

(1994) 05 GAU CK 0020
In the Gauhati High Court
Case No : Second Appeal No. 5 of 1980

Md. Rahim Mia now deceased and On his Death his legal representatives Umarjan Bibi and Others APPELLANT

Vs

Md. Abdullah Mia and Thirteen Ors. RESPONDENT

Date of Decision : 23-05-1994

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 100
Criminal Procedure Code, 1973 (CrPC) — Section 145
Limitation Act, 1963 — Article 55, 58, 64, 65

Citation : (1995) 3 GLR 398

Hon'ble Judges : N.G. Das, J

Bench : Single Bench

Advocate : R.K. Sanajaoba Singh, for the Appellant; H. Manglem Singh, for the Respondent

Final Decision : Dismissed

Judgement

N.G. Das, J.—This Second Appeal is directed against the judgment and decree of the learned District Judge, Manipur dated 17.5.1980 passed in Civil Appeal No. 44/1979 confirming the judgment and decree 30.8.1979 passed by the learned Subordinate Judge No. 1, Manipur in Original Suit No. 24/73/56/76/63/77 dismissing the suit.

2. I have heard Mr. R.K. Sanajaoba Singh, the learned Counsel appearing on behalf of the Appellants and Mr. H. Manglem Singh, the learned Counsel appearing on behalf of the Respondent No. 1.

3. To appreciate the contentions canvassed at the bar by learned Counsel for the parties, the facts necessary for the purpose may succinctly be summarised as follows:

The Plaintiffs of O.S. No. 24/73/56/76/63/77 are the Appellants before me and on 25.7.73 they instituted the aforesaid suit for a decree declaring the land

measuring 3 31 acres appertaining to Patta No. 31/401 I.E.T. corresponding to old Patta No. 31/497 (more particularly described in the schedule attached to the plaint) as undivided property belonging to the Plaintiffs and also for a decree declaring the sale transaction dated 17.8.38 and 23.9.53 not binding upon the Plaintiffs.

4. The case of the Plaintiffs is that the land described in the schedule attached to the plaint (hereinafter referred to as the suit land) belonged to their father Rahim Baksh who died about 40 years prior to the institution of the suit and that after his death the suit property devolved upon the Plaintiffs and other heirs of Rahim Baksh, namely. Md. Karimuddin (son), Md. Johab Ali (son), Rahim Mia (son), Mone Mia (son), Imamuddin (dead) and daughters, namely, Sara Bibi, Hazira Bibi and Mazira Bibi and they were jointly possessing the suit land by cultivating, and growing crops thereon. The daughters of Rahim Baksh having been married they relinquished their shares in the suit land in favour of the brothers and as such the four brothers, namely Md. Karimuddin, Rahim, Johab and Mone Mia became the absolute owners and possessors of the suit land Md. Karimuddin being the eldest brother he had been possessing the suit land by growing crops thereon on behalf of the remaining three brothers.

5. But some time in the year 1970 Defendant No. 1 Md. Abdullah Mia instituted an eviction suit being No. 1/70 in the court of S.D.O. Imphal East against the Defendant No. 2, namely Leihao Mia, the son of Md. Karimuddin alleging inter alia that this Defendant No. 2 was his tenant. This suit was followed by Anr. eviction suit being No. 2/71. On coming to know about the institution of the aforesaid two eviction suits the Plaintiffs hurriedly made some enquiries about those eviction cases and came to know that Abdullah Gaffar, the proforma Defendant purchased the suit land from Karimuddin by dint of a registered deed of sale dated 17.8.1938 and thereafter Defendant No. 1 namely, Abdullah purchased the aforesaid suit land from Abdul Gaffar by dint of a registered deed of sale dated 22.9.53 for a consideration sum of Rs. 800/-. It was pleaded that although the aforesaid purchasers neither possessed nor exercised any act of possession over the land suit, they by filing those cases tried to create some illegal rights over the land in suit. The Plaintiffs, therefore, filed the aforesaid suit for the relief as stated above.

6. Of all the Defendants only Defendant No. 1 and No. 14 resisted the suit by, filing a joint written statement. They denied all the material averments in the plaint and contended further that proforma Defendant No. 14 Dr. Gaffar became absolute owner of the suit land by purchase from Karimuddin i.e. the eldest son of Rahim Baksh and subsequently the Defendant No. 1 became the owner of the suit land by purchase and after the purchase the Defendant No. 1 engaged Defendant No. 2 Md. Leihao Mia the eldest son of Md. Karimuddin to cultivate the suit land as his tenant and Defendant No. 1 (sic, 2) was also receiving the rent regularly. But after a few years this Defendant No. 1 was defaulter in making payment of the rent. So, Defendant No. 1 instituted a eviction suit in the court of

S.D.O., I.E. and S.D.O. passed an order dated 19.11.1973 in favour of Defendant No. 1 for eviction of the Defendant No. 2 from the suit land. Pursuant to the order of S.D.O. Defendant No. 2 was evicted from the suit land on 20.5.74 in an execution proceeding being No. 1/1974.

7. It was also contended by me answering Defendants that they had been possessing the suit land over the prescribed period of limitation and thus acquired title to the suit land by adverse possession. It was, therefore, stated that this suit was not only barred by limitation under Article 58 of the Limitation Act but it was also barred under the provision of Article 64 and 65 of the Limitation Act, 1963.

8. Upon the pleadings the learned trial court framed as many as 14 issues for determination of the suit. Accordingly both the parties adduced both documentary as well as oral evidence in support of their respective contentions. Learned trial court however after elaborate discussion of the evidence on record arrived at the conclusion that Defendant No. 1 acquired title to the suit land by adverse possession and the suit was barred by limitation also. With the above findings, the learned trial court dismissed the suit with costs.

9. Aggrieved by the aforesaid judgment and decree the present Appellants preferred an appeal before the learned District Judge, who by his judgment dated 17th May, 1980 dismissed the appeal upholding the judgment and decree of the learned trial court. Hence, this Second Appeal.

10. Mr. R.K. Sanajaoba Singh, the learned Counsel appearing on behalf of the Appellants has at the very outset submitted that both the courts-below misdirected themselves in appreciating the recitals of Ext.A/4 document by virtue of which Abdul Gaffar purchased the suit land. The contention of Mr. Sanajaoba is that a careful perusal of the recitals of this document will show that although Karimuddin sold the land for valuable consideration and he also stated in the sale deed that he had no objection for mutation, the recitals never indicated that he delivered possession in favour of Abdul Gaffar Mia. Mr. Sanajaoba has therefore, contended that the case of the Plaintiffs being mat Md. Karimuddin had been possessing the land on behalf of other brothers, namely, the Plaintiffs, the Plaintiffs had constructive possession over the land in suit and from the recitals of this Ext.A/4 document it can never be concluded that Md. Karimuddin delivered possession of the land in suit in favour of Md. Abdul Gaffar. The precise submission of Mr. Sanajaoba, the learned Counsel for the Appellants is that the Plaintiffs had the constructive possession over the suit land. In support of his contention Mr. Sanajaoba, the learned Counsel referred to a decision in the case of Deokinandan Appellant v. Zamir Hussain Khan and Ors. Defendant-Respondents reported in AIR 1922 Allahabad 399. In the judgment referred to above it was held that possession of one co-owner must be deemed to be the possession of all the co-owners unless there was some act of ouster by which one of the co-owners was deprived of possession by Anr. . The mere fact of getting the name entered in the revenue papers would not be sufficient to

amount to an ouster.

11. The next decision referred to by Mr. Sanajaoba is a decision in the case of Ahmad Dar Vs. Mt. Mukhti, In this decision it was held by Their Lordships that when a Mohammadan owner dies leaving several heirs they all become co-owners and tenants-in-common. A joint owner is legally entitled to retain possession of joint property. Even if he is in exclusive possession of such joint property his possession is ordinarily to be referred to his legal title. The presumption therefore is that his possession is lawful and therefore on behalf of all the co-owners. The other co-owners are accordingly in constructive possession of the property.

12. But Mr. H. Manglem, the learned Counsel appearing on behalf of lift Respondents has repelled the contention of Mr. Sanajaoba by referring to the provision of Article 55 of the Limitation Act. According to Mr. Manglem this suit being a suit, for declaration simpliciter Article 58 of the Limitation Act applies to such a suit. In this context what Mr. Manglem has quite emphatically submitted is that in view of the Article 58 of the Constitution the suit brought by the Plaintiff was barred by limitation as they failed to bring the suit within a period of three years from the date of their knowledge. It is submitted by Mr. Manglem that the submission of Mr. Sanajaoba Singh during query of the court that no revenue proceeding or criminal proceeding was lying before any Revenue Court or Criminal Court, was not a fact, Mr. Manglem has drawn my attention to Ext.B/4 document and submitted that a glance over this document will show that Md. Mono Mia who is one of the Plaintiffs in this suit was a party in that proceeding case u/s 145 of Code of Criminal Procedure On perusal of this Ext. B/4 document I find that the Plaintiff Mone Mia was one of the Opposite Parties in that proceeding case and by the order dated 19.12.1966 contained in Ext. B/4 document the learned S.D.M., Imphal Fast appointed one Pradhan Shri Ibobi Mia of Khomidok for harvesting the standing crops of the land covered by Patta No. 31/401 I.E. Admittedly, the suit land is covered by Patta No. 31/401 I.E. So, this document is a clear proof that Mone Mia one of the Plaintiffs was quite aware of the aforesaid proceeding case relating to the suit land. In this context Mr. Manglem Singh also referred to Ext. B/5 document which is an order of learned SDM, Imphal in connection with Criminal Misc. Case No. 40/66 u/s 145 of Code of Criminal Procedure By this order dated 24.12.67 (Ext.B/5) the learned SDM held that Md. Abdullah the first party was in possession of the land at the time of passing the preliminary order and that Mone Mia and four others had no possession over the land. This order was passed in respect of the suit land. The second party was however, aggrieved by this order and they came before the court of Judicial Commissioner. The learned Judicial Commissioner disposed of the Criminal reference by his order dated 2nd day of January, 1970 which shows that Defendant No. 2 Leihao Mia accepted that he was a tenant of Md. Abdullah and accordingly held that it was Defendant No. 2 Leihao Mia was in occupation of the land in dispute as tenant.

13. So, all these facts taken together leave no room for doubt that one of the Plaintiffs namely. Mone Mia had the knowledge of dispossession of the land in suit, at least on 17.12.1966 (Ext. B/5). As such in view of Article 58 of the Limitation Act, 1963 the suit is barred by limitation.

14. But, Mr. Sanajaoba, the learned Counsel for the Petitioner in his reply contended that Mone Mia is one of the Plaintiffs and hence it cannot be concluded that other Appellants were also aware of those proceedings before the Revenue Court as well as the Criminal Court. What he likes to mean is that the other two Plaintiffs were quite unaware of the facts of those cases and they were all along under the impression that Leihao Mia was possessing and cultivating the land in suit on behalf of them also. I am, however, not prepared to accept this contention simply because there is no iota of evidence on record (sic) show that the Plaintiffs ever got any usufructs of the suit land during these long years.

15. Revering to the decisions referred to by Mr. Sanajaoba it may be stated here that it would be quite apparent from the excerpts quoted above that even if it is found that one of the co-owners was in exclusive possession of the land in suit only then it can be inferred that other co-owners had constructive possession of the property. But in the present case a careful scrutiny of the documents relied on by the parties will make it abundantly clear that none of the Plaintiffs had any sort of possession real or constructive over the land in suit. Ext.B/10 certified copy of the Jamabandi shows that the suit land was recorded in the name of Defendant No. 1 Md. Abdullah some time in the year 1964 A.D. According to Mr. Sanajaoba at the preliminary stage the record which is prepared is called "Dag Chitha" in Manipur and thereafter one draft Jamabandi was prepared and after preparation of this draft Jamabandi the finally published record of rights, namely Jamabandi is prepared. This Ext, B/10 has beer characterised as a "Kachha Patta". Thereafter Anr. Jamabandi was prepared and it is found as Ext. B/33. This document clearly indicates that suit land was recorded in the name of Md. Abdullah Mia some time in the year 1967 and it was made finally in the year 1968. So, this record of rights which has been finally published clearly indicates that Md. Abdullah Mia was the owner and possessor of the land in suit. The contention of Mr. Sanajaoba in this regard is that the inference that can be drawn from this document is nothing but a presumption which is rebuttable, No one disputes about that. But what is necessary is mat the person who challenges the authenticity or correctness of such document is to prove that the entries were made wrongly.

16. In this context, the decision rendered in the case of Vishwa Vijay Bharati Vs. Fakhrul Hassan and Others, may be referred to where it was held:

It is true that the entries in the revenue record ought, generally, to be accepted at their face value and courts should not embark upon an appellate inquiry into their correctness. But the presumption of correctness can apply only to genuine, not forged or fraudulent entries. The distinction may be fine but it is real. The distinction is that one cannot challenge the correctness of what the entry is open

to the attack that it was made fraudulently or surreptitiously. Fraud and forgery rob a document of all its legal effect and cannot found a claim to possessory title.

17. It would, therefore, be quite apparent from the excerpts that a civil court in adjudging a claim of a person is not called upon to make an enquiry whether the claimant was actually in possession of the land or holding the right as an occupant unless his adversary succeeds in proving that such entry was fraudulently made. The Supreme Court in the aforesaid decision under para 15 of the judgment held:

We have supplied the emphasis in order to that the normal presumption of correctness attaching to entries in the revenue record, which by law constitute evidence of a legal title, is displaced by proof of fraud.

18. I am, therefore, of opinion that it is the person who is challenging the correctness of the entry is to prove that the entries were made wrongly/fraudulently. Not only this document the document marked as Ext. B/11 to B/30 further show that it was the Defendant No. 1 who was paying land revenue regularly in respect of the suit land.

19. Referring to the decision tendered in the case of Deokinandan Plaintiff Appellant v. Zamir Hussain Khan and Ors. Defendant-Respondent reported in AIR 1922 All 399, Mr. Sanajaoba has urged that possession of co-owners must be deemed to be the possession of all the co-owners. Unless there was some act of ouster. But in the instant case, I have already stated above that the evidence on record clearly shows that it was the Defendant who was exercising actual possession over the land in suit since his purchase. The courts-below also after elaborate discussion of the evidence that was adduced by the parties arrived at the same conclusion that it was the Defendants who was actually in possession of the land in suit.

20. Mr. Manglem Singh, the learned Counsel has also submitted that such a concurrent finding cannot be questioned in a Second Appeal. In support of his contention the first decision referred to by Mr. Manglem Singh is a decision rendered by the Apex Court in the case of Maniar Ismail Sab and Others Vs. Maniar Fakruddin and Others, In this decision Their Lordships held that:

Concurrent finding of facts cannot be interfered with by the High Court in a second appeal u/s 100 of Code of Civil Procedure.

The other decision referred to by Mr. Manglem in this connection is the decision rendered by the Apex Court in the case of Dudh Nath Pandey (Dead) by Lrs Vs. Suresh Chandra Bhattasali (Dead) by Lrs, In this decision Their Lordships held in para 6 and 7:

The High Court in exercise of its power u/s 100 of CPC cannot make a fresh appraisal of the evidence and come to a different finding contrary to the finding recorded by the First Appellate Court. The finding on the question of limitation recorded by the First Appellate Court on appraisal of evidence after taking into

consideration the entire circumstances in the case is a finding of fact which cannot be set aside by the High Court in the exercise of power u/s 100 of Code of Civil Procedure.

21. For the foregoing reasons, particularly the position of law exposed by the Apex Court, I am left with no choice other than to hold that this Second Appeal is devoid of any merit and accordingly it is dismissed with costs.

Send down the records immediately.