

HIGH COURT FORM NO- (J) 2

HEADING OF JUDGMENT IN ORIGINAL SUIT

District-Kamrup

In the Original Court of Munsiff No. 3

Present- S. Handique

Thursday the 16th day of May'2012

Title Suit No. 163/10

Chitra Haloi & anr

Plaintiffs

V

Smti Maya Das & 3 ors

Defendants

This suit coming for final hearing on 18-5-12 in presence of

Mr. T. Sarma, Mr. H. Sarma

Advocates of the plaintiff

Mr. P.K. Kalita

Advocates of the defendant

And stood for consideration to this day the court delivered the following judgment.

JUDGMENT

T.S. 163/10

1. This is a suit for declaration of right, title and interest by way of adverse possession and permanent injunction. The case of the plaintiffs is that the suit land measuring 1K-10L covered by dag no. 1192 of K.P. Patta no. 96 originally belonged to the father/ husband of the defendants late Taranath Das who agreed to sell the land to the predecessor of the plaintiff vide one agreement for sale dtd 9-3-81 for a consideration of Rs 12,000/- and the possession was handed over to the plaintiffs' predecessor pursuant to that agreement. It is pleaded that the plaintiffs' predecessor paid Rs 6000/- on the date of execution of the agreement for sale and the balance amount was agreed to be paid at the time of registration of the sale deed. According to the plaintiffs, their predecessor raised dwelling house after taking possession and the balance amount was to be paid within 1 month after Taranath Das obtains the necessary permission. It is pleaded further that the plaintiffs' predecessor kept on waiting to pay the balance amount for getting the sale deed executed. The entire process was to be completed within 6 months. The predecessor of the plaintiffs developed the suit land which was low lying and the plaintiffs have been occupying the suit land by obtaining electricity and water supply connection and paying municipal taxes etc. The predecessor of the plaintiffs visited the house of the defendants several times but their predecessor showed inability to execute the sale deed on one pretext or the other. The plaintiffs' predecessor last paid his visit to the defendants' house on 8-9-81. The plaintiff states that he paid the balance amount of Rs 6000/- to late Taranath Das on 7-7-81 in presence of Khagendra Nath Kalita in good faith as late Taranath Das assured him that he will not claim any right over the suit land if the balance amount is paid. The

plaintiff later on came to know that a ceiling case was pending in respect of the suit land and as such late Taranath Das had no right to sell the suit land to him. The plaintiffs have pleaded that they have been residing over the suit land by raising dwelling house which is assessed by the municipality and have electricity and water supply connection in respect of the holding. It is thus pleaded that they have acquired right over the land by virtue of adverse possession since the date of execution of agreement for sale dtd 9-3-81 and their possession is continuous, peaceful, open. It is alleged that after the death of late Taranath Das his heirs/ defendants have been trying to disturb their possession by claiming the land to be theirs. According to the plaintiffs their possession commenced with a wrong against the right of the defendants as the agreement dtd 9-3-81 is void and their possession has ripened into title over the land. Hence they prayed for declaration of right, title and interest over the suit land as the action of the defendants have clouded their right.

2. The defendants contested the suit by filing written statement and put up a counter-claim against the plaintiffs. The defendants contested the suit by taking the usual pleas that the suit is not maintainable, is bad for non joinder, is barred by limitation etc. The defendants denied their knowledge if their predecessor –in-interest had ever entered into any agreement for sale of the suit land as alleged by the plaintiffs or that the possession was handed over to the plaintiffs on the date of execution of the agreement for sale. It is contended by the defendants that the land was low lying in 1981 and no possession could have been delivered to the plaintiffs at that time. They denied that the electricity connection was taken prior to 2009. Further they contended that the fact that the plaintiffs paid municipal taxes in 2006 goes on to prove that the holding was assessed only in 2006.

They denied that the predecessor in interest of plaintiffs visited their house and paid the balance consideration amount and that their predecessor-in-interest assured him that no claim will be made over the suit land upon payment of balance amount. According to the defendants, the plaintiffs are occupying the suit land illegally as they were asked to vacate the land but have not vacated. The defendants claim that they are the recorded pattadars of the suit land having right, title and interest and the alleged possession howsoever long cannot confer title to the plaintiffs. The defendants stated that during the life time of late Taranath das and after his death they asked the plaintiffs to vacate the suit land as they required it for their own purpose and the plaintiffs had agreed to that but he later on filed the instant suit for wrongful gain at the behest of some other persons. Hence the defendants prayed for a decree for recovery of khas possession of the suit land by evicting the plaintiffs and demolishing the structures raised illegally by the plaintiffs.

3. The plaintiffs filed written statement against the counter-claim of the defendants. It is contended by the plaintiff that there is no cause of action for the counter -claim and that it is barred by limitation and also that defendants have indirectly admitted the existence of the alleged agreement on the basis of which they occupied the land because the defendants have referred to them as a permissive occupier. Hence they prayed for dismissal of the counter claim.

4. The following issues were framed by my learned predecessor:

ISSUES

1. Whether there is any cause of action for this suit?
2. Whether the suit is barred by limitation?

3. Whether the counter-claim is barred by limitation?
4. Whether the plaintiffs acquired right, title and interest over the suit land by way of adverse possession?
5. Whether the plaintiffs are permissive occupiers of the suit land?
6. Whether the defendants are entitled to get khass possession of the suit land?
7. To what relief/ reliefs the parties are entitled to?

5. The plaintiffs examined two witness and the defendants examined one witness. Both parties adduced documentary evidence in support of their respective claims. I have heard arguments of both the sides.

The following documents were exhibited by the plaintiffs:

Ext. 1: agreement for sale dtd 9-3-81

Ext. 2, 3: municipal tax paying receipt

Ext. 4,5,6 : electricity bills

Ext. 8,9: water supply bills

6. However, the court vide order dtd 6-7-11 has held that the Ext. no. 3-9 will not be taken on record. Hence I do not consider them as forming plaintiffs' part of evidence.

The defendant side exhibited the following documents:

Ext. A: certificate issued by mouzadar

Ext. B: certificate issued by mouzadar

Ext. C series : revenue paying receipts

DECISIONS AND REASONS THEREOF

Decision on issue no. 1

7. The plaintiffs are claiming right, title and interest over the suit land by way of adverse possession. The plaintiffs claim that they are in possession of the suit land since 9-3-81, on the other hand the defendants have put up a counter-claim against the plaintiffs. After perusal of the plaint I do find that it discloses a cause of action.

Issue no. 1 is decided in the affirmative.

Decision on issue no. 2 & 4:

8. The defendants contended that the suit is barred by limitation. The plaintiffs are claiming their right, title and interest by way of adverse possession. They claim to be in possession of the suit land since 9-3-81. According to them the cause of action arose on 9-3-81 and on 5-9-81 when the balance amount was paid and on subsequent dates when the defendants interfered with their possession. According to them, their predecessor –in- interest took possession of the land on the date of execution of the void agreement for sale (Ext. 1). PW1 deposed that they were waiting for the execution of the sale deed for several years but deceased Taranath Das avoided execution of the sale deed on one pretext or the other and this way they have completed 28 years on the said land. It is admitted by the plaintiffs that the defendants are owners of the land but claimed that their possession has been long, continuous, peaceful, open and as such they have acquired title by virtue of law of adverse possession. It is pleaded that after the death of Taranath Das the attitude of his legal heirs became negative towards the plaintiffs. Taranath Das is stated to have expired in 1987. It is also pleaded that plaintiffs' predecessor –in- interest took possession of the land on the date of execution of the void agreement for sale (Ext. 1). The plaintiffs have further pleaded that at the time of execution of the agreement the predecessor-in –interest of the defendants had no inalienable right to sell, but he misled the predecessor-in –interest of the plaintiff. Thus the plaintiffs on one hand stated that they took

possession on the basis of an agreement for sale and on the other hand they have taken the plea that the agreement was void. Without going into the validity of the agreement for sale, it is prima facie clear that the entry of the predecessor-in –interest of the plaintiffs upon the land was permissive. If their entry was permissive initially then to assert adverse possession, the plaintiffs have to prove since when their possession became adverse to the true owner. It is pleaded that their possession is adverse since 1981, but it cannot be as they themselves admitted that their predecessor took possession on the basis of a void agreement for sale. If the possession as on 9-3-81 was not adverse then it has to be proved since when the possession became adverse.

9. It is a cardinal principle of law of adverse possession that possession consistent with or in recognition of the owner's title is not adverse. To amount to assertion of possession, acts of possession or enjoyment must be of an unequivocal character and referable only to a claim of right. Payment of house tax or electricity bills is not an unequivocal act, as would constitute an assertion of a hostile intention, so as to amount to adverse possession. To make possession adverse, it must be shown either that the true owner had knowledge of the adverse holding or the possession was so open and notorious as to raise a presumption of notice to him.
10. PW1 Chitra Haloi could not say since when her husband had been possessing the land. She deposed that the owner did not execute the sale deed and he avoided execution. According to her, she visited the house of the defendants in 1985 and even last year, i.e., 2010. PW2 Bhavakanta Haloi deposed that he stayed on the suit land with plaintiffs since 1985 till his marriage and the electricity connection was taken in 1985/86. But there is no documentary proof of electricity and water connection being there since 1985/86.

11. PW1 admitted that she had gone to Taranath Das' house during his life time asking for the registration of the sale deed but he did not register it. If that be the case, it cannot be said that the plaintiffs' intention to hold the suit land was adverse and hostile to the title of the owner. The starting point of limitation (9-3-81) as pleaded by the plaintiffs cannot be accepted. The plaintiffs' case is that they were forced to file the suit for declaration of adverse possession as the defendants have asked them to vacate the suit land on 19-1-10.
12. The learned counsel for the defendants relied upon the decision of the Supreme Court in **P.T. Munichikkanna Reddy and other V. Revamma and others, (2007) 6 SCC 59**. In that case the hon'ble Supreme Court discussed at length the law of adverse possession vis- a- vis the earlier decisions of the Apex Court and held that the adverse possession is a right which comes into play not because someone loses his right to retain property out of continuous and willful neglect but also on account of possessor's positive intent to dispossess. Intention to possess cannot be equated with intention to dispossess which is essential to prove the factum of adverse possession. But in the present case the plaintiffs have failed to prove their intention to dispossess, hence mere possession for about 30 years cannot be termed as adverse possession.
13. The Hon'ble Supreme Court in **Hemaji Waghaji Jat v. Bhikhabhai Khengarbhai Harijan and ors.,(2009) 16 SCC 517** discussed the various earlier decisions like **S.M. Karim v. Bibi Sakina, AIR 1964 1254** wherein it was held that adverse possession must be adequate in continuity, in publicity and extent and a plea is required to show when the possession became adverse so that a starting point of limitation against the party affected can be found. In **Karnataka Board of Wakf v. Govt of India, (2004) 10 SCC 779** the Supreme Court has held that adverse possession is a hostile title in denial of the title of the true owner. The party claiming adverse possession must prove that his possession is " nec vi nec clam, nec precario", i.e., peaceful, open continuous.

The possession must be start with a wrongful disposition of the true owner and be actual, visible, exclusive, hostile and continued over the statutory period. The Supreme court in Hemaji's case after discussing the principles of law of adverse possession held that a person who bases his title on adverse possession must show by clear and unequivocal evidence that his title was hostile to the real owner and amounted to denial of the his title to the property claimed.

14. The Supreme Court in **Chatti Konati Rao and ors V. Palle Venkata Subba Rao, (2010) 14 SCC 316** held that plea of adverse possession is not a pure question of law but a blended one of fact and law. Therefore a person who claims adverse possession should show:

- a) On what date he came into possession
- b) What was the nature of possession
- c) Whether the factum was known to the other party
- d) How long his possession has continued
- e) His possession was open and undisturbed

15. A person pleading adverse possession has no equities in his favour. Since he is trying to defeat the rights of the true owner, it is for him to clearly plead and establish all facts necessary to establish his case. The plaintiff side argued that the defendants admitted that if any house is constructed or electricity connection is taken then it is without their consent, so they have admitted that their possession is hostile and adverse. I do not consider that mere statement of calling the plaintiffs as permissive occupier who takes electricity connection without the owner's consent would imply adverse possession. If that is considered as an admission of adverse possession then everyone who does something on another person's land without authority would be declared as title holder by virtue of long possession.

16. In the present case, the plaintiffs themselves admitted that they were waiting to get the sale deed executed. In such a case, the possession cannot be said to be adverse to the true owner. Moreover, the plaintiffs have made contradictory pleas. On one hand they state that they occupied the land pursuant to one void agreement for sale and on the other hand they claimed adverse possession stating that the sale deed was not executed and the land was not claimed by the owners for the last 30 years or so.

Hence issue no. 2 and 4 are decided against the plaintiffs.

Decision on issue no. 3:

17. The plaintiffs have alleged that the counter-claim is barred by limitation. It was argued by the learned counsel for the plaintiff that the counter-claimant has showed the same date of cause of action as stated by them. It is already found that the plaintiffs have not proved their title by adverse possession. Once adverse possession is not proved then the counter-claim of the defendants cannot be held to be beyond limitation. Hence I decide issue no. 3 in the negative.

Decision on issue no. 5,6 & 7:

18. The defendants have claimed that the plaintiffs are mere permissive occupiers. The agreement for sale is not proved. In fact the plaintiffs themselves pleaded that the agreement for sale is void. DW1 Debashish Das admitted that the plaintiffs' predecessor-in-interest came to possess the land in 1983, but he asserted that he was a permissive occupier only. He testified that his father allowed the plaintiffs to reside there but the electricity connection etc. were taken without their knowledge and they came to know about it only when the suit was filed. The documents filed by DW1 show that the land records are still in the name of predecessor-in-interest of defendants and the defendants have been paying revenue. It is proved from the above discussions that the plaintiffs' entry into the suit land was

permissive and it has not ripened into title, as such the presumption is that the possession still permissive.

19. The defendants have asserted that the suit land is required by them for their own use and occupation. I therefore hold that they are entitled to recover khas possession of the suit land by evicting the plaintiffs, their men and materials.

Issue no. 5,6,7 are decided accordingly in favour of the defendants.

ORDER

20. The suit is dismissed on contest.

21. The counter – claim is decreed in favour of the defendants. The defendants are entitled to recover possession of the suit land by evicting the plaintiff, demolishing the structures constructed over the suit land.

22. Parties to bear their own costs. Prepare decree accordingly. Given under my hand and seal of the court on 16-5-13.

S. Handique

Munsiff No. 2, Kamrup

ANNEXURES

PLAINTIFF SIDE

PW1..CHITRA HALOI

PW2..BHAVAKANTA HALOI

The following documents were exhibited by the plaintiffs:

Ext. 1: agreement for sale dtd 9-3-81

DEFENDANT SIDE

DW1..DEBASHISH DAS

The defendant side exhibited the following documents:

Ext. A: certificate issued by mouzadar

Ext. B: certificate issued by mouzadar

Ext. C series : revenue paying receipts