
(1974) 01 RAJ CK 0010
In the Rajasthan High Court
Case No : Civil Second Appeal No. 97 of 1966

Ramkishan

APPELLANT

Vs

Mohanji and Another

RESPONDENT

Date of Decision : 02-01-1974

Acts Referred:

Limitation Act, 1963 — Article 142, 144

Citation : (1974) WLN 7

Hon'ble Judges : C.M. Lodha, J

Bench : Single Bench

Judgement

C.M. Lodha, J.—This is a plaintiff's second appeal arising out of a suit for possession and mesne profits in respect of a plot of land measuring 201-4/9 Sq. yards situated in a locality called Hathi Bhata in the city of Ajmer.

2. The plaintiff's case as set out in the plaint is that he purchased 1092 sq. yards of land from Abdul Rehman and his wife Betool Bibi by a registered sale deed dated 24-6-1951, marked Ex. 3. It was alleged that the defendant encroached upon the disputed portion of the land measuring 201-4/9 sq yards, out of the land purchased by the plaintiff some time thereafter. Consequently, he filed the present suit for recovery of possession of the disputed land from the defendant Mohanji Barber and also claimed a decree Rs. 432/- on account of mesne profits. The suit was resisted by the defendant on a number of grounds but the only ground which survives for decision was that he had become owner of the land in dispute by adverse possession. This ground found favour with both the lower courts with the result that the trial court dismissed the suit and its judgment and decree were upheld by the Additional Civil Judge, Ajmer in appeal. Hence this second appeal by the plaintiff.

3. learned Counsel for the appellant has urged that the vendors Abdul Rehman and Betool Bibi had been declared evacuees and the land purchased by the plaintiff from them. described as "Takiya" was notified in the official Gazette under the provisions of the East Punjab Evacuee (Administration of Property) Act,

1947 as applied to Ajmer. It has been further urged by him that the property belonging to Abdul Rehman and Betool Bibi was released by the Assistant Custodian of Evacuee Property, Ajmer on 17-5-50 (vide Order Ex. 1). It has been submitted that the period during which the land in question remained under the symbolical possession and control of the Custodian of Evacuee Property will be deemed to have interrupted the adverse possession of the defendant, and looked at from this stand point the defendant's alleged adverse possession was interrupted and did not ripen into a title so as to deprive the plaintiff of the right to recover possession of the land in question from the defendant. In support of his contention learned Counsel relied upon *Radha Krishna v. Rani Bahadur* AIR 1917 PC 197 and *Mamidi Venkata Satyanarayana Manikyala Rao and Another Vs. Mandela Narasimhaswami and Others*, Apart from these authorities learned Counsel rested his case, and pressed that the plaintiff was entitled to a decree in view of a single Bench, judgment of this Court: *S.B. Civil Second Appeal No. 538 of 1966: Smt. Shanti and Ors. v. Omprakash and Ors.* decided on 22-8-73 where on exactly similar facts the suit was held to be within limitation.

4 On the other hand, learned Counsel for the respondent Mohanji strenuously urged that the case put up by the plaintiff in the plaint was that the land encroached upon by the defendant had taken place after the purchase, of the property by him and now it was not open to him to ask for relief on the ground that even though the defendant had encroached upon the land in question prior to his purchase, that is, in the year 1948, still the adverse possession of the defendant was interrupted by the symbolical possession of the Evacuee Property Deptt. It has been also argued by him that the suit is governed by Article 142 of the Limitation Act, and not Article 144 of the Limitation Act of 1908, by which Act the present suit is admittedly governed). Then his contention is that there is nothing to show that before issuing the notification declaring Abdul Rehman and Betool Bibi as, evacuee the Custodian of Evacuee Property had issued the notice as required by law and had thereby laid down foundation for proceeding under the Evacuee Property Act. It has also been seriously contended by him that the principle laid down in the Privy Council and the Supreme Court cases referred, to above has no application to the present case. Lastly his contention is that *Smt. Shanti's* case has not been correctly decided and this Court is not bound to follow the view taken in *Shanti's* case.

5. It may be pointed out that the property involved in *Shanti's* case is also a part of the land owned and possessed by the vendors of the plaintiff in the present case, that is, Abdul Rehman and Betool Bibi and the order Ex. 1 strongly relied upon by the learned Counsel for the appellant in the present case was the basis of the decision in *Shanti's* case. In *Shanti's* case also the alleged encroachment by the defendant had taken place in the year 1948 as in the present case. It is true that in *Shanti's* case the plaintiff has alleged from the very beginning that the encroachment by the defendant had taken place before the purchase, of the land by the plaintiff Murarilal. But in the present case the plaintiff has alleged encroachment by the defendant after the purchase of the land by him though in

the present case also in para No. 2 of the plaint it was admitted that the hut in question of which the defendant is admittedly in possession, had been in existence before the plaintiff purchased the land. The slight difference in the pleadings of the two cases, in my opinion, is of no consequence. Thus it appears that the point of law involved in the present case was undoubtedly directly in issue in Shanti's case, and it cannot be said that the judgment in Shanti's case has no bearing on the case in hand.

6. On the basis of the two cases of the Privy Council and the Supreme Court referred to above the learned Judge held in Shanti's case that the symbolical possession of the Custodian interrupted continuity of the adverse possession of the defendant. He has also assumed on the basis of the release order dated 17-5-1950 that the land belonging to Abdul Rehman and Betool Bibi came under the control of the Custodian. It is indeed a serious question, as argued by the learned Counsel for the respondent, whether such a presumption can be made in absence of the notification or any other evidence that the Custodian had assumed possession of or control over the property. It may not be out of place, here, to point out that Abdul Rehman and Betool Bibi were held not to be evacuees by the Order Ex. 1. It is further clear that no demand was ever made by the Custodian to the defendant to surrender possession of the land in question to the Custodian or a person authorised by him in this behalf. In fact there is nothing to show that the Custodian had ever assumed possession of or control over the property of Abdul Rehman & Betool Bibi. It appears, therefore, very much doubtful to me whether the principle of symbolical possession as laid down by their Lordships of the Privy Council and Supreme Court in the cases referred to above can be pressed into service in a case, like the present one, so as to interrupt the continuity of adverse possession. However, I do not wish to express any final opinion regarding these matters, and since a learned Judge of this Court has taken a view to which, with utmost respect, I have not been able to persuade myself to agree, I think it proper that this case should be decided by a larger Bench.

7. Consequently, I refer the case to a Division Bench. Let the file be put up before the Hon'ble Chief Justice for constituting the Bench.