
(2007) 02 MP CK 0003

In the Madhya Pradesh High Court

Case No : First Appeal No. 134 of 2002

Lokesh Sanyal and Others

APPELLANT

Vs

State of M.P. and Others

RESPONDENT

Date of Decision : 14-02-2007

Acts Referred:

Madhya Pradesh Public Premises (Eviction of Unauthorized Occupants) Act, 1971 —
Section 15

Citation : (2007) 2 MPLJ 221

Hon'ble Judges : Dipak Misra, J; Abhay M. Naik, J

Bench : Division Bench

Advocate : R.D. Jain, with D.P.S. Bhadoriya, for the Appellant; Ami Prabal, Dy. A.G. for Respondents No. 1 and 2, for the Respondent

Final Decision : Dismissed

Judgement

Abhay M. Naik, J.

Babu Singh, the original Plaintiff (predecessor of the present Appellants) instituted a suit for declaration and perpetual injunction against the Defendants/ Respondents in respect of immovable property, described in paragraph 1 of the plaint with the allegation that his father Tandoor Singh has purchased the same from one Kashi Gin s/o Nanhe Giri for a consideration of Rs. 90/- on 24-3-1923. He continued to occupy the same as the owner and executed a Will in favour of the Plaintiff. Name of the Plaintiff has been entered in the municipal record as the owner of the suit property. The suit property does not belong to the Defendants/ Respondents. Earlier, as pleaded, an attempt was made by the Defendants/ Respondents to dispossess the Plaintiff from the suit property and hence Civil Suit No. 1/88 was instituted by the Plaintiff against the State of M.P. which was dismissed in default on 6-9-1989. Relief of restoration was negated by the Court of first instance and also by the Appellate Court. However, the Estate Officer/Respondent passed an order on 21-12-1991 for eviction of the Plaintiff under the provisions of M.P. Public Premises (Eviction of Unauthorized

Occupants) Act, 1971 (for short "the 1971 Act") without any authority of law which compelled the Plaintiff to initiate the aforesaid civil action for a decree for declaration of title in his favour in respect to the suit property and also for perpetual injunction restraining the Defendants/Respondents from causing any interference in his possession over the suit property.

Defendants/Respondents No. 1 and 2 submitted a joint written statement contending thereby that the suit property is owned by Public Works Department and was let out by it to the M.E.S. Department on rent. Plaintiff is not the owner of the suit property and has no right, title or interest in the same. Purchase of the suit property by the Plaintiff's father on 24-3-1923 and his possession over the same has also been denied.

Defendants/Respondents No. 3 and 4 submitted their separate written statements and averred that the suit property was obtained by them on lease from the Public Works Department of State of M.P. It was not owned by Kashi Giri who is said to have sold it to the Plaintiffs' father. Consequently, the Plaintiff did not acquire title to the suit property. It has been further averred that an order for eviction of the Plaintiff has duly been passed on 21-12-1991 under the provisions of the 1971 Act and an appeal was preferred against the same by the Plaintiff. Moreover, the suit of the Plaintiff is not maintainable in view of Section 15 of the said Act. It has been further averred that Tandoor Singh, father of the Plaintiff was not resident of Gwalior but was resident of Jammu and Kashmir. He had never been in possession of the suit property. The market price of the suit property is more than Rs. Three lacs and the Plaintiff trying to grab the same through the Court proceedings.

After recording evidence, the learned trial judge dismissed the suit of the Plaintiff as per impugned judgment and decree dated 11-7-2002 with the finding that the Plaintiff has failed to prove that Kashi Giri was the owner of the suit property and had the right to transfer the same in favour of the Plaintiffs father. Learned trial judge has further found that the Plaintiff has also failed to establish the possession of his father and thereafter of him since 1923. Accordingly it has been held that the alleged possession of the Plaintiff is not liable to be protected by grant of perpetual injunction.

Aggrieved by the aforesaid, the Plaintiffs/Appellants have preferred the present appeal since the original Plaintiff died during the pendency of the suit.

Shri R.D. Jain, learned senior counsel contended that the learned trial judge has not properly appreciated the evidence on record in the light of the pleadings of the parties. It is further submission that the impugned judgment and decree of the learned trial Court are not sustainable either on facts or in law.

Ms. Ami Prabal. learned Dy. A.G. made submissions in support of the impugned judgment and decree.

We have considered the submissions and perused the record.

The Plaintiffs/Appellants have based their claim on derivate title. The suit property is stated to have been owned by Kashi Giri S/o. Nanhe Giri who is stated to have further sold it to the Plaintiff's father for a consideration of Rs. 90/- on 24-3-1923. In the written statement the alleged ownership of Kashi Giri has expressly and specifically been denied. Under these circumstances it was obligatory on the part of the Plaintiff to establish that Kashi Giri was the owner of the suit property and was competent to transfer the same. There is obviously no evidence on record to establish that Kashi Giri owned the suit property at the time of its alleged transfer to the Plaintiff's father. This Court in the case of Sabrani v. Muniva, 1967 RN 507 has held to the effect that where the Plaintiff files a suit for declaration of title on the basis of a sale deed and the Defendants deny his title and the Plaintiff fails to prove the possession or title of the vendor, the execution of the sale-deed alone in his favour would not be sufficient enough to prove the title of the Plaintiff unless the title of the vendor is satisfactorily established.

In view of the aforesaid pronouncement of law, the Plaintiff, having failed to establish the title or possession of Kashi Giri. is bound to be non-suited. Faced with the aforesaid situation. Shri R.D. Jain, learned senior counsel took this Court through the evidence in detail to show that the title has been adequately proved, but, has utterly failed to point out any evidence to establish the ownership of Kashi Giri over the suit property. In the absence of any such evidence the finding of the learned trial judge to the effect that the Plaintiff has failed to establish the title of his predecessor, namely, Kashi Giri, consequently, is hereby confirmed.

Shri R.D. Jain, learned senior advocate relied upon the entries in the Municipal record to highlight how the Plaintiffs have got right, title and interest over the suit property. It is trite law that the Municipal Corporation cannot decide the question of title and its record containing entries is maintained for fiscal purpose like property tax/House tax etc. The suit obviously being for declaration of title the Plaintiff has to succeed or fail on the title that he establishes and in case. if, he does not succeed on the strength of his title his suit must fail notwithstanding the weakness of opposite party. We may fruitfully refer to the decision of the Supreme Court in Brahma Nand Puri v. Neki Puri since deceased represented by Brahma Nand Puri Vs. Neki Puri, . Further, we may refer with profit to the decision of the Apex Court rendered in the case of Commissioner of Income Tax, Bombay City Vs. Bombay Burmah Trading Corpn., Bombay, wherein it has been ruled that in the mutation proceeding, there is no adjudication of right or title of the parties. Thus, obviously, the documents contained in Ex. P/4 to P/6 will not clothe the Plaintiffs with title of the suit property.

Apart from the aforesaid, an order of eviction has already been passed against the Plaintiffs/Appellants under the provisions of the 1971 Act in a lawful manner and therefore, it cannot be said that the Defendants are forcibly dispossessing the Plaintiffs from the suit property. Their Lordships in Mahadeo Savlaram Shelke and Others Vs. Puna Municipal Corporation and Another, , have expressed as

under:

The orders of eviction were passed by due process of law and had become final. Thereafter no right was created in favour of the Appellants to remain in possession. Their possession is unlawful and therefore they cannot seek any injunction against the rightful owner for evicting them.

In view of the aforesaid, the learned trial judge cannot be said to have committed any error in disallowing the relief of injunction against the Defendants/ Respondents.

No other point is canvassed before us.

Consequently, the appeal fails and is hereby dismissed. The parties shall bear their respective costs throughout.