

IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO.2771 OF 2011

ANIL KUMAR (D) THR. LRS.

APPELLANT(S)

VERSUS

SHAKUNTALA DEVI (DEAD) THR. LRS.

RESPONDENT(S)

O R D E R

The defendants are in appeal aggrieved by the judgment and decree passed by the High Court of Himachal Pradesh on 07.01.2010 whereby the suit for possession of the plaintiffs based on title was decreed in appeal.

The plaintiffs/respondents filed a suit for possession on the basis of purchasing the property vide registered sale deed dated 19.05.1927 by Late Laxmi Chand in favour of Duni Chand, predecessor in interest of the plaintiffs. The old Khasra Number was 118 which was assigned new Khasra No.59 measuring 1 Bigha in Main Bazar, Paonta Sahib.

Laxmi Chand who was financially weak as per the plaintiffs, was allowed the possession of a part of the premises after 5 or 6 years on account of his financial condition. Therefore, the suit for possession was filed in respect of the land and building on the area measuring 12 Biswas on the Khasra No.59 situated in Main Bazar, Paonta Sahib.

The defendants/appellants *inter alia* pleaded that Laxmi Chand was not legally competent to sell the suit property being a Hindu undivided ancestral and coparcenary property. It was also pleaded that they are in a continuous peaceful and uninterrupted possession of the property since the time of their forefathers. The trial Court framed the following issues:

"....."

1. Whether the plaintiff is the owner in possession of the disputed property, as alleged?
2. Whether the predecessors of the defendants were inducted as licencees in the suit property by the plaintiff and the said licence stand revoked, as alleged? OPP
3. Whether the defendants have become owner of the disputed property by adverse possessions, as alleged? OPD
4. Whether the defendants are the co - owners in the suit property alongwith the plaintiff, if so, with what effect? OPO
5. Relief."

In respect of Issue No.1, the trial Court returned the finding that the plaintiff is the owner of the suit property having purchased the same vide registered Sale Deed dated 19.05.1927. 8 Biswas of Khasra No.59 are in the actual physical possession of the plaintiff whereas the remaining 12 Biswas along with the shop and houses were in possession of the defendants. The relevant finding reads as under:

"15. in view of the foregoing discussion, I conclude that the entire disputed property was sold by Laxmi Chand in favour of Duni Chand vide registered sale deed, dated 1st April, 1927, and Duni Chand and after his death his heirs were the owners of this property. However, with regard to

actual possession, it is found that out of the total land of khasra No.59, the land measuring 8 biswas alongwith 3 shops standing thereon was in possession of the plaintiff and other heirs of Duni Chand, whereas the remaining 12 biswas of land alongwith shop and the houses standing thereon as shown by site plan, Ext.P3, was in possession of all the defendants.....”

However, the trial Court dismissed the suit for possession on the ground that since the last 65 years that is from the year 1932 or 1933, the defendants are continuing in possession and that the plaintiffs have not asserted their title over the disputed property nor have they ever tried to recover possession from the defendants or to receive any rent from the defendants in lieu of the possession of the disputed property. Thus, the possession of the defendants for more than 60 years on the disputed property would be presumed to be adverse to the plaintiff, thus the suit was dismissed.

Aggrieved by the judgment and decree passed by the trial Court, the plaintiff filed the first appeal before the High Court. The High Court affirmed the finding of the title but reversed the finding recorded by the trial Court in respect of the adverse possession and decreed the suit. Still aggrieved, the defendants are in appeal before this Court.

Dr. Sumant Bharadwaj, the learned counsel for the appellants has vehemently argued that the plaintiff has filed the suit for possession on the basis of the license without proving any license either by document or by oral evidence. Since the plaintiff has failed to prove the license, therefore in terms of Section 62 of the Indian Easements Act, 1882, after the expiry of 20 years, the

license would be deemed to have expired. It is also contended that the defendant has been in possession of the suit property for more than 60 years, therefore, suit for possession based upon the title under Article 65 of Schedule II of the Limitation Act, 1963 is beyond the period of limitation and thus was liable to be dismissed, but the High Court has wrongly decreed the suit on the basis of title pleaded by the plaintiff.

Learned counsel for the appellant relied upon the judgments reported in (2004) 3 SCC 595 titled "C.M. Beena & Anr. Vs. P.N. Ramachndra Rao", AIR 1959 SC 1262 titled "Associated Hotels of India Ltd., Vs. R.N. Kapoor", and (1976) 3 SCC 512 titled "Board of Revenue Etc. Etc. Vs. A.M. Ansari Etc.". The judgments referred by in the appeal are clearly not applicable and are distinguishable on the fact of each case.

We have heard learned counsel for the parties and find no merit in the present appeal.

The plaintiff has filed suit for possession on the basis of the title. Such a suit is governed by Article 65 of Schedule II of the Limitation Act, 1963. The period of 12 years is to defeat the claim of possession on the basis of title if the possession of the defendants is proved to be adverse to the plaintiff. The appellants have failed to prove adverse possession inasmuch the defendants did admit the title of the plaintiff. The defendants pleaded that the property was a joint Hindu family property of Laxmi Chand but no issue was claimed or framed and no evidence was led that the property is a Joint Hindu Property in the hands of the vendor -

Laxmi Chand. Since the defendants has failed to prove that the property was a joint Hindu property family or that the defendants are in open continuous hostile possession to the knowledge of the true owner, the plea of the adverse possession does not survive and had been rejected by the High Court.

Both the Courts below have returned a concurrent finding that the plaintiff had purchased the property in dispute vide registered sale deed dated 19.05.1927. The Trial Court returned a finding that part of the property sold by Laxmi Chand is in possession of the plaintiff whereas some part of the property is in possession of the defendants. Since the plaintiff has proved the title over the property, and the defendants have failed to prove adverse possession or that the property was a joint Hindu family property, the defendants claim had to fail.

The Judgments referred to by the Learned Counsel of the appellant are not applicable to the facts of the present appeal. The judgments relate to as what is license and lease. The appellant has not asserted either a license or lease in their favour. Therefore, none of the judgments have any relevance to the facts of the present case.

The argument raised by the appellants is that the plaintiff has pleaded possession of the defendants as that of licensee. Therefore, in the absence of proof of possession as a licensee, the plaintiff cannot succeed. The defendants have claimed adverse possession. Issue was also framed regarding adverse possession. Since the defendants have not accepted the ownership of the plaintiff, therefore, the plea of adverse possession was rightly

not accepted by the High Court.

The plaintiff has filed a suit of possession based on title. The licensee may be in physical possession but the legal possession is that of the licensor i.e. plaintiff. Therefore, the plaintiff as an owner is entitled to possession of the property from the person who is in possession in whatever capacity and whatever period he may be, unless he proves his adverse possession.

Consequently, the present appeal is dismissed.

Pending application(s), if any, also stand disposed of.

.....J.
[HEMANT GUPTA]

.....J.
[V. RAMASUBRAMANIAN]

NEW DELHI;
29th SEPTEMBER, 2021

ITEM NO.103

COURT NO.11

SECTION XIV-A

S U P R E M E C O U R T O F I N D I A
R E C O R D O F P R O C E E D I N G S

Civil Appeal No(s). 2771/2011

ANIL KUMAR (D) THR. LRS.

Appellant(s)

VERSUS

SHAKUNTALA DEVI (DEAD) THR. LRS.

Respondent(s)

Date : 29-09-2021 This appeal was called on for hearing today.

CORAM :

HON'BLE MR. JUSTICE HEMANT GUPTA
HON'BLE MR. JUSTICE V. RAMASUBRAMANIAN

For Appellant(s) Dr. Sumant Bharadwaj, Adv.
 Dr. Manoj Kumar, Adv.
 Mr. Vedant Bharadwaj, Adv.
 Ms. Mridula Ray Bharadwaj, AOR

For Respondent(s) Mr. Gaurav Pachnanda, Sr. Adv.
 Ms. Namrata Sinha, Adv.
 Mr. Vikas Mehta, AOR
 Mr. Bhaskar Nayak, Adv.

UPON hearing the counsel the Court made the following
O R D E R

The appeal is dismissed in terms of the signed order.
Pending application(s), if any, also stand disposed of.

(SWETA BALODI)
COURT MASTER (SH)

(RENU BALA GAMBHIR)
COURT MASTER (NSH)

(Signed order is placed on the file)