

(1994) 09 SC CK 0020

In the Supreme Court Of India

Case No : Civil Appeal No. 3190 of 1988

Shyam Sunder Dutta

APPELLANT

Vs

Baikuntha Nath Banerjee (Dead) By LRs. and Others

RESPONDENT

Date of Decision : 21-09-1994

Acts Referred:

Citation : (1994) 7 JT 152 : (1994) 6 SCC 545

Hon'ble Judges : N. Venkatachala, J;K. Ramaswamy, J

Bench : Division Bench

Final Decision : Allowed

Judgement

1. This case has a chequered career. Initially, Title Suit No. 40 of 1927 was filed for partition of the plaint-schedule-properties by the mother of the Appellant. Pending suit, a Receiver was appointed on May 3, 1933. During the course of the administration of the plaint-schedule-properties, he had inducted the Respondents into possession purporting to be as tenants. Ultimately, the suit was decreed in January 1940 and the Receiver was discharged in December, 1941. Thereafter, the Appellant on attaining majority, filed a second partition suit - Title Suit No. 53/1944, for partition of other properties and also the suit property which was jointly in possession and enjoyment of him and his co-sharers. He also filed an application for ad-interim injunction to restrain the Respondents from interfering with his possession when there was a threat of dispossession. On April 30, 1944, a preliminary decree in the title Suit No. 53/1944 was passed followed by a final decree of November 7, 1949. Thereafter in November, 1955, the third suit - T.S. No. 164/1955, was filed against the Defendants when the threat of dispossession to the extent of 2 acres and 21 cents was persisting for a declaration that the lands therein together with the garden and fruit bearing trees belong to the Appellant and his co-sharers and the Respondents have no tenancy rights created by the Receiver and for perpetual injunction restraining them from interfering with their possession. The Trial Court dismissed the suit on May 30, 1959, in Title Appeal No. 773/59, by judgment and decree dated

January 17,1994.

The Appellate Court recorded the findings thus:

The entire evidence on record considered together clearly shows that the Defendants are out of possession from the suit lands from August, 1945 and that the Plaintiff and his co-sharers are in actual physical possession of the suit lands from that time."The evidence of P Ws 2, 3, 4 and 5 considered with the documentary evidence discussed above lands support to the evidence of PW-1 that the Defendants were not in possession of the suit lands from August, 1945 and that the Plaintiff and his co-sharer are possessing the suit properties, from that time. I accordingly hold that the Defendants failed to prove that they acquired any limited interest of tenancy by adverse possession.

appellate court decreed thus:

It is hereby declared that the suit land is in joint possession of the Plaintiff and the pro-Defendants and that the Defendant Nos. 1 to 5 have no tenancy therein or any right to possess the same. The Defendant Nos. 1 to 5 are hereby permanently restrained from interfering in any way with the Plaintiffs possession of the suit lands.

2. Feeling aggrieved against the appellate decree, the Respondents filed Second Appeal No. 153/1975 in the High Court. The learned Single Judge, by judgment and decree dated August 16, 1984, reversed the decree of the appellate court and confirmed the decree of the trial court. The High Court held that the Respondents remained in possession of the property and they have acquired by adverse possession the limited right of tenancy and that, therefore, the decree of the appellate court is not valid in law.

3. The question that arises in the appeal is whether the Respondents have acquired any tenancy rights pursuant to the tenancy created by the Receiver by adverse possession. This Court in P. Lakshmi Reddy Vs L. Lakshmi Reddy AIR 1957 SC 314 held that "the possession of a Receiver is as an officer of the Court and he is not the agent of any party to the suit and notwithstanding that in law his possession is ultimately treated as possession of the successful party on the termination of the suit, he could not be considered as the agent of such party with the animus of claiming sole and exclusive title with a view to initiate adverse possession, and during the time of the Receiver's possession the Respondent could not sue H, and limitation could not therefore run against him". In that case, one of the contentions raised was that the unsuccessful party in the suit having remained in possession and the Receiver having continued to be in possession of the land taken from the opposite party, the possession of the Receiver should be tagged to compute the period of adverse possession in his favor. This Court negated the contention and held that the possession was not taken from him by the Receiver and that, therefore, the question of tagging the period due to that contingency did not arise for decision. However, this Court held that the possession of the Receiver is possession on behalf of the Court and

a party cannot claim any title adverse to the opposite party when the Receiver remained in possession. It is settled law that a Receiver when appointed to manage the suit property, he acts as an officer of the Court. Unless the Court grants permission to induct any third party into the possession as a tenant in accordance with the directions contained in the Order or as per the law then prevailing, the person inducted by the Receiver into possession would remain only as a licensee under the Receiver. As soon as the Receiver is discharged, the possession of the licensee being a limited right to remain in possession during the period when the Receiver was in management of the suit property, it comes to an end. On the discharge of the Receiver, the licensee has no right to remain in possession as either a tenant or a licensee. Therefore, the period of his possession cannot be treated or tagged for the purpose of claiming adverse possession. The finding of the courts below the High Court was that the Respondents remained in possession from 1933 to August, 1945 and during that period, such possession cannot be treated to be adverse to the real owner of the property. Consequently, the declaration given by the High Court that the Respondents had acquired the tenancy rights by prescription is clearly illegal.

4. The question of the Respondents to have remained in possession cannot be gone into by the High Court, since the District Court on consideration of the entire evidence had categorically recorded a finding of fact that the Appellant and his co-sharers remained in possession from August 1945 and that the Respondents were not continuing in possession from that time. This being a finding of fact, the High Court would not have gone into the question. However, it would appear that on the question of limitation under the Bengal Tenancy Act when the arguments were addressed, in consideration of that question, the High Court has gone into the question whether the Respondents were not dispossessed from suit lands and recorded a finding that they remained in possession. That finding does not appear to be warranted in view of the fact that the evidence was not discussed and as rightly contended the only evidence the High Court had considered was that of PW-1 but the first appellate court had considered the evidence of P Ws 2 to 5 and the documentary evidence and that evidence was found to be in support of the evidence given by PW-1 that the Respondents did not continue in possession from August, 1945. Therefore, the finding recorded by the High Court, in fact, was not necessary. Even otherwise, that finding was recorded without adverting to all the material evidence and that, therefore, the finding of possession recorded by the High Court is clearly illegal.

5. The appeal is accordingly allowed. The judgment and decree of the High Court is set aside and the judgment and decree of the appellate court is reversed. No costs.