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BRIJESH KUMAR AND ANOTHER

v.

SHARDABAI (DEAD) BY LRS. AND OTHERS

(Civil Appeal No.1090 of 2008)

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OCTOBER 01, 2019

**[NAVIN SINHA AND INDIRA BANERJEE, JJ.]**

*Adverse Possession: Suit for adverse possession filed by plaintiff-respondent in 1990 on the ground of possession of lands for 30 years prior to filing of the suit relying on the Khasra entries for 1960-1961 as the foundation of the claim – Case of appellants was that the suit lands was sold by the original owners to ‘UD’ by way of sale deed dated 11.10.1972 which was subsequently purchased by appellants; that Khasra entries for 1969-1973 showed ‘UD’ in possession of the lands and that in 1974-1978, the Khasra entries again showed ‘UD’ as the landlord; that Khasra entries for 1960-1961 and 1974-1978 showing possession of the plaintiff were interpolations in red color ink while the entries in name of ‘UD’ after purchase were made in blue color ink – Held: Plaintiff-respondents claimed adverse possession from 1960-1961 – If the plaintiff’s possession itself originated in 1960-1961, it is difficult to appreciate how the Khasra entries in its name came to be made in the very same year – s.115 of the MP Land Revenue Code provides that if the Tehsildar finds that a wrong or incorrect entry has been made in the land records prepared under s.114 by an officer subordinate to him, he shall direct necessary changes to be made therein in red ink after making such enquiry from the person concerned – Plaintiff led no evidence whatsoever when the application for correction in the khasra entry was made and that the original land owner was heard before the corrections were made – Khasra entries in red ink, claimed by the plaintiff in proof of possession remained unexplained and doubtful – After purchase of the lands by ‘UD’, her name was entered in the Khasra as landlord during 1969-1973 along with possession as also during 1974-1978 – Once it is concluded that the red ink entries regarding corrections in the Khasra showing possession of the plaintiff were suspicious, based on fraud and forgery, the recordings in the name of the*

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*plaintiff were irrelevant – The name of ‘UD’ was also shown in the Khasra entries for 1984-1989 in blue ink – Therefore, conclusion of the first appellate court with regard to possession of the lands being with ‘UD’ after purchase considered along with the report of the court commissioner, and who subsequently sold it to the appellants on basis of a registered sale deed, called for no interference – Also, the suit land was sold to ‘UD’ before the expiry of 12 years on 11.10.1972 and she was put in possession and, therefore, plaintiff’s claim of uninterrupted possession for 12 years was unsustainable as completely devoid of substance – Plaintiff failed to establish peaceful, open and continuous possession demonstrating a wrongful ouster of the rightful owner – The onus lay on the plaintiff to establish when and how he came into possession, the nature of his possession, the factum of possession known and hostile to the other parties, continuous possession over 12 years which was open and undisturbed – Plaintiff failed to discharge the onus – The order of the High Court is held to be unsustainable and is set aside.*

#### **Allowing the appeals, the Court**

**HELD: 1.** The plaintiff in a suit filed in 1990, asserted possession of the lands for past 30 years prior to the filing of the suit, relying on the Khasra entries for 1960-1961. The nature and origin of the claim for possession was absent in the pleadings. In his evidence, the respondent deposed that since the original land owner had failed to return his bullocks and agricultural equipments borrowed in 1958-1959, he had taken possession of the lands in 1960-1961. The original plaintiff expired on 26.05.1994. The respondents, who are his legal heirs, then filed an application on 21.04.1995 to amend the pleadings to bring it in accord with the evidence. If the plaintiff’s possession itself originated in 1960-1961 it is difficult to appreciate how the Khasra entries in its name came to be made in the very same year. Section 115 of the Code provides that if the Tehsildar finds that a wrong or incorrect entry has been made in the land records prepared under Section 114 by an officer subordinate to him, he shall direct necessary changes to be made therein in red ink after making such enquiry from the person concerned as he may deem fit after due notice. The plaintiff led no evidence whatsoever

- A when the application for correction in the khasra entry was made and that the original land owner was heard before the corrections were made. The entries in the name of the purchaser pursuant to the sale deed dated 11.10.1972 are in blue ink. The corrections in the khasra entry, the sheet anchor of the respondents claim therefore remains unexplained and doubtful. At this stage, it is
- B crucial to notice the findings of the appellate court that the son and nephew of the Plaintiff were working as clerks in the collectorate. They were proceeded against departmentally and in a criminal prosecution regarding the corrections made in red ink in the Khasra entries incorporating the name of the plaintiff
- C as being forged and fictitious. The fact that they may have been acquitted in the criminal prosecution on a benefit of doubt, or that exoneration may have been ordered in the departmental proceeding based on procedural irregularity, are not considered relevant as findings in a civil suit are to be based on preponderance of probabilities considering the nature of evidence available.
- D [Paras 6, 7] [970-E-H; 971-A-D]

2. The conclusion of the first appellate court with regard to possession of the lands being with 'UD' after purchase considered along with the report of the court commissioner, and who subsequently sold it to the appellants on basis of a registered
- E sale deed, called for no interference. The finding that the appellants had admitted the possession of the plaintiff-respondent on account of the failure of the original land owners to return his bullocks and agricultural equipments is held to be perverse. The plaintiff claimed adverse possession from 1960-1961. The lands
- F were sold to 'UD' before the expiry of 12 years on 11.10.1972 and she was put in possession. The plaintiff's claim of uninterrupted possession for twelve years was therefore unsustainable as completely devoid of substance. [Paras 9, 10] [971-F-H]

- G 3. Adverse possession is hostile possession by assertion of a hostile title in denial of the title of the true owner. The respondent had failed to establish peaceful, open and continuous possession demonstrating a wrongful ouster of the rightful owner. It thus involved question of facts and law. The onus lay on the
- H respondent to establish when and how he came into possession,

the nature of his possession, the factum of possession known and hostile to the other parties, continuous possession over 12 years which was open and undisturbed. The respondent-plaintiff failed to discharge the onus. The order of the High Court is held to be unsustainable and is set aside. The order of the first appellate court is restored and the suit is dismissed. [Paras 13, 14] [972-E-G; 973-C]

*M. Venkatesh & Ors. v. Bangalore Development Authority & Ors.* (2015) 17 SCC 1 : [2015] 11 SCR 454 ; *Chhatti Konati Rao & Ors. v. Palle Venkata Subba Rao* (2010) 14 SCC 316 : [2010] 15 SCR 923 – relied on.

*Dagabai Fakirmahomed v. Sakharam Gavaji & Ors.*, AIR 1948 BOM 149 ; *Wontakal Yalpi Chenabasavana Gowd v. Rao Bahadur Y. Mahabaleshwarappa & Ors.* AIR 1954 SC 337 : [1955] SCR 131 ; *M.V.S. Manikayala Rao v. M. Narasimhaswami & Ors.*, AIR 1966 SC 470 : [1966] SCR 628 – referred to.

#### Case Law Reference

AIR 1948 BOM 149	referred to	Para 5
[1955] SCR 131	referred to	Para 5
[1966] SCR 628	referred to	Para 5
[2015] 11 SCR 454	relied on	Para 13
[2010] 15 SCR 923	relied on	Para 13

CIVIL APPELLATE JURISDICTION: Civil Appeal No.1090 of 2008

From the final Judgment and final Order dated 12.01.2006 of the High Court of Madhya Pradesh, Jabalpur Bench at Gwalior in Civil Second Appeal No.657 of 1997

With

Civil Appeal No.1091 of 2008

A Manoj Prasad, N.K. Jain, Sr. Advs., Basava Prabhos P., Prakash Kumar Singh, Ashutosh Dubey, Vinod Mehta, Chinmaya Deshpande, Vikas K. Singh, Siddharth, T. N. Singh, Advs. for the Appellants.

Puneet Jain, Harsh Jain, Harshit Khanduja, Ms. Pratibha Jain, Ms.Prachi Mishra, Rahul Kaushik, Chaitanya, Arjun Garg, Advs. for the Respondents.

The Judgment of the Court was delivered by

**NAVIN SINHA, J.**

1. The appellants are aggrieved by the order allowing the plaintiff's second appeal. The High Court reversed the order of the First Appellate Court and restored the order of the Trial Court decreeing the plaintiff's suit for adverse possession.

2. The suit lands comprise of 4 out of 6 Biswas of land situated in Survey No. 493 of Patwari Halka No.76 at Village-Purani Chhabani, Guna. The Original land owners were Mool Chand and Kashi Ram. The suit lands were sold to defendant no.9 Urmila Devi by registered sale deed dated 11.10.1972. By two separate registered sale deeds dated 22.08.1989 she sold an area of 3414.4 square feet each to the appellants in both the appeals. Possession was handed over and constructions raised by them. The plaintiff Matadin then filed Suit No. 45-A/1995 on 28.08.1990 claiming adverse possession over the suit lands relying on Khasra entries for 1960-1961. The plaintiff also sought a declaration of nullity against the sale deeds executed by the original land owners and subsequent thereto. The sole plaintiff Matadin expired on 26.05.1994. An amendment application was subsequently filed by his legal heirs on 21.04.1995 contending that Matadin had come in possession of the suit lands after the original land owners Moolchand and Kashi Ram had failed to return his bullocks and agricultural implements. The Civil Judge Class I, Guna decreed the suit holding that the plaintiff had perfected his title by continuous, hostile and uninterrupted possession for more than 12 years adverse to that of the original land owners, and that the sale deeds were a nullity. Regular Civil Appeal 19-A of 1996 preferred by the appellants was allowed holding that the Trial court had overlooked documentary evidence on record to arrive at an erroneous conclusion of adverse possession on basis of oral evidence only. The second appeal by the plaintiff was subsequently allowed by the impugned order holding

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that the conclusions of the first appellate court were erroneous, restoring the order decreeing the suit. Thus, the present appeal. A

3. Shri Manoj Prasad, learned senior counsel appearing for the appellants, submitted that the findings of facts by the first appellate court are final. The High Court in a second appeal ought not to have reappraised the evidence to arrive at a different conclusion, without any finding of perversity. The plaintiff never acquired title by adverse possession as the original owner sold the lands to Urmila Devi before expiry of twelve years. The purchaser had come into possession, raised certain constructions, and resold part of the lands to the appellants who consequently came into possession also. The original owners had sought possession from the plaintiff in 1963-1964 also which was declined. The plaintiff never established the origin of his possession. The amendment of the plaint was an afterthought. The Khasra entries for 1969-1973 show Urmila Devi in possession of the lands. In 1974-1978, the Khasra entries again show Urmila Devi as the landlord. The Khasra entries for 1960-1961 and 1974-1978 showing possession of the plaintiff were interpolations in red color ink, while the entries in the name of Urmila Devi after purchase were made in blue color ink. Hitesh Kumar and Hemraj, the son and nephew respectively, of the plaintiff were clerks in the collectorate. They were suspended for making false entries, followed by departmental enquiry and criminal prosecution. The Court Commissioner had also reported possession having been transferred pursuant to the sale deed. The plaintiff had filed an objection after which the Court Commissioner had again inspected the disputed land and filed further report in favour of the appellants. All these have not at all been considered by the High Court. Reliance was placed on *M. Venkatesh & Ors. vs. Bangalore Development Authority & Ors.*, (2015) 17 SCC 1, to contend that the adverse possession could be proved only when possession was peaceful, open, continuous and hostile. B C D E F

4. Shri N.K. Jain, learned senior counsel, adopted the same arguments on behalf of the appellants in Civil Appeal No. 1091 of 2008.

5. Shri Puneet Jain, learned counsel for the respondents, submitted that the plea of adverse possession was taken in the original plaint. No new fact was sought to be introduced by way of amendment. Relying on Section 117 of the Madhya Pradesh Land Revenue Code (hereinafter G

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A referred to as the “Code”), it was submitted that there is a presumption with regard to the correctness of the Khasra entries regarding possession of the plaintiff. It therefore establishes the foundation of a claim for adverse possession. At no point of time, the original land owner filed any application for correction under Section 116 of the Code raising any dispute. The finding of the appellate court with regard to manipulations in the Khasra entries, no more survive after their exoneration in the departmental proceedings and acquittal in the criminal case. The plaintiff was in continuous uninterrupted possession, for over 12 years, hostile to the original land owner. The plaintiff was never dispossessed in 1972 after any sale. Mere execution of a sale deed does not tantamount to dispossession. The claim for possession stated to have been reiterated in 1963-1964 by the original land owner confirms the continuous uninterrupted hostile possession of the plaintiff. Reliance was placed on *Dagabai Fakirmahomed vs. Sakharam Gavaji & Ors.*, AIR 1948 BOM 149, *Wontakal Yalpi Chenabasavana Gowd vs. Rao Bahadur Y. Mahabaleshwarappa & Ors.*, AIR 1954 SC 337, *M.V.S. Manikayala Rao vs. M. Narasimhaswami & Ors.*, AIR 1966 SC 470, to submit that the onus lay on the defendants to establish that the possession of the plaintiff was interrupted at any point of time, to defeat the claim for adverse possession and which they failed to do.

6. We have considered the submissions on behalf of the parties. The plaintiff in a suit filed in 1990, asserted possession of the lands for past 30 years prior to the filing of the suit, relying on the Khasra entries for 1960-1961 as the foundation of the claim to adverse possession. The nature and origin of the claim for possession was absent in the pleadings. In his evidence the respondent deposed that since the original land owner had failed to return his bullocks and agricultural equipments borrowed in 1958-1959, he had taken possession of the lands in 1960-1961. The original plaintiff expired on 26.05.1994. The respondents, who are his legal heirs, then filed an application on 21.04.1995 to amend the pleadings to bring it in accord with the evidence. If the plaintiff’s possession itself originated in 1960-1961 it is difficult to appreciate how the Khasra entries in its name came to be made in the very same year. Section 115 of the Code provides that if the Tehsildar finds that a wrong or incorrect entry has been made in the land records prepared under Section 114 by an officer subordinate to him, he shall direct necessary changes to be made therein in red ink after making such enquiry from the person concerned as he may deem fit after due notice. The plaintiff led no evidence whatsoever



when the application for correction in the khasra entry was made and that the original land owner was heard before the corrections were made. The entries in the name of the purchaser pursuant to the sale deed dated 11.10.1972 are in blue ink. The corrections in the khasra entry, the sheet anchor of the respondents claim therefore remains unexplained and doubtful.

7. At this stage, it is crucial to notice the findings of the appellate court that the son and nephew of the Plaintiff-Matadin were working as clerks in the collectorate. They were proceeded against departmentally and in a criminal prosecution regarding the corrections made in red ink in the Khasra entries incorporating the name of the plaintiff as being forged and fictitious. The fact that they may have been acquitted in the criminal prosecution on a benefit of doubt, or that exoneration may have been ordered in the departmental proceeding based on procedural irregularity, are not considered relevant as findings in a civil suit are to be based on preponderance of probabilities considering the nature of evidence available.

8. After purchase of the lands by Urmila Devi, her name was entered in the Khasra as landlord during 1969-1973 along with possession as also during 1974-1978. Once it is concluded that the red ink entries regarding corrections in the Khasra showing possession of the plaintiff are suspicious, based on fraud and forgery, the recordings in the name of the plaintiff are irrelevant. The name of Urmila Devi has also been shown in the Khasra entries for 1984-89 in blue ink.

9. The conclusion of the first appellate court with regard to possession of the lands being with Urmila Devi after purchase considered along with the report of the court commissioner, and who subsequently sold it to the appellants on basis of a registered sale deed, in our opinion called for no interference. The finding that the appellants had admitted the possession of the plaintiff-respondent on account of the failure of the original land owners to return his bullocks and agricultural equipments is held to be perverse.

10. The plaintiff claimed adverse possession from 1960-1961. The lands were sold to Urmila Devi before the expiry of 12 years on 11.10.1972 and she was put in possession. The plaintiff's claim of uninterrupted possession for twelve years was therefore unsustainable as completely devoid of substance.



A 11. The High Court in second appeal arrived at a perverse finding on the same evidence that Urmila Devi never acquired possession and thus the plaintiff had established adverse possession after twelve years. The report of the court commissioner also finds no discussion by the High Court. It also failed to deal with the suspicious Khasra entries in red ink, claimed by the plaintiff in proof of possession. Likewise, it did not consider that the origin of the claim of the plaintiff itself never stood established in absence of necessary pleadings which was sought to be introduced after the plaintiff's evidence, as an afterthought.

B 12. At this juncture it is necessary to notice that in Civil Suit No. 97-A of 1992 filed by the appellants in Civil Appeal No.1091 of 2008, and who had purchased the lands adjacent to the suit lands from Urmila Devi, against Hemraj, the nephew of plaintiff-Matadin, alleging encroachment of the lands purchased by him, the suit was decreed, and the appeals preferred by Hemraj was dismissed up to this court. The conclusion of the High court that there was no evidence with regard to the dispossession of the respondent-plaintiff is clearly unsustainable as he never came into possession in view of the clear finding with regard to fraud and forgery in the Khasra entries.

C 13. Adverse possession is hostile possession by assertion of a hostile title in denial of the title of the true owner as held in *M. Venkatesh* (supra). The respondent had failed to establish peaceful, open and continuous possession demonstrating a wrongful ouster of the rightful owner. It thus involved question of facts and law. The onus lay on the respondent to establish when and how he came into possession, the nature of his possession, the factum of possession known and hostile to the other parties, continuous possession over 12 years which was open and undisturbed. The respondent was seeking to deny the rights of the true owner. The onus therefore lay upon the respondent to establish possession as a fact coupled with that it was open, hostile and continuous to the knowledge of the true owner. The respondent-plaintiff failed to discharge the onus. Reference may also be made to *Chatti Konati Rao & Ors. vs. Palle Venkata Subba Rao*, (2010) 14 SCC 316, on adverse possession observing as follows :

D "15. *Animus possidendi* as is well known is a requisite ingredient of adverse possession. Mere possession does not ripen into possessory title until the possessor holds the property adverse to the title of the true owner for the said purpose. The person who

claims adverse possession is required to establish the date on which he came in possession, nature of possession, the factum of possession, knowledge to the true owner, duration of possession and that possession was open and undisturbed. A person pleading adverse possession has no equities in his favour as he is trying to defeat the rights of the true owner and, hence, it is for him to clearly plead and establish all facts necessary to establish adverse possession. The courts always take unkind view towards statutes of limitation overriding property rights. The plea of adverse possession is not a pure question of law but a blended one of fact and law.”

14. In view of our conclusions, the precedents cited by the respondents do not merit consideration. The order of the High Court is held to be unsustainable and is set aside. The order of the first appellate court dated 08.08.1997 is restored and the suit is dismissed.

15. The appeals are allowed.