

Radhelal Vs. Amna

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Court : Madhya Pradesh

Decided On : Jan-02-2013

Appellant : Radhelal

Respondent : Amna

Advocate for Pet/Ap. : Shri. Vinay Sharma

Judgement :

S.A.No.1087/2011 (Radhelal Dangi versus Amna and otheRs.02.01.2013 Heard Shri Vinay Sharma, learned counsel for the appellant on the question of admission.

The appellant has filed this appeal being aggrieved by the judgment and decree dated 19.07.2011 passed by the 4rth Additional District Judge, Tikamgarh in Civil Appeal No.13-A/11 wherein and whereby the judgment and decree dated 02.12.2004 passed by the Civil Judge Class-1, Niwadi District Tikamgarh in civil suit No.56-A/95 has been affirmed and upheld.

The appellant has filed the present appeal alleging that the impugned judgment and decree passed by the courts below deserves to be set aside on the following substantial questions of law:- (a) Whether the judgments and findings of the learned courts below are perveRs.and contrary, both on the facts and law and liable to be set aside by this Hon'ble Court ?.

(b) Whether learned courts below committed error in appreciating the documents and material available on record in its proper perspective and came to wrong conclusion ?.

(c) Whether the learned courts below justified in overlooking that civil court in its two versions and the learned lower appellate court have accepted that the appellant is in possession of 0.607 acres land out of the said khaSr.not i.e.291/1 and in the proceedings u/s.250 of the M.P.L.R.C.Also after demarcation the same was corroborated ?.

(d) Whether the learned courts below failed to see that appellant has proved his possession over the suit land since last 60 years i.e.since days of his ancestors and thus has perfected his title by virtue of the adveRs.possession ?.

(e) Whether the demarcation report and the entries in the land record clearly establish the possession of the appellant over the suit land ?.

(f) Whether the long adveRs.possession since more than 60 years has made the appellant owner in possession of the disputed land and whether such adveRs.possession is unauthorized ?.

It is submitted that inspite of the fact that both the courts below have recorded a finding to the effect that the appellant/plaintiff was in possession of an area of 0.607 Acre out of KhaSr.No.291/1 total area of which is 8.45 acres of village Madiyakhas since the time of his forefatheRs.the courts below have dismissed the suit filed by him by recording a finding against the appellant on the issue of adveRs.possession.

It is submitted that once the fact of possession of the appellant on the disputed land in question has been affirmed, the courts below should have decreed the suit filed by the appellant/plaintiff on the ground of adveRs.possession and by not doing so, has committed apparent perversity and illegality.

It is submitted that the courts below have also ignored the admitted facts apparent from a perusal of the record itself.

I have heard the learned counsel for the appellant at length.

From a perusal of the impugned judgment and decree it is clear that the courts below have dismissed the suit filed by the appellant on the ground that the appellant has failed to establish that his possession was infact open and adveRs.to the right and title of the respondents and was continuing since long to his knowledge without interruption.

The court below has infact quoted the statement of the plaintiff/appellant himself made in paragraph 8 of his plaint wherein the appellant has clearly stated that he came to knot for the fiRs.time in February, 1995 about the fact that he was in possession of the land belonging to the respondents.

The court below has also taken into consideration the quoted the statement of the plaintiff/appellant himself recorded during his evidence wherein he has reiterated this fact and has clearly stated that he came to knot for the fiRs.time in February, 1995 that he was in possession of the land belonging to the respondents/defendants on account of certain irregularity in the revenue entries.

It is further clear from a perusal of the impugned judgment and decree that the appellate court on the basis of the aforesaid admitted statement of the plaintiff/appellant in the plaint as well as in the statement made by him before the court has recorded a finding to the effect that the possession of the appellant/plaintiff was not adveRs.and open to the right title and interest of the defendants or to his knowledge and in such circumstances, any claim or relief on the basis of adveRs.possession was not available to him.

I find no illegality or infirmity in the finding recorded by the courts below which are based on the statement of the plaintiff/appellant himself made in the plaint as well as recorded during his evidence.

That apart, it is clear that on the basis of the aforesaid undisputed statement of the appellant there is concurrent finding recorded by both the courts below against the appellant to the effect that he has failed to establish that his possession, at any time was open and adveRs.to that of the respondents.

The findings as aforesaid are in accordance with law and do not warrant any interference.

In the circumstances, I find that no substantial question of law arises for adjudication in the present appeal which is accordingly dismissed.

(R.S.Jha) Judge msp

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