Supreme Court of India
Kalika Prasad & Anr vs Chhatrapal Singh (Dead) By Lrs on 18 December, 1996
Bench: K. Ramaswamy, G.B. Pattanaik

PETITIONER:
KALIKA PRASAD & ANR.

Vs.

RESPONDENT:
CHHATRAPAL SINGH (DEAD) BY LRS.

DATE OF JUDGMENT: 18/12/1996

BENCH:
K. RAMASWAMY, G.B. PATTANAIK

ACT:

HEADNOTE:

JUDGMENT:

O R D E R This appeal by special arises from the judgment of the learned single Judge of the High Court of Madhya Pradesh made on October 12, 1985 in Second Appeal No.309/80.

The admitted facts are that the appellant plaintiff filed a suit for declaration of title and for possession of agricultural lands covered under the schedule of the plaint. The respondent pleaded adverse possession. The trial Court, therefore, recorded a finding that the respondent had perfected the title by adverse possession for having remained in possession for more than 12 years. On appeal, the District Judge reversed the decree on the ground that the respondent had come into possession under a power of attorney and, therefore, he remained to be in possession as an agent on behalf of the principal. The appellant claimed title through one of the principals who had given power of attorney under Ex. P.3. Respondent admitted that he had come into possession thereunder and, therefore, he cannot plead adverse possession against the appellant. In second appeal, the learned single Judge considered the controversy in relation to the documentary evidence and held thus:

> "The word 'Shikmi' used in the application has, therefore, to be construed in the context of the facts expressly stated therein.
>
> Ex.P-3 is the statement of defendant Chhatarpal Singh nowhere admitted his possession through the plaintiffs. He expressly stated that his possession was a result

of an arrangement made before abolition of Jagirs. No doubt, he also said that the Pawaidars Ramkishore and Vimalprasad had given Mukhtiyarnama, to begin with, but the Mukhtiyarnama was cancelled long back. He nowhere admitted the Mukhtiyarnama being given by plaintiffs Kalika Prasad and Ambika Prasad or his possession being through the plaintiffs at any time. Ex. P-4 is the order dated 3.6.1969 in the proceeding rejecting the defendant's application under Section 190 of the Code. In my opinion, there is nothing in these documents, which can be construed as defendant inducted into the suit-land by the plaintiffs so as to constitute his possession as permissive through the plaintiffs. His admission of initial entry under a Mukhtiyarnama given by the other Pawaidars was only in respect of his possession prior to abolition of jagirs and it is obvious that the same is of no co sequence after abolition of is of no consequence after abolition of Jagirs, which itself is an event more than twelve years prior to the date of suit. The only remaining document for consideration is Ex. D-9. This is an order dated 30.7.1959 on an application made by Ramkishore, one of erstwhile Pawaidars claiming a similar interest in the suit-land, as the present plaintiffs by seeking a declaration under Section 169 of the M.P. Land Revenue Code. That application was dismissed holding that the plaintiff had no right over the suit land to challenge the defendant's possession therein. This document itself is sufficient to indicate the assertion of hostile title by defendant Chhatarpal Singh and his claim of possession over the suit-land in his own right at least when the application under Section 169 of the Code was filed on 8.11.1957 by Ramkishore making the same assertion that the possession of Chhartarpal Singh over the suit land was as Mukhtiyar of the Pawaidars. This claim was rejected on 30.7.91. This document alone proves defendant's adverse possession for more than twelve years prior to the date of suit. It is, therefore, clear that the first appellate Court misread and misconstrued the aforesaid documents, Ex.P-1 to Ex.P-4 & Ex, D-9, to reach the conclusion that defendant's possession over the suit-land was permissive, on account of which the plaintiff's suit could be decreed. Reversal of the Trial Court's finding was the result of this error. The conclusion reached by the first Appellate Court being contrary to law, has to be set-aside."

On that basis, the learned single Judge concluded that the documentary evidence, Ex.P1 to P4 and D-9 was misconstrued by the District Court to come to the conclusion that the respondent had come into possession by a permissive possession and remained in that capacity. Accordingly, he set aside the decree and concluded that he respondent had perfected his title by adverse possession.

Shri A.K. Chitale, learned senior counsel for the appellant, contends that the view taken by the High Court is not correct in law. According to the learned counsel, the estate was abolished with effect from February 15, 1954; the appellant had obtained a patta under Section 190 of the M.P. Land Revenue Code on August 10, 1965, for conferment of asami rights which was rejected; for the first time, the asserted his title to the property only on making an application on August 10, 1965; the suit came to be filed within 12 years from the date and, therefore, the respondent had not perfected his title by prescription. We are unable to agree with the learned counsel. The learned Judge has

recorded the finding that even after the abolition till the date of the filing of the suit, the respondent had remained in uninterrupted possession and thereby he perfected his title by prescription. It is also an admitted position that the power of attorney given to the respondent was cancelled and thereafter no action was taken to have him ejected from the lands in his possession. After the abolition of the estate, no attempt was made to have him ejected. When we have put a question to the learned counsel whether any notice was given to the respondent by the other party before obtaining the patta under Section 189 on July 22,1959, the learned counsel is unable to place before us any material to show that such a notice was given to him. Obviously, therefore, the patta was obtained without notice to him. The respondent having remained, without any interruption, for well over 12 years, it would be obvious that he remained in possession in assertion of his own right, that too after the abolition of the estate. Thereby, he perfected his title by prescription since any person who got superior right had taken no action to have him ejected from the lands. Under these circumstances, the finding recorded by the High Court has not been vitiated by any manifest error of law creating any substantial question of law for interference in this appeal.

The appeal is accordingly dismissed. No costs.