

Fatte Vs. Banshilal and ors.

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Court : Madhya Pradesh

Decided On : Mar-22-1972

Reported in : AIR1974MP16; 1973MPLJ617

Judge : T.P. Naik, J.

Acts : Madhya Pradesh Land Revenue Code, 1959 - Sections 117, 210, 211, 250 and 257; [Evidence Act, 1872](#) - Sections 5; [Transfer of Property Act, 1882](#) - Sections 43; Madhya Pradesh Abolition of Proprietary Rights (Estates, Mahals, Alienated Lands) Act, 1950

Appeal No. : Second Appeal No. 25 of 1967

Appellant : Fatte

Respondent : Banshilal and ors.

Advocate for Def. : P.C. Khare, Adv.

Advocate for Pet/Ap. : D.L. Dube, Adv.

Disposition : Appeal allowed

Judgement :

T.P. Naik, J.

1. The suit of the plaintiff-appellant for possession of 2.75 acres of land situate in mouza Mahul Jhop-di, tahsil Rajnandgaon, district Durg, has been dismissed by the District Judge, Durg, at Rajnandgaon, reversing the judgment and decree of the Civil Judge, Class I, Rajnandgaon, decreeing the suit.

2. The suit of the plaintiff-appellant was based, inter alia, on the following allegations.

That the suit land was formerly part of Khasra No. 43, area 6.45 acres, and Khasra No. 57/1, area 0.30 acre; it was situate in what was formerly the Princely State of Rajnandgaon; and that it was owned and possessed by then proprietor ekyxqtkjRandhirsingh as his 'sir'; that after the coming into force of the Madhya Pradesh Abolition of Proprietary Rights (Estates, Mahals, Alienated Lands) Act, 1950 (No. I of 1951), the land, being the home-farm of the ex-proprietor, was saved to him; that by a registered deed of sale, dated 12-6-1952, (Ex. P-17) the said ex-proprietor sold the suit fields, Khasra No. 43, area 6.45 acres and Khasra No. 57/1, area 0.30 acre, along with Khasra No. 37, area 2.60 acres for a consideration of Rs. 400.00 to the plaintiff-appellant and put him in possession of them; that the plaintiff-appellant thus became the Bhumiswami--holder of the fields comprising the suit lands; that there was a consolidation of holdings in the village in 1958-59 when, as a result of the consolidation, the plaintiff-appellant was allotted 26.78 acres of land, which included land now numbered as Khasra No. 38, area 8.02 acres, and Khasra No. 47, area 4.29 acres, in lieu of his old holdings, in Bhumiswami rights vide Chak-bandhi Patta (Ex. P-1), dated 1-6-1959; that the defendants had unlawfully encroached on an area of 2 acres in Khasra No. 38 marked as ^v c l M** in the map filed with the plaint and on an area of 0.75 acre in Khasra No. 47 marked as ^d [k x ?k** in the said map; and that the defendants had not only sowed the suit land after it had been sown by the plaintiff-appellant but had also cut and removed away the crop sown by the plaintiff-appellant thereon.

He, therefore, claimed possession of the suit land measuring 2.75 acres from the defendants.

3. The defendants-respondents contested the suit alleging, inter alia, that the suit land was khudkasht of the then proprietor ^xksfV;k** who had some 15 years ago

given it along with some other lands to Pandit, the father of the defendants, on an oral patta in raiyati rights; that the defendants thus became a raiyat of the suit land under the Rajnandgaon State wajib-ul-arz and, thereafter, a Bhumidhari and a Bhumiswami under the Madhya Pradesh Land Revenue Codes of 1954 and 1959; that the father of the defendants, and thereafter the defendants, had been in open, continuous and peaceful possession of the suit land for over 15 years and had thus in any case acquired title to it by adverse possession; that the ex-proprietor Randhirsingh had no right to sell the suit land to the plaintiff-appellant and the sale in his favour was ineffective and void; that the plaintiff-appellant had never been in possession of the suit land nor had he ever cultivated it; that it was all along in the cultivating possession of the defendants; that the suit lands were not parts of Khasra Nos. 38 and 47; that though there were consolidation proceedings in 1958-59 in village Mahul Jhopdi, the suit lands were excluded from the said consolidation; that the inclusion of the suit land in Khasra Nos. 38 and 47 was fraudulent and did not confer any right on the plaintiff-appellant in respect of it; that the defendants had never consented to the allotment of the suit lands to the plaintiff-appellant as a result of the said consolidation; that the defendants had improved the suit land by spending over Rs. 5,000.00 over it as its owner to the knowledge of the plaintiff-appellant who was, therefore, estopped from challenging their title to it; and that, in any case, the plaintiff-appellant could not claim possession of the suit land unless he paid to the defendants Rs. 5,000.00 as the costs of improvement. It was, therefore, claimed that the suit be dismissed.

4. The trial Court decreed the suit holding, inter alia, that the suit lands formed parts of Khasra No. 38 and Khasra No. 47; that the suit land was allotted to the plaintiff-appellant in the consolidation proceeding of 1958-59; that the suit lands were held by Randhirsingh the ex-proprietor, in malik makbuja rights after the Madhya Pradesh Abolition of Proprietary Rights (Estates, Mahals, Alienated Lands) Act, 1950 (Act No. I of 1951); that Randhir Singh had validly sold the suit lands to the plaintiff-appellant in 1952 by a registered sale deed dated 12-6-1952 (Ex. P-17); and that the suit lands were not excluded from the consolidation proceedings and their allotment to the plaintiff-appellant was legal and valid. It further held that the plaintiff-appellant had not been in possession of the suit lands nor was he dispossessed from them in 1961 as alleged; but that the defendants

had not acquired any title to them by adverse possession.

5. The learned District Judge reversed the judgment and decree of the trial Court and dismissed the suit of the plaintiff-appellant. He held:

(1) That the civil suit was barred because of the provisions of Section 250 read with Section 257 (x) of the Madhya Pradesh Land Revenue Code.

(2) That the plaintiff-appellant had failed to prove that he was in possession of the suit land and was dispossessed therefrom in 1961; and as this was the foundation of his claim, his suit must fail.

(3) That Ex. P-17, dated 12-6-1952 was forged.

(4) That, in any case, the suit lands were settled with the ex-proprietor Randhir Singh under Section 54 (1) of the Madhya Pradesh Abolition of Proprietary Rights (Estates, Mahals, Alienated Lands) Act, 1950 (No. I of 1951) on or about 12-2-1954 and could not, therefore, have been sold by him to the plaintiff-appellant on or about 12-6-1952.

(5) That the Consolidation Patta (Ex. P-1) was given to the plaintiff-appellant on the basis of Ex. P-17, which was a forgery and that consequently it could not help him.

6. The learned counsel for the plaintiff-appellant contends that the suit could not be held to be barred under Section 257 (x) read with Section 250 of the Madhya Pradesh Land Revenue Code. In my opinion, the contention is correct. Section 250 of the Code provides a summary remedy for the reinstatement of a Bhumiswami illegally dispossessed from his holding; and Section 257 (x) prohibits a Civil Court from entertaining a suit instituted or an application made to obtain a decision or order which a Revenue Officer is, by the Code empowered, to determine, decide or dispose of, and, in particular, any decision regarding reinstatement of a Bhumiswami improperly dispossessed under Section 250. Interpreting these sections, a Division Bench of this Court in *Nathu v. Dilbande Hussain*, 1964 MPLJ 822 = (AIR 1967 Madh Pra 14), held that-

'The remedy of a suit under Section 9 of the Specific Relief Act for obtaining possession of agricultural land of which he is dispossessed is not available to a Bhumiswami. If such a Bhumiswami wishes to have the land restored to him in speedy manner and after a summary enquiry, he must resort to the remedy provided by Section 250 of the Madhya Pradesh Land Revenue Code, 1959. But that the sections do not 'stand in the way of the institution of a suit for possession of land founded on title.' It was further held that an aggrieved Bhumiswami may, if he likes straightway bring a suit in a Civil Court for the establishment of his title to the land and to recover possession thereof.'

7. It is equally incorrect to hold that as the plaintiff-appellant had failed to prove his allegation of dispossession in or about 1961 when he was in possession, his suit for possession on the basis of his title was bound to fail. The basis of his title was his purchase of the suit land from the ex-proprietor Randhirsingh on or about 12-6-1952 for valuable consideration under a registered deed of sale and the subsequent grant of a Consolidation Patta (Ex. P-1) to him by the Consolidation Officer on 1-6-1959. His suit could not, therefore, be dismissed, unless his title was disproved or his remedy for possession was held to be barred under the law of limitation.

8. Now, as regards the plaintiff-appellant's title, he claims under the registered sale deed dated 12-6-1952 (Ex. P-17) executed by the ex-proprietor Randhirsingh in his favour. The defendants-respondents do not say in their written statement that it was a forged document. All that is alleged is that as the ex-proprietor had no right to sell the land, the sale, if any, was void and inoperative. The learned District Judge had, therefore, little reason to observe that the document (Ex. P-17) was on the face of it forged. Then again, the reasons for holding the document (Ex. P-17) forged are very thin and cannot bear scrutiny. According to the learned Judge, there was an overwriting in the number 9.35; but an addition of the areas of the three fields $2.60 + 6.45 + 0.30$ is 9.35 and consequently, if any mistake in addition had been corrected, it could not be labelled as forgery. But the crucial thing is that the document had been registered and the defendants could have, if they had so intended, proved that it was forged by filing a certified copy of the sale deed when a comparison of the certified copy with the original filed would have shown

whether any manipulation had been made in the original after its registration. It may also be noted that no question on the document being a forgery was put to the plaintiff-appellant when he was in the witness-box. He could have then explained how and why what appears to be an overwriting was made and whether it was bona fide. In the absence of such evidence, it is idle to speculate that it was a forgery on surmises and conjectures. It is also significant that in the jamabandi for 1955-56 (Ex. P-13), the plaintiff and his brothers are shown to be the khatedars in respect of the fields sold under Ex. P-17, and in the khasra panchsala for the years 1953-54 to 1956-57 (Ex. P-6) again they are shown to be the persons in possession of the lands in respect of them as also in Ex. P-9 the certified copy of the record-of-rights in respect of them. I do not, therefore, think that there is any evidence to hold the document (Ex. P-17) as forged. On the other hand, in my opinion, that document satisfactorily establishes the title of the plaintiff-appellant in respect of the suit land.

9. It is admitted by the defendants that in 1958-59 there were consolidation proceedings in village Mahul Jhopdi where the suit lands are situated. It is also not disputed that in those proceedings the lands of the plaintiff were consolidated and vide the Consolidation Patta (Ex. P-1) he was allotted lands Khasra No. 38, area 8.03 acres, and Khasra No. 47, area 4.29 acres, which we may for convenience call 'Chak Khasra Numbers'. It is also not disputed that the suit lands form part of the aforesaid Khasra numbers. The defendants allege that 2 acres of the suit land form part of Khasra No. 38 and 0.75 acre of Khasra No. 47. Ex. P-10, which is a copy of Form 'A' shows that Chak Khasra No. 38 comprised of, amongst others, old Khasra No. 43 and Chak Khasra No. 47 comprised of, amongst others, old Khasra No. 57/1 and that the areas of Khasra Nos. 38 and 47 were respectively 8.02 acres and 4.29 acres. This document further records, under the head 'nature of the right and its origin'

that the right is a right of occupancy and that the origin of the right is in the consolidation of the lands in 1958-59.

(in pursuance of an application of 1959 for possession and cultivation and in accordance with the consolidation of Bhumidhari lands in Revenue Case 16 of

1958-59). This document (Ex. P-1) thus shows that the plaintiff was given possession of Khasra Nos. 38 and 47 for cultivation after the consolidation proceedings.

10. Ex. D-7 dated 18-7-1959 is the report of the Consolidation Officer. It has been 'approved by' the Collector, Durg, presumably under Section 210 of the Madhya Pradesh Land Revenue Code, 1959. The report says that the consolidation had been accepted by the khatedars and that no objection had been raised by them. He has further stated that the changes in the holding have been made with the unanimous consent of the villagers and that it was to come into force as from 1-6-1959. Under Section 210 of the Land Revenue Code,--

'The Collector may either confirm the scheme with or without modification or refuse to confirm the scheme with or without modification or refuse to confirm it after considering the objections, if any, to the scheme of consolidation and the recommendation of the Consolidation Officer. The decision of the Collector, subject to any order that may be passed in revision by the Settlement Commissioner under Section 50, shall be final.'

Under Clause (v) of Section 257 of the Land Revenue Code, jurisdiction of the civil courts is barred to question the scheme of Consolidation of Holdings under Section 210 of the Code.

11. In the result, I hold that the title of the plaintiff-appellant to Khasra Nos. 38 and 47 which had been allotted to him, under the Consolidation Patta (Ex. P-1), is fully proved.

12. I shall now examine whether the defendants had acquired any right in the suit property by adverse possession or otherwise.

13. The defendants say that the suit land was the khudkasht of the ex-proprietor Randhirsingh. There is, however, no reliable evidence to substantiate the aforesaid allegation. On the other hand, Ex. P-12, the Khasra Jamabandi for the year 1922-23, shows that Khasra Nos. 43 and 57/1 were recorded as the 'sir' of the then proprietor Lachhamansingh. In Ex. P-2, the Panchasala Khasra for the

years 1946-47 to 1950-51, again the lands, Khasra Nos. 43 and 57/1, are recorded as the 'sir' of the ex-proprietor Randhirsingh. In the sale deed (Ex. P-17) executed by the ex-proprietor Randhirsingh in favour of the plaintiff-appellant on or about 12-6-1952, the lands are described as 'sir'. I am, therefore of opinion that the suit land was the sir of the ex-proprietor Randhirsingh. Now, when The Madhya Pradesh Abolition of Proprietary Rights (Estates, Mahals, Alienated Lands) Act, 1950. came into force, the 'homefarm' of the ex-proprietor, which was under his cultivating possession in 1949-50 as also on the date of vesting, and which he was entitled to retain on the termination of proprietary tenure under any instrument having the force of law and applicable to such tenure, was saved to him under Section 4(2) read with Section 2 (g) (22) of the Act. Under Clause 8 of the Rajnandgaon wajib-ul-arz, 'if a gaontia is ejected from his theka, he loses his sir land which becomes the sir of the new gaontia. Consequently, when the proprietary rights vested in the State, the ex-proprietor Randhirsingh lost his right to his sir which became the sir of the State. It was for this reason that on or about 12-2-1954 some of the sir of the ex-proprietor, which was in his personal cultivation, was settled with him in raiyati rights under Section 54 (1) of the Madhya Pradesh Abolition of Proprietary Rights (Estates, Mahals, Alienated Lands) Act, 1950 vide Ex. P-11. Thus, under the orders of the Collector in Ex. P-11 all his sir, except that comprised in Khasra Nos. 15, 61, 77, 130 and 157, area 17.39 acres, was settled with him in raiyati rights and assessed to revenue of Rs. 34.00.

14. In view of the aforesaid evidence, the plea of the defendants that the suit land was the khudkasht of the ex-proprietor and that he had been made a raiyat thereof on an oral lease cannot be accepted.

15. Alternatively, the defendants pleaded title to the suit land by adverse possession of over fifteen years. The trial Court had negatived the plea of adverse possession and the Appellate Court has given no finding on the point. The documents on record do not, however, show the possession of the defendants-respondents for over fifteen years on the suit lands as alleged. The earliest record we have is the Khasra Panchasala for the years 1946-47 to 1951-52 (Ex. P-2). At that time the land was sir of the ex-proprietor Randhirsingh. Both in respect of

Khasra Nos. 43 and 57/1 the defendants-respondents are not shown to be in cultivating possession. Ex. P-3 is the Khasra Panchsala for the years 1953-54 to 1956-57. In this document also the defendants are not shown to be in possession, nor are they shown to be in possession in Ex. P-7, which is the Panchsala Khasra for the years 1956-57 to 1958-59. In 1958-59, there were consolidation proceedings in which the plaintiff was given new chaks bearing Khasra Nos. 38 and 47. Ex. P-14, which is the Panchsala Khasra for the years 1959-60 to 1960-61, records the plaintiff Eatte in possession first as Bhumidhari and later as Bhumiswami. Thereafter, for the first time in the Khasra for the year 1961-62 (Ex. P-4) the name of the kabjedar is shown as the plaintiff, Fatte son of Arjun in Bhumiswami rights and the name of the defendant Banshilaf in the remarks column 10 as in forcible possession in respect of 2 acres in Khasra No. 38 and in respect of 0.75 acre in Khasra No. 47. The entry reads as follows: ^ca'khyky dk uktk;t dCtk jdok 2&OO; ij gS** against Khasra No. 38 and ^ca'khyky dk uktk;t dCtk jdok O&" ijgS**against Khasra No. 47. No doubt, the defendant Banshilal as D. W. 2 has asserted that his father had been in possession of the suit land since about five years before his death in 1952. i.e. from about the year 1947; but the revenue records do not corroborate him on the point. It is significant that his case in his written statement was that the land was given to his father on an oral Patta, while in his evidence he speaks of a sale, though he admits thathe has no written document to evidence it. I may add that the story of a purchase of the suit land by the father of the defendants 1 and 2 in about the year 1947 could not be true because at that time, according to the wajib-ul-arz of Rajnandgaon State, the land being sir could not have been sold to the father of the defendants 1 and 2 as the sale of sir land was not permissible under the wajib-ul-arz. The defendant Banshilal says that he has in his possession Rasid Bahis (rent receipts) evidencing the payment of land revenue in respect of the suit land; but no such rent receipts have been filed. In my opinion, the story of possession since about 1947 could not possibly be true and, in any case, it is not saisfactorily established from the evidence on record as the oral assertions of the defendant Banshilal on the point are contradicted by the documentary evidence.

16. The defendant Banshilal as D. W. 2 admits that the suit lands form part of consolidated Khasra Nos. 38 and 47, These Khasra numbers, as we have shown

above, were allotted to the plaintiff-appellant in the consolidation proceedings of 1958-59 vide Ex. P-1. Prior to the consolidation, the suit lands formed part of Khasra Numbers 43 & 57/1 which were sir of the ex-proprietor and were sold to the plaintiff-appellant in about the year 1952 vide Ex. P-17. Now, the land being sir, it had vested in the State under the Abolition of Proprietary Rights (Estates, Mahals, Alienated Lands) Act, 1950 read with the Rajnandgaon wajib-ul-arz; but as it was in the cultivating possession of the ex-proprietor, it was settled with him in raiyati rights under Section 54 (1) of the Act. The defendant could not, therefore, have been in possession of the suit land prior to 1954, much less in adverse possession. It does, however, appear that some time after this he surreptitiously took its possession because in the Khasra Panchsala for 1961-62 and 1962-63 (Ex. P-4) the defendant Banshilal is recorded as in disputed 'possession of the suit lands which he in his deposition as D. W. 2 admits are Darts of Khasra Nos. 38 and 47. At about this time, he had also raised an objection before the Revenue Officers, Ex. D-9 is 'Form E' for objections dated 28-3-1962. In this for the first time the defendant Banshilal alleges that the objectors Banshilal, Ramadhin, Kashiram and Ghasiram had purchased the suit plots along with Khasra Nos. 40 and 46 for Rs. 5,000.00 from the ex-proprietor Randhirsingh which, as I have said above, could not be true because before fifteen years ago the plots were sir of Randhirsingh and could not be sold by him in view of Clause 8 of the wajib-ul-arz of Rajnandgaon State. The defendants further say that the plots were under their personal cultivation for over fifteen years, which again is not believable because the oral statement of Banshilal (D. W. 2) on the point finds no corroboration from the Khasras which have inclusive evidentiary value. In addition, the copies of the Record of Rights (Exs. P-9 and P-10), which record Khasra Nos. 38 and 47 as owned and possessed by the plaintiff-appellant and Khasra Nos. 40 and 46 as owned and possessed by the defendants-respondents have under Section 117 read with Section 211 of the Madhya Pradesh Land Revenue Code, 1959, presumptive evidentiary value. The allegation in the objection that the defendants had got the suit plots measured and the sale registered

geus ekSds ij gh Hkwfe dh yEckbZ pkSMkbZ ukidjok Qksyky ds lkeus gh lkSnk fd;k Fkk ml [kjnhh gqbZ tehu dk uEcj Jh ejnkuvyh HkwriwoZ ys[kiky us fn;k Fkk vkSj jftLVh djkbZ xbZ

is not proved as the sale deed has not been filed. According to the objector in this document, the land was measured recently and it was found that 2 acres out of Khasra No. 38 and 0.75 acre out of Khasra No. 47 were part of their land which they had been cultivating for long and which had wrongly been recorded as part of Khasra Nos. 38 and 47. It is significant that the defendant Ban-shilal does not say that he had got his Khasra Nos. 40 and 46 measured and found that they were short in area by 2.75 acres because the lands of the plaintiff and the defendants are contiguous and if the defendants' land, area 2.75 acres, was included in Khasra Nos. 38 and 47 of the plaintiff, to that extent it must have diminished the area of the defendants Plots Nos. 40 and 46. In the absence of such allegation and proof, the bare assertion of the defendant Banshilal on the point cannot be accepted. On the aforesaid objection, the statement of the plaintiff-appellant was also recorded where he is alleged to have admitted the defendants' possession on the suit plots. This statement, however, was not put to the witness (P. W. 1) nor has it been proved by examining Dewangan who had recorded it. There is also the statement of the plaintiff Fatte (P. W. 1) recorded in criminal proceedings (Ex. D-10) wherein he is stated to have admitted that before the Revenue Inspector he had admitted that the suit field was being cultivated by the defendants for 15-16 years. He has denied the statement now. But, in my opinion, nothing much turns on the said admission as, in the face of overwhelming evidence to the contrary, it cannot have much value. No doubt, on the basis of the aforesaid objection, the Revenue Officer had, on or about 27-4-1962, submitted a report to the Tahsildar accepting the defendants' objection and recommending a correction of the Patwari records; but what action was taken on it we do not know.

17. Much was made of the fact that the suit land was kept 'khadi' (standing) in the consolidation proceedings, i.e.. it was agreed to be excluded from any consolidation scheme in the village. Again, we have the interested word of the defendant Banshilal (D. W. 2) for it. No officer, who had done the consolidation, was examined nor is any certified copy of the consolidation proceedings filed to establish that any such assurance was given by the Consolidation Officers.

18. On an appreciation of the evidence on record it appears to me that the suit land was part of the land purchased by the plaintiff-appellant from the ex-proprietor

Randhirsingh, viz., Khasra Nos. 37, 43 and 57/1. After the consolidation of holdings in the village, it was included in new Khasra Nos. 38 and 47 of the plaintiff-appellant. The land of the defendants, Khasra Nos. 40 and 46, was contiguous to the plaintiff's land. Some time before or after the consolidation, the defendants had illegally occupied the suit land. But, during consolidation, they could not lay claim to it because they had no title to it. They, therefore, did not raise any objection and that is the reason why in the report of the Consolidation Officer to the Collector dated 18-7-1959 (Ex. D-7) the Consolidation Officer says that 'no cultivator has objected to the scheme' dksbZ Hkh 'kd us vk{ki ugha fd;k-On the confirmation of the scheme by the Collector under Section 210 of the Madhya Pradesh Land Revenue Code, 1959 it has become final and the jurisdiction of the Civil Courts is barred to question it because of Section 257 (v) of the Code. In 1961-62 the Khasra numbers were got measured by the plaintiff-appellant and it was found that the suit land was his and was in illegal occupation of the defendants. Whether the encroachment by the defendants was deliberate or mistaken, we do not know; but one thing is certain that it was illegal and unauthorized. It has also not been proved to be of the requisite duration of twelve years or over to warrant any inference of adverse possession. Consequently, the defendants' claim of title on the basis of his alleged adverse possession cannot be held to have been established.

19. The next question is whether the sale of the suit land in favour of the plaintiff-appellant by the ex-proprietor Randhirsingh on 12-6-1952 can pass a valid title to him when he himself got the land settled in his favour under Section 54 (1) of the Madhya Pradesh Abolition of Proprietary Rights (Estates, Mahals, Alienated Lands) Act, 1950 on or about 12-2-54 vide Ex. P-11 In my opinion, the provisions of Section 43 of the Transfer of Property Act would be attracted, whereunder a person who has no title whatsoever to a property grants it by a conveyance which in form carries legal estate, and he subsequently acquires an interest sufficient to satisfy the grant, the estate instantly passes. There is also the fact that the plaintiff-appellant has been recorded as the owner in possession in the revenue papers, viz., Khasras Exs. P-3, P-7 and P-14 for the years 1952-53 to 1958-59, as also in the copies of the Record-of-Rights (Exs. P-9 and P-10), and has thus by his conduct exercised the option of accepting the sale, within the meaning of Section

20. The last question is whether the plaintiff-appellant 'having allowed the defendants and their predecessor Pandit to spend about Rs. 5,000.00 in making improvements and constructions on the suit land, was estopped in law front claiming the suit land as his own and from seeking its possession' (vide paragraph 7 of the written statement).

21. Now neither of the Courts below has found that the plaintiff-appellant had allowed the defendants and their predecessor Pandit to spend about Rs. 5,000.00 over the improvement of the suit land. There is also no evidence to support the allegation. Banshilal (D. W. 2) does not say that the plaintiff had allowed the defendants' predecessor Pandit or the defendants to make the improvements nor does he say that the defendants had spent Rs. 5,000.00 over it. On the other hand, his evidence is that the suit lands were valued at Rs. 2,750.00, which could not be their value if they had spent about Rupees 5,000.00 over them. Reliance may, however, be placed on the statement of Jethmal (D. W. 1) that Randhirsingh had pointed out the land purchased by Pandit to him in the presence of Gendmlal, the broher of the plaintiff, and others (Paragraph 2 of his deposition). But this does not prove that it was the suit land which was pointed out by the ex-proprietor Randhirsingh to Pandit, nor that it was the suit land which was sold by Randhirsingh to him. I may also point out that the story of the defendants that they or Pandit had purchased the suit land or any land from the ex-proprietor Randhirsingh has already been found to be false by me. Under the circumstances, the facts necessary to apply the provisions of Section 115, Evidence Act are neither specifically alleged nor proved by the defendants-respondents. Under that section,--

'When one person has, by his declaration act or omission, intentionally caused or permitted another person to believe a thing to be true and to act upon such belief, neither he nor his representative shall be allowed, in any wit or proceeding between himself and such person or bis representative, to deny the truth of that thing.'

None of the essential requirements for the application of the provisions has been proved in this case. There is thus no question of any estoppel against the plaintiff-appellant in this case.

22. I, therefore, hold that the plaintiff-appellant has title to the suit land and as his right to claim its possession has not been lost by twelve years adverse possession, his claim for possession must be decreed.

23. In the result, the appeal is allowed. The judgment and decree of the learned District Judge are set aside and those of the trial Court decreeing the suit restored. The costs of all the Courts shall be paid by the defendants-respondents.

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