Thakur Kishan Singh vs Arvind Kumar on 7 September, 1994

Equivalent citations: 1995 AIR 73, 1994 SCC (6) 591, AIR 1995 SUPREME COURT 73, 1994 AIR SCW 4082, (1994) 2 PUN LR 761, 1995 ( ) JABLJ 1, 1995 (1) CIVILCOURTC 640, 1994 (56) DLT 250, (1994) 2 CURLJ(CCR) 619, (1994) 2 LANDLR 471, 1994 REVLR 2 212, (1994) 2 LJR 452, (1997) 10 JT 611 (SC), 1994 (2) UJ (SC) 608, 1998 (1) CTC 241, 1998 HRR 57, 1995 (1) MAH LR 347, 1995 (2) LANDLR 85, 1995 (1) IJR 169, 1994 (3) SCC(SUPP) 406

Author: R.M. Sahai

Bench: R.M. Sahai, N.P Singh

PETITIONER:
THAKUR KISHAN SINGH

Vs.

RESPONDENT:
ARVIND KUMAR

DATE OF JUDGMENT07/09/1994

BENCH:
SAHAI, R.M. (J)
BENCH:
SAHAI, R.M. (J)
SINGH N.P. (J)

CITATION:
1995 AIR 73 1994 SCC (6) 591
1994 SCALE (4)176

ACT:

HEADNOTE:

JUDGMENT:

ORDER

1. In this defendant's appeal directed against the judgment and order of the High Court of Madhya Pradesh, the question that arises for consideration is if the High Court committed any error of law in upholding the order of the appellate court decreeing the suit of the plaintiff-respondent on finding that the defendant-appellant had not acquired any rights by adverse possession.

2.The suit was filed for possession in respect of an area of approximately 0.56 acres of Khasra No. 526 located in Khurai Tehsil, District Sagar. It was claimed that the land in dispute was leased to the plaintiff by the lambardar and the deed executed on 5-12-1949 which was registered on 3-4-1950. It was alleged that the appellant was an agent of the respondent who was permitted to set up a brick-kiln in the area in dispute in the year 1960-61. The appellant, however, who had a house in the adjoining Khasra No. 527 trespassed initially on 0.14 acre and made further encroachments on 0.42 acre. The claim was contested by the appellant and it was claimed that the deed having been registered on 3-4- 1950, it was void under Section 6 of the Madhya Pradesh Abolition of Proprietary Rights Act, 1950 (in brief 'the Act') as the land had vested in the State on 31-3-1950. In the alternative, the plea of adverse possession was raised. The trial court did not find any merit in the claim of the appellant and held that even though the lease deed was registered after 30-3-1950 but it having been executed on 5- 12-1949, it would be deemed to have been registered on 5-12- 1949 and, therefore, the provisions of Section 6 of the Act did not stand in the way of the respondent acquiring the title in land in dispute. But the suit was dismissed on the finding that the appellant had acquired rights by adverse possession. In appeal the order was set aside and the suit was decreed. The appellate court affirmed the finding on title. And set aside the finding on adverse possession. The High Court did not interfere in second appeal.

3. The findings recorded by the High Court and the trial court have been assailed by Shri Sen, the learned Senior Counsel appearing for the appellant, and it is claimed that the lease deed having been registered after the material date, it could not confer any title on the respondent as the right title-ininterest of the respondent's predecessor already stood vested in the State prior to registration of the lease deed. The argument does not appear to be sound. Section 47 of the Registration Act provides that a registered document shall operate from the time it would have commenced to operate if no registration thereof had been required or made and not from the time of its registration. It is well established that a document so long it is not registered is not valid yet once it is registered it takes effect from the date of its execution. (See Ram Saran Lall v. Mst Domini Kuer1 and Nanda Ballabh Gururani v. Smt Maqbool Begum2.) Since, admittedly, the lease deed was executed on 5-12-1949, the plaintiff after registration of it on 3-4-1950 became owner by operation of law on the date when the deed was executed. Therefore, the land did not vest in the State. And the courts below did not commit any error in negativing the claim of appellant.

4.It is then urged that the lease was not signed by the respondent and it being a unilateral act of the lambardar, was contrary to the provisions of the Transfer of Property Act. Since under Section 117 of the Transfer of Property Act the agricultural leases are excluded from operation of the Act, the provisions of Section 107 did not apply to it. Nor is there any merit in the submission that even if Transfer of Property Act did not apply the principles contained therein would be applicable to agricultural lease. In view of a specific provision in the Transfer of Property Act excluding agricultural leases from the operation of the Act, and the Tenancy Act of the State having provided

for execution of the lease which does not contain any provision like Section 107 of the Transfer of Property Act, the principles of Section 107 cannot be extended to it.

I AIR 1961 SC 1747: (1962) 2 SCR 474
2 (1980) 3 SCC 346: 1980 UJ (SC) 597

5.As regards adverse possession, it was not disputed even by the trial court that the appellant entered into possession over the land in dispute under a licence from the respondent for purposes of brick-kiln. The possession thus initially being permissive, the burden was heavy on the appellant to establish that it became adverse. A possession of a co-owner or of a licensee or of an agent or a permissive possession to become adverse must be established by cogent and convincing evidence to show hostile animus and possession adverse to the knowledge of real owner. Mere possession for howsoever length of time does not result in converting the permissive possession into adverse possession. Apart from it, the appellate court has gone into detail and after considering the evidence on record found it as a fact that the possession of the appellant was not adverse. The learned counsel, despite strenuous argument, could not demolish the finding of adverse possession. Attempt was made to rely on the evidence led on behalf of the parties and the evidence of the Commissioner who prepared the map. We are afraid that such an exercise is not permissible even in second appeal, what to say of the jurisdiction exercised by this Court under Article 136 of the Constitution. Further, we do not find that the appellant has suffered any injustice which requires to be remedied by this Court.

6. In the result, the appeal fails and is dismissed. But there shall be no order as to costs.
