

Nagu and ors. Vs. Bhanwarsingh and ors.

Nagu and ors. Vs. Bhanwarsingh and ors.

SooperKanoon Citation : sooperkanoon.com/498608

Court : Madhya Pradesh

Decided On : Oct-09-1986

Reported in : AIR1987MP102

Judge : A.G. Qureshi, J.

Acts : [Limitation Act, 1963](#) - Schedule - Articles 64 and 65

Appeal No. : S.A. No. 237 of 1975

Appellant : Nagu and ors.

Respondent : Bhanwarsingh and ors.

Advocate for Def. : C.M. Mehta, Adv. and ;G.S. Solanki, Govt. Adv.

Advocate for Pet/Ap. : G.M. Chafekar, Adv.

Disposition : Appeal allowed

Judgement :

A.G. Qureshi, J.

1. This is a second appeal against the judgment and decree dated 9-12-1974, passed by the Second Additional District Judge, Ujjain in Civil Regular Appeal No. 4 A of 1973, preferred against the judgment and decree dated 8-1-1973, passed by the Civil Judge Class II, Mahidpur in Civil Original Suit No. 18-A of 1968.

2. The facts leading to this appeal in short are that the original plaintiff Bhaggaji had filed a suit in the Court of the Civil Judge Class-II, Mahidpur against Bapusingh (now deceased) for declaration of his title on the ground that the plaintiff Bhaggaji had purchased agricultural land, survey No. 34 in village Dhulet from the defendant Bapusingh on 3-2-1953. The document was executed about the sale and Bhaggaji was inducted into possession of the suit land. This suit land is also called 'Anarsingh-Wala Seda'. Since that date, the plaintiff is in continuous possession of the suit land. On 8-8-1964, the defendant Bapusingh along with his son tried to dispossess the plaintiff forcibly from the suit land. Therefore, on 10-8-1964, he filed a Civil Suit No. 32-A of 1964 in the Court of the Civil Judge Class II, Mahidpur, whereupon a judgment and decree was passed in favour of the plaintiff against the defendant Bapusingh and his son restraining them from interfering with the possession of the plaintiff over the suit land. A relief of declaration was sought on the ground that the plaintiff being in possession of the land for a period of over 12 years as an owner, he has perfected his title by adverse possession and, therefore, he be declared the owner of the suit land. A prayer in the alternative was made that in case the plaintiff may not be declared an owner, then a decree for specific performance of the contract be passed against the defendant, The suit was resisted on the ground that the defendant was never inducted in the possession of the suit land in lieu of a contract to sell the land. Even if such an agreement may be held to exist still the plaintiff cannot get a decree for specific performance of the contract in view of the provisions of Section 70 of the Madhya Bharat Land Revenue Code. The trial Court after trial decreed the suit of the plaintiff against the defendant holding that the plaintiff has become the owner of the suit land by prescription. Aggrieved by the judgment of the trial Court, the defendant filed an appeal before the lower appellate Court which was registered as Civil Regular Appeal No. 4-A of 1973. During the pendency of the appeal, the plaintiff and defendant both expired and their legal representatives were brought on record.

3. The learned lower appellate Court agreed with the findings of the learned lower Court about the possession of the plaintiff on the suit land. However, it held that the possession was not continuously peaceful because on 8-8-1964 when the defendant tried to forcibly oust the plaintiff from the suit land he had denied his title

on the suit land. Thereafter the plaintiff filed a suit for permanent injunction against the defendant pertaining to the suit land, whereupon the Civil Court passed a decree of permanent injunction against the defendant and his son in Civil Suit No. 32-A of 1964. Therefore, since 8-8-1964 the plaintiff continued in possession of the suit land on the basis of the decree of the Civil Court and not peacefully within his rights. Therefore, the possession of the plaintiff on the suit land could not be held to be continuous and peaceful for a period of over 12 years. Consequently the judgment and decree passed by the trial Court was reversed and the suit of the plaintiff was dismissed. Hence this second appeal.

4. The learned counsel for the appellants, Shri Chafekar assails the findings of the learned lower Court in the ground that having held that the defendant was in possession of the suit land in his own rights since 3-2-1953 to the date of the suit, the learned lower Court has erred in holding that the possession was not adverse to the defendant Bapusingh for approval of over 12 years. The finding of the learned lower appellate Court is contrary to the evidence on record and against the well settled principles pertaining to adverse possession. On the other hand, the learned counsel for the respondents Shri C. M. Mehta, supporting the judgment and decree passed by the learned appellate Court, argues that the learned lower Court has rightly held that after 8-8-1964, the possession of the plaintiff-appellant on the suit land was not peaceful.

5. It is not controverted before me that since the year 1953 when the appellant was inducted into the possession of the suit land in lieu of an agreement to sell the said land to the plaintiff by the defendant, the plaintiff was in possession of the suit land as an owner of that land. The defendant tried to dispossess him forcibly by taking law in his own hand in August 1964, whereupon the plaintiff filed a suit against the defendant and his son in the Civil Court. The Civil Court passed a decree in favour of the plaintiff against the defendant restraining the defendant and his son from interfering with the possession of the plaintiff over the suit land. Although there was an abortive attempt to dispossess the plaintiff from the suit land still the plaintiff continued to remain in possession of the suit land. In suit No. 32-A of 1964, filed by the plaintiff against the defendant, claiming the right to continue in possession on the suit land against the interest of the defendant, who

was the recorded Bhumiswami of the suit land; the defendant in his written statement did not take a plea that he being the owner of the suit land is entitled to dispossess the plaintiff. On the contrary, he took a plea that the plaintiff had cut down trees on the adjacent land and the defendant had gone on the suit land in occupation of the plaintiff for recovery of the price of the wood cut by the plaintiff. The plaintiff succeeded in that suit and an order of permanent injunction was passed against the defendant as is evident from Ex. P-3, the judgment dated 27-3-1965, passed in Civil Suit No. 32-A of 1964. The defendant did not challenge that judgment and decree and thereafter took no steps by filing a suit or any other proceeding for dispossessing the plaintiff from the suit land knowing fully well that the plaintiff is in possession of the suit land claiming himself to be the owner of the suit land against the interest of the defendant on the basis of the document of agreement to sell. The aforesaid circumstances clearly go to show that the plaintiff was in possession of the suit land claiming a title hostile to that of the defendant. The protection granted to the plaintiff by the Civil Court in civil suit No. 32 A of 1964 did not change the character of the possession of the plaintiff. It continued to be adverse and the assertion of the plaintiff to hold the suit land as an owner was re-enforced by the judgment and decree of the Civil Court.

6. The learned counsel for the respondents, however, argues that a plea of adverse possession has not been taken by the plaintiff and it was also not known as to since when the possession became adverse against the true owner. In Support of his contention, he has placed reliance on *S. M. Karim v. Mst. Bibi Sakina*, AIR 1964 SC 1254 and *Ambu Nair v. Secretary of State*, AIR 1924 PC 150. In *S. M. Karim v. Mst. Bibi Sakina* (supra), the Supreme Court has held that when a claim of title was based on adverse possession, then the plea of adverse possession should specifically be taken and if in the prayer clause the plea of adverse possession is raised, then it will not substitute the specific plea of adverse possession. Further it must also be shown that since when the possession of the person claiming adverse possession became adverse to the true owner, so that the starting point of limitation against the party affected can be found. In *Ambu Nair v. Secretary of State* (supra), it has been held that a long possession is not necessarily an adverse possession and the possession should be adverse to the knowledge of the true owner. In the instant case, in para 4 of the plaint, there is an

unambiguous plea that the plaintiff is in possession of the suit land since 3-2-1953 on the basis of a contract to sell the land in his favour and since then he is holding the land adverse to the interest of the owner and since he is holding that land for a period of over 12 years in adverse possession, therefore, he has perfected his title over the suit land. Therefore, both the judgments of the Supreme Court do not help the respondents in any way because a specific plea of adverse possession has been taken and it has also been mentioned that since when the plaintiff is holding the land in adverse possession. Reliance has also been placed on the judgment of the Full Bench of this Court in *Kashiram Gopal Gari v. Nathu Hire*, 1980 MPLJ 670 : (AIR 1980 Madh Pra 183), where it has been held that a person claiming adverse possession can claim Bhumiswami rights if the rights are acquired lawfully. This judgment also is of no avail to the respondents because the plaintiff is not claiming the rights of the Bhumiswami only on the basis of the adverse possession. He pleads the ripening of his title over the suit land by adverse possession for the statutory period of 12 years. Similarly the authority of *Dagdu Kachhi v. Jatibai Kachhi*, (1986 Revenue Nirnaya 260) also does not help the respondents wherein it has been held that possession based on agreement to sell is not sufficient to establish the claim of adverse possession. In the instant case the appellant has all through held the land in his possession, treating himself as an owner and has, at no point of time, acknowledged the title of the defendant in the suit land, whereas in *Dagdu Kachhi's* case (*supra*) the plaintiff was depositing the revenue in the name of the defendant and had also admitted that even one year prior to the filing of the suit he was pressing the defendant-respondents to get the sale deed registered in his favour. As such, in that case he all through admitted the title of the defendant in the suit land, whereas in the instant case there is no evidence to show that the plaintiff was holding the land on behalf of the true owner acknowledging his title over the suit land.

7. The learned lower appellate Court has dismissed the suit of the plaintiff holding that because of the attempt of the defendant to dispossess the plaintiff forcibly from the suit land and continuance of the possession of the plaintiff over the suit land under the protection of the order of the Civil Court was not a peaceful possession and the possession being not peaceful there is a break in the continuity of the peaceful possession. Therefore, the plaintiff cannot be held to

have been in adverse possession over the suit land for a continuous period of 12 years. In my opinion, the learned lower appellate Court has failed to make a distinction between the interruption of the possession and the peaceful possession. What the law requires is that the possession should be hostile under a claim or colour of title. It should be actual, open, uninterrupted, notorious, exclusive, continuous and for a statutory period of 12 years. Presence of all these elements converts the adverse possession into title. Uninterrupted possession has to be distinguished from the peaceful possession. Any stray act of an attempt to dispossess the person holding the land adversely cannot be held as an interruption of the possession. The interruption should be actual, causing a break in the possession. Only an attempt to dispossess cannot be held to be an interruption in the possession. Similarly a litigation in the Court also cannot be treated as an interruption, unless during the course of the litigation, the person in adverse possession acknowledges the title of the true owner. Such an acknowledgment will certainly affect the adverseness of the possession because then the element of the hostility against the true owner about the title in respect of the land in possession shall be lacking, causing a break in the continuity of adverse possession.

8. In the instant case despite the attempt of the defendant to dispossess the plaintiff from the suit land, he was not dispossessed. In the proceedings before the Court also, the plaintiff asserted his right to possess the suit land and did not acknowledge the title of the defendant on the suit land. Therefore, the judgment and decree passed by the learned lower appellate Court treating the decree of the Court and the attempt of the defendant to dispossess the plaintiff from the suit land as interruption of the possession is erroneous.

9. In the result, the appeal of the appellants is allowed with costs. The judgment and decree passed by the learned lower appellate Court are set aside. Instead the judgment and decree passed by the trial Court are restored. Counsel's fee according to schedule or certificate, whichever is less.