

Ramsingh Vs. Roopsingh

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Court : Madhya Pradesh

Decided On : Sep-29-1988

Reported in : AIR1989MP273; 1989MPLJ681

Judge : R.C. Lohoti, J.

Acts : [Limitation Act, 1963](#) - Sections 27 - Schedule - Articles 64 and 65; Madhya Pradesh Land Revenue and Tenancy Act, 1950 - Sections 78

Appeal No. : Civil Second Appeal No. 255 of 1977

Appellant : Ramsingh

Respondent : Roopsingh

Advocate for Def. : G.M. Chaphekar, Adv.

Advocate for Pet/Ap. : P.K. Saxena, Adv.

Disposition : Appeal allowed

Judgement :

R.C. Lohoti, J.

The defendant-appellant seeks setting aside of a decree for possession in respect of an agricultural land in a suit based on title though declaration as to title was not prayed for.

2. The suit property, an agricultural land bearing survey No. 106 area 15.32 acres situated at village Shivna of Tahsil Bhikangaon admittedly belongs to the plaintiff-respondent. According to the plaintiff the defendant illegally dispossessed the plaintiff at about 7-8 years prior to the institution of the suit and did not restore the possession to the plaintiff in spite of demand by notice served on 7-6-66. The defendant in his written statement took the plea that in the year 1955 the plaintiff sold the land to the defendant and his brother Manohar for a consideration of Rs. 611/- and delivered possession. A sale-letter (on a piece of plain paper) was executed by the plaintiff which document has been lost because at about two years before the institution of the suit Manohar, who was in the custody of the document, expired unexpectedly on account of snakebite and since then the document was not traceable. The defendant submitted that he having been in possession of the property since 1955 adversely and in denial of the plaintiff's title, his title has been perfected by prescription also.

3. The suit was decreed by the trial Court on 30-7-1971. The decree was challenged in appeal. The District Court in Civil Appeal No. 46-A of 76 by order dt. 27-6-74 remanded the case back to the trial court because it was of the opinion that despite a plea as to adverse possession having been raised in the written statement an issue covering the plea was not framed which vitiated the trial. On remand such an issue was framed. On behalf of the defendants an additional witness, Ram Singh by name, was examined. No other evidence was adduced. On hearing the parties, by judgment and decree dt. 15-3-76 the suit was once again decreed. The trial Court held that the possession of the defendant being under an agreement for sale, could not be treated to be adverse. The lower appellate Court made a reappraisal of all evidence available on record. It upheld the dismissal of the suit but not for the reasons given by the trial court. It held that the loss of the sale letter of the year 1953 was neither alleged nor proved and there being no prayer seeking leave to adduce secondary evidence, nor a permission to do so, the evidence of such sale could not have been looked into. The court also held that the plaintiff in his statement dt. 23-7-71 had stated that he had leased the land to the defendant on adhbatai (division of crops or profits) for a period of two years in 1957-58 which fact found support from the khasra entry (Ex. D. 1) for the samvat year 2014-15, and hence the possession of the defendant

could not be treated as adverse. The appellate Court believed the statement of Anopsingh (P. W. 2) who was village Patel and who had deposed that the defendant had been in possession of the land for 15-16 years. On this evidence appellate Court arrived at a conclusion that possession of the defendant commenced in Samvat Year 2014-15 whereafter he had been continuously in possession but the possession had originated in permission which could not be adverse to the plaintiff.

4. Before this court the learned counsel for the appellant has submitted that the possession of the defendant having been found proved since samvat year 2014-15, it should have been held that the defendant had perfected his title by adverse possession extending over the statutory period of 12 years and hence the plaintiff's suit should have been dismissed. The collateral findings have also been attacked as unsustainable, There is force in the submission made.

5. The learned appellate court adopted a very superficial approach to the facts of the case. The loss of the sale letter was pleaded in the written statement but the pleading was totally overlooked by the appellate Court. Evidence was adduced which was secondary in nature and allowed to be adduced by the defendant without raising an objection and admitted by the Court too. Sale letter, if executed, would ordinarily have been in the custody of the defendant who stated that it was lost and was not available. In this background the secondary evidence having been allowed to be adduced and admitted a prayer for its exclusion made at the fag-end of the trial or at the stage of appeal could not have been entertained. It may also be noticed that what the defendant was seeking was not acquisition of title under the lost sale letter, unstamped and unregistered, but he only wanted to settle and fix up the point of time with which his possession purporting to be that of an owner and his denial of the plaintiffs title commenced.

6. Possession pursuant to an agreement to sell the land becomes adverse from the date of the agreement. Their Lordships of the Supreme Court held in *Sundersingh v. Narayansingh* (Civil Appeal No. 816 of 1966 decided on 3rd April, 1969) (reported in 1969 SCD 900) that when a person is put in possession of property pursuant to an agreement of sale, the proposition that his possession is

permissive until he is able to establish by definite evidence the point of time from which his possession became adverse against the owners cannot be regarded as laying down the correct law. The decision of the Apex Court has been followed by this Court in Govind v. Rama (S. A. No. 491/1966 decided on 25-2-77 at Indore) to hold that from the date of agreement to sell, since when the defendant continued to be in possession of the suit land in pursuance of that agreement, his possession became adverse to the plaintiffs and the plaintiffs' suit (instituted beyond 12 years of that date) was clearly barred by time. That being settled position the Courts below were not right in holding that the possession alleged to have commenced under an unregistered sale letter was permissive and not adverse.

7. The lower appellate Court was also not right in holding that the possession of the defendant should have been held permissive and not adverse because he was recorded as a bataidar for two years in Samvat Year 2014-15. This has to be held for reasons more than (Sic). The plaintiff alleged that he was dispossessed only at about 7 to 8 years before filing of the suit which averment was not found to be correct. The defendant on the other hand specifically pleaded to have been in possession since 1955. The plaintiff did not plead either by filing a rejoinder or by amending the plaint that the possession of the defendant was permissive in character. At no point of time a plea was raised that the defendant was a bataidar and hence in permissive possession. A plea not raised in the pleadings could not have been considered and made foundation of finding in the judgment. Even otherwise, the lease as per entry, would fall in Samvat Years 2014-15 and 2015-16 that is the years 1956-1958 of English Calendar. The exact date of commencement and termination of the period of lease is not known. A mere entry showing some one as shikmi or bataidar in revenue papers would not make his possession permissive when he was claiming a hostile title. In similar circumstances in *Dirib Singh v. Nirpat* (1981) 1 MPWN 55 this court refused to accept that merely because the defendant, claiming to be in possession hostile to the plaintiff, having been shown a shikmi in record of rights, his possession could be said to be permissive. Even otherwise by virtue of Section 78 of M. B. Land Revenue and Tenancy Act, 1950 the transaction of adhbatai would be unauthorised and the person in possession thereunder would be deemed to be a trespasser. In either case the nature and character of the possession of the defendant could not

have been held to be permissive one.

8. The plaintiff is no doubt a recorded bhumiswami. But the lower appellate court has believed the statement of Anopsingh according to whom the defendant had been in possession for 15-16 years before the date of the suit. Such possession being not permissive and adverse to the title of the plaintiff, would ripen into perfect title, Even other evidence is available to support the finding as to length of possession of the defendant. The Courts below, therefore, could not have decreed the suit as the plaintiff did not have any subsisting title in him on the date of the suit.

9. The appeal is allowed. The judgments and decrees of the Courts below are set aside. The plaintiffs suit is directed to be dismissed with costs throughout. Counsel's fee Rupees 150/-.

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