
(2014) 12 RAJ CK 0096

In the Rajasthan High Court

Case No : Civil Second Appeal No. 265 of 2011

Ram Pathya Granthagar Samiti and Others

APPELLANT

Vs

Basant Kumar and Others

RESPONDENT

Date of Decision : 09-12-2014

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 100

Citation : (2015) 3 CDR 1238 : (2015) 2 RLW 1625

Hon'ble Judges : Vineet Kothari, J.

Bench : Single Bench

Advocate : B.M. Bhojak, Advocate, for the Appellant; R.K. Singhal, for the Respondent

Final Decision : Dismissed

Judgement

Dr. Vineet Kothari, J.?Rank trespassers or the persons claiming title on the weak plea of adverse possession are the cantankerous litigants to burden, rather over burden the dockets of the Courts for long periods and their success lies in the length of time rather than on any merit in the foundation of their cases. The present case is another such glaring example of the misuse of the Court process that too in the narrow and limited scope of the second appeal under Section 100 of the Code of Civil Procedure, 1908, which lies only on the substantial questions of law, not so far decided by the Apex Court or even the same High Court, which questions may require a fine analysis and interpretation of the relevant statute based on the facts proved and found by the courts below in two rounds of litigation.

2. The appellants/defendants have called in question the impugned judgment and decree dated 29.03.2011 passed by learned Additional District Judge, Ratangarh, District: Churu in Civil Appeal No. 05/2003, whereby the judgment and decree dated 09.04.2003 passed by learned Civil Judge (Sr. Division), Ratangarh, Churu in Civil Suit No. 157/2001 (50/95) - Basant Kumar & Ors. vs. Shri Ram Pathya Granthaghar Samiti & Ors., was reversed and suit filed by the

plaintiffs was decreed for possession and mesne profit.

3. The appellant No. 1-Shri Ram Pathya Granthagar Samiti, a registered society bearing Registration No. 17/86, in Ratangarh, District: Churu, and the appellant, Raghunandan S/o. Sita Ram Dhard, claiming their right of title and possession on the suit property, belonging to the plaintiffs/respondents, (Chaturbhuj, Ramanand, Ramcharan, Jagannath and Hardev) the lineal descendants of their forefathers, about 35 in number now before this Court and some of them have expired during this long period of pendency of the suit in present second appeal for last almost three decades at the hearing stage in the present suit filed by the respondents/plaintiffs in the year 1988, where both the courts below not only found in favour of plaintiffs, their title over the suit property, a property with boundary wall at Ratangarh in District: Churu, but the first appellate court taking a different view than the trial court, also held against the defendants/appellants that they even could not claim any semblance of right of possession or title on the basis of their so called plea of adverse possession over the suit property.

4. The following substantial questions of law have already been framed by the coordinate bench of this Court on 03.02.2012 and 04.12.2013, which are quoted below for ready reference:-

1. Whether the first appellate court committed error in reversing the finding of the trial court regarding the continuous peaceful possession of the appellant No. 1 since 1968 is perverse.

2. Whether the finding on Issue No. 4 of the first appellate court while reversing the finding of the learned trial court is perverse?

3. Whether both the courts below committed error in arriving at the conclusion that the suit property belongs to respondents?

4. Whether the suit on behalf of the plaintiffs No. 1 to 42 was maintainable not by Shri Hanuman Prasad and thus, the first appeal was also not maintainable by Shri Hanuman Prasad?

5. Whether on death of Shri Shanker Lal, during pendency of the appeal, whether the appeal became not maintainable and was liable to be dismissed as not maintainable?

5. The suit property in question known as "Ganediawalon-Ki-Chhatri" was in the name of S/Sh. Chaturbhuj, Ramanand, Ramchandra, Jagannath and Hardeo, in whose favour, title was found by the courts below on the basis of entries in the Government record, namely, "Sawa-Bahi" (Exhibits 8, 9, 11 and 13), which were proved before the trial court. Several witnesses were examined by the learned trial court. While on the plaintiffs' side, P.W. 1, Basant Kumar, P.W. 2, Hanuman Prasad Ganediwala, P.W. 3 Shankerlal, P.W. 4 Kishanlal, were examined and the documentary evidence from Exhibits 1 to 33 were produced and proved before the court below. On the defendants' side, the present appellants 11 witnesses viz. D.W. 1, Raghunandan Sharma, D.W. 2, Vinod Kumar, D.W. 3 Ghanshyam

Mishra, D.W. 4 Madan Singh, D.W. 5, Motilal, D.W. 6, Govind Prasad, D.W. 7, Shankerlal, D.W. 8, Dinesh Kumar, D.W. 9, Ambika Prasad, D.W. 10, Om Prakash and D.W. 11, Vishwanath, were examined and Exhibit A/1 to A/59, documents were exhibited by the defendants.

6. Learned counsel for the appellants/defendants, Mr. B.M. Bhojak, vehemently submitted that the title of the plaintiff/respondent was not proved and merely on the basis of "Sawa-Bahi", no such title could be established by the plaintiffs and on the other hand the adverse possession of the defendants right from the year 1968 when initially a Sports Club was established in the said suit property, which later on, handed over the adverse possession to the present appellant-Shri Ram Pathya Granthagar Samiti in the year 1981 and which society was later on registered in the year 1986 and in a Volleyball tournament organized by the said Sports Club way-back in the year 1968, the P.W. 3, namely, Shankerlal, had objected to the same and, therefore, the possession of the said sports club become hostile to the knowledge of the said P.W. 3, Shankerlal, who is member of the plaintiff's family and the present suit was filed in the year 1988 beyond the period of 12 years. Therefore, the findings of the learned court below on Issue No. 4 about the adverse possession are not sustainable on the ground that the appellant/defendant No. 1, Society, came into existence only in the year 1986 upon its registration as a society. He, therefore, submitted that the findings of the courts below are perverse and the present second appeal of the defendants deserves to be allowed.

7. On the other hand, Mr. R.K. Singhal, and Mr. Hanuman Prasad Ganediwal, power of attorney holder on behalf of plaintiffs, submitted that the findings of title are concurrently against the defendants/appellant and in favour of plaintiffs and those findings of facts being binding on this Court, the same are not required to be upset as there is no perversity in the same. He also submitted that question of adverse possession has also been decided against the appellants/defendants by the first appellate court below by giving detailed & cogent findings and, thus the substantial question of law framed above, deserves to be answered in favour of plaintiffs/respondents. He also vehemently argued that there is no right, title or interest of the appellants/defendants in the suit property and the suit property is surrounded by boundary wall belonging to the plaintiffs, since the time of their forefathers, which has illegally be occupied by the appellants as trespassers and, therefore, the present second appeal of defendants deserves to be dismissed. He also relied upon various judgments in support of his contentions.

8. I have heard the learned counsel for the parties at length and perused the record and the judgments cited at Bar. The findings of the learned first appellate court below on both the relevant issues of title and the adverse possession, which are quoted herein below for ready reference, which would include the discussion of evidence also, though re-appreciation of evidence is not permissible not it is called for in the limited scope of second appeal under Section 100 of

Code of Civil Procedure, 1908, which lies only on the substantial question of law alone, still for the proper appreciation of the contentions raised by the learned counsel for the appellants/defendants, the findings of the courts below are quoted herein below for ready reference:-

Relevant and extract part of Judgment dated 29.03.2011/P9.

9. The legal position with regard to adverse possession is now settled by various judgments of Hon"ble Supreme Court, which have been followed by this Court on number of occasions and it is well settled now that claim for title on the basis of adverse possession is a very weak kind of plea and the Hon"ble Supreme Court has gone to the extent of even recommending the deletion of the relevant statutory provisions in regard to the claims based on adverse possession in the case of State of Haryana Vs. Mukesh Kumar and Others, . The relevant portion of the aforesaid judgment is quoted herein below for ready reference:-

"11. The Hon"ble Supreme Court in the case of State of Haryana Vs. Mukesh Kumar and Others, deprecating the law relating to the adverse possession claimed by such persons, who come into possession of any suit property without any legal title, the Hon"ble Supreme Court held as under:-

"A person pleading adverse possession has no equities in his favour since he is trying to defeat the rights of the true owner. It is for him to clearly plead and establish all facts necessary to establish adverse possession. Though we got this law of adverse possession from the British, it is important to note that these days the English courts are taking a very negative view towards the law of adverse possession. The English law was amended and changed substantially to reflect these changes, particularly in light of the view that property is a human right adopted by the European Commission."

The doctrine of adverse possession arose in an era where lands were vast particularly in the United States of America and documentation sparse in order to give quietus to the title of the possessor and prevent fanciful claims from erupting. The concept of adverse possession exists to cure potential or actual defects in real estate titles by putting a statute of limitation on possible litigation over ownership and possession. A landowner could be secure in title to his land; otherwise, long-lost heirs of any former owner, possessor or lien holder of centuries past could come forward with a legal claim on the property. Since independence of our country we have witnessed registered documents of title and more proper, if not perfect, entries of title in the government records. The situation having changed, the statute calls for a change."

10. The Hon"ble Supreme Court also suggested to the Parliament that the Parliament should consider abolishing the law relating to the adverse possession. The relevant portion of the judgment is quoted below:-

"Parliament may consider abolishing the law of adverse possession or at least amending and making substantial changes in the law in the larger public interest.

The government instrumentalities - including the police - in the instant case have attempted to possess land adversely. This is a testament to the absurdity of the law and a black mark upon the justice system's legitimacy."

11. The Hon'ble Apex Court in the case of Maria Margarida Sequeria Fernandes and Others Vs. Erasmo Jack de Sequeria (Dead) through L. Rs., also held that possession on the basis of title of property is always better claim as against the claim on the basis of adverse possession. The Hon'ble Supreme Court in a very detailed and researching judgment, detailing the four types of possession under property law; Easements Act, 1882, Transfer of Property Act, 1882 and Specific Relief Act, 1963, dealing with a case of a well known and respected Christian family of Goa where the permissive & free of cost possession of suit premises was given by a sister to her brother as a caretaker, while the sister with her husband was out of Goa in relation to his service in Navy and which brother illegally denied her possession of her own house with title undisputed for 20 long years. The Hon'ble Supreme Court allowing the sister's appeal with costs of Rs. 50,000/- and mesne profits of Rs. 1 lac per month for the residential house, held in para 32 to 36 as under:-

"Truth as guiding star in judicial process

32. In this unfortunate litigation, the Court's serious endeavour has to be to find out where in fact the truth lies.

33. The truth should be the guiding star in the entire judicial process. Truth alone has to be the foundation of justice. The entire judicial system has been created only to discern and find out the real truth. Judges at all levels have to seriously engage themselves in the journey of discovering the truth. That is their mandate, obligation and bounden duty. Justice system will acquire credibility only when people will be convinced that justice is based on the foundation of the truth.

34. In Mohanlal Shamji Soni Vs. Union of India and another, , this Court observed that in such a situation a question that arises for consideration is whether the presiding officer of a Court should simply sit as a mere umpire at a contest between two parties and declare at the end of the combat who has won and who has lost or is there not any legal duty of his own, independent of the parties, to take an active role in the proceedings in finding the truth and administering justice? It is a well accepted and settled principle that a Court must discharge its statutory functions - whether discretionary or obligatory - according to law in dispensing justice because it is the duty of a Court not only to do justice but also to ensure that justice is being done.

35. What people expect is that the Court should discharge its obligation to find out where in fact the truth lies. Right from inception of the judicial system it has been accepted that discovery, vindication and establishment of truth are the main purposes underlying the existence of the courts of justice.

36. In Ritesh Tewari and Another Vs. State of U.P. and Others, this Court

reproduced often quoted quotation which reads as under:

".....Every trial is voyage of discovery in which truth is the quest"

.....The quest of truth continues....., also in this case.

12. Deprecating false claims and defences, which are considered really serious problems with real estate litigation, predominantly because of ever-escalating prices of the real estate, the Hon''ble Supreme Court in the aforesaid judgment in para 81 and 82 observed as under:-

"False claims and defences are really serious problems with real estate litigation, predominantly because of ever-escalating prices of the real estate. Litigation pertaining to valuable real estate properties is dragged on by unscrupulous litigants in the hope that the other party will tire out and ultimately would settle with them by paying a huge amount. This happens because of the enormous delay in adjudication of cases in the Courts. The Supreme Court in Rameshwari Devi and Others Vs. Nirmala Devi and Others, aptly observed that unless wrongdoers are denied profit from frivolous litigation, it would be difficult to prevent it. In order to curb uncalled for and frivolous litigation, the courts have to ensure that there is no incentive or motive for uncalled for litigation. This problem can be solved or at least can be minimised if exemplary costs is imposed for instituting frivolous litigation. Imposition of actual, realistic or proper costs and/or ordering prosecution in appropriate case would go a long way in controlling the tendency of introducing false pleadings and forged and fabricated documents by the litigants. Imposition of heavy costs would also control unnecessary adjournments by the parties. In appropriate cases, the courts may consider ordering prosecution otherwise it may not be possible to maintain purity and sanctity of judicial proceedings."

And then finally, allowing the sister''s appeal as aforesaid and laying down the principles of law in para 97 to 101, the Hon''ble Supreme Court held as under:-

"97. Principles of law which emerge in this case are crystallized as under:-

1. No one acquires title to the property if he or she was allowed to stay in the premises gratuitously. Even by long possession of years or decades such person would not acquire any right or interest in the said property.
2. Caretaker, watchman or servant can never acquire interest in the property irrespective of his long possession. The caretaker or servant has to give possession forthwith on demand.
3. The Courts are not justified in protecting the possession of a caretaker, servant or any person who was allowed to live in the premises for some time either as a friend, relative, caretaker or as a servant.
4. The protection of the Court can only be granted or extended to the person who has valid, subsisting rent agreement, lease agreement or license agreement in his favour.

5. The caretaker or agent holds property of the principal only on behalf of the principal. He acquires no right or interest whatsoever for himself in such property irrespective of his long stay or possession.

98. In this view of the matter, the impugned judgment of the High Court as also of the Trial Court deserve to be set aside and we accordingly do so. Consequently, this Court directs that the possession of the suit premises be handed over to the appellant, who is admittedly the owner of the suit property.

99. In the peculiar facts and circumstances of this case, the legal representatives of the respondent are granted three months time to vacate the suit premises. They are further directed that after the expiry of the three months period, the vacant and peaceful possession of the suit property be handed over to the appellant. The usual undertaking to this effect be filed by the legal representatives of the respondent in this Court within two weeks.

100. The legal representatives of the respondent are also directed to pay Rs. 1,00,000/- (Rupees one Lakh) per month towards the use and occupation of the premises for a period of three months. The said amount for use and occupation be given to the appellant on or before the 10th of every month. In case the legal representatives of the respondent are not willing to pay the amount for use and occupation as directed by this Court, they must hand over the possession of the premises within two weeks from the date of this judgment. Thereafter, if the legal representatives of the respondent do not hand over peaceful possession of the suit property, in that event, the appellant would be at liberty to get the possession of the premises by taking police help.

101. As a result, the appeal of the appellant is allowed. In the facts and circumstances of the case, the respondents are directed to pay a cost of Rs. 50,000/- to the appellant within four weeks. (We have imposed the moderate cost in view of the fact that the original respondent has expired). Ordered accordingly."

Thus, strongly deprecating the holding over of possession by the persons like care-takers and persons with permissive possession, Chowkidars etc., the Hon"ble Apex Court allowed the plaintiff's appeal in that case with exemplary cost of Rs. 50,000/- and mesne profit of Rs. 1,00,000/- in respect of a residential house situated at Goa.

13. In the light of aforesaid settled legal position, which has been followed by this Court in the case of Babulal vs. Kashi Devi, SBCFA No. 466/2009 decided on 01.11.2012, this Court is of the considered opinion that the substantial questions of law as framed by this Court are required to be answered in favour of respondents/plaintiffs and there is no force in the present second appeal of the appellants/defendants. Their plea of adverse possession is not only false to its core but is also mischievous. The appellant/defendant society which even came into existence on its registration in the year 1986 is banking upon the so-called adverse possession of the Sports Club, which according to it existed since 1968.

The said Sports Club, the legal existence of which is not even before this Court and is not even a party before this Court, cannot be believed to have passed on the baton of adverse possession to the present appellant/defendant society. The illegality would be worse confounded if such version of the appellants/defendants was to be believed even for a moment. The courts below have found that the defendant/appellant No. 2, Raghunandan Sharma, was only 7 years of age when he claim to be in possession of the property in question and that too hostile and adverse to the knowledge of the true owners. His own statement demolishes the case of the defendants when he says that he even does not know who is the true owner of the land in question. If the main defendant D.W. 1 Raghunandan Sharma, is to say this and most of other witnesses according to their age given in the statements recorded by the learned trial court, were minor in the year 1968 or so, it is very clear that even the appellant/defendant No. 1, a registered society incorporated in the year 1986, was only a sham facade to claim the continued possession, whereas the defendant/appellant No. 2 and his likes, would continue to have enjoyment illegally over a valuable suit property belonging to the respondents/plaintiffs, whose forefathers were given "Patta" and which were supported by the entries in the Government record, namely, "Sawa-Bahi", on which the findings of facts about their title is based and the same cannot be put in question in the second appeal filed by the appellants/defendants.

14. Not only this, the plea of adverse possession even assuming for arguments" sake while holding otherwise, could be an argument worth considering and the same is not even established by a threat bare reading of the evidence led by the defendants. The plaintiffs/respondents on the other hand have challenged the unauthorized possession and occupation of the suit property ever since 1968 if the statement of P.W. 3, namely, Shankerlal, when he objected to the holding of the Volleyball tournament at the suit property is to be believed, which the defendants sought to rely as if they held hostile possession adverse to the plaintiffs to the knowledge of the said P.W. 3, Shankerlal. The appellants/defendants before this Court are the society and Mr. Raghunandan. Since on their own showing that they could not have been in possession for more than 12 years and that too an adverse possession of the knowledge of the true owner since the present suit was filed in the year 1988 whereas the society came into existence in the year 1986 only, even this weak plea of adverse possession is not available to the defendants. That is why in the preamble part of this judgment, this Court has observed that the rank trespassers and persons claiming their possession on the basis of plea of adverse possession are a burden on the dockets of the Courts; and their success lies only in the length of litigation not on the merits of the case. Such appellants/ deserves to be put down with iron hands of justice by imposition of exemplary costs so that it sets an example for other such persons, who are in unauthorized possession of the land belonging to others. Therefore, following the Hon"ble Supreme Court in the case of Maria Margardia Sequeira Fernandes (supra) quoted above, the present second appeal of the appellants/defendants is dismissed with cost of Rs. 50,000/- to be paid by the defendants

besides mesne profit as fixed by the court below to the plaintiffs/respondents. The appellants/defendants shall handover the peaceful and vacant possession of the suit premises to the respondents/plaintiffs within a period of two months from today, and if necessary, with police aid which may also be provided. The respondents/plaintiffs shall also be entitled to invoke the contempt jurisdiction of this Court, in case the appellants/defendants fail to handover the peaceful and vacant possession of the suit premises within a period of two months from today. A copy of this judgment be sent to the concerned parties forthwith.