. The distinction here is the suit was decreed and possession was delivered. However, in this case even proceedings u/s 248 did not go against the appellant.

For all these reasons aforesaid, this Court held that running of time was not arrested and appellant continued to be in adverse possession of suit property for more than 30 years and, therefore, the state had no right to evict the appellant as he had perfected the title by adverse possession.

This aforesaid conclusion of this Court can be supported further from another angle. It is clear from the finding recorded by the Court below, and it is not in dispute that on the suit property, there is dwelling House. It is clear from the proviso to Section 248 (1) of the "Code" that Tahsildar shall not exercise powers conferred by that Sub-section, in regard to the encroachment made by buildings and works constructed so far as Vindhya Pradesh Region was concerned before First April 1955. The proviso was a mandate to the Tahsildar, and therefore, any proceeding drawn against the appellants was a nullity. It is well established that where the Legislature uses a mandate or to command not to commence a proceeding, then starting of any proceeding in contravention of that command would be a nullity. The following cases support the above proposition : Kaushalya Devi and Others Vs. Shri K.L. Bansal, , K. K. Chan v. R. M. Seshadri, AIR 1973 SC 1311, Nagindas Ramdas Vs. Dalpatram Ichharam alias Brijram and Others, , Roshan Lal and Another Vs. Madan Lal and Others, and Smt. Nai Bahu Vs. Lala Ramnarayan and Others, . Therefore, initiation of proceedings u/s 248 of the

"Code" was null and void. The Court can, therefore ignore these proceedings as of no consequence for arresting of running of time by way of adverse possession. Looked at this way the filing of proceedings u/s 248 of the "Code" is comparable to making no attempt to disturb the adverse possession of the appellant. The proceedings which are apparently a nullity can safely be ignored as of no legal consequence.

The result of the aforesaid discussion is that the judgment and decree passed by the Lower Appellate Court are set aside and that passed by the Trial Court are restored. The appellant is declared Bhumiswami of land and accordingly the State is directed to correct entries into Revenue Papers. Thus the appeal succeeds and is allowed. No costs.