
(2013) 08 AHC CK 0128

In the Allahabad High Court

Case No : Civil Miscellaneous Writ Petition No. 242 of 1994

Mohan and Others

APPELLANT

Vs

Board of Revenue and Others

RESPONDENT

Date of Decision : 16-08-2013

Acts Referred:

Citation : (2013) 08 AHC CK 0128

Hon'ble Judges : A.P.Sahi, J

Final Decision : Disposed Of

Judgement

A.P. Sahi, J.

Heard Sri Sudhanshu Srivastava, learned counsel for the petitioner and Sri Triveni Shanker for the respondent no. 4. The learned Standing Counsel has been heard for the respondent nos. 1, 2, 3 and 6. No counsel has appeared on behalf of the Nagar Palika Varanasi. Affidavits have been exchanged between the contesting parties.

This is a dispute arising out of a suit filed under Section 229B of the U.P. Z.A. & L.R. Act, 1950 by the respondent no. 4. The claim according to the plaint was of adverse possession over the disputed holding, namely, Plot No. 457/2, area 0.25 acres. The plaint discloses a case of adverse possession and a prayer has been made for decreeing the suit as against the defendants 1, 2 and 3 who are the petitioners before this Court.

The matter proceeded and it appears that before the trial court a case was developed by the plaintiff, without there being any pleadings, that the disputed property was the holding of the grandfather of the plaintiff. This plea was obviously not taken in the plaint. The petitioners, who are the defendants, put in appearance and contested the suit on the ground that the disputed land was owned by a common ancestor and that the petitioners were in possession thereof and they also relied on certain entries in their favour. They also contended that the plaintiffs never objected to the entries nor did they dispute the pedigree as

set up by the defendants. The trial court proceeded to discuss the case on the basis of succession in favour of the respondent plaintiff and so far as the claim of adverse possession was concerned the trial court clearly commented that the entry of adverse possession through Form PA10 was not proved. On the issue of possession while deciding Issue No. 7, a one line finding was recorded that the plaintiffs have been found to be in possession of the land and therefore the suit deserves to be decreed.

An appeal was preferred by the petitioners and the appellate court also affirmed the judgment of the trial court. A second appeal was preferred before the Board of Revenue which also met the same fate, hence, this petition by the defendants.

Sri Sudhanshu Srivastava urged that the trial court decreed the suit on the basis of completely inconsistent claims, namely that of adverse possession as against succession being claimed by the plaintiff without there being any pleading in the plaint. He therefore submits that the suit could not have been decreed as the plaintiff has to stand on his own legs.

He further contends that continuous uninterrupted possession as against the true owner was not proved and the plaintiffs having failed to establish their claim, the suit could not have been decreed on any discrepancy of evidence adduced by the defendants.

He thirdly submits that the plaintiffs failed to dislodge the entries made in the revenue records in favour of the predecessor in interest of the defendants and the pedigree set up by them as such without recording any finding in respect thereof the decree deserves to be set aside.

Coming to the evidence discussed, Sri Srivastava submits that the orders are perverse, inasmuch as, assumptions have been drawn about possession treating the case to be one of succession by the two brothers Mahadeo and Shiv Nandan. He submits that this assumption of possession is based as if the holding was a joint holding. Sri Srivastava therefore submits that this was not a ground to believe adverse possession which was the only case set up in the plaint. He therefore submits that the suit was decreed beyond the case set up by the plaintiff by drawing assumptions on the basis of an evidence relating to the pedigree as set up by the defendants which was never denied by the plaintiffs. The finding therefore on possession is perverse and the conclusions drawn are against the weight of evidence on record.

He lastly submits that once the plaintiff had failed to establish his right by way of adverse possession then the suit had to be dismissed and the same could not have been decreed by adopting any other method or carving out another case.

The same criticism has been advanced in relation to the appellate and the second appellate orders.

Replying to the aforesaid submissions, Sri Triveni Shanker contends that possession has been clearly proved by the plaintiff respondent through oral and

documentary evidence. He submits that if possession is established and the defendant is not in possession, then the suit had to be decreed even otherwise. He further submits that this claim of adverse possession was against the defendant petitioners only as other members of the family did not claim any right of joint holding over the said property. He submits that the exclusive possession of the plaintiff respondents was established and that the entries on which the defendants have relied have been rightly disbelieved. He therefore contends that the findings recorded by the trial court as affirmed subsequently do not require any interference as they are justified and supported by the evidence on record.

Sri Triveni Shanker contends that the entries having been discarded, the defendants had no semblance of title over the disputed holding and in the absence of any possession the plaintiff's claim has been rightly decreed.

Having heard learned counsel for the parties, It is evident that the respondent plaintiff had set up a claim on the basis of adverse possession only. This fact has been clearly stated in Paragraph 3 of the plaint. The plaintiff tried to prove his adverse possession with the help certain revenue entries and the trial court after discussing the same diverted the finding on the basis of the contention raised by the plaintiff that the property in question had been acquired solely by the grandfather of the plaintiff, namely, Mahadeo. On the issue of entry of adverse possession through Form PA. 10 the case set up by the plaintiff has been disbelieved by the trial court. It is therefore clear that Form PA. 10 which is the basis of the claim of entry of the plaintiff for adverse possession has been rejected. If the entries are not prepared as per the procedure prescribed then they have no sanctity nor do they have any evidentiary value. The ingredients for believing an entry of PA10 has been discussed in the judgment of Gurmukh Singh and others Vs. Dy. Director of Consolidation, Nainital and others reported in 1977 (88) RD 276 relied on by the learned counsel for the petitioner. The burden of proof lay on the plaintiff to establish the claim on the basis of such entry as per the aforesaid decision, but the trial court on an analysis rejected the said plea.

Once the said entry had no evidentiary value then the same cannot be taken as a plea for the purpose of adverse possession. Learned counsel for the petitioner has therefore rightly relied on the decision in the case of Mohd. Raza Vs. Dy. Director of Consolidation and another reported in 1990 RD 165.

A noncompliance of the procedural requirement for proving such an entry was also considered by a learned Single Judge in the case of Smt. Bitiya Bano Vs. Dy. Director of Consolidation and others reported in 1980 RD 190 where also it was held that if the procedure was not complied with for issuance of PA10, the same deserves to be discarded.

Coming to the question of plea of adverse possession, the ingredients have been discussed in a large number of decisions. Learned counsel for the petitioner has relied on two decisions of the apex court in the case of Vishwanath Bapurao

Sabale Vs. Shalinibai Nagappa Sabale and others reported in 2009 (108) RD 71 and Hemaji Waghaji Jat Vs. Bhikhabhai Khengarbhi Harijan and others reported in 2009 (106) RD 784.

The aforesaid principles relating to adverse possession are well settled. A person who claims himself to be owner alongwith any other cosharer cannot claim a title of adverse possession as against the other cosharers. In the instant case the petitioners who were the defendants had claimed their rights which ought to have been considered in view of the law laid down in the case of Mahendra Kumar and others Vs. Dy. Director of Consolidation, U.P. Lucknow and others reported in 1968 RD 365 but the trial court erroneously beyond the pleadings of the plaint proceeded to declare the respondent plaintiffs as the sole title holders of the holding in dispute on the ground of the property having been created by the grandfather of the respondent plaintiff. Thus succession and title from a predecessor, and not adverse possession, was made the basis of the decree by the trial court.

The trial court has further recorded a doubt on account of the parentage of Gullu the predecessors in interest of the petitioner defendants. It is settled principle that doubt cannot take the place of proof. The judgment of the trial court therefore suffers from manifest errors as indicated hereinabove.

The plea on adverse possession which was the main plank in the case of the respondent plaintiff was diluted and the claim of succession as understood by the trial court became the basis of the decree. In my opinion such a course was impermissible and the plaintiff could not have taken any advantage of a different case with regard to succession when the plaint case was clearly one of adverse possession.

Sri Triveni Shanker urged that possession has been proved. This argument cannot be accepted, inasmuch as, the possession of the plaintiff was sought to be justified by the trial court on the basis of succession when on the other hand the entry of adverse possession had been disbelieved by the trial court. This clearly contradicts each other, inasmuch as, once the trial court had come to the conclusion that the entry through Form PA10 had not been proved then in that view of the matter the very foundation of the claim of adverse possession was seriously doubtful with no substantial material to support the said finding.

Every claim of long possession is not necessarily to be understood as adverse possession. In the instant case, the trial court did not accept the initial evidence of the claim of adverse possession as set up by the plaintiff and rather went on to accept possession on the basis of succession through the grandfather of the plaintiff. This therefore necessarily does not fulfil the criteria of uninterrupted continued adverse possession to the knowledge of the true owner.

Consequently, the judgment of the trial court was erroneously upheld by both the courts below. The judgment therefore deserves to be set aside. The writ petition is allowed and the judgment of the trial court dated 26.5.1986 as affirmed in

appeal on 11.2.1992 and in the second appeal on 15.12.1993 are all quashed. The plaintiff having failed to establish the claim of adverse possession, the courts below could not have decreed the suit for the reasons given hereinabove. The findings being perverse and on erroneous assumptions, therefore, were unsustainable. Accordingly, the writ petition is allowed and the plaintiff's suit stands dismissed. No order as to costs.