Supreme Court of India
Makhan Lal vs Asharfi Lal & Ors on 25 March, 1997
Bench: K. Ramaswamy, D.P. Wadhwa

PETITIONER:
MAKHAN LAL

Vs.

RESPONDENT:
ASHARFI LAL & ORS.

DATE OF JUDGMENT: 25/03/1997

BENCH:
K. RAMASWAMY, D.P. WADHWA

ACT:

HEADNOTE:

JUDGMENT:

O R D E R Leave granted.

The respondent Nos.1 and 2 had filed a suit for permanent injunction, possession and damages against the appellant and the proforma respondent No.3 on the premise that they were licensees in respect of part of the house belonging to Baij Nath and, therefore, had no manner of right whalsoever to be in possession after the revocation of the licence. The appellant set up the plea that he contributed half of the amount in the construction of the house along with Baij Nath and that he has been residing therein ever since. The house also was got mutated in 1957 in the joint name of himself and Baij Nath and, therefore, the injunction sought for could not be granted. Both the trial court as well as the first appellate court had negatived the case of the respondents and dismissed the suit. In the second appeal, the learned single Judge of the High Court framed two questions for consideration, namely, whether merely by contributing some amount towards construction of the disputed house, the appellant can claim half share in the house and whether the judgment of the two courts below are the result of total mis-reading of evidence and of recording the finding while ignoring the oral as well as documentary evidence on record Judge, as if he were the First Appellate Court has gone into the questions of fact and recorded the finding against the appellant. Thus, he reversed the decree of the trial court and the appellate Court.

It is contended for the appellant, on the basis of the documentary evidence adduce in proof of the

mutation and his enjoyment ever since 1957 during the life time of Baij Nath who did not even object to his being in possession and enjoyment of the half share in the house that the view taken by the High court is not correct. He also pointed out that the finding of the High court that the material evidence was ignored by the courts below is not correct as the evidence has been appreciated and the High court came to the conclusion that the respondents had not established their case.

It is contended for the respondents/plaintiffs, on the other hand, that the evidence of Ram Pyari, the mother of the parties was not properly considered. She was the best person to show how the property was enjoyed and the other evidence also was not properly considered. On the basis of surmises, the trial Court and the appellate Court had come to a wrong conclusion. Therefore, it is a substantial mistake of law which the High court has rightly corrected.

Having considered the respective contentions, the question that arises for consideration is whether the High Court is right in disturbing the concurrent findings of fact recorded by the trial court and the appellate court ? It is not in dispute that material documents had been filled, as indicated in the judgment of the first appellate Court itself. It is also not also not in dispute that the mutation proceedings having taken place during the life-time of Baij Nath of the municipality do indicate that the property was mutated in the joint names of Baij Nath and the appellant. During the life time of Baij Nath no demur of the right to residence and continuance in half share of the property was controverted nor ever that the appellant is the son of first husband of Ram Pyari and the respondents are the children born to Baij Nath in the second Marriage. In view of the fact that the parties are closely inter-related and having lived jointly at least from 1957, The obvious inference that they had been inducted into possession by Baij Nath even treating them as members of the family, is irresistible. Under these circumstances, the suit of injunction etc. against them is unsustainable in law. The trial Court and the appreciated the same came to the finding of fact. The said findings cannot be characterised to be surmises; nor can they be said to have ignored the material evidence. Under these circumstances, the High Court was wrong in interfering with the concurrent findings.

The appeal is according accordingly allowed. The judgment of the High Court stands set aside and that of the appellate Court and the trial Court stands confirmed. No costs.