
(2015) 03 MP CK 0161
In the Madhya Pradesh High Court
Case No : Second Appeal No. 597 of 2008

Mahmood Khan

APPELLANT

Vs

Nathuram

RESPONDENT

Date of Decision : 03-03-2015

Acts Referred:

Madhya Pradesh Land Revenue Code, 1959 — Section 250

Citation : (2015) 03 MP CK 0161

Hon'ble Judges : Sanjay Yadav, J

Bench : Single Bench

Advocate : J.L. Mishra, Learned Counsel, for the Appellant

Final Decision : Dismissed

Judgement

Sanjay Yadav, J—Heard on admission.

2. This is defendant's second appeal directed against judgment and decree dated 6.2.2008 passed by Second Additional District Judge, Chhindwara in Civil Appeal No. 90-A/07, reversing the judgment and decree dated 31.8.2007 passed by Fourth Civil Judge Class II Chhindwara in Civil Suit No. 53-A/07.

3. Plaintiff brought an action for declaration of title in respect of land bearing Khasra No. 221 Area 0.06/0.024 hectare Village Parasiya Betul Ghat Tahsil and District Chhindwara, permanent injunction and for a declaration that the sale deed dated 27.1.1995 executed by defendant No. 2 to 5 in favour of defendant No. 1 is not binding on the plea that land was in possession of Jagu Mahra since 1914-15 and after his death Nanku came in possession. After Nanku's death, Nanakram viz. plaintiff's father came in possession of suit property. That, Nanakram expired on 12.9.1996 where onward the plaintiff has uninterruptedly continued in possession. It was further contended that undermining the continuous uninterrupted possession by the plaintiff since his ancestors time, defendants No. 2 to 5 executed the impugned sale deed immediately after death of Rakhdu. It was contended that having been in peaceful possession over suit

property for more than 20 years uninterruptedly, perfected the title by adverse possession.

4. Defendant No. 1, 3, 4 and 5 denied the plaint allegation contending inter alia that the plaintiff was never in possession of suit property whereas the defendants were in possession being the recorded owner over suit property.

5. Trial Court framed five issues and answering the issue relating to whether plaintiff has been in possession since 1914 and that he has perfected the title by adverse possession, declined to declare the impugned sale deed null and void. However, on a finding that the plaintiff is in possession over suit property for a longtime the same be not interfered with without taking recourse to law.

6. The plaintiff preferred an appeal, wherein the defendant also filed cross appeal.

7. The Appellate Court on re-appreciating the evidence on record found that the plaintiff's forefathers were the recorded occupier over the suit property and that the defendants had not led any evidence to establish that the plaintiff's possession was ever interfered with.

8. The Appellate Court found-

9. The Appellate Court negated the counter claim by the defendants being in possession over suit property. It is observed-

In *Balkrishan Vs. Satyaprakash and Others*, AIR 2001 SC 700 : (2001) 2 JT 357 : (2001) 1 SCALE 336 : (2001) 1 SCR 480 : (2001) 1 UJ 416 : (2001) AIRSCW 344 : (2001) 1 Supreme 336 it has been held:

10. The High Court while accepting those findings of the Courts below, 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."

11. 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 interfered nor lost. Mere passing of an order of ejectment 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."

10. In *P.T. Munichikkanna Reddy and Others Vs. Revamma and Others*, AIR 2007 SC 1753 : (2007) 6 JT 86 : (2007) 6 SCALE 95 : (2007) 6 SCC 59 : (2007) 5 SCR 491 : (2007) AIRSCW 2897 : (2007) 3 Supreme 751 it is observed by their Lordships-

"5. Adverse possession in one sense is based on the theory or presumption that

the owner has abandoned the property to the adverse possessor on the acquiescence of the owner to the hostile acts and claims of the person in possession. It follows that sound qualities of a typical adverse possession lie in it being open, continuous and hostile.

6. Efficacy of adverse possession law in most jurisdictions depend on strong limitation statutes by operation of which right to access the court expires through effluxion of time. As against rights of the paper-owner, in the context of adverse possession, there evolves a set of competing rights in favour of the adverse possessor who has, for a long period of time, cared for the land, developed it, as against the owner of the property who has ignored the property. Modern statutes of limitation operate, as a rule, not only to cut off one's right to bring an action for the recovery of property that has been in the adverse possession of another for a specified time, but also to vest the possessor with title. The intention of such statutes is not to punish one who neglects to assert rights, but to protect those who have maintained the possession of property for the time specified by the statute under claim of right or color of title. (See American Jurisprudence, Vol. 3, 2d, Page 81). It is important to keep in mind while studying the American notion of Adverse Possession, especially in the backdrop of Limitation Statutes, that the intention to dispossess can not be given a complete go by. Simple application of Limitation shall not be enough by itself for the success of an adverse possession claim."

11. Analysis of the evidence by the first Appellate Court and the conclusions arrived at that the plaintiff has uninterruptedly continued in possession of the suit property when tested on the principle of law laid down in Balkrishan and P.T. Munichikkanna Reddy (supra) warrant no indulgence.

12. Since no substantial question of law arises for consideration, the appeal fails and is dismissed. No costs.