

Sanjay Jain (B.L.Jain), and ors. Vs. Achal Kumar Bhatia, and ors.

Sanjay Jain (B.L.Jain), and ors. Vs. Achal Kumar Bhatia, and ors.

SooperKanoon Citation : sooperkanoon.com/915741

Court : Madhya Pradesh Jabalpur

Decided On : Apr-13-2011

Judge : G.S. Solanki, J.

Acts : [Code of Civil Procedure \(CPC\) \(C.P.C.\) 1908](#) - Section 96 ;

Appeal No. : First Appeal No. 283/1997.

Appellant : Sanjay Jain (B.L.Jain), and ors.

Respondent : Achal Kumar Bhatia, and ors.

Advocate for Def. : Shri R.P. Agrawal; Shri Sharad Gupta, Advs.

Advocate for Pet/Ap. : Shri A.D. Deoras; Shri R.K.Jaiswal, Advs.

Judgement :

1. Being aggrieved by the Judgment and decree dated 31.7.1995 in Civil Suit No. 85-A of 1995 passed by 9th Additional District Judge, Jabalpur by which the plaintiffs have been declared to be the owners of the house in dispute and defendants have been directed to pay mesne profits of Rs. 2,200/- per month to plaintiffs, defendants No. 1 and 3 to 13 have preferred this appeal under Section 96 of the Code of Civil Procedure.

2. It is not in dispute that Dwarkadas Bhatia was the owner of House situated at Lordganj, Jabalpur. The plaintiffs are his heirs. It was a big house. It is not disputed that house of Dwarkadas Bhatia was auctioned in two parts; one part in

Civil Suit No. 39-B/48, which was purchased by Gyanchand on 27.6.1951, sale was confirmed on 18.10.1951 and thereafter, sale certificate was issued on 16.1.1952 by First Civil Judge Class II, Jabalpur. Second part of the house was auctioned on 16.11.1953, sale was confirmed on 24.3.1954 and thereafter sale certificate was issued in favour of purchaser Babulal/defendant No. 1 on 8.4.1954.

3. It is undisputed that this appeal was earlier dismissed on 8.1.2004. Appellant Babulal (deceased) by LRs filed Civil Appeal No. 2089/2007 before Apex Court and Apex Court remitted this appeal vide order dated 20.4.2007 to this Court for consideration of the matter with respect to maintainability of the suit, issue of limitation, conduct of parties and also the fact as to how the parties dealt with the property.

4. Plaintiff's case in short is that Dwarkadas Bhatia was the owner of House No. 64/942/2/367, New No. 951 and House No. 365/940, New No. 946,947,948 and 949 situated at Ward No. 77, Plot No. 52/53, Ganjipura, Jabalpur. Dwarkadas Bhatia expired on 30.5.1952 and plaintiffs being legal heirs became the owner of the property. It has been further pleaded that name of Dwarkadas Bhatia was recorded in maintenance Khasra of Nazul Department, thereafter, in the year 1958-59 name of Gyanchand was mutated and by virtue of oral partition, name of defendant No. 1 was mutated in the year 1962. As mentioned in admitted fact, the portion purchased by Gyanchand in auction sale is shown in red colour in the map attached with the plaint as per sale certificate dated 16.1.1952. It has been further pleaded that auction purchaser Gyanchand got mutated whole house in his name in maintenance khasra by misrepresentation, whereas he purchased only a part of the house.

5. It has also been pleaded that rest part of the house was purchased in auction by defendant No. 1 on 8.4.1954. After the death of Dwarkadas Bhatia, plaintiffs left Jabalpur and shifted to Mumbai (the then Bombay). According to them, they have not sold house No. 64/367/942/2, New No. 951 to anyone and taking disadvantage of their non presence for so many years, defendant and his successors took illegal possession of the house and illegally mutated their names.

6. In the month of September 1985 Plaintiff No. 2 visited Municipal Corporation in connection with some personal work and came to know that defendant No. 1 Babulal mutated his name in place of plaintiff's name as Khariddar.

7. On the basis of aforementioned pleadings, plaintiffs filed suit for declaration that portion of house No. 64 Old 942/4/951 shown in green colour is owned by them. Further declaration has been sought that defendants No. 1 to 13 are not entitled to collect rent from the tenants and mesne profits have also been claimed. They further claimed that tenants/defendants No. 16 to 19 should be directed to pay rent to them .

8. The case of the defendants No. 1 to 13 was that the entire house belonging to Dwarkadas Bhatia was sold in the two auctions and nothing was left with him. According to these defendants, the house shown in green colour in the plaint map was also subject matter of the sale certificate dated 8.4.1954 (Ex.D/1). They specifically denied the fact that they took illegal possession of the house and get illegally mutated their names in Municipal Record, by taking advantage of non-presence of plaintiffs for so many years and pleaded that defendant is in possession of the house property from his own rights.

9. It is also denied that Babulal with malafide intention managed to mutate his name alongwith the name of plaintiffs. They further pleaded that defendants are in possession of the property without interruption since the date of purchase as an owner and made construction with the approval of house plan from the Jabalpur Corporation Authorities and have right to enjoy the property or to induct the tenant therein, therefore, tenant of the defendant cannot be compelled to make deposit of rent in the Court.

10. Defendants/appellants specifically denied the fact that cause of action arose in the month of September, 1985 when plaintiffs came to know about the wrongful act of defendants No. 1 to 13 and pleaded that no cause of action arises against defendants, therefore, suit is liable to be rejected.

11. The trial Court framed the several issues on the basis of pleading of the parties and after appraisal of the evidence and document filed by respective parties,

arrived at conclusion that green portion of the house which is in dispute was not sold to defendant No.1 Babulal and on this finding, the decree mentioned above has been passed in favour of plaintiffs/respondents. Being aggrieved thereby, the defendants/appellants have preferred this appeal under section 96 of CPC.

12. First of all, I have to consider the interim applications filed by the appellants and respondents during the pendency of this appeal and it was directed by this Court that these applications would be considered at the time of final hearing. I.A. No. 10344/2008 has been filed by the appellants under Order 41 Rule 27 of the CPC for additional evidence, I.A. No. 2187/2009 has been filed by the appellants under Order 6 Rule 17 of CPC for amendment in written statement and I.A. No. 11244/2010 has been filed by the respondents under Order 41 Rule 3 for additional evidence.

13. In I.A. No. 10344/2008, learned counsel for the appellants has submitted that document attached with this application was filed before the Supreme Court and on the basis of these documents, case was remitted to this Court for consideration of the matter afresh. He has further submitted that all the documents are certified copies of execution proceedings and sale certificate of disputed house, which are necessary for just decision of the case.

14. Learned counsel for respondents has opposed the application, however, he has admitted that these documents are related with the execution proceedings and sale certificate of property of late Dwarka Das Bhatia.

15. I have perused the documents which are certified copies of proceedings of execution case No. 2-B/1948 (R.L.Agrawal and others v. Dwarka Das Bhatia) and execution case No. 39-B/1948 (Liberty Services Chanda v. Smt. Natthi Bai and others) and two other documents are sale certificates issued in aforementioned execution proceedings. It is not in dispute that these documents are belonging to the property of Dwarka Das Bhatia and Natthi Bai. Thus, I am of the opinion that these documents are necessary for just decision of this appeal, therefore, the application is allowed. All the documents are taken on record.

16. In I.A. No. 2187/2009, learned counsel has submitted that since earlier this Court at the time of disposing of the appeal held that there was no pleading of adverse possession by the defendants/appellants, in these circumstances, to avoid the expected technical objection, defendants/appellants filed this application proposing the amendment in regard to the plea of adverse possession. Learned counsel for respondents has vehemently opposed the proposed amendment on the basis of delay of 13 years after passing the decree by the trial Court. But as mentioned hereinabove that defendants pleaded adverse possession in so many words that they are in possession without interruption since the date of purchase as owner thereof, in this way appellants have raised the matter before trial Court. Thus, this application for proposed amendment is only further elaboration of facts already pleaded and plaintiffs were already aware of these facts, therefore, I.A. No. 2187/2009 is allowed and appeal is decided assuming amended written statement.

17. With respect to I.A. No. 11244/2010, learned counsel for respondents has submitted that the document annexed with this application is certified copy of report of process server and copy of cheque and details of the documents of execution proceedings, which is pending before the trial Court. These documents are necessary for just decision of this appeal.

18. Learned counsel for appellants has opposed this application on the ground that these documents came into existence after passing of the impugned judgment and same is under challenge in this appeal.

19. After considering the rival contentions of the parties, I am of the view that these documents came in existence after passing the impugned judgment by the trial Court which is under challenge. In these circumstances, these documents are not necessary for just decision of this appeal, therefore, this application is hereby dismissed.

20. Learned counsel for the appellants has submitted on that the Supreme Court has remitted the matter on the grounds of maintainability, limitation and also in regard to conduct of the parties in relation to properties. He has further submitted that suit for mere declaration without claiming the possession is not maintainable

and the suit is also barred by limitation. The trial Court committed error in not appreciating the evidence in its proper perspective, therefore, he has prayed for setting aside the impugned judgment and decree passed by the trial Court.

21. On the other hand, learned counsel for respondents has submitted that since defendants are not in possession of disputed property and only tenants are residing in disputed property, therefore, no need to file suit for possession and suit for mere declaration is maintainable. He has further submitted that the trial Court rightly held that plaintiff's got the knowledge in the year 1985 and filed the suit in the year 1996, which is within the limitation. He has further submitted that the trial Court rightly appreciated the evidence on record and in this way, learned counsel has supported the impugned judgment passed by the trial Court and prays for dismissal of appeal.

22. I have perused the impugned judgment, evidence on record by the trial Court, additional documents filed in this Court and other material on record.

23. First coming to the question of maintainability of the suit; as mentioned hereinabove, that learned counsel for the appellant argued that since plaintiffs/respondents are not in possession of property therefore, suit for declaration without claiming the relief of possession is not maintainable. He placed reliance on the decisions of Joseph Klein and others v. Eliahu (Leo) Heiman and others - AIR (36)1949 PC 53.

24. On the contrary, learned counsel for the respondents has submitted that if at the time of institution of the suit neither plaintiffs nor the defendants were in possession of the disputed property, then suit for mere declaration is maintainable. He placed reliance on the decisions of Sunder Singh Mallah vs. Managing Committee, Sunder Singh Mallah Singh, Rajput High School, Indaura and others - AIR 1938 PC 73; Giribala Choudhary and others v. Ushangini Debi - AIR 1955 Assam 177; Deo Kuer and another vs. Sheo Prasad Singh and others - AIR 1966 SC 359 and Smt. Chandania v. Gyanchand and others AIR 1989 Allahabad 75.

25. Before applying the principles of law laid down by the Privy Council and the Supreme Court, factual position has to be considered regarding possession of the

parties on disputed house (property) at the time of institution of the suit, whether defendants/appellants were not in possession of disputed property? Plaintiff's came with the pleading that they the owner of the disputed property. Defendant No. 1 by misrepresentation mutated his name in the municipal records of the disputed house and inducted respondents No. 14 to 20 as tenants in the disputed house. As per Para-6, before filing the suit plaintiffs requested the defendants to hand over the possession of disputed portion of the house but they avoided to hand over the possession, then plaintiffs sent a registered notice and filed this suit against the defendants/appellants.

26. Plaintiff Khushbadan Bhatia (PW-1) admitted that House No. 365/940 was sold in execution proceedings but he has no specific knowledge regarding the fact that how much portion of the house was auctioned. He further admitted that the disputed house was again auctioned in another execution proceedings and defendant Babulal purchased the house in auction. He further admitted in Para-9 that defendants No. 1 to 13 are in possession of one room of disputed house and, therefore, he claimed rent of Rs. 100/- per month from them. He pointed out this particular room in the map annexed with the plaint as "dx[k?k" . In these circumstances it is crystal clear that defendants No. 1 to 13 are also in the possession of one room of disputed house, therefore, case in hand is not, such in which defendants were not in possession over the disputed property.

27. On the contrary as discussed above, plaintiff himself admitted that defendants No. 1 to 13 are in possession of one room and on the other part of the house, they inducted tenants. Babulal defendant No.1 deposed that after the purchase of the property in auction sale, he had dismantled the disputed house and reconstructed house after getting the map (Ex.P-3) approved from Municipal Corporation and then he inducted the tenants. Plaintiff Khushbadan (PW-1) expressed ignorance in his cross examination (Para-15) regarding reconstruction of the house, in these circumstances, it is proved on record that old house was reconstructed and then tenants were inducted by the defendants.

28. In this factual scenario, the principles laid down in Sunder Singh Mallah's case (supra) and Giribala Choudhary 's case (supra) are not applicable to the facts of

this case because in both the cases defendants were not in possession of the disputed property. In Deo Kuer's case (supra) defendants were not in possession of the property and were not able to deliver the possession. In Smt. Chandania's case (supra), the suit was filed for declaration without asking for possession against the person denying the plaintiffs' right to realize rent. In this case also, whole disputed property was in possession of the tenants and Allahabad High Court after relying on the decision of Gian Chand v. Bhagwan Singh reported in AIR 1932 Lahore 97, held that defendants/appellants prevented the plaintiffs from realizing the rent from the tenants, hence relief merely for declaration would be sufficient but as discussed hereinabove, in this case, only tenants are not residing in disputed property but defendants No. 1 to 13 are also residing therein. In these circumstances, the principles laid down by Allahabad High Court is not applicable to instant case.

29. In Joseph Kelien's case (supra) it has been held that plaintiffs/respondents gain nothing by declaration unless they proceed to take necessary action for recovery of possession. Principal laid down in this case is applicable to the instant case because defendants No. 1 to 13 are in possession by themselves and through their tenants, which are inducted after reconstruction of house. In these circumstances, present suit for declaration of title of property without further relief of possession is hit by proviso to section 34 of the Specific Relief Act, 1963 and is not maintainable in the eye of law.

30. Coming to the question of limitation; the pleadings of plaintiff/respondent in regard to limitation is that when he visited the Municipal Corporation in the month of September, 1985, he found that defendant No. 1 Babulal got mutated his name on disputed house with malafide intention and despite repeated request, he did not vacate the disputed house and hand over the possession to him, then he sent a registered notice on 11.12.1985 and filed a suit on 22.4.1986 for declaration and injunction.

31. Defendants/appellants denied the averments made in the plaint and pleaded that defendant is in possession of the house property by virtue of his own right since 8.4.1954 the date of auction purchase and he mutated his name legally in

the record of Municipal Corporation. He further pleaded that defendants/appellants are in possession of the property without interruption as owner and made construction of house with the approval of Municipal Corporation, Jabalpur.

32. Plaintiff Khushbadan Bhatia (PW-1) deposed that his father died on 30.5.1952, at that time he was aged 11 years and after death of his father he along with his mother shifted to Bombay. He further deposed that when he came back to Jabalpur and demanded the rent from the tenants, the tenants informed him that they were inducted by some other persons. He admitted in his cross examination that this suit is filed with his mother. His mother never told him regarding the remaining property at Jabalpur. He further admitted that he visited Jabalpur 4-5 times before 1985 but no one informed him regarding the disputed house.

33. Learned Sr. counsel for the appellants has submitted that it was the duty of plaintiffs/respondents to plead and prove the fact that their suit is within the limitation. He further submitted that plaintiffs' suit is utterly barred by limitation because defendant No. 1 Babulal purchased the property in auction sale dated 8.4.1954, thereafter reconstructed the house in the year 1962 and inducted his tenants. His possession was peaceful, open, without interruption as an owner thereof, perfected title by prescription.

34. On perusal of statement of plaintiff Khushbadan Bhatia, as mentioned hereinabove, it is apparent that he has not stated anything regarding the fact that he got the knowledge from Municipal Corporation that Babulal illegally mutated his name on disputed house, on the contrary he deposed that when he asked the tenants to pay the rent, then the tenants informed him that they were inducted by some other persons. In these circumstances, there is no evidence to prove the pleaded case of the plaintiffs. It is undisputed that defendant No. 1 Babulal purchased the property in auction on 8.4.1954 in the execution proceeding of Civil Judge, Jabalpur and this proceeding was conducted against Natthi Bai and her son, in these circumstances, plaintiff Natthi Bai was duly aware in regard to the fact that what property was auctioned. It is unbelievable that if any property was left despite auction sale, plaintiff Natthi Bai could not disclose to her son Khushbadan. Since suit is jointly filed by Natthi Bai and Khushbadan, in these

circumstances, explanation given by plaintiff Khushbadan that he got the knowledge from the Municipal Corporation in September, 1985, cannot be said to be satisfactory.

35. Learned Sr. Counsel for plaintiffs/respondents has submitted that plaintiffs's suit was based on title and once their title is proved, the onus is on defendants/appellants to prove thier adverse possession and in this case appellants/defendants failed to plead and prove adverse possession, therefore, suit of the plaintiffs cannot be said to be barred by limitation. He has relied on the decision of Apex Court in Vishwanath Bapurao Sabale v. Shalini Bai Nagappa Sabale and others - 2009(12) SCC 101 and Giribala Choudhary v. Ushangini Debi (supra).

36. In Giribala Choudhary's case (supra) the agent of plaintiff found guilty of playing fraud in not disclosing the fact to the plaintiff that disputed land had been purchased and later mutated in his own name, then the onus would lie on the defendant to show that plaintiff had clear and definite knowledge of the facts then the plaintiff would be entitled to file the suit from the date of knowledge or discovery of fraud, but in the instant case defendant Babulal did not commit any fraud. He was an auction purchaser and this fact was very much in the knowledge of plaintiff Natthi Bai right from the date of auction i.e. 8.4.1954, therefore, limitation from the date of knowledge cannot be availed by the plaintiffs.

37. In Vishwanath Sabale's case (supra), plaintiff proved his title and defendant was in the permissive possession. As we discussed hereinabove that plaintiffs' suit without claiming possession is not tenable, though the plaintiffs artistically pleaded the case for declaration and injuncion despite the fact that he has no possession over the disputed property since 1954.

38. Now coming to the factual aspect of the case; it is undisputed that primarily plaintiffs pleaded that half of house No. 365/940 was purchased by Gyanchand Jain in auction purchase by sale certificate dated 16.1.1952 and then after filing the written statement by the defendants, when he got knowledge about the another auction sale, he amended his plaint regarding the auction sale to defendant No. 1 on 8.4.1954 in execution case No. 39- B/48. According to the

plaintiffs despite the aforesaid two auction sales, house No. 64/367/942/2 (new No. 951) has not been sold to defendants. But by taking advantage of absence of the plaintiffs for so many years, defendant and his successors took illegal possession of the house, they illegally mutated their names but property still belongs to the plaintiffs.

39. This contention has been denied by the defendants/appellants. They have pleaded that defendants had purchased the disputed house and execution case No. 39-B/48. They legally mutated their names in the record of Municipal Corporation and Nazul Department. They are in possession of the house without interruption from the date of purchase as an owner thereof.

40. Learned trial Judge mainly passed the judgment on the basis of admission of defendant Babulal, which was mentioned in para-15 of the judgement. On perusal of statement of Babulal (DW-1), it reveals that in his cross examination Para-5, he admitted that house No. 942 was not auctioned. He further stated in Para-6 that house No. 940 was purchased by Gyanchand and house No. 942 was purchased by him and he got mutated his name on house No. 942. He further admitted that old house No. 942 was 941-A as well as 941/1A, 2A, 3A and 4A as mentioned in assessment register (Ex.P-3), sub-clause 2. He further explained in his cross examination Para-7 on showing the document (Ex.D-1) that though he purchased the back part of house No. 940 but Municipal Corporation gave the House No. 942 to that part. But aforementioned whole statement was not considered by learned trial Judge in the impugned judgment. It is true that admission is the best evidence but when admitted fact itself later on has been denied by the defendant in his later cross examination, then it was the duty of the plaintiff to prove his own case.

41. Plaintiff Khushbadan Bhatia (PW-1) deposed that in the year 1930 a partition took place between his father Dwarka Das and uncle Sunder Das and Jeevan Das. Since original partition deed was lost and plaintiff was permitted to lead secondary evidence, he exhibited the photocopy of partition deed Ex. P-1A to P-1F) and certified copy (P-2A to P-2O). He filed the map of disputed house (Ex.P-2N), according to which at present number of house is 951. He further deposed that old number of the house was 367 then 942/2, 941/A, B,C and 64 also. Copy of

Taxation Register of house No. 942/2 from 1952 to 1957 (Ex.P-3) and other taxation receipts (Ex.P-3) sub-clause 1-9. He further deposed that in the map annexed to the plaint, green portion of the house is disputed house and the portion blue and red, are house No. 365/940. The red portion of the house was purchased by Gyanchand and blue portion was purchased by Babulal defendant No. 1. According to the plaintiffs, green portion was never auctioned or sold. In cross examination Para-13 he fairly admitted that he don't have personal knowledge about the fact that how much part of the house was auctioned, which shows that he has no personal knowledge about the property. He further admitted that house No. 365/940 was auctioned twice then he left Jabalpur in the year 1952. He further expressed ignorance in regard to the fact that previously the house was Kaccha Khaprel and later on auction purchaser reconstructed the house. He further admitted that on the basis of map and record, he deposed that disputed house was not sold.

42. On perusal of copy of taxation register (Ex.P-3), it reveals that from the year 1952 to 1956, house was registered in the name of Dwarkadas, minor Khushbadan and his mother Natthi Bai, house number allotted was 942/2. Earlier in the year 1949-50 and 1951-52, the number allotted to the house was 940 and it was only in the name of Dwarkadas. Later on this house was allotted number 941/A , 942 as shown in Ex.P-3, sub-clause 1 and other documents filed by the plaintiff (Ex.P-3 sub clause 2 to 9). The number shown in these documents are 941, A, B,C. Some documents have the name of Khariddar Babulal Dalchand Jain. As discussed hereinabove, at the one place defendant Babulal admitted that house No. 942 was not sold in auction but at the same time afterwards in further cross examination he denied and explained that he purchased the house adjoining the house No. 940 and Municipal Corporation allotted house No. 942 to his purchased portion. In these circumstances, the burden was on the plaintiff to prove the fact that house No. 942 was other than the house purchased by defendant No. 1 Babulal and Gyanchand Jain. For the purpose of appreciation of evidence when we put all the three maps together i.e. the map attached to execution case No. 12-B/ 1949 (additional document No. 1), certified copy of map filed in execution case No. 122-B/1950 (additional document No. 2) and the map attached to the plaint, on comparison, it reveals that house No. 365, Jawaharganj, Jabalpur was

purchased in auction by Gyanchand in execution case No. 12-B/1949, house of Lala Ramswaroop is shown in its north side, later on defendant No. 1 Babulal auction purchased house No. 940/365 and adjoining to the previous sold house. In this proceeding, additional document No. 2 shows that it is just attached to the east side of the house already sold and same house of Lara Ramswaroop shown at its north side. On comparing these two maps which are attached to different execution proceedings and map attached with the plaint, it is crystal clear that map attached in the second auction proceeding has resemblance with green portion of the map attached to the plaint.

43. In sale certificate (Ex.D-1), measurement in hand was written in place of feet and inches, which created the confusion. Yet two facts shown in sale certificate has resemblance with aforementioned maps, one is well and another fact is boundary on north side, there is house of Lala Ramswaroop. As per plaintiffs' contention, in blue portion there is no house of Lala Ramswaroop in north side and there is no mark of well, in these circumstances, despite the change in numbers from time to time, the factual position is that one part of the house was sold in execution case No. 12-B/1949 and another part was sold in execution case No. 122-B/1950 and in this way, whole house property of deceased Dwarkadas Bhatia situated at Ward No. 77, Ganjipura, plot No. 52/53 was sold.

44. In case any part remained unsold due to the discrepancy of size of house shown in map attached to execution proceeding and sale certificate (Ex.D-1), then it was the duty of the plaintiff to file a suit within the prescribed period of limitation as discussed and concluded hereinabove that plaintiffs have failed to satisfactorily explain the delay caused in filing the suit.

45. The conduct of the plaintiffs including the fact that plaintiff Natthi Bai was well aware of the auction proceedings, but she kept mum till the filing of the suit i.e. upto 32 years. Plaintiff Khushbadan himself admitted that he saw the house in the year 1985 only. According to him tenants refused to pay the rent and informed him that they were inducted by some other persons. He further expressed ignorance in regard to the fact that previous house was Kachcha Khaprel and later on it was reconstructed. On the contrary, conduct of defendant No. 1 Babulal shows that

right from beginning since 1954 he was in possession of the disputed property. He reconstructed the house with the approved map (Ex.D-3) in the year 1962 and thereafter inducted the tenants in the disputed property. In these circumstances, the conduct of the plaintiffs shows that plaintiffs themselves remained inactive for 32 years. The process of acquisition of title by adverse possession springs into action essentially by default or inaction of the owner. A person, though having no right to enter into the possession of property of somebody else, does so and continues in possession setting up title in himself and adversely to the title of owner, common sense prescribing title into himself and such prescription having continued for a period of 12 years, he acquires title not on his own but on account of the default or inaction on the part of real owner, which stretched over a period of 12 years results into extinguishing of the title of real owner. In this way, law does not intend to confirm any premium on wrong doer. It pronounces the penalty of extinction of title on the person who though entitled to assert his right and remove the wrong doer and reenter in possession, has defaulted and remained inactive for a period of 12 years, which the law considered reasonable for attracting the penalty.

46. In this case also plaintiffs/respondents remained inactive for a period of 32 years and on the contrary defendant No. 1 Babulal pleaded and proved that he is in possession of the property without interruption from the date of purchase as an owner thereof. It is undisputed that he purchased the remaining house in the year 1954 and thereafter he got mutated his name in the disputed house. He further proved that he after demolishing the old structure, reconstructed the house with the approved map (Ex.P-3) in the year 1962 and then inducted the tenants in the disputed property. As discussed hereinabove that if any part of the house was remained and defendants peacefully without applying any force continued in possession, claim of denial of title of true owner was amply proved by the evidence on record and in these circumstances right, title or interest of plaintiffs/respondents had been extinguished due to their default or inaction for a period of 12 years and, therefore, defendants prescribed the title of adverse possession. In these circumstances, the principles laid down in the case of Vishwanath Sabale's case (supra) are not applicable in the instant case.

47. As discussed hereinabove, the suit filed by the plaintiffs without claiming the relief of possession is not maintainable and the suit is also barred by limitation, the trial Court committed error in not appreciating the evidence on record in its proper perspective, therefore, the impugned judgment passed by the learned trial Court is liable to be set aside, thus :-

(i) Appeal is allowed, the impugned judgment and decree dated 31.7.1995 is hereby set aside.

(ii) Respondents to bear their own costs as well as the costs of appellants.

(iii) Advocates' fee as per schedule or certificate, whichever is less.

(iv) Decree be drawn accordingly.

SooperKanoon - India's Premier Online Legal Search - sooperkanoon.com