

(2012) 02 CHH CK 0048
In the Chhattisgarh High Court
Case No : First Appeal No. 90 of 2002

Uma Shankar Shukla and Others

APPELLANT

Vs

Smt. Lalita Bai

RESPONDENT

Date of Decision : 08-02-2012

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 11, 96

Citation : (2012) 1 CG.L.R.W. 372

Hon'ble Judges : Nawal Kishore Agarwal, J

Bench : Division Bench

Advocate : V.G. Tamaskar, for the Appellant; B.D. Guru, for the Respondent

Final Decision : Dismissed

Judgement

Nawal Kishore Agarwal, J.—The instant defendant's first appeal filed u/s 96 of the C.P.C. is directed against the judgment and decree dated 29th June, 2002 passed by the District Judge, Raipur in Civil Suit No. 72-A/99. Brief facts of the case are as under:

(i) Plaintiff filed a suit against the appellants for possession of the suit house No. 8/183, Chhotapara, Raipur, described in the plaint map, inter alia, claiming its title and legal possession on the basis of sale deed executed by her father—Sheoshankar Shukla dated 25-8-1977 and judgment of High Court in First Appeal No. 24/1982 dated 31-8-1988. According to plaintiff, appellants herein are in permissive possession of the suit house. She terminated the appellant's licence vide notice dated 29-11-1988, even thereafter, appellants have not handed over the vacant possession of the suit house, and therefore, the suit has been filed.

(ii) The appellants, by filing written statement, denied the plaint averments claiming ownership in them pursuant to Panch faisla dated 10-4-1974 (Annexure P-1) and after execution of sale deed dated 25-8-1977 in favour of plaintiff by Sheoshankar Shukla, by way of adverse possession.

(iii) The trial Court framed the following issues:

(iv) Parties led evidence. The trial Court finding inter alia, appellants are in permissive possession of suit property, decreed the plaintiff's suit. Hence, this first appeal.

2. Shri V.G. Tamaskar, learned counsel appearing for the appellants, vehemently argued: appellants are in exclusive and continuous possession of the suit house for a period of more than 20 years and they have perfected their title by way of adverse possession over the suit house; whether the nature of appellants' possession over suit house was permissive or adverse was not directly and substantially in issue in the earlier civil Suit No. 1-A/1978 filed by the appellants against the plaintiff and her father Sheoshankar Shukla, therefore, the finding of appellants' possession as permissive possession recorded by the High Court in the First Appeal No. 24/1982 arising out of Civil Suit No. 1/A/1978 does not operate as res judicata in the instant case. It was further contended, the Panch Faisla dated 10-4-1974 (Annexure P-1) though not admissible for want of registration as held by the High Court of Madhya Pradesh in First Appeal No. 24/1982 and affirmed by the Division Bench of High Court of M.P. in L.P.A. No. 83/1988, is admissible for collateral purposes, i.e., to prove nature and character of appellants' possession. The trial Court, ignoring all above facts, has erroneously decreed the suit and the judgment and decree deserves to be set aside.

3. On the other hand, Shri B.D. Guru, learned counsel appearing for respondent/plaintiff supported the judgment and decree impugned and submitted: the nature and character of appellants' possession was directly and substantially in issue in the previous suit and the finding of the High Court of M.P. regarding nature of appellants' possession as permissive possession operates as res judicata in the facts and circumstances of the case. After terminating the licence, the suit has been filed by the respondent/plaintiff for possession, which has been rightly decreed by the trial Court.

4. I have heard learned counsel for the parties, perused the judgment and decree impugned including record of the trial Court.

5. Before examining the judgment and decree impugned, it would be appropriate to narrate the facts in nutshell of the previous suit No. 1-A/1978 and its findings (as mentioned in judgment of High Court of Madhya Pradesh dated 31-8-1988 in first appeal No. 24/1982):

6. On 4-1-1978, the appellants filed a suit for declaration of title over the suit house on the allegations that in a private partition dated 10-4-1974 amongst appellants and their father Sheoshankar, appellants got the suit house as their share and since then they are owners and in possession.

After the said partition, their father Sheoshankar has no right, title or interest over the suit house. Their father Sheoshankar executed a sale deed on 25-8-1977 in favour of Lalita Bai without consideration. The sale deed is null and void and respondent/plaintiff did not acquire any right or title over it.

By filing written statement, respondent/plaintiff-Lalita Bai and her father Sheoshankar denied the plaint averments and pleaded, appellants reside in the suit house with their permission.

The trial Court in Civil Suit No. 1-A/1978 held that the suit house was allotted to appellant No. 1 in partition effected on 10-4-1974, and therefore, the sale deed executed by Sheoshankar Shukla in respondent/plaintiff's favour on 25-8-1977 is null and void and decreed the appellants' suit.

The first appeal No 24/1982 filed by the respondent plaintiff and her father Sheoshankar Shukla, was allowed by the learned Single Judge of High Court of M.P., finding inter alia, the suit house was separate property of Bhuribai and after her death, it remained a separate property in the hands of her son Sheoshankar and there is no plea much less proof that Sheoshankar voluntarily intended to blend the suit house or actually blended it with other joint family property. Ex. P. 1 (Panch Faisla), viewed as an award or as a partition, is inadmissible for want of registration as also failure to obtain a decree of civil Court on that basis. Therefore, the appellants herein did not acquire any title over the suit house from the said document. Thus, appellants have failed to prove their ownership of the suit house. Therefore, the appellants cannot challenge the sale deed in favour of Smt. Lalitabai Mishra. It was further held that there is ample evidence on record that the appellants are residing in the suit house with the leave and licence of the respondent/plaintiff and her father Sheoshankar.

After the judgment and decree of the High Court of M.P., the appellants herein preferred Letters Patent Appeal No. 83/1988.

The respondent/plaintiff gave notice dated 29-11-1988 to the appellants for vacating the suit house (Ex. P. 8).

The Division Bench of High Court of Madhya Pradesh on 17-9-1996 dismissed the L.P.A. filed by the appellants herein affirming the judgment and decree passed by the learned Single Judge in the First Appeal No. 24/1982.

7. In the above backdrop, the instant suit was filed by the plaintiff on 18-10-1989. Indisputably, the former suit No. 1-A/1978 was between the appellants and plaintiff and her father Sheoshankar Shukla. The main dispute was of ownership and possession, that is, whether the appellants were in possession of the suit property as its owners or their possession was permissive.

8. The learned Single Judge of the High Court of M.P. in First Appeal No. 24/1982 has held in para 16 of its judgment as under:

16. There is ample evidence on record that the plaintiffs are residing in the suit house with the leave and licence of the appellants.

9. Therefore, nature and character of the appellants' possession over the suit property was directly and substantially in issue in the former suit and its above finding would operate as res judicata in the instant suit.

10. The Supreme Court, in the case of Swamy Atmananda and Others Vs. Sri Ramakrishna Tapovanam and Others, has held in paragraphs 26 & 27 as under:

26. The object and purport of the principle of res judicata as contended in Section 11 of the CPC is to uphold the rule of conclusiveness of judgment, as to the points decided earlier of fact, or of law or of fact and law, in every subsequent suit between the same parties. Once the matter which was the subject-matter of lis stood determined by a competent court, no party thereafter can be permitted to reopen it in a subsequent litigation. Such a rule was brought into the statute-book with a view to bring the litigation to an end so that the other side may not be put to harassment.

27. The principle of res judicata envisages that a judgment of a court of concurrent jurisdiction directly upon a point would create a bar as regards a plea, between the same parties in some other matter in another court, where the said plea seeks to raise afresh the very point that was determined in the earlier judgment.

11. Moreover, initially it was not the case of the appellants that they perfected their title by way of adverse possession over the suit house. The above plea was taken by the appellants in the instant suit on 15-1-1998 by amending the written statement when the Division Bench of High Court of Madhya Pradesh has dismissed the L.P.A. No. 83/1988 vide judgment dated 17-9-1996.

12. The Supreme Court, in the case of L.N. Aswathama and Another Vs. P. Prakash, has held: to establish a claim of title by prescription, that is, adverse possession for 12 years or more, the possession of the claimant must be physical/actual, exclusive, open, uninterrupted, notorious and hostile to the true owner for a period exceeding twelve years. It is also well settled that long and continuous possession by itself would not constitute adverse possession if it was either permissive possession or possession without animus possidendi. The pleas based on title and adverse possession are mutually inconsistent and the latter does not begin to operate until the former is renounced and observed in para 17 as under:

17. The legal position is no doubt well settled to establish a claim of title by prescription, that is, adverse possession for 12 years or more, the possession of the claimant must be physical/actual, exclusive, open, uninterrupted, notorious and hostile to the true owner for a period exceeding twelve years. It is also well settled that long and continuous possession by itself would not constitute adverse possession if it was either permissive possession or possession without animus possidendi. The pleas based on title and adverse possession are mutually inconsistent and the latter does not begin to operate until the former is renounced. Unless the person possessing the property has the requisite animus to possess the property hostile to the title of the true owner, the period for prescription will not commence. (Vide P. Periasami (Dead) by Lrs. Vs. P. Periathambi and Others, Md. Mohammad Ali (Dead) by Lrs. Vs. Sri Jagadish

Kalita and Others, and P.T. Munichikkanna Reddy and Others Vs. Revamma and Others,

13. The Supreme Court, in the case of Gaya Parshad Dikshit Vs. Dr. Nirmal Chander and Another, has held: mere continuance of unauthorized possession by licensee even for more than 12 years after termination of licence does not enable the licensee to claim title by adverse possession. There must be some overt act on the part of the licensee indicating assertion of hostile title. It is possible that the licensor may not file an action for the purpose of recovering possession of the premises from the licensee after terminating his licence but that by itself cannot enable the licensee to claim title by adverse possession.

14. In the instant case, the plaintiff, after terminating the licence on 29-11-1988 (Ex. P. 8), has filed the suit for possession on 18-10-1989, i.e., well within a period of 12 years from the date of termination of appellants' licence.

15. The judgment of High Court of M.P. in the case of Bhanwarlal and others Vs. Hiralal, , relied upon by the learned counsel for the appellants, in the facts and circumstances of the case, is of no help to him.

16. In view of above, the learned Court below has rightly held: the finding of permissive possession in the former suit operates as res judicata between the parties in the instant suit; the appellants failed to prove their title by prescription, i.e., adverse possession for 12 years or more and has rightly decreed the plaintiffs suit.

17. For the reasons mentioned hereinabove, the appeal, being devoid of merit and substance, is liable to be and is hereby dismissed.

18. No order as to costs. A decree be drawn accordingly.