Dagadabai (Dead) By Lrs vs Abbas @ Gulab Rustum Pinjari on 18 April, 2017

Equivalent citations: AIRONLINE 2017 SC 602

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Bench: Abhay Manohar Sapre, R.K. Agrawal

Reportable

IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION
CIVIL APPEAL No.83 OF 2008

Dagadabai(Dead) by L.Rs. ….Appellant(s)

VERSUS

Abbas @ Gulab Rustum
Pinjari …Respondent(s)

J U D G M E N T

Abhay Manohar Sapre, J.

1) This appeal is filed by the legal representatives of the plaintiff against the final judgment and order dated 25.04.2007 passed by the High Court of Judicature of Bombay, Bench at Aurangabad in Second Appeal No.333 of 1990 whereby the Single Judge of the High Court while exercising jurisdiction under Section 100 of the Code of Civil Procedure, 1908 (hereinafter referred to as "the Code") reversed the concurrent findings of fact arrived at by the two Courts below and dismissed the suit of the plaintiff-appellant herein.

2) We need not burden the order by setting out the facts in detail except to the extent necessary to appreciate the short controversy involved in the appeal.

3) The appellants are the legal representatives of the original plaintiff whereas the respondent is the defendant.

4) The dispute in this appeal relates to an agricultural land bearing G.No. 505 (old Sy. No 71) admeasuring 5 Hectare 28 R. situated at village Vardi, Taluka Chopda, District Jalgao (MH) (hereinafter referred to as, "the suit land".

5) One Rustum s/o Nathu Pinjari - a Muslim by religion was the owner of the suit land. He died intestate leaving behind his only daughter- Dagadabai, w/o Shaikhlal Pinjari. She, as an heir, accordingly inherited the suit land exclusively on the death of her father- Rustum.

6) Dagadabai then filed a Civil Suit, out of which this appeal arises, against the respondent claiming therein a decree for possession in relation to the suit land. The plaintiff alleged that she is the owner of the suit land whereas the defendant is in unlawful possession of the suit land without any right, title and interest therein and, therefore, he is to be dispossessed from the suit land. The plaintiff, therefore, as mentioned above sought a decree for possession on the strength of her title against the respondent.

7) The respondent filed his written statement. He denied the appellant's claim. In the first place, claiming himself to be the adopted son of Late Rustum, the respondent contended that he became the owner of the suit land by inheritance as an adopted son of Rustum. In the second place, he denied the ownership of the plaintiff in the suit land and set up a plea of adverse possession to claim his ownership over the suit land. The respondent contended that he has been in long and continuous possession of the suit land for more than 12 years prior to the date of filing of the suit on the basis of mutation entries made in the revenue record in relation to the suit land. It was alleged that he acquired title over the suit land on the strength of his continuous possession which, according to him, was adverse. It is essentially on these two defenses, the respondent denied the plaintiff's case and defended his possession over the suit land.

8) The Trial Court framed issues and the parties adduced evidence. The Trial Court, by judgment/decree dated 29.08.1983 in Civil Suit No. 108 of 1981 decreed the appellant's suit. It was held that the appellant (plaintiff) is the owner of the suit land; defendant failed to prove his adoption; there is no concept of adoption in Muslims and hence there could be no valid adoption of the respondent by Rustam and nor such adoption is recognized in Mohammadan Law; the defendant has failed to prove his title over the suit land on the basis of his alleged possession over the suit land; the defendant is, therefore, in illegal and unauthorized possession of the suit land for want of any right, title and interest and hence liable to be dispossessed from the suit land.

9) Felt aggrieved, the defendant filed first appeal before the Additional District Judge, Amalner. Vide order dated 18.09.1990 in Civil Appeal No.43 of 1989. The first appellate Court affirmed the judgment and decree of the Trial Court and dismissed the appeal.

10) Felt aggrieved, the defendant carried the matter in Second Appeal before the High Court. The High Court admitted the appeal on the following substantial question of law:

> "Whether in the facts and circumstances of the present case, the defendant(appellant herein) perfected his title to the suit land on account of adverse possession and the alternative plea ought to have been allowed by the Courts below, particularly, when there were disputes regarding the mutation proceedings after the death of Rustum Pinjari and the intention of the defendant to get his name mutated was writ large to show his hostile attitude."

11) By impugned order, the learned Single Judge of the High Court allowed the appeal and while setting aside the judgment/decree of the two courts below dismissed the suit giving rise to filing of this appeal by special leave by the plaintiff before this Court. The leave was granted.

12) Heard Mr. Anshuman Animesh, learned counsel for the appellants and Mr. Nishant Ramakantrao Katneshwarkar, learned counsel for the respondent.

13) Having heard the learned counsel for the parties and on perusal of the record of the case, we are inclined to allow the appeal and while setting aside of the impugned order restore that of the Trial Court and the first Appellate Court.

14) In our considered opinion, the High Court erred in admitting the second appeal in the first instance and then further erred in allowing it by answering the question framed in defendant's favour. This we say for more than one reason as detailed below.

15) First, when the Trial Court and the First Appellate Court concurrently decreed the plaintiff's suit by recording all the findings of facts against the defendant enumerated above, then, in our opinion, such findings of facts were binding on the High Court.

16) It is also for additional reasons that the findings were neither against the pleadings nor evidence and nor against any provisions of law.

They were also not perverse on facts to the extent that no average judicial person could ever record. In this view of the matter, we are of the opinion that the second appeal did not involve any question of law much less substantial question of law within the meaning of Section 100 of the Code to enable the High Court to admit the appeal on any such question much less answer it in favour of the defendant.

17) Second, the question which was formulated by the High Court did not involve any question of law much less substantial question of law within the meaning of Section 100 of the Code requiring interference in the first Appellate Court's judgment.

18) Third, the plea of adverse possession being essentially a plea based on facts, it was required to be proved by the party raising it on the basis of proper pleadings and evidence. The burden to prove such plea was, therefore, on the defendant who had raised it. It was, therefore, necessary for him to have discharged the burden that laid on him in accordance with law.

19) When both the Courts below held and, in our view, rightly that the defendant has failed to prove the plea of adverse possession in relation to the suit land then such concurrent findings of fact was unimpeachable and binding on the High Court.

20) Fourth, the High Court erred fundamentally in observing in Para 7 that, "it was not necessary for him (defendant) to first admit the ownership of the plaintiff before raising such a plea".

21) In our considered opinion, these observations of the High Court are against the law of adverse possession. It is a settled principle of law of adverse possession that the person, who claims title over the property on the strength of adverse possession and thereby wants the Court to divest the true owner of his ownership rights over such property, is required to prove his case only against the true owner of the property. It is equally well-settled that such person must necessarily first admit the ownership of the true owner over the property to the knowledge of the true owner and secondly, the true owner has to be made a party to the suit to enable the Court to decide the plea of adverse possession between the two rival claimants.

22) It is only thereafter and subject to proving other material conditions with the aid of adequate evidence on the issue of actual, peaceful, and uninterrupted continuous possession of the person over the suit property for more than 12 years to the exclusion of true owner with the element of hostility in asserting the rights of ownership to the knowledge of the true owner, a case of adverse possession can be held to be made out which, in turn, results in depriving the true owner of his ownership rights in the property and vests ownership rights of the property in the person who claims it.

23) In this case, we find that the defendant did not admit the plaintiff's ownership over the suit land and, therefore, the issue of adverse possession, in our opinion, could not have been tried successfully at the instance of the defendant as against the plaintiff. That apart, the defendant having claimed the ownership over the suit land by inheritance as an adopted son of Rustum and having failed to prove this ground, he was not entitled to claim the title by adverse possession against the plaintiff.

24) In the light of this settled legal position, the plea taken by the defendant about the adoption for proving his ownership over the suit land as an heir of Rustum was rightly held against him.

25) Fifth, the defendant having failed to prove that he was the adopted son of Rustum, had no option but to suffer the decree of dispossession from the suit land. It is a settled principle of Mohammadan Law that Mohammadan Law does not recognize adoption (see-Section 347 of Mulla Principles of Mahomedan Law, 20th Edition page 430).

26) It is for the aforementioned reasons, the impugned judgment is held legally unsustainable and hence deserves to be set aside.

27) The appeal thus succeeds and is accordingly allowed. Impugned judgment is set aside and that of the Trial Court and the first Appellate Court is restored.

.....J. [R.K. AGRAWAL] .....J. [ABHAY MANOHAR SAPRE] New Delhi;

April 18, 2017
