Mata Badal Singh And Ors. vs Hanwant Prasad Singh And Ors. on 24 March, 1950

Equivalent citations: AIR1952ALL177, AIR 1952 ALLAHABAD 177

JUDGMENT

Brij Mohan Lal, J.

1. This is an appeal by the defendants against a decree of the learned civil Judge of Partabgarh who confirmed a decree of the learned Additional Munsif. The latter had decreed the claim of the plaintiffs respondents in part.

2. Village Phulpur Mauri, in the district of Partabgarh, forms part of taluqa Shamshpur and is owned by Lal Baijnath Singh. The latter has created a trust of his, property, including village Phulpur Hauri, and has constituted the respondents, as trustees.

3. In this village stand three groves bearing Nos. 1035A, 1025B and 1029. Debi Bakhsh Singh, who died about 30 years ago, was the grove-holder in respect of them. In 1938, the appellants took possession of these groves and cut a mango tree from grove No. 1029. Thereupon the respondents instituted in 1941 the suit which has given rise to this second appeal. They asked for a decree for possession over the said groves and for a sum of Rs. 65 as compensation. It was alleged by them that Debi Bakhsh Singh had died 19 years prior to the suit, without leaving any heir, that the groves in a question had lapsed to the taluqdar, that the latter had entered into possession, remained in peaceful and undisturbed possession thereof till he was dispossessed by the appellants. It was alleged that he had become owner, and in the alternative it was suggested that he had acquired title by adverse possession.

4. The appellants denied that Debi Bakhsh Singh had died heirless. They set up a pedigree in which they claimed to be his heirs. They denied the taluqdar's possession and pleaded limitation.

5. By way of reply, the respondents set up another pedigree which was, according to them, the pedigree of the appellants' family. Their object was to show that the appellants' family was not connected with that of Debi Bakheh Singh.

6. For reasons which need not be mentioned, and which have no bearing on the point in dispute, the trial Court dismissed the respondents claim in respect of plot No. 1026A. This portion of the decree has become final and no reference need therefore be now made to plot No. 1025A.

7. As regards the remaining two plots, the respondent did not press their plea of adverse possession and the appellants did not press their plea of limitation. The trial Court disbelieved both pedigrees

and held that the appellants were not Debi Bakhsh Singh's heirs. According to its finding Debi Bakhsh Singh had died 30 years, and not 19 years, prior to the suit. Further it held that ever since his death, the taluqdar had been in peaceful and undisturbed possession of the two groves, and his possession was disturbed in 1938 when the appellants dispossessed him. It held that the grove had "escheated" to the taluqdar. The use of the word "escheated" was unhappy. Escheat takes place in favour of the State only. What the Court obviously meant was that the groves had after the death of Debi Bakheh Singh, lapsed to the holder and had become his property. In the result the suit was decreed for possession of the two groves bearing Nos. 1025B and 1029 and for recovery of Rs. 40 as compensation.

8. The appellants went in appeal but the decree of the trial Court was, as already stated, upheld by the learned Civil Judge, Hence this appeal.

9. The first point argued by the learned counsel for the appellants is that the mere fact that the appellants are not the heirs of Debi Bakbsh Singh is not sufficient to justify a finding that Debi Bakhsh Singh died heirless and that the groves lapsed to the taluqdar. This contention is well founded. A person who comes with the allegation that the last owner died heirless must prove that he left no possible kind of heir, namely, neither sapinda, nor samanodakas nor bandhus. No evidence has been adduced on that point. In the circumstances the respondents have failed to prove that Debi Bakhsh Singh died heir-less, although it may be stated that the appellants are not his heirs. It will, therefore, follow that the taluqdar cannot claim that the groves lapsed to him.

10. It is true that he has been in possession ever since the death of the last owner. But since he has abandoned his plea of being in adverse possession, he cannot say that the title of the rightful heir, whoever he might be, has been extinguished. It is also possible to argue that if there was in fact no heir left, the groves might have escheated to the State, and against the State 60 years adverse possession is needed. In any case it is clear that by the mere fact of having taken possession of the grove after the death of the last grove-holder, and of having remained in peaceful and undisturbed possession thereof for a period longer than 12 years, the taluqdar has not become the owner of the grove.

11. There is, however, another aspect of the case and that is that a person who is in peaceful and undisturbed possession of any property, though without title, has the right to continue in possession until he is evicted by the person who is the real owner of the property. His peaceful possession is by itself a title which is good against the whole world except the rightful owner. This view finds support from the pronouncement of their Lordships of the Privy Council in the case of Ismail Ariff v. Mahomed Ghous, 20 Cal. 834 (p. c.). In that case the plaintiff had purchased some property from the heirs of the original owner. It was found that the original owner had made a waqf of the said property and had thus parted with its ownership in favour of Almighty God. His heirs therefore had not inherited anything from him and could not convey any title to the plaintiff. The plaintiff was therefore a person without title. His possession was disturbed by persons who claimed to be the mutwallis. But it was found that the persons who had disturbed his possession were not in fact mutwallis. Thus the position was that a person who had been in peaceful and undisturbed possession, but who had no title in himself was disturbed by persons who also had no title and were

therefore trespassers. Their Lordships held that as against such persons the person in possession had possessory title and he could enforce it. Exactly the same is the situation in the present case. Here also the taluqdar has been in peaceful and undisturbed possession and the appellants are persona without title. They are mere trespassers. They had no right to dispossess the respondents. In the circumstances the respondents had a legitimate right to ask the Court to pat them in possession.

12. For the above reasons, the decision appealed against is correct though it is founded on different grounds. The appeal fails and is hereby dismissed with costs.

Chandiramani, J.

13. I agree.