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Sheikh Ibrahim Vs. Smt.Munni Devi and ors

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Court : Madhya Pradesh

Decided On : Oct-30-2012

Appellant : Sheikh Ibrahim

Respondent : Smt.Munni Devi and ors

Advocate for Def. : Shri. Zargar

Advocate for Pet/Ap. : Shri. Usmani

Judgement :

(1) F.A. No.615/2004 HIGH COURT OF M. P. JUDICATURE AT JABALPUR Single Bench : Hon'ble Shri Justice A.K. Shrivastava First Appeal No.615/2004 Appellant Sheikh Ibrahim S/o. Late Nannu Pahalwan, Resident of Ward No.5, Tehsil and District Chhatarpur (M.P.) Vs. Respondents:

1. Smt. Munni Devi, widow of Basant Lal Pandey, resident of near Bihariji Temple, Chhattarpur, 2. Lakhan Lal, S/o Late Basant Lal Pandey, resident of near Bihariji Temple, Chhattarpur 3. Smt. Suman Devi, W/o Som Datt Tiwari, daughter of late Basant Lal Pandey, resident of near Railway Phatak, Jabalpur 4. Yogesh Kumar, S/o Lakhan Lal Pandey 5. Brijesh Kumar, S/o Lakhan Lal Pandey, 6. Madhao Prasad, S/o Kanhaiya Lal Pandey, 7. Ganesh Prasad, S/o Kanhaiya Lal (2) F.A. No.615/2004 Pandey, Respondents No.4, 5, 6 & 7 residents of near Biharilalji temple, Chhattarpur (M.P.) 8. Qayum Khan alias Munna, S/o Sadique Khan 9. Raju Khan, S/o Qayum Khanalias Munna Respondents no.8 and 9, both residents

of near Biharilal Chaurasia, Jawahar Road, Chhattarpur.

10. The State of M.P. through Collector, Chhattarpur. _____ Shri A. Usmani, Advocate for appellant. Shri Avinash Zargar, Advocate for respondents No.1 to 7. Shri Santosh Yadav, Panel Lawyer for respondent No.10/State. _____

JUDGMENT

(Delivered on this 30th day of October, 2012) This is plaintiffs first appeal under Section 96 of the CPC against the judgment and decree dated 03.09.2004 passed by learned Second Additional District Judge, Chhatarpur in Civil Suit No.16-A/2003 dismissing the suit on the ground of res judicata. (3) F.A. No.615/2004 2. The only point which is to be decided in this appeal is as to whether the learned Trial Court erred in law in dismissing the suit holding it to be barred by res judicata.

3. The factual aspect of the matter is not in dispute. Against the present plaintiff Sheikh Ibrahim, deceased defendant Basantlal Pandey filed a suit for eviction in the Court of Civil Judge, Class-II Chhatarpur which was registered as Civil Suit No.23-A/1997 on the basis of relationship of landlord and tenant. The said suit was decreed in favour of present defendant Basantlal (not deceased) on 15.12.1997 holding him to be the owner of suit property. First appeal which was filed before the First Appellate Court was registered as Civil Appeal No.96-A/1999 and it was dismissed on 27.10.1999. Against the decree of First Appellate Court, a second appeal was submitted before this Court which was registered as S.A. No.1294/1999 and the same was dismissed on 28.01.2002. Learned counsel for the parties also did not dispute that judgment of all the Courts were assailed by the present appellant, who was defendant in the earlier suit by filing SLP No.7581/2002 and that too was dismissed on 01.10.2002 by the Apex (4) F.A. No.615/2004 Court.

4. The contention of Shri Usmani, learned counsel for appellant is that the earlier suit was for eviction on the basis of relationship of landlord and tenant and therefore it cannot be said that the deceased defendant Basantlal was owner of the suit property although he may be a landlord of the appellant. Learned counsel

further submits that present suit has been filed basing upon a document dated 15.07.1969 which is an agreement by which the property in question was given to appellant on licence and another plea which has been pleaded in the plaint para 17 is that by virtue of adverse possession the present plaintiff has become owner of the suit property and therefore the present suit is not barred by the dictum of res judicata as envisaged under Section 11 CPC. In support of his contention, learned counsel has placed heavy reliance upon the decision of Supreme Court Sheela and others v. Firm Prahlad Rai Prem Prakash AIR 200.SC 1264.

5. On the other hand, Shri Zargar, learned counsel for respondents no.1 to 7 submitted that indeed the plea of adverse possession was also raised by the appellant in earlier suit of eviction and a specific issue (5) F.A. No.615/2004 (issue No.11) was framed in this regard and the said issue was decided against the present appellant/plaintiff. The said judgment was affirmed by First Appellate Court also and by this Court while dismissing the second appeal of the present appellant and therefore the present suit is barred by dictum of res judicata. It has also been contended by him that as per own showing of plaintiff he is resting upon another plea of lease. Since eviction decree has already been passed against present plaintiff holding him to be tenant and further holding that Basantlal (deceased defendant of this suit) whose LRs are present respondents, was owner of the suit property and therefore on this count also, the suit is barred by the dictum of res judicata and learned Trial Court did not commit any error in dismissing the suit holding it to be barred by dictum of res judicata.

6. Having heard learned counsel for the parties, I am of the view that this appeal deserves to be dismissed.

7. On going through the impugned judgment this Court finds that plea of res judicata was raised by the present defendants by filing an application under Order VII Rule 11 CPC which was dismissed by Trial Court on 22.12.2003 and against which a Civil Revision (6) F.A. No.615/2004 No.51/2004 was filed by the defendants and this Court on 12.04.2004 directed to raise this plea in the written-statement and to treat the issues of res judicata and limitation as preliminary issues. Accordingly, issue no.6 which is in respect of limitation and issue no.7

which is in regard to res judicata were tried as preliminary issues. Learned Trial Court by the impugned judgment has found the suit to be within limitation, although while deciding the issue no.7 categorically held that present suit is barred by dictum of res judicata.

8. The factual aspect of the matter is not at all in dispute. Copy of the plaint of earlier suit has been filed in which it has been specifically pleaded by the present defendant (who was plaintiff in that suit) that he is owner of the property in question.

9. On bare perusal of the written-statement present plaintiff who was defendant in former suit specifically raised a plea of adverse possession in para 26 and also raised plea of execution of document dated 15.07.1969 in para 21 of the written-statement. Copy of judgment and decree dated 15.12.1997 passed in earlier suit has been placed on record and it is gathered that specific issue no.11 was framed in regard to acquiring (7) F.A. No.615/2004 ownership right by adverse possession in favour of present plaintiff. Another specific issue no.9 was also framed in regard to right accrued in present plaintiff through agreement by virtue of document dated 15.07.1969. Learned Trial Court while deciding issue no.11 in para 15 specifically holding that present plaintiff (who was defendant in former suit) did not acquire ownership right by adverse possession and while deciding issue no.9 in para 11 it has been specifically held that no right has been accrued in the defendant by virtue of said document dated 15.07.1969. The judgment and decree of learned Trial Court was assailed by present plaintiff by filing Civil Appeal No.96-A/1999 (Old No.38/1998) and in para 39 it has been specifically held that present plaintiff did not acquire ownership right by adverse possession. The finding of learned Trial Court in regard to conferring the right in pursuance to document dated 15.07.1969 has also been affirmed in para 41 onwards. The judgment and decree of two Courts below were affirmed by this Court by dismissing the second appeal of present plaintiff on 28.1.2002 and thereafter the SLP No.7581/2002 filed by present plaintiff/appellant was also dismissed by the Supreme Court on 01.10.2002. (8) F.A. No.615/2004 10. In the aforesaid backdrop I have no hesitation in holding that present suit is barred by res judicata. The decision of Sheela (supra) placed reliance by learned counsel for appellant is not applicable in

the present case because in the earlier round of litigation it has already been held that plaintiff (present defendant) is owner of the property and present plaintiff (defendant in the former suit) did not acquire any ownership right by adverse possession. Thus, on facts the said decision is not applicable.

11. Resultantly, this appeal fails and is hereby dismissed with cost. Counsel fee `.2000/- if pre-certified. (A.K. Shrivastava) Judge 30/10/2012 SS

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