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Court : Himachal Pradesh

Decided On : May-12-1956

Reported in : AIR1956HP50

Judge : Ramabhadran, J.C.

Acts : [Evidence Act, 1872](#) - Sections 35, 101 to 104 and 110; ;Limitation Act, 1908 - Schedule - Article 142; ;[Code of Civil Procedure \(CPC\) , 1908](#) - Order 2, Rule 2

Appeal No. : Civil Revn. Nos. 53 of 1954 and 38 of 1955

Appellant : Budhu

Respondent : Nahru and ors.

Advocate for Def. : D.R. Chaudhary, Adv.

Advocate for Pet/Ap. : D.N. Vaidya, Adv.

Disposition : Petition dismissed

Judgement :

ORDER

Ramabhadran, J.C.

1. These two revision petitions can be disposed of conveniently by means of one judgment, as they involve common points for determination. In the case of Civil

Revision No. 53 of 1954, a further point for determination arises, as to whether the suit giving rise to it was barred by the provisions of Order 2, Rule 2, C. P. C. I shall refer to that point also in due course.

2. (A) The first point to be considered in both the revision petitions is the value of an entry in the Khewat Abadi of Nagar Mandi. The learned District Judge has remarked that there was nothing on the record to show under what law the Khewat Abadi was prepared and what evidentiary value should be attached to the entries therein. He has further remarked that under Section 35, Evidence Act, an entry in any public or other official book, register or record, stating a fact in issue or relevant fact, and made by a public servant in the discharge of his official duty, or by any other person, in performance of a duty specially enjoined by the law of the country, is itself a relevant fact.

Entries in question were made by the Patwari, but in the opinion of the learned District Judge, there was nothing to indicate that it was a part of his official duties to make such entries. The entries in the Khewat Abadi, followed certain mutations ordered by the former Ruler of Mandi State, in favour of the plaintiff. Learned counsel for the petitioner . (Mr. D. N. Vaidya) argued that the mutation orders were passed by the Ruler in his capacity as the supreme Executive, Judicial and Legislative Head of the State, and consequently were final and unchallengeable.

In support of his argument, Mr. Vaidya cited, inter alia, (1) -- 'Kamakhya Narain Singh v. Abhiman Singh', AIR 1934 PC 182 (A), wherein, their Lordships of the Privy Council expressed their opinion that an entry in the survey Khewat raised a presumption in favour of its correctness which continued unless it was rebutted.

(2) 'Kondavitti Brahmayya v. Rajeswaraswami Temple', AIR 1953 Mad 580 (B), where a Division Bench of that High Court observed that in the absence of the original grant, the recital in the Inam Register was of great evidentiary value.

(3) 'Biswambhar Singh v. State of Orissa', AIR 1954 SC 139 (C). There the Lordships of the Supreme Court observed that:

'Recital of ekrarnama and its terms in ancient public document like Rubakari, whose authority has not been doubted, furnishes a strong evidence of the existence and genuineness of the ekrarnama and its terms.'

As the learned counsel for the contesting respondent rightly pointed out the facts of the present case are' different. Here, we have to see whether a mutation order sanctioned by the Ruler of Mandi by itself, would constitute proof of ownership. The above rulings, therefore, would not help the petitioners.

3. In support of his argument that the orders of the Ruler of Mandi were final and unchallengeable, Mr. Vaidya cited, -- 'Ameer-un-Nissa Begum v. Mahboob Begum', AIR 1955 SC 352 (D), where dealing with the force of Firmans, issued by the Nizam of Hyderabad, their Lordships observed as follows :

'Prior to the integration of Hyderabad State with the Indian Union and the coming into force of the Indian Constitution, the Nizam of Hyderabad enjoyed uncontrolled sovereign powers. He was the supreme legislature, the supreme judiciary and the supreme head of the executive, and there were no constitutional limitations upon his authority to act in any of these capacities.

The firmans were expressions of the sovereign will of the Nizam and they were binding in the same way as any other law; nay, they would override all other laws, which were in conflict with them. So long as a particular firman held the field, that alone would govern or regulate the rights of the parties concerned, though it could be annulled or modified by a later Firman, at any time that the Nizam willed.'

On the same analogy, Mr. Vaidya urged that the mutations sanctioned by the Ruler of Mandi in 'favour of the petitioners were the acts of the sovereign and therefore were final and conclusive. We have to consider the value of the mutation orders. In --'Wali Mahomed v. Mahomed Baksh', AIR 1930 PC 91 (E), their Lordships of the Privy Council indicated that:

'The entries in the Record-of-Rights are not the foundations of the title but are mere items of evidence to be adduced by a vendee to prove the sale.'

4. The learned District Judge has also referred to an earlier decision of this Court, reported in --'Mehtar Singh v. Hukmi', AIR 1949 Him Pra 22 (F), wherein my learned predecessor had pointed out that entries in revenue records do not confer any title. As regards the claim that the mutation orders were acts of the Sovereign and, therefore, could not be challenged, the learned Judge of the lower appellate Court has rightly remarked that the orders sanctioning the mutations do not amount to acts of a sovereign. He has referred to -- 'Bhagtu v. Wazir Moti Ram', AIR 1951 J & K 14 (G), wherein their Lordships of the High Court of Jammu and Kashmir observed that it is a question of fact in each case which particular jurisdiction the Ruler was exercising.

Learned counsel for the contesting respondent pointed out that prior to the merger of the Mandi State in the Union of India, which took place on 15-4-1948, the law applicable to Mandi is to be found in Mandi Land Revenue Regulation, 1975, and the Transfer of Immovable Property Regulation also of 1975 S. Under Section 15 of the former Regulation, the Darbar was the supreme owner and sole proprietor of all land in the State.

Section 2 of the latter Regulation lays down that all land within Mandi State belonged absolutely to the Raja as sole proprietor, whether such land be used for agriculture or for any other purpose. Further, no land could be alienated without the sanction of the Ruler. It is in this back-ground we have to judge the value of the mutation orders which were sanctioned by the Ruler. In my view, the true purport of the sanctions is that the Ruler agreed to the substitution of the names in the mutation register and not that he conferred or perfected title where it was lacking or deficient.

The learned District Judge has rightly pointed out that the Ruler's approval did not, ipso facto, prove the sale. It was necessary for the parties to execute a sale-deed and get it registered, after payment of Nazrana. In Civil Revision No. 38 of 1955, it may be pointed out, that the mere direction that Mt. Kubjan be recorded as tenant of the plaintiff would not establish the relationship of landlord and tenant between the parties.

As was pointed out in -- 'Firm Pariteshah Sadashiv v. Asst. Custodian of Evacuee Property', 54 Pun LR 468: (AIR 1953 Punj 21) (H), referred to by the learned District Judge, the relationship of the landlord and tenant comes into existence as the result of an agreement, express or implied. On the facts, the lower appellate Court has rightly found that there was no evidence to show that Mt. Kubjan had ever paid any rent to the plaintiff or recognized him as her landlord.

Thus, I concur with the view of the lower appellate Court that the order of the Ruler of Mandi sanctioning mutation in favour of the plaintiff and directing that the name of Mt. Kubjan be recorded as a tenant of the plaintiff would not relieve the plaintiff of the burden to establish his case affirmatively, by cogent and convincing evidence.

5. This principle would hold good in the case of both the revision petitions. The decision contained in the AIR 1955 SC 352 (D), (referred to earlier), would not help the plaintiffs-petitioners because, here, we are not concerned with any Firman but only an approval given by a Ruler to the alienation of land as required by the Regulations then in force,

6. (B) In the second place, Mr. Vaidya contended that the learned District Judge has erred in holding that Mt. Kubjan's possession matured into ownership before her death (in Civil Revision 38 of 55) and that the defendants had been in possession of the land in dispute openly and notoriously for more than 30 years and accordingly became owners thereof (in C. R. 53 of 54).

As far as Mt. Kubjan is concerned, it was urged by Mr. Vaidya that non-payment of rent could not change her status. It was further contended that the plaintiff was in possession through Mt. Kubjan and her possession could never be adverse as against the plaintiff. I have already pointed out that the plaintiff failed to show that Mt. Kubjan was his tenant. Therefore, it is not open to him to say that he was in possession through Mt. Kubjan. On the facts, the District Judge has found that in 1934 Mt. Kubjan asserted her right of ownership in the house and she remained in possession till her death in 1949.

As was pointed out in --- 'Mahomed Ibrahim v. Shaida Mahomed', AIR 1930 Lah 297 (I) and --'Chenchu Rama Reddy v. Ademma', AIR 1949 Mad 673 (J), in suits for ejectment against a person in occupation of immovable property the plaintiff cannot rest his case on title alone. Under Art. 142, it is incumbent upon him to prove that he has exercised acts of ownership within 12 years of suit. The mere fact that the plaintiff obtained a declaratory decree would not prevent the statute of limitation from running against him. Mt. Kubjan has died. Mr. Vaidya argued that since Zalam is not proved to be her heir, he is liable to be ejected, unless his possession matures into ownership. The learned District Judge has rightly pointed out that the plaintiffs' rights, if any, were extinguished during the life time of Mt. Kubjan and, therefore, he has no locus standi to eject Zalam. I concur with that view.

In Civil Revision 53 of 1954, the learned District Judge has found on facts that Nahru defendant had been in possession of the land and the house since 1921 A.D. There is considerable force in the observation of the District Judge that it was hardly probable that the defendants remained in possession only in the house and allowed the plaintiff to occupy the open site around it, i.e. the compound, backyard and Swaru. I am unable, therefore, to accept Mr. Vaidya's argument that in possession follows title. 'Bhalla Singh v. Jagat Singh', AIR 1929 Lah 669 (K), cited by him, is, therefore, not applicable to the present case. In my opinion, the learned District Judge's finding on the point of possession and limitation is correct and cannot be interfered with.

7. (C) In Civil Revision 53 of 1954, there is a further point to be considered (as already stated in the opening portion of this judgment) namely, that the suit giving rise to that revision petition was barred by the provisions of Order 2, Rule 2, C. P. C., the learned District Judge has found that when the plaintiff filed suit No. 43 of 52 against the defendants in the Court of Sri Karam Singh, they (the defendants) were in possession of the entire area of Khasra Nos. 2526 and 2527.

It was, therefore, incumbent upon him to sue for the ejectment of the defendants from the entire area comprised in these two khasra numbers. The allegation made by the plaintiff that the defendants had encroached upon the remaining area only 4

months before the second suit was filed, was rejected by the District Judge as obviously wrong. Mr. Vaidya for the petitioner argued that there were two distinct causes of action giving rise to the two suits.

Therefore, it was contended that the second suit was not barred by the provisions of Order 2, Rule 2. Mr. D. R. Chaudhary for the respondents rightly pointed out that there was only one cause of action because the defendants were in possession over the entire area. Mr. Chaudhary cited -- 'Mahamedsaheb Ibrahimsaheb v. Tilokchand Abherchand', AIR 1922 Bom 243 (L), where a Division Bench of that High Court remarked that:

'Possession of open sites goes naturally with the possession of the property to which they adjoin.'

8. Under these circumstances, I concur with the view of the District Judge that the suit leading to Civil Revision 53/54, was barred by the provisions of Order 2, Rule 2.

9. In view of all that has been said above, I see no ground for interfering with the decisions of the learned District Judge.

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