

**Komal Vs. the State of Madhya Pradesh Judgement Given By: Hon'ble Shri Justice Sanjay Yadav**

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**Court : Madhya Pradesh**

**Decided On : Jan-17-2014**

**Appellant : Komal**

**Respondent : The State of Madhya Pradesh Judgement Given By: Hon'ble Shri Justice Sanjay Yadav**

**Advocate for Pet/Ap. : Shri. Z.M.Shah**

**Judgement :**

:: 1 :: Second Appeal No.749/2013 17.1.2014.

Shri Z.M.Shah, learned counsel for the appellant-plaintiff.

Heard on admission.

This second appeal at the instance of plaintiff is directed against judgment and decree dated 25.7.2013 in Civil Appeal No.11-A/2012 passed by FiRs.Additional District Judge, Khurai District Sagar, affirming the judgment and decree dated 29.2.2012 passed by Second Civil Judge Class I, Khurai, dismissing the Civil Suit No.160-A/2011.

Suit by the plaintiff against State Government and its functionaries was for declaration of title and permanent injunction in respect of cultivable land, bearing

khaSr.No.446 area 0.43 hectare, khaSr.No.447 area 0.79 hectare and khaSr.No.468 area 0.49 hectare on the ground that, being in possession of suit property for more than 35 years the plaintiff has perfected his title by adverse possession and that without any hindrance, tilling the land.

Defendants denied the claim.

It was denied that the plaintiff is in peaceful possession of the suit property.

It was contended that the plaintiff having been proceeded against encroachment of government land and fined time and again was not in adverse possession, but a rank trespasser.

Trial Court framed four issues : 1.

Whether the plaintiff is in continuous possession over KhaSr.No.446, 447 and 468 admeasuring 0.43, 0.79 and 0.49 hectares respectively at village Jogan.

:: 2 :: 2.

Whether the plaintiff acquired ownership under the provisions of the Madhya Pradesh Krishi Pariyojna Ke Liye Upyog Ki J.Rahi Dakhal Rahit Bhoomi Par Bhoomiswami Adhikaron Ka Pradan Kiya Jana (Vishesh Upabandh) Adhiniyam, 1984.

3.

Whether defendants are unauthorizedly evicting the plaintiff from the suit property.

4.

Relief and costs.

That on the basis of material evidence, the trial Court answered all the issues in negative.

In respect of the allegation regarding adverse possession, the trial Court returned a finding that though the plaintiff had produced KhaSr.Panchshala, Exhibit P/1 to

P/21, but they do not establish that the plaintiff has been in peaceful possession of the suit property for 30 years. On the contrary, the trial Court found from the evidence on record that the plaintiff being trespasser over the government land was time and again proceeded against the encroachment and was imposed the penalty of fine.

These findings are based on the cogent evidence on record and were, later on, affirmed by the appellate Court.

There being a concurrent finding of fact that the plaintiff is an encroacher and has failed to establish being in possession over suit property for over 30 years, no interference is warranted.

It is trite that unless the possession is adequate in continuity, publicity and in extent ("nec vi, nec clam, nec precario"). it does not mature into an adverse possession (See R. Hanumaiah versus State of Karnataka (2010) 5 SCC 203).

:: 3 :: In the case at hand, the plaintiff having been proceeded, as is established by evidence on record, against for encroaching the suit land, being a government land, has failed to prove that he perfected the title by adverse possession.

Furthermore, the plaintiff even failed to establish of accrual of right under the Adhiniyam, 1984 because he was found to be in occupation over a grass land whereas Section 3 of the Adhiniyam, 1984 stipulates - 3.

Conferral of Bhoomiswami rights on agricultural labourer.

- (1) All unoccupied land in a village in possession of an agricultural labourer on the 2nd October, 1984 shall, notwithstanding anything contained in the Code, or the rules made thereunder shall be held by such person as from the said date in Bhoomiswami rights and he shall be a Bhoomiswami of the said land for all purposes of the Code and any other enactment for the time being in force : Provided that such conferral of Bhoomiswami rights shall not be for such land exceeding two hectares: Provided further that nothing contained in this section shall apply in respect of land - (a) set apart under section 237 of the code for the

following purposes :- (i) for burial ground and cremation ground; (ii) for gaathan; (iii) for threshing floor; (iv) for skinning ground; (v) for bazar; (vi) for public purpose such as schools, playgrounds, parks roads, lanes and drains; :: 4 :: (vii) for the pasture, grass, bir or fodder.

(b) hold or reserved by the Central Government or the State Government for any specific purpose; (c) which stands allotted to any person other than the person in possession of the land on the said date.

(2) Nothing contained in sub-section (1) shall apply unless the agricultural labourer is in possession of the land in the village in which he resides and none of the members of his family holds any land.

Explanation.- For purposes of sub-section (2) the family shall be deemed to consist of the spouse, issues, parents and any other person dependent on him. Thus, being in occupation of grass land, no right accrued in favour of the plaintiff over suit property under the Adhiniyam, 1984.

Consequently, the appeal deserves to be dismissed at admission stage as no substantial question arises for consideration.

In the result, the appeal is dismissed.

However, no costs.

(SANJAY YADAV) vinod JUDGE

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