

Ramlal Patel Vs. Sanjay Patel

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Court : Madhya Pradesh

Decided On : Oct-10-2012

Appellant : Ramlal Patel

Respondent : Sanjay Patel

Judgement :

-1- HIGH COURT OF MADHYA PRADESH : JABALPUR Misc.Appeal No.1766/2011 Ramlal Patel and another -Vs- Sanjay Patel and others & Misc. Appeal No.2260/2011 Ramlal Patel and another -Vs- Sanjay Patel and others
Present : Honble Shri Justice M.A.Siddiqui Shri N.C.Beohar and Shri Anshuman Singh, Advocates for appellants. Shri R.P.Khare, Advocate for respondent no.1 to 6. Shri A.K. Jain, Advocate for respondent No.7 and 8.

ORDER

RESERVED ON 20.09.12

ORDER

PASSED ON 10.10.12

ORDER

Since both the appeals arise out of common Order dated 25th March,2011 passed by 18th Addl. District Judge, Jabalpur (hereinafter referred to as trial Court.) in Civil Suit No.2A/2011 and 8A/2011 deciding the application filed by the plaintiffs/appellants under Order 39 Rule 1-2 CPC, hence they are being decided

by this common order.

2. Learned trial Court found that looking to the averments of the parties undisputed facts were that -2- common ancestor was Bheem Patel (Kachhi) who was holding the disputed land, he was succeeded by his three sons Daulat Patel, Balkishan Patel and Dalchand Patel. Daulat Patel was the eldest son, he was succeeded by Khitai Patel and Khitai Patel was succeeded by plaintiffs/ appellants. Balkishan Patel was succeeded by his son Pooranlal Patel who was succeeded by his sons defendants/respondents No.5 and 6, namely, Khemchand Patel and Yogendra Patel. Dalchand Patel was succeeded by his son Janki Patel whose wife is defendant/respondent no.4 Smt. Darshana Patel and sons are defendants/respondents no.1 to 3, namely, Sanjay Patel, Sujeet Patel and Sukesh Patel. The fact is also undisputed that in the year 1991 plaintiffs/appellants sold the land measuring $14 \times 7 = 928$ sq.ft. to one Kasturchand Jain.

3. In short, the suit of the plaintiffs together with the application was that disputed land belong to plaintiffs exclusively. After death of Bheem Patel it was mutated in the name of Daulat Patel, and after him Khitai Patel and thereafter plaintiffs being the legal heirs of Khitai Patel are holding ownership and possession over the disputed land. Respondent no.1 to 6, without any basis, sold the land to respondent No.7 and 8 on 3.2.01. Suit for -3- declaring the aforesaid sale as null and void and for declaration and permanent injunction was brought with the application claiming that respondents No.7 and 8 be restrained from interfering with the possession over the suit land.

4. Respondents denied the claim on the ground that since Bheem Patel was succeeded by three sons and all became co-owner of the property left by Bheem Patel, though the property was mutated in the name of Daulat Patel being the eldest son, but otherwise the property belongs to three sons of Bheem Patel, namely, Daulat, Balkishan and Dalchand Patel, and after them the property belongs to their sons. A partition took place in the year 1958 among Janki Prasad S/o of Dalchand, Pooranlal S/o Balkishan and Khitailal S/o Daulat. Plaintiffs have sold out one of their share to Kasturchand Jain on 18.4.90 by a registered sale deed in which also house of Pooran Patel (father of respondents no.5 and

6) was shown. Later on, from Pooran Patel, respondent no.7 and 8 purchased the said land by registered sale deed dated 3.2.2001. Respondents 7 and 8 purchased the land together with the possession and they are in actual possession. In MA No.1766/2011, Singhai Nirmalchand Jain and Jinendra Jain are respondents 7 -4- and 8 respectively, and in MA No.2260/11, Smt. Lata Jain and Smt. Jyoti Jain are respondents 7 and 8 respectively.

5. With the plaint, an injunction application under Order 39 Rule 1-2 CPC was filed together with various documents and affidavits by both the sides.

6. Learned trial Court found that all the three sons of Bheem Patel (Kachhi), namely, Daulat, Balkishan and Dalchand Patel inherited the property after death of Bheem Patel, and after death of these three sons, a partition took place in the year 1958 between the sons of Daulat, Balkishan and Dalchand Patel, and they were enjoying the possession, and property was inherited by plaintiffs as well as by respondents 1 to 6 as per the partition.

7. I have heard learned counsel for both the sides at length and perused the record.

8. Impugned order dated 25.3.11 is assailed on the ground that land was in the exclusive name of Daulat Patel and through him his LRs inherited the property and no partition took place, whereas learned counsel for respondents submits that factum of partition has been revealed in the pleadings so it has been admitted that partition was there. -5- 10. Learned trial Court did not find prima facie case, and by way of abandoned caution, in order to avoid the future complications, ordered respondents 7 and 8 to give an undertaking to the effect that in case the plaintiffs get success, then they will remove the structure to be constructed by them. With this condition, respondents 7 and 8 have been permitted to carry on the construction work, since they are the bona fide purchasers and they have purchased the land from LRs of Bheem Patel (Kachhi) and they want to construct the building, and if they are restrained for future, then looking to the construction cost, etc., they may suffer irreparable loss, balance of convenience is also in their favour.

11. Learned counsel for appellants submitted that trial Court erred in not finding the prima facie case as well as in disallowing the injunction and permitting the construction. On the other hand, learned counsel for respondents submitted that there was no prima facie case and it is clear that respondents No.1 to 6/seller got the property inherited from their ancestor Bheem Patel (Kachhi) and they were in possession, they have sold the property with possession and by taking advantage of mutation in the -6- name of Daulat Patel alone, the suits have been filed. Further submission of respondents is that by mutation no right and title is conferred, so mutation in the name of Daulat Patel is not conclusive one and is against the facts and circumstances of the case.

12. From perusal of pleadings, it is clear that partition itself has been pleaded by the plaintiffs. Had the property was inherited alone by Daultat Patel, then no question of partition was there. From perusal of documents learned trial Court did not find a prima facie case and the finding is not perverse or against the facts and circumstances of the case. Moreover the trial Court, by way of abandoned caution, has taken an undertaking to the effect that structure to be constructed will be removed by the respondents 7 and 8, in case the plaintiffs get success. So, I find no illegality in the impugned order, hence, these appeals being no merits are dismissed. (M.A.Siddiqui) Judge. jk.

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