State Of Rajasthan vs Harphool Singh (Dead) Through His L.Rs on 4 May, 2000

Equivalent citations: AIRONLINE 2000 SC 173, (2001) 1 CG LJ 220, (2000) 2 CUR LJ (CIV&CRI) 163, (2000) 3 REC CIV R 191, (2000) 3 ICC 314, 2000 (5) SCC 652, (2000) 40 ALL LR 8, (2000) 4 CIV LJ 546, (2000) 2 CUR CC 258, (2000) 3 RAJ LW 398, (2000) 2 LAND LR 567, (2000) 4 SCALE 336, (2000) 4 ANDH LD 18, (2000) 5 JT 546, (2000) 4 SUPREME 215, (2000) 2 CURLJ(CCR) 163, 2000 UJ(SC) 2 931, (2000) WLC (SC)CIVIL 460, (2000) 5 JT 546 (SC)

Bench: S.R.Babu, Doraswami Raju

CASE NO.:
Appeal (civil) 5188 of 1996

PETITIONER:
STATE OF RAJASTHAN

Vs.

RESPONDENT:
HARPHOOL SINGH (DEAD) THROUGH HIS L.RS.

DATE OF JUDGMENT: 04/05/2000

BENCH:
S.R.Babu, Doraswami Raju

JUDGMENT:

L.....I.....T.....T.....T.....T.....T.....T..J Raju, J.

The State of Rajasthan, who lost before the Courts below, is the appellant before us, challenging the summary dismissal of a second appeal by a learned Single Judge of the Rajasthan High Court filed in SB Civil S.A. No.157/94 and thereby affixing seal of approval to the judgment and decree passed in favour of respondent-plaintiff.

Having regard to the nebulous manner in which relevant facts are found to have been stated in the judgments of the trial court as well as the first appellate court, we thought it fit and necessary to look into the plaint of which an English translated copy as made for the respondents has been furnished by the learned counsel, appearing before us. The suit property is said to be a plot of land measuring

north-south 60 ft. and east-west 40 ft. situated on Nohar-Bhadra Road at Nohar. As per the version of the claim in the plaint he was holding possession of the property since time immemorial by fencing it and in the year 1955 the plaintiff constructed a house on the disputed plot and started living therein. The fact that in the year 1955, he constructed the rooms, kitchen etc., and started living there, is found asserted more than once, claiming at the same time that he was in occupation since long before without specifying anywhere how long before. Further, assertions made in the plaint are that he got electricity connection and water connection in 1965 and 1974 respectively, producing photocopies of an electricity bill of 1965 and water bill of 1981. A grievance has also been made that at the instance of Area Patwari, Nohar, the A.D.M/Secretary, Mandi Development Committee, issued a notice calling upon him to vacate the encroachment, to which he claims to have submitted his defence. Since, the A.D.M. without properly appreciating the claims of the plaintiff, ordered eviction, the plaintiff was forced to file the suit and as per the case of the plaintiff projected in the plaint, he by his long possession has become the owner of the plot of land and not only the order passed by the A.D.M. is illegal, null and void but his possession has to be protected by the issue of appropriate orders of permanent injunction.

The case of the defendant was that the encroachment was made for the first time only in the year 1981 and the plaintiff was not in possession of the plot before and that no connection of electricity and water was obtained by the plaintiff as claimed during the years 1965 and 1974 respectively and the order of the A.D.M. directing the removal of encroachment is absolutely legal, having been passed in exercise of the powers under Sections 22 and 24 of the Rajasthan Colonisation Act, 1954. Want of notice under Section 80 CPC has also been urged as an infirmity to non suit the plaintiff.

Both parties adduced oral and documentary evidence in support of their respective claims. It is only for the first time in evidence the plaintiff as PW-1 introduced the theory of earlier possession of the land by the father of the plaintiff and the two witnesses examined also in a most cavalier and `more loyal than the king fashion seem to have asserted that the property in question was in the occupation of the plaintiffs family for nearly 55-60 years. A cursory reference is found made to the evidence produced on the side of the defendant-State. The trial court, on such perfunctory materials, is found to have made certain observations totally lacking in precision and observed, on the basis of the oral evidence and water and electricity bills produced by the plaintiff in respect of plot in question, the possession of the plaintiff over the land in question has been found continuously and uninterruptedly since 1955. In yet another place, the trial court observed, Thus, I hold that on the basis of the evidence produced by the plaintiff, it is proved that the plot of land in question has been in possession of the plaintiff for more than 30 years peacefully, continuously and without any obstruction, after raising building thereon. The startling observation is found made in the relief portion and it reads, on the above discussion, I have decided that the land in question has been in peaceful and continuous possession of the plaintiff since 1955, on which he constructed building and started residing therein in 1955 itself and thus, this period becomes over about 30 years. Under the circumstances, the adverse possession of the plaintiff over the land in question has been established on the basis of which he has acquired ownership thereon.

Aggrieved, the State pursued the matter on appeal before the first appellate court but we find on a close scrutiny of the judgment that there was no due or proper application of mind or any critical

analysis or objective consideration of the matter made, despite the same being the first appellate court. On the other hand, by merely reproducing the findings of the nature adverted to by us, a mechanical affirmation seems to have been made of them without any reference to the principles of law or the criteria to be satisfied before the claim of the plaintiff of perfection of title by adverse possession could be sustained, involving correspondingly destruction of title of the State in respect of a public property. The first appellate court further chose to reject the appeal on the ground that the same has not been presented within time even without properly noticing the details as to when the Court closed for summer vacation and when the same was reopened, on some strange method of reasoning.

The High Court, apparently obsessed by the limitations drawn on the exercise of Second Appellate Jurisdiction, unmindful even of the glaring inconsistencies and contradictions and serious nature of the issues raised involving public property, has chosen to summarily reject the appeal solely for the reason that both the courts below have found the plaintiff to be the owner of the property and if that be the position, Section 22 of the Rajasthan Colonisation Act, 1954, which provided for summary eviction of those in illegal occupation of public property will have no application and that the declaration granted by the courts had the effect of setting aside the order by the A.D.M., impliedly. Hence, this appeal by the State.

Shri Sushil Kumar Jain, learned counsel appearing for the State of Rajasthan, strenuously contended that the courts below committed serious errors of law in upholding the claim of adverse possession projected by the plaintiff and that such findings were based more on hypothetical assumption of vital and necessary facts, based on mere surmises. Reference has been made to the fact that there was no specific finding about the claim of possession by the father projected merely at the time of trial and not raised either when the objections were submitted before the A.D.M. or even when the suit was filed, in the plaint. Argued the learned counsel further that the essential ingredients necessarily to be established to substantiate a claim of perfection of title by adverse possession are totally lacking in the present case and, therefore, our interference is called for to prevent miscarriage of justice. As for the finding of the first appellate court that the appeal presented by the State before it was also barred by limitation, the learned counsel invited our attention to the details relating to the period of vacation and the date of reopening of subordinate courts after summer recess and contended that the said reason also was erroneous both on law and on facts. A plea on the bar of civil courts jurisdiction based on Section 25 of the Act was also raised.

Shri Aman Hingorani, learned counsel appearing for the respondents-legal representatives of the plaintiff, with equal force and vehemence contended that the findings of the courts below concurrently recorded are quite in accordance with law and do not call for interference in this appeal. The learned counsel, at length, invited our attention to the findings of the courts below, the copy of the plaint and the evidence of PWs by furnishing his own translated copies of the same. Since, the order passed by the A.D.M. was illegal and a nullity, according to the learned counsel, the bar of suit engrafted in the Act cannot be a hurdle to approach the competent civil court to vindicate the property rights of the plaintiff. Both the learned counsel invited our attention to some of the relevant case law on the subject and reference will be made, to the same hereinafter.

Adverting first to the question of limitation, on which also the first appellate court chose to reject the appeal before it and pursued before us though not considered by the High Court, we find from the materials placed on record that the trial court delivered its judgment on 10.4.89, that on 11.4.89, the State applied for a copy of the judgment and the summer vacation started on 9.5.89. It is stated that after the receipt of the copy of the judgment on 9.5.89, an application for a copy of the decree was made only on 12.5.89 and the appeal was filed on 3.7.89, the date on which the courts were said to have been reopened after summer recess. If the copy of the judgment dated 10.4.89 was furnished on 9.5.89, the limitation for filing the appeal would extend upto 8.6.89 and if during such period on 12.5.89 a copy of the decree was applied for it cannot be said to have been made after the limitation period was over and having regard to the intervening summer recess, the filing of the appeal on the reopening day after obtaining the decree copy also, together with copies of judgment and decree on the first day of the reopening after vacation would be well within the period of limitation and there is no merit in the said ground assigned by the first appellate court. Our attention has also been drawn to the original records where we found a specific endorsement made after processing the appeal papers by the office of the first appellate court, that the appeal has been filed within time. The first appellate court, therefore, was in error in holding to the contra.

Apart from the serious error committed by the first appellate court on the question of limitation, which the second appellate was obliged but yet failed to consider and correct, the learned Single Judge in the High Court, in our view, committed a grave error in dismissing summarily the appeal when it involved substantial and arguable questions of law of some importance. Since, these issues have been raised and argued before us, we consider it appropriate to deal with them ourselves, instead of remitting the matter back to the High Court for disposal on merits after hearing both parties, at this belated stage.

The learned counsel for the appellant strongly relied upon Sections 22 and Section 25 of the Act to contend that the order passed by the A.D.M. in exercise of his powers under Section 22 of the Act has become final and the jurisdiction of the Civil Court stand ousted in respect of such matters by virtue of Section 25 and therefore the suit could not have been entertained at all by the Civil Court. Section 25 of the Act stipulates that a Civil Court shall not have jurisdiction in any matter which the Collector is empowered by that Act to dispose of and shall not take cognisance of the manner in which the State Government or Collector or any officer exercises any power vested in it or in him by or under the said Act. Section 22, provides for a summary eviction of any person who occupies or continues to occupy any land in a colony to which he has no right or title or without lawful authority by treating such person as a trespasser in the manner and after following the procedure prescribed therefor. Reliance has been placed by the respondents on the decisions reported in Abdul Waheed Khan vs Bhawani & Others [1966 (3) SCR 617]; and Firm and Illuri Subbayya Chetty & Sons vs The State of Andhra Pradesh [1964 (1) SCR 752], to substantiate his claim that the bar of suit will not be attracted to a case of this nature. In our view, the principles laid down in Abdul Waheed Khans case (supra) while considering a provision like the one before us, that the bar is with reference to any matter which a Revenue Officer is empowered by the Act to determine and the question of title is foreign to the scope of proceedings under the Act, would apply to this case also with all force, that is on the provisions of Section 25 of the Act, as it stands. Even that apart in State of Tamil Nadu vs Ramalinga Samigal Madam [AIR 1986 SC 794] this Court, after adverting to Dhulabhaiss case

reported in AIR 1969 SC 78, held that questions relating to disputed claims of parties for title to an immovable property could be decided only by the competent Civil Court and that in the absence of a machinery in the special enactment to determine disputes relating to title between two rival claimants, the jurisdiction of the Civil Court cannot be said to have been ousted. In the case on hand, a citizen is asserting a claim of acquisition of title by adverse possession in derogation of the rights and interests of the State in the property in question. In our view, determination of such claims are not only outside the purview of Section 22 which only provide for a summary mode of eviction but in respect of such disputes relating to title to immovable property the jurisdiction of ordinary civil courts to adjudicate them cannot be said to have been ousted. The powers and procedure under Section 22 of the Act, in our view, is no substitute for the civil courts jurisdiction and powers to try and adjudicate disputes of title relating to immovable property.

So far as the question of perfection of title by adverse possession and that too in respect of public property is concerned, the question requires to be considered more seriously and effectively for the reason that it ultimately involve destruction of right/title of the State to immovable property and conferring upon a third party encroacher title where, he had none. The decision in P. Lakshmi Reddy vs L. Lakshmi Reddy [AIR 1957 SC 314], adverted to the ordinary classical requirement - that it should be nec vi nec clam nec precario - that is the possession required must be adequate in continuity, in publicity and in extent to show that it is possession adverse to the competitor. It was also observed therein that whatever may be the animus or intention of a person wanting to acquire title by adverse possession, his adverse possession cannot commence until he obtains actual possession with the required animus. In the decision reported in Secretary of State for India in Council vs Debendra Lal Khan (1933) LR (LXI) I.A. 78 (PC), strongly relied for the respondents, the Court laid down further that it is sufficient that the possession be overt and without any attempt at concealment so that the person against whom time is running, ought if he exercises due vigilance, to be aware of what is happening and if the rights of the crown have been openly usurped it cannot be heard to plead that the fact was not brought to its notice. In Annasaheb Bapusaheb Patil & Others vs Balwant alias Balasaheb Babusaheb Patil (dead) by Lrs etc. [AIR 1995 SC 895], it was observed that a claim of adverse possession being a hostile assertion involving expressly or impliedly in denial of title of the true owner, the burden is always on the person who asserts such a claim to prove by clear and unequivocal evidence that his possession was hostile to the real owner and in deciding such claim, the Courts must have regard to the animus of the person doing those acts.

The High Court without even a cursory scrutiny of the legality and propriety of the findings in order to ascertain at least as to whether they are based upon any legally acceptable evidence and the necessary legal ingredients of `adverse possession stood substantiated, mechanically seem to have accorded its approval to the claim of title made by the plaintiff merely on the basis that both the courts below have found the plaintiff to be the owner of the property. Indisputably the State was the owner and the question is as to whether its title has been extinguished and the plaintiff had acquired and perfected title to the same by adverse possession. In order to substantiate such a claim of adverse possession the ingredients of open, hostile and continuous possession with the required animus, as laid down by Courts should be proved for a continuous period of 30 years. Admittedly, the plaintiff claims to have put up the construction in 1955 and absolutely there is no concrete and independent material to prove the same, except an oral assertion. The story of his father having

been there even earlier to 1955 was not projected either before the A.D.M. when the plaintiff submitted his defence, or in the plaint when the suit was filed but for the first time introduced only at the stage of trial when examined as PW1. When the property was a vacant land before the alleged construction was put up, to show open and hostile possession which could alone in law constitute adverse to the State, in this case, some concrete details of the nature of occupation with proper proof thereof would be absolutely necessary and mere vague assertions cannot by themselves be a substitute for such concrete proof required of open and hostile possession. Even if the plaintiffs allegations and claims, as projected in the plaint, are accepted in toto, the period of so-called adverse possession would fall short by 5 years of the required period. There is no scrap of paper or concrete material to prove any such possession of the plaintiffs father nor was there any specific finding supported by any evidence, in this regard. The father of the plaintiff was also an employee of the Telephone Department. It is not as though, if their story of such long possession is true, there would be no correspondence or record to show that his father or the plaintiff were there before 1981. The relevance of the electricity bill to the property in question itself has been questioned and no effort has been taken by the plaintiff to correlate the electricity and water bill to the property claimed by examining any official witnesses connected with those records. While that be the factual position, it is beyond comprehension as to how anyone expected to reasonably and judiciously adjudicate a claim of title by objective process of reasoning could have come to the conclusion that the legal requirement of 30 years of continuous, hostile and open possession with the required animus stood satisfied and proved on such perfunctory and slender material on record in the case. The first appellate court as well as the High Court ought to have seen that perverse findings not based upon legally acceptable evidence and which are patently contrary to law declared by this Court cannot have any immunity from interference in the hands of the appellate authority. The trial court has jumped to certain conclusions virtually on no evidence whatsoever in this connection. Such lackadaisical findings based upon mere surmises and conjectures, if allowed to be mechanically approved by the first appellate court and the second appellate court also withdraws itself into recluse apparently taking umbrage under Section 100, Cr.P.C., the inevitable casualty is justice and approval of such rank injustice would only result in gross miscarriage of justice.

We are of the view, on the materials on record that the plaintiff could not beheld to have substantiated his claim of perfection of title by adverse possession to the public property. The courts below could not have legitimately come to any such conclusion in this case. The judgment and decree of the courts below are set aside and the plaintiffs suit shall stand dismissed. No costs. Before parting with this case, we may observe that our decision need not stand in the way of the legal heirs of the plaintiff, if they so desire to approach the concerned authorities to seek for assignment of the land in their favour, for value.