

Bai Reva, Widow Of Bhikhabhai Alias ... vs Bai Jadav on 24 April, 1986

Equivalent citations: AIR1986SC1921, (1987)1GLR265, 1986(1)SCALE1359, (1986)3SCC679, 1986(2)UJ563(SC), AIR 1986 SUPREME COURT 1921, (1987) 1 GUJ LR 265, 1986 UJ(SC) 2 563, 1986 (3) SCC 679, (1986) 2 CURCC 1019, (1986) 2 CIVLJ 450

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Bench: R.S. Pathak

JUDGMENT

1. This is a widow's appeal on a certificate of valuation granted by the Gujarat High Court. It arises out of a suit for partition of the deceased husband's properties filed by the co-widow and for possession of her one half share therein.

2. One Bhikhabhai resided at Rahad in the Taluka of Wagra in the district of Broach. He was the owner of immovable properties which consisted of houses and lands. Bhikhabhai died on March 12, 1947 leaving behind two widows, Bai Jadav and Bai Reva, He had married Bai Jadav in 1933, and some years later in 1936 he entered into matrimony with Bai Reva. Apparently his second marriage was not approved of by the first wife and she left the husband's residence and went to live with her father's family. On the death of Bhikhabhai, Bai Reva, the second wife, continued in possession of her husband's properties. It was easy for her to do so for she had been residing with him all along. As we have said, Bai Jadav was residing away from her husband with her parents. It appears that in May 1958 Bai Jadav executed a gift deed of her one-half share in the Gabhan property of her deceased husband in favour of one Jijibhai Shankerbhai. Thereafter, on May 27, 1959, Bai Reva sold the Gabhan property to one Ahmad Vali Isap. This provoked Bai Jadav to file a suit on June 15, 1959 in the Court of the learned Civil Judge, Senior Division at Broach, She claimed partition and possession of her half share as well as past and future mesne profits.

3. The suit was resisted by Bai Reva on a number of grounds, but the only plea with which we are concerned in this appeal is that of adverse possession.

4. The trial court decreed the suit and granted a declaration that Bai Jadav was entitled to a half share in the properties in suit and also passed a preliminary decree for partition of the properties. The Trial court also directed an enquiry for the purpose of ascertaining future mesne profits.

5. Bai Reva appealed to the High Court, and the High Court dismissed the appeal by its judgment and decree dated August 11, 1970, maintaining the finding of the trial court that the suit was within time and not barred by limitation, that Bai Reva had not succeeded in establishing adverse

possession, and that Bai Jadav was entitled to the share decreed in her favour by the trial court. The High Court also passed a decree for past, pendente lite, and future mesne profits.

6. In this appeal, learned Counsel for the appellant Bai Reva has strenuously contended that both the trial court and the High Court have erred in holding that the appellant has failed to establish adverse possession for a period of twelve years and that the suit filed by Bai Jadav was not barred by limitation.

7. In our opinion, the appeal must fail. Although Bhikhabhai died on March 12, 1947, there is nothing to show that the appellant Bai Reva asserted possession to the exclusion of the respondent Bai Jadav and claimed hostile title against her for a period of 12 years immediately before the suit was filed. Our attention has been drawn by learned Counsel to the initiation of mutation proceedings by the appellant on April 28, 1947, when an application was made by the appellant before the Revenue authorities for the entry of her name in respect of the properties as an heir of her husband Bhikhabhai. There is nothing on the record before us to indicate that she asserted absolute right to the property to the exclusion of the respondent Bai Jadav. During the lifetime of Bhikhabhai, the respondent Bai Jadav had obtained an order for payment of maintenance from her husband and, on the death of Bhikhabhai the appellant Bai Reva continued payment of maintenance from the property to the respondent Bai Jadav upto 1958. It is pointed out that the appellant took out insurance in respect of some of properties and that is evidence, it is said, of asserting absolute title to the properties. We are unable to agree. Insuring the property is merely an act of management, and cannot constitute proof of ouster of the respondent Bai Jadav. In any event, it was done only on June 21, 1948. We are of the view that there is no evidence on the record to show that the appellant asserted any exclusion right to the properties for a period of 12 years before the suit was filed.

8. The appeal is dismissed with costs. The interim order made by this Court staying the preparation of the final decree is vacated. Further proceedings to give effect to the decree made by the court below shall be concluded expeditiously.