Supreme Court of India
Abubakar Abdul Inamdar (Dead)By ... vs Harun Abdul Inamdar And Others on 30 August, 1995
Equivalent citations: 1996 AIR 112, 1995 SCC (5) 612
Author: M Punchhi
Bench: Punchhi, M.M.

PETITIONER:
ABUBAKAR ABDUL INAMDAR (DEAD)BY LRS. AND OTHERS.

Vs.

RESPONDENT:
HARUN ABDUL INAMDAR AND OTHERS

DATE OF JUDGMENT30/08/1995

BENCH:
PUNCHHI, M.M.
BENCH:
PUNCHHI, M.M.
FAIZAN UDDIN (J)

CITATION:
1996 AIR 112 1995 SCC (5) 612
JT 1995 (7) 179 1995 SCALE (5)87

ACT:

HEADNOTE:

JUDGMENT:

O R D E R This appeal having arisen from the Judgment and order of the Bombay High Court relates to two properties which belonged to one Syed Abdulla Inamdar. On his death, he was succeeded by six children; four of whom are sons and two daughters. The eldest son is Abubakar.

On the death of Syed Abdulla, agricultural lands which were Inams in his hands, were assigned to Abubakar, the eldest son, by certain orders passed by the Ruler of Kolhapur as Inams of two kinds. It is the admitted case of the parties that these Inams were impartible and had to devolve upon the eldest son by the rule of primogeniture. The other property was a dwelling unit which was owned by Sayed Abdulla and remained in possession of abubakar.

On the abolition of the `Inams' under the provisions of the Bombay Merged Territories Miscellaneous Alienations Abolition Act, 1955, Abubakar was regarded as a Watandar on re-grant of the properties. His brothers and sisters, on the one side ,laid claims to those lands as co-heirs of

Abubakar, taking the plea that by virtue of inheritance, they had a share in that property; the bar of impartiability and the rule of primogeniture having gone. Regarding the house property,they laid claims to partition it as heirs. Abubakar resisted the suit by laying claim that the landed properties which were erstwhile `Inams' became on re-grant `personal'in his hands and therefore the other heirs of Syed Abdulla had no share in those. Regarding the house he put up the plea of adverse possession, even though, avowedly, he had a will in his favour from his father. The trial court partly decreed the suit against him insofar as the Inam lands were concerned but dismissed the suit insofar as the house was concerned; and the lower appellate court affirmed that decision. Before the High court the appeal of Abubakar as also the cross-objections on the contrary were allowed with the result that the entire suit stood decreed, rejecting the claim of Abubakar of the Inam lands being personal to him and the house being in his adverse possession, maturing in his ownerships.

We have heard Mr. Ganpule, learned senior counsel for the appellant-Abubakar, at great length and pointedly with regard to the nature of regrant after the abolition of the Inam. It stands conceded by him that the terms of the grant are not in any manner peculiar to the facts emerging in this case but rather are the usual ones which find mention in such grants. He was frank enough to concede before us that had the parties been Hindus then the two decisions of this Court, namely, (i) Nagesh Bisto Desai etc. etc. vs. Khando Tirmal Desai etc. [1982 (3)SCP 341]; and (ii) Annasaheb Bapusaheb Patil and others vs. Balwant (dead) by lrs and heirs and others [1995 (2) SCC 543] would have taken over the field to hold that the properties in the hands of the Watandar were joint family properties and partible after the re-grant . He tried in vain to convince us that principally it would make a difference if the parties were Mohammedans, as presently they are. If we come to analyse the proposition canvassed, Syed Abdulla's estate should normally have devolved upon his six children in accordance with the shares as defined by the Shariat Law. But, since the properties were Inams and Impartible and the services to the Ruler due from the members of the family were expected to be taken from the eldest son by the rule of primogeniture, then the heirs of Syed Abdulla, even though not forming a joint Hindu family as is known to Hindu Law, would still be a group of people, the representative of which was Abubakar in order to hold the Inam. Once that Inam was abolished and re-grant given to Abubakar, impartibility of the estate vanished and thus this group of people were definitely entitled to claim their respective shares in accordance with the law of Sharfat. All the three courts below have taken such a view and we see no impelling reason to draw a line of distinction qua the aforesaid two cases in Nagesh Bisto Desai and Annasaheb Bapusaheb (supra) so as to carve out an exception to the principle for Mohammedans. The prime reason for such interpretation is that the Ruler while drawing up the Inam initially and conferring it again on Abubakar did not intend to create any distinction between his subjects, be it Muslims or Hindus. Uniformity of tradition in that regard would be a good rule of reason so as to set the matter at rest here.

With regard to the plea of adverse possession, the appellant having been successful in the two courts below and not in the High Court, one has to turn to the pleadings of the appellant in his written statement. There he has pleaded a duration of his having remained in exclusive possession of the house, but nowhere has he pleaded a single overt act on the basis of which it could be inferred or ascertained that from a particular point of time his possession became hostile and notorious to the complete exclusion of other heirs, and his being in possession openly and hostilely.It is true that some evidence, basically of Municipal register entries, were inducted to prove the point but no

amount of proof can substitute pleadings which are the foundation of the claim of a litigating party. The High Court caught the appellant right at that point and drawing inference from the evidence produced on record, concluded that correct principles relating to the plea of adverse possession were not applied by the courts below. The finding, as it appears to us, was rightly reversed by the High Court requiring no interference at our end.

For the foregoing reasons, there is no merit in this appeal which is hereby dismissed. No costs.