
(1987) 10 MP CK 0018
In the Madhya Pradesh High Court
Case No : S.A. No. 92 of 1983

Sultan Khan

APPELLANT

Vs

State of Madhya Pradesh and Another

RESPONDENT

Date of Decision : 29-10-1987

Acts Referred:

Limitation Act, 1963 — Article 112

Madhya Pradesh Land Revenue Code, 1959 — Section 248

Citation : (1991) 36 MPLJ 81 : (1991) MPLJ 81

Hon'ble Judges : Gulab C. Gupta, J

Bench : Single Bench

Advocate : V.S. Shrotri, for the Appellant; O.P. Namdeo, Government Advocate, for the Respondent

Final Decision : Dismissed

Judgement

Gulab C. Gupta, J.

This second appeal, filed by the plaintiff u/s 100, CPC is directed against the judgment and decree dated 20-10-1982, passed by Addl. Judge to the Court of District Judge, Sehore in Civil Appeal No. 185-A of 1982, arising out of judgment and decree, dated 25-9-1980, passed by the Civil Judge, Class II, Sehore in Civil Suit No. 53-A of 1979, dismissing the appellant's suit for declaration of title over 10 acres of land of Khasra No. 202/1, situated at village Mundla Kalan, Tahsil and District Sehore (hereinafter referred to as the "suit land").

The appellant filed the present suit on 13-12-1974, seeking declaration of his title over the suit land based on his long and continued possession for about 4 decades as owner thereof. His case was that his father Jugge Khan was in cultivating possession of the suit land during his life time and his possession is even recorded in revenue records since 1351 Fasli year i.e. 1944 A.D. Appellant also submitted that his father died about 10 years before and therefore, the suit land came into his possession. According to him, the Sub-Divisional Officer, Sehore declared the suit land as service land and issued a Patta for 7.18 acres in

favour of respondent No. 2 by his order, dated 10-8-1972 and thereafter, Naib Tahsildar started eviction proceedings against him u/s 248 of the M. P. Land Revenue Code (hereinafter referred to as "The Code"). According to him, he felt aggrieved by this order and filed the appeal before the Collector, Sehore which was dismissed. He, therefore, prayed for a declaration that he is the Bhumiswarni of the suit land, that Patta allotment of land in favour of respondent No. 2 was illegal and void and the eviction proceedings were also illegal. The appellant based his claim over the suit land on adverse possession for more than the statutory period of 30 years. The respondent-State contested the claim and denied that the appellant was or has become the owner of the suit lands. According to them Jugge Khan and the appellant were the trespassers, and have been proceeded against from time to time. Their specific case was that the appellant has paid fine for illegal occupation. They, therefore denied the ownership of the appellant based on adverse possession. The learned trial Judge, on the basis of evidence on record, held that it was not proved that the appellant and his father were in continuous adverse possession of the suit land for about 4 decades. The learned Judge, however, held that the appellant and his father were in possession of a part of the suit land since 1944 but since they have been ordered to be evicted in the year 1972, they could not perfect their title by adverse possession. The suit was accordingly dismissed. These findings have been affirmed by the lower appellate Court in appeal and hence this second appeal.

This Court while admitting this appeal for final hearing on 7-2-1983 framed the following substantial question for its consideration : -

"Whether in the facts and circumstances of this case, the plaintiff has perfected his title by adverse possession against the State as he is in adverse possession of the land since the Fasli Year 1351 (1944 A.D.) as recorded in the revenue papers?"

Submission of the learned counsel for the appellant is that he has been in continuous possession of the suit land upto the date of the suit and even thereafter as per order of the Court. Since his possession before the date of the suit has been as owner and for more than 30 years, he would be deemed to be in continuous adverse possession entitling him to the declaration that he has become the owner thereof. Specific submission of the appellant is that eviction proceedings u/s 248 of the Code or the allotment order in favour of the respondent No. 2 would not interrupt his possession or the adverse possession. Reliance is placed on *Fatima Bibi and Another Vs. A. Hajee Muhammad Usman Sahib (died)*, ; *D. G. Nidhi v. K. L. Chettiar* AIR 1939 Mad. 456 ; and *Sri Damodar Jew Thakur Vs. Hema Narayan Misra and Others*, .

The finding that the appellant is found to be in occupation of a part of suit land since 1944 is the concurrent finding recorded by the two Courts below. This finding is based on revenue records, certified copies of which have been filed by both the parties. Under the circumstances, the finding is not only binding on this

Court because it is a concurrent finding of fact but also because it is a good finding of fact. It must, therefore, be accepted that the appellant and before him his father was in occupation of a part of the suit land. It is appellant's own case that by an order, dated 11-8-1972, he has been ordered to be evicted from this land and the same has been allotted in favour of respondent No. 2. In case the appellant's possession is treated to be adverse from 1944, he would have perfected his title over this land on the date of the suit, if this order, dated 11-8-1972 and subsequent proceedings u/s 248 of the Code have no effect on it. Under the circumstances, the important question for consideration in this appeal is whether the adverse possession of the appellant was interrupted on 11-8-1972 when proceedings u/s 248 of the Code were started? The decisions of Madras High Court relied upon by the appellant, do not exactly deal with this point. According to these decisions, mere declaration of title of the defendant without any thing done to recover possession does not amount to interruption in possession of the plaintiff. Shri Damodar's case of the Orissa High Court has, however carried this reasoning and logic further and has held that since possession is not disturbed, even the adverse possession will not be treated as disturbed and will continue. There is, however, no discussion in this judgment and therefore nothing to understand why it has been so held. If this conclusion is accepted, a trespasser will be able to perfect his title even during the pendency of the suit for recovery of possession from him. This however, is not the intention of the law. It is well-settled that the status of the parties has to be determined on the basis of facts as they exist on the date of suit. It is true that in the instant case, no suit for recovery of possession was filed but only proceedings u/s 248 of the Code were initiated. Section 248 of the Code only provides an alternative forum for recovery of possession and therefore, proceedings under this provision will have the same effect as a suit in a regular Civil Court. Since a suit for recovery of possession is sufficient to interrupt the adverse possession, proceedings u/s 248 of the Code must have the same effect. In Mst. Sultan Jehan Begum and Others Vs. Gul Mohd. and Others, : 1972 MPLJ 969 a Division Bench of this Court considered in detail the law on the subject and clarified it as under :-.

"In our view the law is clearly this :

- (1) When a person entitled to possession does not bring a suit against the person in adverse possession within the time prescribed by law his right to possession is extinguished. From this it only follows that if the former begins suit against the latter within the prescribed period of limitation his right will not be extinguished.
- (2) If a decree for possession is passed in that suit in his favour he will be entitled to possession irrespective of the time spent in the suit and the execution and other proceedings.
- (3) The very institution of the suit arrests the period of adverse possession of the defendant and when a decree for possession is passed against the defendant the plaintiff's right to be put in possession relates back to the date of the suit.

(4) Section 28 of the Limitation Act merely declares when the right of the person out of possession is extinguished. It is not correct to say that section confers title on the person who has been in adverse possession for a certain period. There is no law which provides for "conferral of title" as such on a person who has been in adverse possession for whatever length of time.

(5) When it is said that the person in adverse possession "has perfected his title", it only means this. Since the person who had the right of possession but allowed his right to be extinguished by his inaction, he cannot obtain the possession from the person in adverse possession, and, as its necessary corollary the person who is in adverse possession against the other not in possession, on the well settled rule of law that possession of one person cannot be disturbed by any person except one who has a better title."

It must, therefore, be accepted that filing of the suit for recovery of possession, by itself, is sufficient to arrest the period of adverse possession and a decree for possession could be passed irrespective of the time taken in deciding the suit. If this principle is applied to the proceedings u/s 248 of the Code, it must be held that in case a person has not perfected his title by adverse possession before start of the proceedings, he cannot perfect his title during the pendency of the proceedings. Adverse possession of the person in possession must be deemed to have been arrested by initiation of these proceedings. This Court has, therefore, no hesitation in holding that adverse possession of the appellant was interrupted and arrested on 11-8-1972 when proceedings u/s 248 of the Code were initiated against him. Since he has not completed 30 years of possession before 11-8-1972, his possession even if adverse cannot confer any right or title on him.

Shri Damodar's case (supra) relied on by the learned counsel for the appellant is no doubt capable of supporting the submission that the adverse possession continues in spite of proceedings as long as it is not brought to end by delivery of possession and therefore, the title by adverse possession could be acquired even during the pendency of the suit for possession. This case is however contrary to the decision of this Court in Sultan Jehan Begum's case (supra). Indeed a Division Bench of Orissa High Court in Artabandhu Mohapatra and Others Vs. Bisweswar Bhutia and Others, reconsidered the matter and overruled Shri Damodar's case (supra) and approved the view of this Court in Sultan Jehan Begum's case (supra). Under the circumstances, the said case must be held to have been decided wrongly and therefore, not sufficient to provide support to the appellant. It is rather unfortunate that the learned counsel for the appellant did not investigate the matter fully and relied on an overruled decision.

The appeal fails and is dismissed with costs. Counsel's fee as per rules.