

Kadore Vs. Bhumanideen (D) Lrs. Puna Bai Judgement Given By: Hon'ble Shri Justice Sanjay Yadav

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Court : Madhya Pradesh

Decided On : Jan-09-2014

Appellant : Kadore

Respondent : Bhumanideen (D) Lrs. Puna Bai Judgement Given By: Hon'ble Shri Justice Sanjay Yadav

Advocate for Pet/Ap. : Shri. R.P. Khare

Judgement :

1 Second Appeal No. 486/2011 9.1.2014 Shri R.P. Khare, learned counsel for the appellants.

Heard on admission.

This second appeal at the instance of plaintiffs is directed against the judgment and decree dated 18.1.2011 passed by Additional District Judge Bijawar, District Chhatarpur in Regular Civil Appeal No. 8 A/2010 which in turn affirmed the judgment and decree by First Civil Judge Class II, Bijawar dismissing the Civil Suit No. 8 A/2009.

Suit by the plaintiffs was for declaration in respect of suit property bearing Khasra No. 167 admeasuring 0.454 Area situated at Village Madelanpura, Tahsil Bijawar, District Chhatarpur. That, plaintiffs No. 1 and 2 have their share over 0.113 Arey

and plaintiff No. 3 has his share over 0.341 arey and they are the joint owner in possession of suit property and for permanent injunction.

That, Malkhan and Sarman were two brothers respectively survived by Kadore, Swami, Chitrakuty and Babulal and Mahadev, Bihari and Gokul. These legal heirs respectively inherited half of the share in Khasra No. 163 area 0.336 area and Khasra No. 167 area 0.454 Arey. There was no formal partition and each of them were in joint possession.

That, Mahadev, Bihari, Gokul, Babulal and Chitrakoty sold from their respective shares 0.084 Arey of Khasra No. 163 and 0.341 Arey of Khasra No. 167 to Hariprasad, plaintiff No. 3 and gave him the possession. Thus he came to hold the joint possession. Kadore and Swami did not sell their share and 2 were left with the ownership of KhaSr. No. 167 area 0.113 Arey.

That, vide registered saledeed dated 16.7.1993 (Ex. D/2) Mahadev, Bihari and Gokul sold 0.168 Arey of 0.336 Arey of KhaSr. No. 163 to defendant Bhumanideen (since deceased represented through his legal heirs). That, vide correction deed dated 23.1.2004 (Ex. D/3) Khasra No. 163 in the saledeed dated 16.7.1993 was got corrected to Khasra No. 167. The correction was in pursuant to Naib Tahsildar's order dated 7.11.1997 passed in Revenue Case No. 14/ v /6 v/9697. The order was later on set aside by Sub divisional Officer, Bijawar by order dated 21.3.2000 passed in Appeal No. 20/vihy/9798 filed by plaintiff No. 3.

That, an appeal thereagainst is pending before Additional Commissioner.

That, the order of Correction of KhaSr. No. 163 to Khasra No. 167 gave rise to cause for civil suit on the ground that the defendant on the basis of the alleged correction in KhaSr. entries is causing interference in the peaceful possession of the suit land.

Trial Court framed following issues: %okn iz'u% 1& D;k fookfnr Hkwfe [kljk uacj 167 jdck 0-454 ds 1@2 Hkkx ds iwoZ Lokeh dM+ksjk].Lokeh].fp=dksVh].ckcwyky].iq=x.k ey[kku yks/kh ,oa 1@2 Hkkx ds Lokeh egknso].fcgkjh xksdqy].iq=x.k ljeu yks/kh Fks \ 2& D;k mijksDr fookfnr Hkwfe okn

iz'u dz&1 esa of.kZr O;fDRk;ksa dh vfoHkkftr].lfEEkfyr vkf/kiR; dh Hkwfe Fkh \ 3& D;k egknso].fcgkjh].xksdqy iq=x.k ljeu ,oa ckcw].fp=dksVh iq=x.k ey[kku us fookfnr Hkwfe [kljk uacj esa 0-341 dks izfrQy izklr dj fnukad 28-1-97 dks 3 gñizlkn dks fodz; dj fn;k Fkk \ 4& D;k fodz; i= ds i'pkr fookfnr Hkwfe [kljk uacj 167 ds jdck 0-454 vkjs esa ls gñizlkn 0-341 vkjs o dM+ksjk ,oa Lokeh 0-113 ds Lokeh gks x;s Fks \ 5& D;k fookfnr Hkwfe [kljk uacj 167 oknhx.k ds lkeykrh vkf/kiR; esa gS \ 6& D;k egknso].fcgkjh o xksdqy }kjk fnukad 16-7-93 dks [k-ua- 167 jdck 0-336 ds 1@2 0-168 Hkkx dk fodz; i= izfroknh dz&1 ds i{k esa fd;k x;k gS \ 7& D;k izdj.k esa i{kdkjksa ds vla;kstu dk nks"k gS \ 8& D;k mfpr U;k; 'kqYd vnk fd;k x;k gS \ 9& D;k okn le;kof/k esa gS \ 10& lgk;rk ,oa okn O;;

A The Trial Court on the basis of the material evidence on record while holding that the property bearing KhaSr. No. 167 area 0.454 was previously owned (1/2 share each) by the legal heirs of Malkhan and Sarman and was jointly owned by them and that 0.341 Arey was sold to plaintiff No. 3 by Mahadev, Bihari, Gokul, all sons of Sarman and Babulal, Chitrakoty S/o Malkhan on 29.1.1997 (paragraphs 35 and 36 of judgment and decree by trial court) could not be proved and that the plaintiffs also failed to prove their ownership over suit property. The Trial Court further returned a finding that the plaintiffs failed to prove joint possession over suit property and found that the suit property was duly purchased by defendant No. 1 vide saled deed executed by Mahadev, Bihari and Gokul.

The Trial Court has further returned a finding on the basis of the evidence on record that the land purchased by defendant No. 1 as per its physical location as described in 4 the saled deed and as per evidence of Hariprasad, plaintiff No. 3, examined as plaintiff's witness No. 2 who in paragraphs 17 and 18 of cross examination gave the physical location of the suit property.

The trial court returned a finding that the physical boundaries described hatched with Khasra No. 167 rather than Khasra No. 163. Furthermore the verdict that the defendant No. 2 did not seek any declaration, it was within the right of the joint owners to have sold their share in landed property. These findings by the trial court are affirmed by the appellate Court.

Section 44 of the Transfer of Property Act, 1982 stipulates "Where one of two or more coowners of immoveable property legally competent in that behalf transfers his share of such property or any interest therein, the transferee acquires, as to such share or interest, and so far as is necessary to give effect to the transfer, the transferor's right to joint possession or other common or part enjoyment of the property, and to enforce a partition of the same, but subject to the conditions and liabilities affecting, at the date of the transfer, the share or interest so transferred. Where the transferee of a share of a dwelling house belonging to an undivided family is not a member of the family, nothing in this section shall be deemed to entitle him to joint possession or other common or part enjoyment of the house.

As per the first part of the provision when one of the several coowners transfers his share, the transferee stands in the shoes of the transferor. The substantial question of law as proposed that the Courts below erred in upholding the validity of sale deed by a co-sharer of his share in the 5 property and that the transferor has a right to joint possession does not arise as would warrant the admission of the second appeal.

Consequently the appeal is dismissed at admission stage. No costs.

(SANJAY YADAV) JUDGE Vivek Tripathi

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