

(2005) 01 MP CK 0099
In the Madhya Pradesh High Court
Case No : S.A. No. 23 of 1990

Praveen Kumar and Others	Vs	APPELLANT
Deity Shri Vishnu Bhagwan, Shri Ram Chandra Ji, Shri Shankar Ji Mandir and Others		RESPONDENT

Date of Decision : 18-01-2005

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 100

Citation : AIR 2005 MP 193 : (2005) 3 MPLJ 39

Hon'ble Judges : S.K. Pande, J

Bench : Single Bench

Advocate : C. Kotecha, for the Appellant; Pradeep Naolekar, for the Respondent

Final Decision : Dismissed

Judgement

S.K. Pande, J.

Being aggrieved by the judgment-decree dated 28-9-89 passed by the Additional District Judge, Sehora in C.A. No. 10-A/88 reversing the judgment-decree dated 13-1-81 passed by the 1st Civil Judge Class-II, Sehora in C.S. No. 64-A/77, plaintiff/appellants have preferred this appeal u/s 100, CPC.

The appeal has been heard on the following substantial questions of law :-

1. "Whether Mathura Bai on her re-marriage had lost title to the suit property held by her deceased husband ?

Whether the present suit filed by the plaintiff as heirs of Mathura Bai was rightly held to be barred by time ?"

Late Reva Prasad was the owner of suit lands 37.66 acre Village Mandour, Tehsil Sihora, Distt. Jabalpur, fully described in para 8 of the plaint and schedule annexed thereto. Reva Prasad died in the year 1923 leaving behind Smt. Mathura Bai as his widow. Mathura Bai re-married one Nanhooram in the year 1924. From this wedlock daughter Gulab Bai was born. Mathura Bai died sometime in the

year 1941 leaving behind Gulab Bai as her daughter. Plain tiff/ appellants are sons and daughters of Gulab Bai. Gulab Bai also died in the year 1959. Late Reva Prasad had two sisters namely Mathura Bai wife of Mukundi Lal. Suraj Prasad was son of another sister. Mathura Bai wife of Mukundi Lal and Suraj Prasad executing registered sale deeds dated 24-10-1941 and 20-3-1946 (Exs. P/4 and P/5) sold the suit lands to defendant/respondent Deity .Shri Vishnu Bhagwan, Shri Krishna Chandra Ji, Shri Ram Chandra Ji, Shri Shankar Ji Temple, Gosalpur. On the basis of sale deeds aforesaid defendant/respondents dispossessed Gulab Bai. Plaintiff/ appellant Praveen Kumar was born on 24-8-1956. Plaintiff/appellants instituted C.S. No. 64-A/77 on 1-1-1975 for declaration of nullity of sale deeds dated 24-10-1941 and 20-3-1946 (Exs. P/4 and P/5) and restoration of possession of suit lands on the ground that their grandmother late Mathura Bai was absolute owner of suit lands. As such Mathura Bai wife of Mukundi Lal and Suraj Prasad son of another sister of Reva Prasad had no right-title to execute the registered sale deeds in favour of deity defendant/respondent. Possession on the basis of sale deeds aforesaid is illegal.

The suit was resisted stating inter alia that Mathura Bai since re-married one Nanhoo Ram in the year 1924 was divested of the estate vested in her as her former heir. Mathura Bai wife of Mukundi Lai and Suraj Prasad being real sister and sister's son on the death of Mathura Bai having entered into possession executed the registered sale deeds of suit lands in favour of the deity defendant/respondent No. 1. Since then defendant/respondent No. 1 is in possession of suit lands. Plaintiff/appellants are not competent to institute the suit seeking reliefs aforesaid and in any case the suit filed on 1-1-1975 was barred by time.

The Civil Judge in C.S. No. 64-A/77 vide judgment dated 13-1-1981 held that on re-marriage Mathura Bai was not divested with the estate on the death of Mathura Bai. Gulab Bai remained in possession of suit lands only during the periods 1941 to 1946. Mathura Bai widow of Mukundi Lai and Suraj Prasad had no right to execute the sale deeds. As such the suit seeking restoration of possession was decreed. Being aggrieved. defendant/respondents preferred C.A. No. 10-A/88 before the Additional District Judge, Sihora. The Court below allowing the appeal set aside the judgment-decree passed by the Civil Judge in C.S. No. 64-A/77 instead dismissed the suit for declaration and possession. Being aggrieved, plaintiff/appellants have preferred this appeal u/s 100, CPC.

It has been contended that Mathura Bai on remarriage had lost title to the suit property held by her deceased husband Reva Prasad. The suit filed by plaintiff/appellants as heir of Mathura Bai was barred by time. Reva Prasad died in the year 1923. Soon after his death widow-Mathura Bai remarried one Nanhoo Ram. From the wedlock aforesaid Gulab Bai mother of plaintiff/appellants was born. Mathura Bai also died in the year 1941. Sale deeds dated 24-10-1941 and 20-4-1946 (Exs. P/4 and P/5) were executed by Mathura Bai wife of Mukundi Lai and Suraj Prasad being sister and sister's son of Reva Prasad.

P.W. 2 Bhaiya Lal has stated that agricultural lands of Nanhoo Ram remained in

possession of Gulab Bai and suit lands of Reva Prasad remained with Mathura Bai sister of Reva Prasad. The same is the statement of PW/1 Bhagooram. The suit lands remained in possession of Mathura Bai wife of Mukundi Lal and on sale Tarachand said to be Sarvarakar of defendant/respondent deity remained in possession. Admittedly, Gulab bai died in the year 1959 and did not file suit for declaration of nullity of sale deeds (Exs. P/4 and P/5) and restoration of possession.

Plaintiff/appellants were not born on the date of sales dated 24-10-1941 and 20-3-1946 (Exs. P/4 and P/5) as such they have no right-title to assail the sales and seek the relief of restoration of possession. The suit for reliefs aforesaid filed on 1-1-75 was hopelessly barred by time. The Court below rightly held that plaintiff/appellants have no cause of action and their suit was liable to be dismissed as barred by time.

Section 2 of the Hindu Widows Re-marriage Act, 1856 is to the effect that all rights and interests which any widow may have in her deceased husband's property by way of maintenance, or by inheritance to her husband or to his lineal successors, or by virtue of any will or testamentary disposition conferring upon her, without express permission to re-marry, only a limited interest in such property with no power of alienating the same, shall upon her re-marrying cease and determine as if she had then died; and the next heirs of her deceased husband or other persons entitled to the property on her death, shall thereupon succeed to the same. Section 4 is not repugnant to aforesaid principle of succession by next heir of deceased husband of the widow.

The Civil Judge with reference to discussion of evidence in issue No. 5 held that Gulab Bai remained in possession of suit lands only during the periods 1941 to 1946. P.W. 1 Bhagooram. P.W. 2 Bhaiya Lal have stated that Gulab Bai in fact remained in possession of the lands left by her father Nanhooram. The agricultural lands of Reva Prasad remained in possession of Mathura Bai wife of Mukundi Lal. D.W. 1 Sukhai Ram, DW/2 Santoshi Ram, D.W. 2 Santoshi Ram, D.W. 3 Jamuna Prasad, D.W. 4 Govind Prasad, D.W. 5 Mahendra Kumar also have stated that Mathura Bai wife of Mukundi Lal who was sister of Reva Prasad remained in possession of suit lands and sold it to the deity. The sale deeds said to have been executed by Mathura Bai wife of Mukundi Lal and Suraj Prasad is favour of deity defendant/respondent No. 1 were valid. As such plaintiff/appellants cannot assail the sales so as to seek relief of possession.

The aforesaid findings of fact arrived at by the Court below in C.A. No. 10-A/88 is neither perverse nor illegal, Plaintiff/appellants in fact have no cause of action to assail the sale deeds so as to seek restoration of possession of suit lands.

Consequently, affirming the judgment-decree passed by the Court below in C.A. No. 10-A/88, appeal fails and is dismissed. Plaintiff/appellants shall bear their costs and pay the costs of defendant/respondents. Counsel fees as per rule or certificate (whichever is less).