

Vishal and Others Vs. Ramjee Son of Dinesh and Others

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Court : Chhattisgarh

Decided On : Feb-28-2012

Judge : N. K. Agarwal

Appeal No. : S A No 209 of 2004

Appellant : Vishal and Others

Respondent : Ramjee Son of Dinesh and Others

Judgement :

(SECOND APPEAL UNDER SECTION 100 OF THE CIVIL PROCEDURE CODE)

1. This is plaintiff's second appeal under Section 100 of CPC against the judgment and decree dated 27.02.2004 passed by the Additional District Judge (F.T.C.), Kawardha in Civil Appeal No.34-A/2002 affirming the judgment and decree dated 08.08.1996 passed by the Civil Judge Class-2 in Civil Suit No. 139-A/1994.

2. The appeal was admitted for hearing on the following substantial questions of law:

"(1) Whether the Courts below have fallen into error by non-suiting the plaintiffs on the ground that defendants No.1 to 3 have perfected their title on the land bearing Khasra No. 181 by adverse possession when admittedly it is a case of permissive possession by way of exchange of land between the parties?

(2) Whether exchange of land having value more than Rs.100/- can be transacted without any document being registered under the provisions of the Registration Act, 1908?

3. Brief facts of the case are as under:

(i) Admittedly, the appellants are legal representatives of late Jagat and respondents No.1 to 3 are legal representatives of late Dinesh. The land situated in village Bidaura bearing Kh.No.181, area 8.34 acres was owned by Jagat and land situated in same village bearing Kh.No.129, area 3.23 acres was owned by Dinesh. 30 - 35 years before filing the suit, Jagat transferred possession of 20 decimals of his land (suit land) to Dinesh and in exchange obtained possession of 40 decimals of his land. Dinesh constructed two room house on the land obtained from late Jagat and lived in it till his life. After his death, defendants constructed one more room in the year 1992 and are living in it. Since the date of exchange, earlier Jagat and after his death appellants are in cultivating possession of the land obtained in exchange from late Dinesh.

(ii) As per plaintiffs' case, late Jagat temporarily permitted late Dinesh to construct house over the suit land and live in it for 2 to 4 years and in lieu of it Dinesh had also transferred possession of 40 decimals of his land to Jagat. But the ownership of the suit land was never transferred nor registered exchange deed was executed and the suit land still stands recorded in the name of the appellants. Dispute arose when respondents started constructing one more room over the suit land.

(iii) The respondents denied the plaint averments and pleaded, the transaction of exchange of land between Jagat and Dinesh though not registered but was permanent and was with an intention to transfer ownership. Pursuant to above transaction, both the parties came in possession of each other's land. Late Dinesh constructed Pucca house over the suit land, also incurred expenses and since then earlier Dinesh and after his death, respondents are in peaceful and uninterrupted possession for a period of more than 35 years. The respondents had perfected their title by adverse possession.

(iv) Parties led evidence. The trial Court framed issues.

(v) The trial Court, finding inter alia, plaintiffs failed to prove, the transfer of possession between the parties was temporary; respondents after obtaining possession of the suit land in exchange are in its continuous and peaceful possession for a period of 35 years; respondents have perfected their title by adverse possession; plaintiffs are also estopped from claiming title over the land transferred to respondents, granted alternative relief to the appellants as claimed by them.

(vi) The plaintiffs preferred first appeal. The first appellate Court, on re-appreciation of the evidence, affirmed the above findings and dismissed the appeal.

4. Shri H.B.Agrawal, learned Senior Counsel appearing for the appellants, vehemently argued: the oral transaction of exchange of land for want of registration is inadmissible and does not confer any title upon the respondents. The respondents' possession over the suit land was permissive and both the Courts below have erred in holding, respondents have perfected their title by way of adverse possession, inasmuch as, permissive possession is not adverse till respondents assert adverse possession. He relied upon the judgments of Supreme Court in the case of Ram Kristo Mandal and another v. Dhankisto Mandal, AIR 1969 SC 204, Sheodhari Rai and others v. Suraj Prasad Singh and others, AIR 1954 SC 758 and upon the judgment of Privy council in the case of Mt. Allah Rakhi and others v. Shah Mohammad Abdur Rahim and others, AIR 1934 Privy Council 77 and para 21 of this Court's judgment in the case of Ram Gopal Dixena and ors. v. Shyamlal and Anr., 2010 (II) MPJR CG 9.

5. Per contra, Shri Malay Shrivastava, learned counsel appearing for respondents No. 1 to 3, supported the judgment and decree impugned and submitted: the respondents are in continuous and peaceful possession over the suit land for a period of more than 35 years; the transaction was not temporary but was permanent; the intention was to transfer ownership of the land; though the oral transaction does not confer any title to the parties but since the respondents as also the plaintiffs are in possession of each other's land for a period of more than 30 - 35 years, they have perfected their title by way of adverse possession over

each other's land. He would further submit: late Dinesh after obtaining the possession of the suit land, had constructed a Pucca house over it and incurred expenses, and therefore, even a licence cannot be revoked by the grantor and the appeal is misconceived and devoid of merit.

6. I have heard learned counsel for the parties and perused the records of both the Courts below including impugned judgment and decree.

7. I shall first examine the second substantial question of law formulated by this Court.

8. Section 118 of the Transfer of Property Act, 1882, which defines "Exchange", reads thus:

"(118.) "Exchange" defined.--- When two persons mutually transfer the ownership of one thing for the ownership of another, neither thing or both things being money only, the transaction is called an "exchange".

A transfer of property in completion of an exchange can be made only in manner provided for the transfer of such property by sale".

A bare perusal of above provision would clearly elucidates, a transaction is exchange when two persons mutually transferred the ownership of one thing for the ownership of another, provided it is not an exchange of money only. Further, a transfer of property in completion of exchange can be made only in the manner provided for transfer of such property by sale. Therefore, an exchange of tangible immoveable property of the value of Rs.100/- and upward, if not, made by a registered instrument, is invalid, in view of Section 17 of the Indian Registration Act, which provides for compulsory registration of such instrument and is also inadmissible as evidence of transaction, in view of Section 49 of the Indian Registration Act.

9. The above position of law is well settled, and therefore, there is no difficulty in answering the above substantial question in appellant's favour. Accordingly, I hold, the oral transaction of exchange of land took place between the parties, is not a valid transaction and also not admissible in evidence.

10. Coming to the main and first substantial question of law formulated by this Court, both the Courts below have concurrently held, the transaction was permanent, pursuant to above transaction, late Dinesh executed a work of permanent character, i.e., built a two room house 30 - 35 years back and also incurred expenses. The suit for possession was filed by the plaintiffs/appellants in the year 1992 whereas the possession of the suit land was handed over 30 - 35 years before filing the suit. The respondents have perfected their title by adverse possession.

11. The Supreme Court, in the case of Collector of Bombay v. Municipal Corporation of the City of Bombay and others, A.I.R. (38) 1951 SC 469, in a case where Bombay Municipal Corporation and its predecessor in title were in possession of the land to which they had no legal title at all, has held: a person having no legal title but nevertheless holding the possession of the land under colour of an invalid grant of the land in perpetuity and free from rent for the purpose of a market. Such possession not being referable to any legal title it was prima facie adverse to the legal title of the Government as owner of the land from the very moment the predecessor in title of the Corporation took possession of the land under the invalid grant.

12. Following the above proposition of law laid down by the Supreme Court in the case referred hereinabove, the Supreme Court, in the case of State of West Bengal v. The Dalhousie Institute Society, AIR 1970 SC 1778, has observed in paras 16 and 17 of its judgment as under:

"(16.) There is no material placed before us to show that the grant has been made in the manner required by law though as a fact a grant of the site has been made in favour of the Institute. The evidence relied on by the Special Land Acquisition Judge and the High Court also clearly establishes that the respondent has been in open continuous and uninterrupted possession and enjoyment of the site for over 60 years. In this respect the material documentary evidence referred to by the High Court clearly establishes that the respondent has been treated as owner of the site not only by the Corporation, but also by the Government. The possession of the respondent must have been on the basis of the grant made by the

Government, which, no doubt, is invalid in law. As to what exactly is the legal effect of such possession has been considered by this Court in *Collector of Bombay v. Municipal Corpn. of the City of Bombay*, 1952 SCR 43 = (AIR 1951 SC 469) as follows:

".....the position of respondent Corporation and its predecessor in title was that of a person having no legal title but nevertheless holding possession of the land under colour of an invalid grant of the land in perpetuity and free from rent for the purpose of a market. Such possession not being referable to any legal title it was prima facie adverse to the legal title of the Government as owner of the land from the very moment the predecessor in title of the Corporation took possession of the land under the invalid grant. This possession has continued openly, as of right and uninterruptedly for over 70 years and the respondent Corporation has acquired the limited title to it and its predecessor in title had been prescribing for during all this period, that is to say, the right to hold the land in perpetuity free from rent but only for the purposes of a market in terms of the Government Resolution of 1865."

(17.) The above extract establishes that a person in such possession clearly acquires title by adverse possession. In the case before us there are concurrent findings recorded by the High Court and the Special Land Acquisition Judge in favour of the respondent on this point and we agree with those findings."

13. In the instant case, there is concurrent finding recorded by both the Courts below in favour of the respondents on the point of adverse possession and by applying the ratio of law laid down by the Supreme Court in the cases referred herein above, I also agree with those findings.

14. The Supreme Court, in the case of *Sheodhari Rai and others v. Suraj Prasad Singh and others* (supra) having found possession of the appellants as permissive as rent receipts produced by them would go to show that they have been acknowledging title of the defendants till 12 years of the institution of the suit, has held: permission of defendants being only permissive, the defendants must be regarded as having been in possession through first party.

15. In the instant case, it has been concurrently held by both the Courts below that intention of the parties was to transfer ownership and the respondents' possession was not permissive possession though the transfer of ownership was oral and not valid, therefore, the possession of the respondents from the date of transaction would be deemed, prima facie, as adverse to the legal title of the plaintiffs as owner of the land from the moment the predecessor in title of the respondents took possession of the land under the invalid grant and the ratio of law laid down by the Supreme Court in the above case, is of no help to the appellants.

16. The Supreme Court, in the case of Ram Kristo Mandal and another v. Dhankisto Mandal (supra) has held: a person who has been in adverse possession for twelve years or more of property inherited by a widow from her husband by any act or omission on her part is not entitled on that ground to hold it adversely as against the next reversioners on the death of such a widow. The next reversioner is entitled to recover possession of the property, if it is immoveable, within twelve years from the widow's death under Article 141. This rule does not rest entirely on Article 141 but is in accord with the principles of Hindu law and the general principle that as the right of a reversioner is in the nature of spes succession and he does not trace that title through or from the widow, it would be manifestly unjust if he is to lose his right by the negligence or sufferance of the widow.

17. The above principle is also not applicable in the facts and circumstances of the present case. It is not the case of the plaintiffs that late Jagat Ram was having any limited interest in the suit property and the appellants are not claiming their right through him.

18. There is no quarrel with the proposition of law laid down by the privy council in the case Mt. Allah Rakhi and others v. Shah Mohammad Abdur Rahim and others (supra) wherein it has been held: burden to prove adverse possession is on the defendants and also in the case of Ram Gopal Dixena and ors. v. Shyamlal and Anr. (supra) wherein this Court has held: once it is held that the defendants' possession is neither in their own right nor adverse to the plaintiff, then plaintiff and defendants, being father and son, necessary inference would be that

defendant No.1 is in permissive possession. However, in view of ratio of law laid down by the Supreme Court, in the case of Collector of Bombay v. Municipal Corporation of the City of Bombay and others and State of West Bengal v. The Dalhousie Institute Society (supra), the respondents' possession is adverse to the legal title of the plaintiffs/appellants as owner of the land from the very moment late Dinesh took possession of the land under the oral invalid grant and the above ratio of law laid down by the Privy Council and this Court are also of no help to the appellants.

19. The matter can be looked from another angle also. Both the Courts below have concurrently held: late Dinesh executed a work of permanent character, i.e., residential house and also incurred expenses in its construction. Therefore, in view of Section 60 (b) of the Easements Act, the licence, if any, has become irrevocable. The man who stands by and allows another person to build on his land, in the belief that he has power or authority to do so, and incurs expenses in such building, cannot turn round and claim the removal of such building on the ground that the latter had no authority to build. He is estopped by his conduct from adopting that course and the law will presume an authority from him in such cases, as held by the High Court of Madhya Pradesh in the case of Rambilas s/o Amal Sai and others v. Jagatram s/o Ramprasad, 2000 (2) M.P.L.J. 170, to which, I am also in respectful agreement. Further, the appellants are still in possession of the land obtained in exchange of suit land and are enjoying its fruits and now after a period of about 35 years, they want to evict the respondents, who are living in the house constructed upon the suit land. The appellants' above conduct, on the face, appears to be inequitable.

20. Considering every aspect of the matter, in my considered opinion, the respondents' possession over the suit land was not permissive but they have perfected their title over the suit land by adverse possession. The trial Court has rightly granted alternative relief to the appellants as claimed by them. The first substantial question of law formulated is answered accordingly.

21. For the reasons mentioned hereinabove, the appeal fails and is hereby dismissed.

22. No order as to costs.

23. A decree be drawn accordingly.

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