

Allahabad High Court  
Om Prakash vs Basu Deo on 3 November, 2023  
Bench: Jaspreet Singh

HIGH COURT OF JUDICATURE AT ALLAHABAD, LUCKNOW BENCH

Neutral Citation No. - 2023:AHC-LK0:72390

RESERVED

Case :- SECOND APPEAL No. - 283 of 1997

Appellant :- Om Prakash

Respondent :- Basu Deo

Counsel for Appellant :- Amar Nath Dubey, Ankit Pande, Dr R S Pandey, Virendra Bhatt

Counsel for Respondent :- R.K.Pathak, Rakesh Pathak, Vivek Singh

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Hon'ble Jaspreet Singh, J.

1. This is the plaintiffs' second appeal assailing the judgment of reversal dated 21.05.1997 passed in Civil Appeal No.112/1996 whereby the suit of the plaintiffs which was decreed by the trial Court on 27.04.1996 was reversed and set aside and the suit came to be dismissed by the lower Appellate Court.

2. The instant second appeal was admitted on the following substantial question of law on 17.09.1997:-

"Whether, the Court misread and misconstrued the evidence of the defendant witness No.1 and arrived at a wrong conclusion?"

3. In order to appreciate the controversy involved in the second appeal, briefly the facts giving rise to the same are being noticed hereinafter. For the sake of convenience, the Court shall be referring to the parties as they were originally impleaded in the suit.

4. The original plaintiffs namely Om Prakash and Kailash Pati instituted a suit initially seeking a relief of permanent injunction against Basu Deo and Shyama. The said suit was registered as R.S.

No.82/1989. It was pleaded that the plaintiffs are the owner in possession of their house which was shown by letters Ka, Kha, Cha and Chaa in the site plan annexed with the plaint in suit. On the northern side of the house of the plaintiffs, the disputed property was shown by letters ABCD which was, as per the plaintiffs, their appurtenant land and was utilized by them for their beneficial use including for tying their animals. They had also kept two 'chappars' under which they also had a fodder cutting machine. It was pleaded that the said land is a part of Plot No.138, measuring 8 biswas, 6 dhoor and was recorded 'Naveen Parti' after the consolidation proceedings concluded in the village. Out of the aforesaid area, the plaintiffs was allotted 3 biswas and 7 dhoor by the allotment made by the Land Management Committee vide its proposal dated 10.01.1974 and since thereafter the plaintiffs have been its owner and occupation. It was further pleaded that the defendants since 08.02.1989 were threatening the plaintiffs to raise construction over the disputed land and also to dispossess them. Accordingly, the suit for simplicitor injunction was filed on 09.02.1989.

5. The suit came to be contested by the defendants, who filed their written statement on 31.03.1989 and took the defence that there was no allotment made by the Land Management Committee in favour of the plaintiffs on 10.01.1974. The alleged allotment/lease which was filed by the plaintiffs was forged and do not have any legal sanctity as there was no procedure followed as contemplated under the U.P. Z.A. & L.R. Act, 1950 for grant of such allotment/lease. No approval was taken from the S.D.M., and moreover the land was for public utility as 'Naveen Parti' could not have been allotted for residential purposes to the plaintiffs.

6. It was further pleaded in the written statement that the defendants are in possession of the disputed land shown by letters ABCD and 'chappars' also belonged to the defendants. It was also urged that the land as recorded in the records as 'Naveen Parti' relating the Plot No.138 was actually the 'abadi' and the defendants had already raised their constructions in shape of house since last 20 years and they were in its peaceful possession. It was specifically pleaded that the plaintiffs were not in possession and for the aforesaid reason the suit was liable to fail.

7. The plaintiffs thereafter moved an application for amending the plaint which was allowed by the trial Court. In furtherance of the amendment, the relief of permanent injunction as initially claimed was abandoned rather a relief for mandatory injunction was introduced on the premise that after the suit was instituted on 09.02.1989 and while it was originally pleaded that the defendants had started digging the foundation over the disputed land belonging to the plaintiffs. However, despite protest, the defendants had completed their construction in the month of April, 1989 and despite the plaintiffs having reported the matter to the police, yet no action was taken and the defendants were able to dispossess the plaintiffs during pendency of the suit, hence, a decree of mandatory injunction was sought directing the defendants to remove their illegal construction and hand-over the property to the plaintiffs.

8. It is in the aforesaid context that the suit for permanent injunction was thereafter converted in a suit for mandatory injunction.

9. Upon exchange of pleadings, the trial Court framed seven issues, however, the relevant issues upon which the suit came to be contested was (i) whether the plaintiffs are the owner of the disputed property; (ii) whether the house of the defendants was raised by the defendants in the disputed property about 22 years ago as stated by the defendants in Para-10 of written statement; (iii) whether the suit was time barred; (iv) whether the defendants are liable to be removed the constructions over the disputed property.

10. The plaintiffs filed documentary evidence relating to the lease which was marked as Exhibit-1 and 3. Certain revenue records were also filed and marked as Exhibit-4, 5 and 6. The plaintiffs examined himself as PW-1, Ram Asare as PW-2 and Ram Autar Chaube as PW-3. On the other hand, the defendants also filed a copy of Parivar Registrar marked as Exhibit-1 bearing Paper No.Ga-57, extract of Khasra Khatauni relating to Fasli Year 1378 and Fasli Year 1389 marked as Paper No.G-58 and Exhibited as Ka-2, copies of extract of Khatauni of Fasli Year 1394 to 1399 bearing Paper No.Ga-77 Exhibited as Ka-4 and documents bearing No.Ga-108 exhibited as Ka-5 relating to the proceedings for granting lease (patta) and Basu Deo examined himself as DW-1, Janaki Prasad as DW-2; Udai Raj as DW-3 and Ram Abhilakh as DW-4.

11. The trial Court after considering both oral and documentary evidence recorded a finding that insofar as the case of the plaintiffs over the disputed property was leased out/allotted by the Land Management Committee on 10.01.1974 is concerned, the same was not proved. However, it further recorded that despite the above since the plaintiffs had claimed possessory title and to examine the same it arrived at a conclusion that the plaintiffs had constructions their house about 20 years ago sometimes around the year 1974. It also concluded that since the property belonged to Gaon Sabha who was not a party, accordingly, no declaration regarding the rights of plaintiffs over the land in question could be granted, however, it was to be examined whether the plaintiffs had any possessory title being in possession of the disputed property prior in time, having settled possession and with the aforesaid it concluded that the plaintiffs were in possession and had been in settled possession since 20 years, the defendants could not establish any prior right and since the defendants were successful in dispossessing the plaintiffs during pendency of the suit, consequently, it allowed the relief of mandatory injunction by means of the judgment and decree dated 27.04.1996.

12. The defendants being aggrieved against the judgment and decree passed by the trial Court dated 27.04.1996 preferred a regular civil appeal under Section 96 CPC, which was registered as R.C.A. No.112/1996. The lower Appellate Court after reconsidering the entire matter affirmed the findings of the trial Court insofar as it related to the alleged allotment/lease made by the Land Management Committee in favour of the plaintiffs. The lower Appellate Court did not find any illegality in the findings recorded by the trial Court on the aforesaid issue. Thereafter, the lower Appellate Court noticing the evidence led by the parties found that the plaintiffs could not establish their possession prior in time to the defendants and as such the suit which was decreed by the trial Court was dismissed by the lower Appellate Court. In the aforesaid backdrop, the plaintiffs being aggrieved approached this Court in terms of Section 100 CPC assailing the said judgment of the lower Appellate Court dated 21.05.1997 dismissing the suit the suit.

13. Dr. R.S. Pande, learned Senior Counsel assisted by Shri Virendra Bhatt, learned counsel for the appellants primarily raised a proposition that the plaintiffs had possessory title over the disputed property shown by letters ABCD. It is urged that the lower Appellate Court committed an error in reversing the findings for the reasons that even if at all the plaintiffs could not establish their title in terms of resolution made by the Land Management Committee on 10.01.1974 yet it was specifically pleaded that the plaintiffs had possessory title which was good and almost as that of the owner against the whole world except the true owner. Since, the defendants also could not prove a better title, accordingly, the only issue which was to be examined was regarding the possession of the plaintiffs prior in time which was admittedly established from the evidence available on record.

14. The lower Appellate Court has noticed the statement of DW-1 Basu Deo and has drawn incorrect conclusions and without even meeting with the reasons recorded by the trial Court and as such it has resulted in sheer miscarriage of justice and the appeal deserves to be allowed. Consequently, the suit of the plaintiffs for mandatory injunction deserves to be decreed as done by the trial Court.

15. It has further been submitted that it was admitted to the parties that the land belonged to Gaon Sabha. It is also admitted that the plaintiffs had their house which has been shown by letters Ka, Kha, Cha and Chaa and on the northern side of the disputed property shown by letter ABCD was located which had two 'chappers' and in control and possession of the plaintiffs. It has been pointed out that the house of the defendants was on the southern side of the plaintiffs and on the eastern and western side of the plaintiffs' house there was a narrow gallery (kullia) and thereafter there was a house of Ramjas on the western side and house of Sahibdeen on the eastern side and both Ramjas and Sahibdeen had their sehan on the northern side of their house and the disputed property shown by letters ABCD. Since, the house constructed by the father of the plaintiffs namely Kedar Nath was short in accommodation, consequently, the plaintiffs had made a new house since last 20 years and the defendants had no right, title or interest in either the house or the appurtenant land which was of the plaintiffs house even if at all the defendants had succeeded in raising construction during pendency of the suit, the same was liable to be removed as legal obligation upon the defendants for not to interfere or disturb the possession of the plaintiffs over the disputed property and since the same was done by force against the wishes of the plaintiffs, hence, they were entitled to be back in possession by enforcing the legal obligations on the defendants.

16. In support of his submissions, Dr. R.S. Pande has relied upon the decision of the Apex Court in Nair Service Society Ltd. v. K.S. Alexander and others, AIR 1968 SC 1165; Somnath Burman v. Dr. S.P. Raju and another, (1969) 3 SCC 129; Ramesh Chand Ardawatiya v. Anil Panjwani, (2003) 7 SCC 350; Rame Gowda v. M. Varadappa Naidu and another, (2004) 1 SCC 769 and 1983 (9) ALR 85.

17. Per contra, Shri Rakesh Kumar Pathak, learned counsel for the respondents while refuting the aforesaid submissions has stated that the plaintiffs could not establish their settled position and without doing so, they had no right to maintain the suit for mandatory injunction. It is submitted that the plaintiffs did not approach the Court with clean hands inasmuch as the plaintiffs did not disclose that the defendants were in possession of the disputed property. It is further urged that the plaintiffs failed to establish any right over the disputed property especially as the plaintiffs had set up a case that the same was allowed to them by the lower Appellate Court on 10.01.1974. In absence

of proving the same, the plaintiffs' possession was at best as that of a trespasser. The defendants had taken a plea that they were in possession of the disputed property and it was incumbent on the plaintiffs to prove their prior possession if at all the plaintiffs could maintain a suit for injunction but having failed to do so, the lower Appellate Court rightly concluded that the plaintiff neither proved his title nor the possession and in the aforesaid circumstances, the lower Appellate Court has rightly dismissed the suit.

18. It is further urged by the learned counsel for the respondents that the very fact that the suit was filed on 09.02.1989 and despite the defendants filing their written statement on 31.03.1989, the plaintiffs did not have courage to meet with the defence from Para-11 to 14 stated in the written statement. It was specifically stated that the defendants were not in possession and the plaintiffs did not have any right over the property nor there was any allotment made by the Land Management Committee in favour of the plaintiffs. Thus, in the aforesaid circumstances, it cannot be said that the suit which was dismissed by the lower Appellate Court is against the law nor the judgment passed by the lower Appellate Court requires any interference and as such the appeal be dismissed. In support of his submission, he has relied upon the decision of the Apex Court in *Poona Ram v. Moti Ram and others*, (2019) 11 SCC 309.

19. The Court has heard learned counsel for the parties and also perused the record.

20. In light of the substantial question of law as framed and noticed above, the issue that requires consideration and adjudication is whether the lower Appellate Court was justified in dismissing the suit had been decreed by the trial Court in light of the evidence of DW-1 Basu Deo.

21. Having considered the learned counsel for the parties and from the perusal of the material on record, certain undisputed facts which emerge are (i) both the plaintiffs and the defendants do not have any title over the property in dispute; (ii) It is an admitted case of both the parties that the land was left as 'Naveen Parti' after consolidation operations that commenced in the village somewhere in the year 1962; (iii) It is also an admitted case that prior to the consolidation there were farming fields at the disputed sites and that Plot No.138 was left out and allotted as 'Naveen Parti' whereas the Plot No.163 is part of old abadi.

22. Insofar as the house of the plaintiffs marked as letter by Ka, Kha, Cha and Chaa is concerned i.e. part of Plot No.163. In the aforesaid backdrop, it is clear that neither of the parties had any title over the disputed land shown by letters ABCD. The case of the parties has to be seen in context with the possessory title.

23. As per the plaintiffs, they had taken the disputed land from the Land Management Committee vide resolution from the Gaon Sabha dated 10.07.1974, however, the plaintiffs could not prove any right flowing from it or on the basis of such allotment/lease dated 10.01.1974. The defendants had examined Shri Udai Raj Singh as DW-3 and Ram Abhilakh Singh as DW-4 and both of them stated that the said land was that of Gaon Sabha. In the original patta proceedings, the Gaon Sabha register was also summoned wherein it indicated that on the given date i.e. 10.01.1974, 35 pattas were granted to persons but in the said list, the name of the plaintiffs did not find any mention. In light of

the fact that the plaintiffs could not establish their title on the basis of the said allotment, apparently, the plaintiffs and the defendants both could not be treated to be the owners and especially when the land was in the nature of 'Naveen Parti' vested with the Gaon Sabha. Gaon Sabha was not made a party to the suit, hence, in the admitted position, no declaration could be made in favour of the either of the parties regarding the land in dispute.

24. It is now settled law that a person is entitled to maintain a suit for injunction even in absence of title, if he is able to establish his possessory title which is good against the whole world except the true owner. It is in context with this law, it would be noticed that the two Courts have concurrently held that the plaintiffs was unable to establish their title or right over the disputed property on the basis of alleged lease/allotment.

25. Now the only issue that requires examination is whether the plaintiffs was able to establish their juridical possession and that too prior in time. It is the case of the plaintiffs that they had raised the house and has been in occupation of the disputed property about 20 years ago. On the other hand, it is the case of the defendants that the house of the plaintiffs was made about 3 to 4 years prior to institution of the suit and that they had their door on the western side but not on the northern side. It is only during pendency of the suit that the plaintiffs had opened a door on the northern side in order to takeover the disputed land which was in the use and occupation of the defendants since last 20 years.

26. In order to resolve the aforesaid question, the record indicates that an Amin Commissioner had also visited the property in suit and he filed his report on 25.03.1989 along with a map.

27. From the perusal of the said report and the map, it reveals that the site plan which was filed by the plaintiffs and forming part of the plaint in suit is quite similar. The existence of the plaintiffs house shown by letters Ka, Kha, Cha and Chaa and the said house being constructed adjacent to a wall on the southern side is established. Both in the site plan as well as the report filed by the Amin Commissioner indicates the house of defendants Basu Deo and Shyama on the south-east site at the house of the plaintiffs, the house and sehan of Ramjas on the western side and Sahibdeen on the eastern side is also shown and is confirmed. The only aspect that requires is that the disputed property shown by letters ABCD which is northern side of the plaintiffs house whether was in possession of the plaintiffs or with the defendants. The possession is to be seen in the context of whether the plaintiffs or the defendants were in settled possession. The concept of settled possession was considered by the Apex Court in Rame Gowda (supra), wherein it was noticed as under:-

"6. The law in India, as it has developed, accords with the jurisprudential thought as propounded by Salmond. In *Midnapur Zamindary Co. Ltd. v. Kumar Naresh Narayan Roy* [AIR 1924 PC 144 : 51 IA 293] Sir John Edge summed up the Indian law by stating that in India persons are not permitted to take forcible possession; they must obtain such possession as they are entitled to through a court.

7. The thought has prevailed incessantly, till date, the last and latest one in the chain of decisions being *Ramesh Chand Ardawatiya v. Anil Panjwani* [(2003) 7 SCC 350] . In between, to quote a few out of several, in *Lallu Yeshwant Singh v. Rao Jagdish Singh* [AIR 1968 SC 620 : (1968) 2 SCR 203]

this Court has held that a landlord did commit trespass when he forcibly entered his own land in the possession of a tenant whose tenancy has expired. The Court turned down the submission that under the general law applicable to a lessor and a lessee there was no rule or principle which made it obligatory for the lessor to resort to court and obtain an order for possession before he could eject the lessee. The Court quoted with approval the law as stated by a Full Bench of the Allahabad High Court in *Yar Mohd. v. Lakshmi Das* [AIR 1959 All 1 : 1958 All LJ 628 (FB)] (AIR at p. 4):

"Law respects possession even if there is no title to support it. It will not permit any person to take the law in his own hands and to dispossess a person in actual possession without having recourse to a court. No person can be allowed to become a judge in his own cause." (AIR p. 5, para 13) In the oft-quoted case of *Nair Service Society Ltd. v. K.C. Alexander* [AIR 1968 SC 1165 : (1968) 3 SCR 163] this Court held that a person in possession of land in assumed character of owner and exercising peaceably the ordinary rights of ownership has a perfectly good title against all the world but the rightful owner. When the facts disclose no title in either party, possession alone decides. The Court quoted Loft's maxim -- "*Possessio contra omnes valet praeter eum cui ius sit possessionis* (he that hath possession hath right against all but him that hath the very right)" and said: (AIR p. 1175, para 20) "A defendant in such a case must show in himself or his predecessor a valid legal title, or probably a possession prior to the plaintiff's and thus be able to raise a presumption prior in time."

In *M.C. Chockalingam v. V. Manickavasagam* [(1974) 1 SCC 48] this Court held that the law forbids forcible dispossession, even with the best of title. In *Krishna Ram Mahale v. Shobha Venkat Rao* [(1989) 4 SCC 131] it was held that where a person is in settled possession of property, even on the assumption that he had no right to remain on the property, he cannot be dispossessed by the owner of the property except by recourse to law. In *Nagar Palika, Jind v. Jagat Singh* [(1995) 3 SCC 426] this Court held that disputed questions of title are to be decided by due process of law, but the peaceful possession is to be protected from the trespasser without regard to the question of the origin of the possession. When the defendant fails in proving his title to the suit land the plaintiff can succeed in securing a decree for possession on the basis of his prior possession against the defendant who has dispossessed him. Such a suit will be founded on the averment of previous possession of the plaintiff and dispossession by the defendant.

8. It is thus clear that so far as the Indian law is concerned, the person in peaceful possession is entitled to retain his possession and in order to protect such possession he may even use reasonable force to keep out a trespasser. A rightful owner who has been wrongfully dispossessed of land may retake possession if he can do so peacefully and without the use of unreasonable force. If the trespasser is in settled possession of the property belonging to the rightful owner, the rightful owner shall have to take recourse to law; he cannot take the law in his own hands and evict the trespasser or interfere with his possession. The law will come to the aid of a person in peaceful and settled possession by injunction even a rightful owner from using force or taking the law in his own hands, and also by restoring him in possession even from the rightful owner (of course subject to the law of limitation), if the latter has dispossessed the prior possessor by use of force. In the absence of proof of better title, possession or prior peaceful settled possession is itself evidence of title. Law presumes the possession to go with the title unless rebutted. The owner of any property may prevent even by using reasonable force a trespasser from an attempted trespass, when it is in the process of being

committed, or is of a flimsy character, or recurring, intermittent, stray or casual in nature, or has just been committed, while the rightful owner did not have enough time to have recourse to law. In the last of the cases, the possession of the trespasser, just entered into would not be called as one acquiesced to by the true owner.

9. It is the settled possession or effective possession of a person without title which would entitle him to protect his possession even as against the true owner. The concept of settled possession and the right of the possessor to protect his possession against the owner has come to be settled by a catena of decisions. Illustratively, we may refer to *Munshi Ram v. Delhi Admn.* [AIR 1968 SC 702 : (1968) 2 SCR 455 : 1968 Cri LJ 806], *Puran Singh v. State of Punjab* [(1975) 4 SCC 518 : 1975 SCC (Cri) 608] and *Ram Rattan v. State of U.P.* [(1977) 1 SCC 188 : 1977 SCC (Cri) 85]. The authorities need not be multiplied. In *Munshi Ram* case [AIR 1968 SC 702 : (1968) 2 SCR 455 : 1968 Cri LJ 806] it was held that no one, including the true owner, has a right to dispossess the trespasser by force if the trespasser is in settled possession of the land and in such a case unless he is evicted in the due course of law, he is entitled to defend his possession even against the rightful owner. But merely stray or even intermittent acts of trespass do not give such a right against the true owner. The possession which a trespasser is entitled to defend against the rightful owner must be settled possession, extending over a sufficiently long period of time and acquiesced to by the true owner. A casual act of possession would not have the effect of interrupting the possession of the rightful owner. The rightful owner may re-enter and reinstate himself provided he does not use more force than is necessary. Such entry will be viewed only as resistance to an intrusion upon his possession which has never been lost. A stray act of trespass, or a possession which has not matured into settled possession, can be obstructed or removed by the true owner even by using necessary force. In *Puran Singh* case [(1975) 4 SCC 518 : 1975 SCC (Cri) 608] the Court clarified that it is difficult to lay down any hard-and-fast rule as to when the possession of a trespasser can mature into settled possession. The "settled possession" must be (i) effective, (ii) undisturbed, and (iii) to the knowledge of the owner or without any attempt at concealment by the trespasser. The phrase "settled possession" does not carry any special charm or magic in it; nor is it a ritualistic formula which can be confined in a straitjacket. An occupation of the property by a person as an agent or a servant acting at the instance of the owner will not amount to actual physical possession. The Court laid down the following tests which may be adopted as a working rule for determining the attributes of "settled possession" (SCC p. 527, para 12):

(i) that the trespasser must be in actual physical possession of the property over a sufficiently long period;

(ii) that the possession must be to the knowledge (either express or implied) of the owner or without any attempt at concealment by the trespasser and which contains an element of *animus possidendi*. The nature of possession of the trespasser would, however, be a matter to be decided on the facts and circumstances of each case;

(iii) the process of dispossession of the true owner by the trespasser must be complete and final and must be acquiesced to by the true owner; and



(iv) that one of the usual tests to determine the quality of settled possession, in the case of culturable land, would be whether or not the trespasser, after having taken possession, had grown any crop. If the crop had been grown by the trespasser, then even the true owner, has no right to destroy the crop grown by the trespasser and take forcible possession.

10. In the cases of Munshi Ram [AIR 1968 SC 702 : (1968) 2 SCR 455 : 1968 Cri LJ 806] and Puran Singh [(1975) 4 SCC 518 : 1975 SCC (Cri) 608] the Court has approved the statement of law made in Horam v. R. [AIR 1949 All 564 : 50 Cri LJ 868] wherein a distinction was drawn between the trespasser in the process of acquiring possession and the trespasser who had already accomplished or completed his possession wherein the true owner may be treated to have acquiesced in; while the former can be obstructed and turned out by the true owner even by using reasonable force, the latter may be dispossessed by the true owner only by having recourse to the due process of law for reacquiring possession over his property."

28. This was also considered by the Apex Court in Poona Ram (supra), wherein it has been held as under:-

"13. The crux of the matter is that a person who asserts possessory title over a particular property will have to show that he is under settled or established possession of the said property. But merely stray or intermittent acts of trespass do not give such a right against the true owner. Settled possession means such possession over the property which has existed for a sufficiently long period of time, and has been acquiesced to by the true owner. A casual act of possession does not have the effect of interrupting the possession of the rightful owner. A stray act of trespass, or a possession which has not matured into settled possession, can be obstructed or removed by the true owner even by using necessary force. Settled possession must be (i) effective, (ii) undisturbed, and (iii) to the knowledge of the owner or without any attempt at concealment by the trespasser. There cannot be a straitjacket formula to determine settled possession. Occupation of a property by a person as an agent or a servant acting at the instance of the owner will not amount to actual legal possession. The possession should contain an element of animus possidendi. The nature of possession of the trespasser is to be decided based on the facts and circumstances of each case."

29. Having noticed the concept of settled possession and the conflicting claim of both the plaintiffs and the defendants but both say that they were in settled possession. Since, the property is situate in a rural area, accordingly, the oral evidence led by the parties gains significance.

30. At this juncture, it will also be noticed that insofar as the documentary evidence is concerned that does not help either of the parties since the alleged lease/allotment filed by the plaintiffs could not be proved in accordance with law rather discredited in law in light of the testimony of DW-3 and DW-4 along with the proceedings of allotment which was led on behalf of the defendants. Similarly, the extracts of the Khasra, Khatauni and Parivar Register filed on behalf of the defendants also does not come their aid as the Parivar Register was prepared only during pendency of the suit. Khasra Khatauni does not indicate the possession of either the plaintiffs or the defendants as prior to the consolidation the disputed area was the field of Dharamraj which was left out and was recorded as 'parti' at the conclusion of consolidation operations.

31. In this regard, the testimonies of PW-1, PW-2 and PW-3 were noticed by the trial Court and it concluded that in an around the year 1947, the plaintiffs had raised their house which was about 17 years old. This was disputed by the defendant No.1 Basu Deo, who stated that the plaintiffs' house was three years old but the two defendants witnesses namely Udai Raj Singh as DW-3 and Ram Abhilakh Singh as DW-4 gave a different version to state that the house of the plaintiffs was ten years old and adjacent to a well. The location, the existence of the well is not disputed. The trial Court also noticed that it is an admitted case of the defendants that their old house was on the southern eastern portion of the house of the plaintiffs. The defendants could not establish that the house of the plaintiffs was three years old whereas the other two defendants witnesses had corroborated the statement of the plaintiffs i.e. the house was existence since 17 years. The existence of the door on the northern western side was also corroborated.

32. From the cross-examination of DW-1, it emerged that the old house of the defendant No.1 namely Basu Deo was on the southern eastern side which had been made by his father namely Mani Ram. DW-1 further stated that he was turned out of his father's home and, therefore, he had raised his house on the disputed plot which is marked by letters ABCD, however, in his cross-examination, the DW-1 admitted that Basu Deo was the sole surviving son of Mani Ram who was working in Pune. The defendants was engaged on the work of selling milk. Basu Deo's brother Guddu had already expired and Basu Deo also used to regularly visited his father in Pune. This amply proved that the relations between the defendant No.1 and his father were cordial but he further admitted that though he had received his share in the field belonging to Mani Ram but also no share was given to him in the house which was constructed by Mani Ram in abadi which was on the south-eastern side from the house of the plaintiffs. It could not be explained that the defendants being the sole surviving son and having received his share in the farming field but was not granted any share in the house which as per the defendants were locked.

33. In these circumstances, the trial Court inferred that the statement of defendants and their witnesses did not inspire confidence to indicate that the defendants were in possession of the disputed property by letters ABCD since about 20 years.

34. Another relevant factor which is noticed by this Court is that DW-2 Smt. Shyama, who was related to Basu Deo was not examined as a party witness. Though it is stated that on the eastern side of the property there was a dilapidated structure but as noticed above Shyama did not enter into the witness-box to corroborate the statement or her claim that she had her dilapidated structure and admittedly other than the disputed property shown by letters ABCD. The defendant No.1 Basu Deo also did not have any house adjacent to ABCD as the said disputed land is between the Sehan of Ram Abhilakh on the western and Sahibdeen on the eastern side.

35. In the given circumstances and the manner in which the property has been depicted in the site-plan filed by the plaintiffs the and site-plan filed by the Commissioner, the plausible use and occupation appears to be that of plaintiffs and the testimony of the plaintiffs and their witnesses also corroborated the said fact but the shown letter ABCD was being utilized by the plaintiffs for their sehan. The defendants could not clearly establish their possession or the house for the last 20 years nor he could establish their existence the 'neem' true for the reason that the tree could not have been

planted by the defendants in the sehan and there was no probability of the defendants having planted the said tree inside their house. While both the parties claimed their rights over the said tree but the fact remains that the said tree in the given land marked by letters ABCD appears to be used as a sehan rather than residential use of the defendants.

36. It is also borne out from the testimony of witnesses that the construction if any was raised during pendency of the suit. It is in this backdrop that the suit came to be decreed. The lower Appellate Court without noticing the aforesaid reasons given by the trial Court reversed the findings and has given a different complexion to the statements recorded by the defendants witnesses. The testimony of the defendants regarding raising of the house by the plaintiffs as noticed above had different versions, the lower Appellate Court has culled out the statement in isolation which is not correct way to reappraise the evidence. The lower Appellate Court did not consider the fact that under what circumstances, the defendants would raise construction over the northern portion especially when their house was far and on the south-eastern side of the plaintiffs house. It was also not disputed that the plaintiffs had their domesticated animals which were tied on the disputed property.

37. In the aforesaid circumstances, from the perusal of the impugned judgment, this Court finds that the conclusion drawn by the lower Appellate Court is not in accordance with proper appreciation of the evidence especially DW-1. On the other hand, the trial Court had considered the oral testimony of all the witnesses and after noticing the same has drawn inferences which are based on proper appreciation of evidence.

38. In light of the aforesaid, this Court finds that the plaintiffs may not have been owner nor any findings regarding ownership has been granted or declared by the two Courts so also this Court does not deem proper to make any comment on the ownership of the plaintiffs.

39. As noticed above that the land in question is 'Naveen Parti' belonging to the Gaon Sabha, thus, the true owner of the said land is Gaon Sabha. Hence, any finding given in the instant proceedings will not affect the rights of Gaon Sabha in case they choose to enforce their rights. However, the conflict between the defendants and the plaintiffs is to be seen only on the basis of possessory title and the findings recorded by the trial Court appear to be based on proper appreciation of evidence.

40. With the aforesaid observations, this Court finds that the judgment and decree passed by the lower Appellate Court dated 21.05.1997 deserves to be set aside and the judgment and decree dated 27.04.1996 is affirmed. The second appeal is accordingly allowed and the judgment and decree dated 21.05.1997 passed in Civil Appeal No.112/1998 is set aside. The judgment and decree dated 27.04.1996 passed by the trial Court in R.S. No.82/1989 has been confirmed. In the facts and circumstances, there shall be no order as to costs. The record of the trial Court shall be returned forthwith.

Order Date :- 3rd November, 2023 Rakesh/-