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Court : Rajasthan

Decided On : Nov-24-1975

Reported in : 1975WLN(UC)559

Judge : S.N. Modi, J.

Appeal No. : S.B. Civil First Appeal Nos. 102 and 105 of 1972

Appellant : Shanker Singh and ors.

Respondent : The Union of India (Uoi) and ors.

Disposition : Appeal allowed

Judgement :

S.N. Modi, J.

1. These are two connected appeal arising out of acquisition proceedings relating to acquisition of Khasra Nos. 8736 & 8738, Khata No. 718, treasuring 3 bighas 1 biswa situaten to Ajmer. Thok Maliyan. The land was acquired for the construction of railway line between Madar and Tabiji-Rail-way Stations on Western Railway. Vide notification No. 7563 issued under Section 4 of the Rajasthan Land Acquisition Act, 1962. The possession of the land was taken over by the Railway authorities on 24-9-63 by award dated 30th November, 1967, the Land Acquisition Officer, Ajmer, fixed Rs. 19485 80 as compensation for the lace at the rate of Rs.

3/- per sq. yard and ordered that Mithanlal, Sukhdeo Prasad and Jawar Singh sons of Radha Kishan were the persons entitled to the compensation. The Land Acquisition Officer also awarded interest on the aforesaid sum at the rate of 4% per annum from 24-9-63 to 30th December, 1967. Dissatisfied with the said award, Mithanlal Sukhdeo Prasad & Jawahar Singh as well as Shanker Singh, Monan, Mst. Amri and Heera moved applications under Section 18 of the Rajasthan Land Acquisition Act for making a reference to the Court. These applications were accepted and two references were made to the District Judge, Ajmer. The learned Civil Judge, Ajmer to whom these references were transferred, by his judgment under there appeals, up-held the award as to the quantum of compensation but modified it so far as apportionment of the compensation was concerned. He held that Shanker Singh and others were entitled to Rs. 6388 80 as compensation for 1 bigha of land and Mithanlal and others were entitled to the the rest of the amount, namely 13,097 00 for the retraining 2 bighas and 1 biswa of land. It is against this judgment that both the claimants have preferred these two separate appeals. As they arise out of the same acquisition proceedings they are being disposed of together by this judgment.

2. In these appeals, the appellants in each appeal claim the entire amount of the compensation awarded by the land Acquisition Officer.

3. It is common ground between the parties that the land in dispute originally belonged to Thok Mailiyan i.e. community of Malis. It is further not in dispute that at a partition amongst the Malis effected on 11-2-41, the land in question fell to the share of Radha Kishan the father of Mithalal, Sukhdeo Prasad & Jawahar Singh, The land was thereafter shown as belonging to Radha Kishan in the revenue record and on his death it was mutated in favour of his sons. These facts are no longer in dispute & they are clearly borne out from Ex. C1 to Ex. C-6. It is thus abundantly clear that so far as the title to the land in question is concerned it is established that Mithanlal and his brothers were the owners of the land. The other claimants namely, Shanker Singh and others claim title by adverse possession Their case is that they had perfected their title by adverse possession long before they were dispossessed from the land in question in the acquisition proceedings. The learned Civil Judge has found that Shankersingh and others were in adverse

possession of 1 bigha of land which is in the form of 'bara' and their adverse possession matured into title before they were dispossessed...On 24-9-63. The learned Civil Judge has also found that Shankersingh & others had been in possession of this 'bara' continuously from 15.5.51 to 24-9-63. It is not disputed by Mithanlal and others that there existed a 'bara' out up by Shankarsingh and others. It is also not disputed that Shankersingh and other Were in continuous possession of this 'bara' from 15-5-51 to 24.9.63. What is disputed is, firstly its area and secondly, that Shankersingh and others adverse possession did not mature into title before they were dispossessed on 24.9.63. I first take up one question as to what was the area of the 'bara'. According to Mithanlal' & others, the area of the 'bara' was about 300 sq. yards whereas, according to Shankersingh and others, its area was 1 bigha. In this connection, on behalf Sanker singh and others, reliance is placed on the oral testimony of Shankersingh AW. 1, Bhanwarsingh AW. 2, Malkhansingh AW. 6 and Harji AW. 7 The oral testimony of the aforesaid witnesses is not supported by any documentary evidence whatsoever. I Have carefully gone through the statement of these witnesses and I have no hesitation to say that the oral testimony of these witnesses his not impressed me at all. None of these witnesses has mentioned dimensions or other particulars of the 'bara,' to show that their estimate of 1 bhgha is based on actual measurement. Shanker Singh AW. 1 says that a 'bara' existed on the disputed land, the area of which was about 1 bigha, Similarly Bhanwarsingh AW. 2, says that there was a 'bara' on 1 bigha of land Malkha Singh AW. 6 says that there were two 'baras' Harji AW. 7 says that the railway employees took possession of 1 bigha of land from Shankersingh. None of them gives dimensions of the 'bara'. The statements of other witnesses examined on behalf of Shankersingh are also to the same effect and they do not mention the dimensions of the 'Bara'. No reliance can be placed on such vague and indefinite evidence.

4. On the other hand, Sukhdeo Prasad NA. 3 W.2 has deposed that Shankersingh had put up a 'bara' in the year 1953 on 300 sq. yards NA. 3 W. 3 Surajmal says that Shankersingh had put up a bara' some 13 to 14 years ago on 300 to 400 sq. yards. Mithanlal NA. 3 W. 7 has deposed that he filed a suit in respect of the 'bara' measuring 300 sq. yards He has further deposed that Shankersingh encroached upon 300 sq. yards of land in the year 1951-52. The oral testimony of NA. 3 W. 2

and NA. 3 W. 7 stands corroborated by the copy of the plaint Ex. A4 filed in Civil Suit instituted by them on 18-5-56, Ex. A4 is no doubt an uncertified copy of the plaint put it has been proved by Shankersingh and share is no dispute that it is not the correct copy of the original plaint. A perusal of Ex. A1, Ex. A2 and Ex. A3 shows that Mithan Lal had lodged a complaint under Section 145, Criminal P.C. against Harji the father of Shankersingh, Mohan, Heera etc. in the Court of Honorary Magistrate First Class, Ajmer in respect, of a plot. The dimensions of this plot are of course not mentioned in the aforesaid documents but, it appears from the subsequent suit, filed by Mithanlal & others that the area of the plot which was the subject matter of the proceedings under Section 145, Criminal P.C. was 300 sq. yards. Ex. A3 is the order of the Honorary Magistrate First Class, Ajmer in the proceedings under Section 145, Criminal PC. which shows that these proceedings terminated in favour of Shankersingh's party. Mithanlal and others then instituted a Civil suit and the copy of the plaint in this suit is Ex. A4. In para No. 6 of the plaint, it was alleged that on or about 6th August 1953, the defendants i.e. Shankersingh and others had wrongfully and illegally occupied the portion of the plot measuring about 300 sq. yards out of the total land mentioned in para No. 5. It was also alleged that Shankersingh and others had put up a 'bara' (thorn hedge) thereon. Para 7 contains the boundaries of the bara'. There is nothing on the record to suggest that the area of the 'bara' mentioned in the plaint Ex. A4 was in any way disputed by Sanker Singh and other in their written statement. It may be pointed out that the written statement has not been filed in this case. But, had such a dispute been raised by Shankersingh and others they would not have omitted to file the written statement on the record of this case Again, if the area of the bara or the plot in dispute in the proceedings under Section 145, Criminal PC. had been more than 300 sq. yards. I see no reason why Mlthanlal and others should not have filed the suit for possession for the entire land in possession of Shanker Singh and others. I am clearly of the view chat the area of the 'bars' was not more than 300 sq. yards and the evidence of NA. 3 W. 2 and NA. 3 W. 7 in this respect is reliable and trust worthy . The learned Civil Judge, in my opinion, was not right in holding that the 'bara,' was 1 bigha. I hold that the area of the 'bara' in possession of Shankersingh's party did not exceed more than 300 sq. yards.

5. As to the question whether Shankersingh and others acquired title by adverse possession on this 'bara', I propose to deal with it at a later stage.

6. Regarding the land other than the 'bara' the learned Civil Judge has held that the evidence on the side of Shankersingh and others is not sufficient to prove their adverse possession for more than 12 years. Mr. Bhargava, the learned Counsel for Shankersingh's party, has vehemently opposed that finding. Before I deal with his contentions, I wish to make it clear that it is common ground between the parties that the land in dispute is a waste land comprising of a hillock. Shankersingh in his statement has admitted that the only act of possession or ownership which he exercised over this land was to graze cattle. He has also deposed that he let out the land to Mangal Singh for grazing of cattle. Bhanwar Singh PW/2 says that the land in dispute is a hillock and he saw cattle of Mangal Singh grazing on it. Mangal Singh AW/4 says that he has been grazing his cattle and collecting 'loong' and 'pala' from the bushes existing on the land for the last 25 to 30 years on payment of rent to Shanker Singh Narain AW/5 has corroborated the statement of Mangal Singh AW/4. No receipt of rent paid to Shanker Singh by Mangal Singh has been produced. There is also no document showing that the land was let out to Mangal Singh by Shanker Singh's party for grazing purposes or for collecting 'long' and 'pala'. Having read the statements of the witnesses examined on behalf of Shanker Singh's party, I do not feel inclined to accept the story of letting out the land by Shanker Singh to Mangal Singh, for it is not supported by any documentary evidence. As already pointed out above, the land is a vacant waste land having no utility to its owners. The use of such land for temporary purposes like grazing of cattle or collecting 'loong' and 'pala' can not be understood to mean a claim to the ownership of the land. I, therefore, entirely agree with the learned Civil Judge that Shanker Singh and others have not been able to prove their possession over the land other than the 'bara'.

7. Mr Bhargava, learned Counsel for Shanker Singh and others contends on the basis of Ex. A/9 that Shanker Singh and others were in possession of the entire land in dispute in the year 1951. In my opinion the contention is not well founded. Ex. A/9 is a copy of the plaint in the suit, filed by me Bishindass on 4-12-51. In that suit, Hazari i.e. Shanker Singh's father and others were arrayed as defendants 1 to

4 and Mithanlal and others as dependants 5 to 7 The relevant paras on which emphasis was laid by Mr. (sic) are Nos. 1, 2, 3. and 4 and the para relating to relief. These paras run as under:

1. That there is a temple of Balaji Maharaj situated at Gaddi Malian Ajmer and certain lands are attached to the same.

DESCRIPTION OF LANDTwenty years Settlement Present SettlementKhata No. Khasra No. Khata No. Khasra No.593 6264 1157 87368787.2. That the above fact is recorded in the Ten years settlement & the pujari shown as Bhagwan Das. Certified copy attachment here with.

3. That the plaintiff has been in possession of the temple since the time of his grand father but was dispossessed by the defendants No. (sic) to 4 on 15-6 1951 who have appointed defendant No. 8 as the Pujari.

4. That on a partition of the Shamlal lands without notice to the plaintiff the lands have been allotted to defendants No. 5 to 7 and they have begun to assert their rights over the lands described in para 1 above which is a hillock and thus a cloud has been cast on the plaintiff's title.

Prayer:

It is, therefore prayed that the learned court would be pleased to pass a decree in favour of the defendants for the following reliefs.

(1) it be declared that the plaintiff is the hereditary shebiat of the temple of Shri Balaji Maharaj situate at Gaddi Malian, Ajmer, the lands attached to the said temple were incapable of being partitioned.

(b) plaintiff be put in possession of the temple and the lands described in para 1 above.

(c) Costs of the suit be allowed.

In para 3 of the plaint, Bishandass in clear terms alleged that he was dispossessed by Shanker Singh's party from the temple on 15-5-51. There is no

allegation in the plaint Ex. A/9 that Shanker Singh's party also dispossessed him from the land mentioned in para No. 1 of the plaint. On the contrary, the allegation in para No. 4 is that Mithanlal and others began to assert their title on the land mentioned in para No. 1 on the basis of partition of shamlal lands. That shows that the prayer for possession of the land mentioned in para No. 1 was made because Mithanlal and others began to assert hostile title over the land and prayer for possession of the temple was sought because Shanker Singh and others had dispossessed him from the temple In the year 1951. It may also be mentioned here that the suit by Bishandass, so far as it related to the possession of the land, was dismissed by the trial Court vide judgment dated Ex. A/10 and on appeal, the appellate Court also affirmed the judgment of the trial Court vide judgment Ex. C-10. Since the suit for possession of the land was dismissed, no value can be attached to the allegations made by Bishandass in his plaint.

8. It is Next contended by Mr. Bhargava that the subject matter in proceedings under Section 145, Cr.PC. related to the entire land in question and Mithanlal and others should have filed the suit for the entire land and since they, did not being the suit for the entire land within the prescribed period of limitation then title to the land was extinguished, This argument is based on the supposition that the subject matter in proceedings under Section 145, Cr.P.C. was the entire land in question. As already pointed out above, if Shankersingh and others had been in possession of the entire land in dispute and the proceedings under Section 145, Cr.PC. also related to the entire land, there appears no reason why Mithanhlal and others should not have filed the suit fur possession of the entire land and restricted their suit only in respect of 300 sq. yards. From the subsequent suit, it follows that the order in proceedings under Section 146, Cr.PC. relate to other land in question. That apart the fact that Mithanlal and Others sought relief of perpetual injunction in respect of the land other than 'bara' clearly suggests that they were themselves in possession of the land and they sought relief for perpetual injection in order to avoid future disturbance in their possession by Shanker Singh and others. I therefore, hold in agreement with the learned Civil Judge, that Shanker Singh's party had failed to prove their possession on the lard other than the 'bara'. That being the case, the question of adverse possession of Shanker Singh and others maturing into title on the land other the 'bara' does not arise.

9. I now take up the question whether Shanker Singh and others have succeeded in proving then adverse possession on the 'bara' for more than twelve years before they were dispossessed on 24-9-63 and whether they perfected their title on it. It has been found by the lower Court and that finding has not been challenged before me, that possession of Shanker Singh's party on the 'bara' continued from 15-5-51 to 23-9-63. At this stage, it would be desirable to (sic) the steps taken by Mithanlal and others to dispossess Shanker Singh and others from the 'bara', after 15-5-51. The first step taken by Mithanlal and others was to lodge a complaint under Section 145, Cr.PC. in the year 1953. As already pointed out above, Mithanlal's party did not succeed in dispossessing Shanker Singh and others in the proceedings under Section 145 Cr.PC. and the complaint filed by them was dismissed vide order dated 30th March, 1955 (Ex. A/3) Thereafter. Mithanlal's party within the period of limitation (sic) under Article 47 of the Limitation Act, 1908 instituted a civil suit on 18-5-56 for possession of the 'bara'. The suit was dismissed by the trial Court by its judgment dated 8-2-60 holding that Shanker Singh and others had been in possession of the 'bara' from the period prior to 11-12-41. On appeal by Mithanlal and others, the learned District Judge, Ajmer, set aside the judgment and decree of the trial Court and remanded the case back to the trial Court with the directions to implead the State as a party to the suit under Section 5(2)(b) of the Rajasthan Zamindari and Biswedari Abolition Act which came into force during the pendency of the suit. The trial court, after remand of the case by its judgment dated 10-7-63 held that the suit was triable by a revenue court and therefore it transferred the suit for trial to the Court of Assistant Collector, Ajmer. During the pendency of the suit in the court of the Assistant Collector, Ajmer, Mithanlal and others, on 10-11-64, moved on application under Order 23 Rule 1, Civil PC. for withdrawal of the suit on the ground that the suit had become infructuous on account of taking over possession by the Railway Authorities under the Land Acquisition Act. On this application the Assistant Collector, Ajmer, dismissed the suit as withdrawn on 17.3.66 and awarded Rs, 7/- as costs to Shanker Singh and others.

10. In the background of the above narrated facts the question arises whether Shankersingh's party prescribed for an absolute title to the 'bara' on the expiry of 12 years from 15-5-51. The above litigation between the parties shows that the

final order in the proceedings under Section 145, Cr.PC. was passed on 30th march, 1956 in favour of Shankersingh's party, Sub-section (6) of Section 145, Cr.PC. lays down that the party in whole favour the final order is passed in to retain possession until evicted from the Subject of the dispute in due course of law. It is well settled that the life of the final order in a proceeding under Section 145, Cr.PC is conterminous with the passing of a decree by a civil court and the moment the civil court makes an order of eviction, it displace the order of the criminal Court. Had the aggrieved party, namely, Mithanlal and others not filed a civil suit for possession against the successful party, namely, Shankersingh and others, within the statutory period of three years from the date of the final order as prescribed under Section 47 of the Limitation Act, 1908 , the title of the aggrieved party would have been extinguished under Section 28 of the Limitation Act, 1963 or Section 27 of the Limitation Act, 1983. But that contingency did not arise as Mithanlal and others instituted the suit for possession within the period of limitation on 18.5.66, During the pendency of the suit, Shankersingh and others lost their possession on 24.9.65 under the Land Acquisition Act. It is thus apparent that upto the date the suit was filed by Mithanlal and others the adverse possession of Shankersingh and others had not matured into title. It is further clear that the suit filed by Mithanlal and other could not be decided one way or the other, because Shankarsingh and others lost their possession during the pendency of the suit. Mithanlal's party had, no alternative but to withdraw the suit, after dispossession of Shankersingh's party, for they could not have got the relief of possession against Shankersingh's party. It was, in these circumstances, that the suit had to be withdrawn on 17.3.66. It cannot be contended in the circumstances that because the Civil suit was dismissed or was not decided within 12 years from the date of the commencement of the adverse possession, Shankersingh's party acquired title by adverse possession. The illustration would make it clear. A encroaches upon B's land, B files a suit for possession within the prescribed period of limitation. The suit, first appeal and second appeal take more than 12 years for termination of the list Can it be contended that because A's possession continued for more than 12 years on account of the pendency of the suit, he acquired a title by adverse possession? The answer must be in the negative, the reason being that the effect of the institution of the suit within limitation is to destroy previously existing

adverse possession with effect from the date of the institution of the suit or at any rate, to suspend adverse possession from that date. Now, in the present case, if this period is excluded which, in my opinion, must be excluded it is apparent that adverse possession of Shankersingh's party did not mature into title at the time when it lost the possession on 24-9-63.

11. Mr. Bhargava, however, urges that because the suit was dismissed under Order 24 Rule 1, Civil PC. Mithanlal and others were precluded under Order 23 Rule 3 CPC. from bringing a fresh suit for possession of the same property and Shankersingh's party, in the circumstances is entitled to take benefit of whole of the period from 15-5-51 to 24-9-63. I regret, this argument cannot be accepted in the circumstances of the case. In this view of the matter, I am of the opinion that Shankersingh & others have no right to claim compensation either for 'bara' or for the land in question. The Land Acquisition Officer, in my opinion, rightly awarded the whole of the composition amount to Mithanlal and others.

12. In the result, I allow the appeal filed by Mithanlal and others, modify the judgment of the court below and allow whole of the compensation amount fixed under the award to the appellants in appeal No. 105 of 72 Mithanlal and others. The appeal filed by Shankersingh and others is dismissed. Having regard to the circumstances of the case, I leave the parties to beat their own costs. In both the appeals.