

2024 LiveLaw (SC) 17

**IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION**

VIKRAM NATH; J., RAJESH BINDAL; J.

Civil Appeal No. 7502 of 2012; JANUARY 03, 2024

BRIJ NARAYAN SHUKLA (D) THR. LRS. *versus* SUDESH KUMAR ALIAS SURESH KUMAR (D) THR. LRS. & ORS.

Adverse Possession - Tenants cannot claim adverse possession against their landlords since their possession is permissive in nature. (Para 9.4)

For Appellant(s) Mr. Shashwat Goel, AOR

J U D G M E N T

VIKRAM NATH, J.

1. The plaintiff is in appeal assailing the correctness of the judgment and order dated 15.05.2012 passed by the Lucknow Bench of the Allahabad High Court allowing Second Appeal No.202 of 1980, Sudesh Kumar and others vs. Brij Narayan Shukla and others, whereby, both the judgments of the First Appeal Court and the Trial Court were set aside and the suit of the plaintiff appellant was dismissed on the ground of limitation being barred by time.

2. Dispute relates to an area of 3500 sq. ft. (70 ft. x 50 ft.) (2 Biswa 12 Biswani) of Plot No.1019 situated in Village Hardoi within the limits of Nagar Palika Hardoi, Uttar Pradesh. The plaintiff claimed title through a registered sale deed dated 21.01.1966 from the erstwhile Zamindar Rai Bahadur Mohan Lal. They also claimed to have received possession pursuant to the sale deed. It is also relevant to mention that the land purchased was an open piece of land. In 1975, when the appellant tried to raise the construction over the land purchased, the defendants objected and caused hindrance giving rise to the filing of the suit in question on 28.05.1975, registered as O.S.No.161 of 1975 praying for the relief of injunction with alternative relief for possession.

3. The defendant respondent filed their written statement primarily alleging that there had been prior proceedings between Rai Bahadur Mohan Lal and his co-sharers and their tenants (ancestors of the respondent) in the year 1944 where a suit was filed for arrears of rent with respect to Plot No.1019, 1022 and 1023.

3.1 Further under the settlement between the Zamindar and co-sharers, the land in question came to Siddheshwari Narain and Deep Chandra in a private partition and as such these co-sharers became the owners of the land.

3.2 The defendant respondents having continued in possession at the time of abolition of Zamindari, became the owners.

3.3 Lastly, it was contended that soon after the sale deed of January, 1966 in favour of plaintiff appellant, there was proceedings under section 145 of the Code of Criminal Procedure, 1973¹ in May, 1966. In the said proceedings, it was found that the defendant respondents were in possession.

4. Both the parties led evidence, both documentary and oral. The Trial Court found the plaintiff appellant to be the owner of the land in dispute as also in possession and accordingly decreed the suit for injunction vide judgment dated 19.09.1979.

¹ CrPC

5. The Trial Court had placed reliance upon the sale deed, the Mutation and the Khasra and Khewat entries. Further, the Trial Court had held that the proceedings under section 145 CrPC would not be of any benefit to the defendant respondents as it was not clear from the material placed that the said proceedings related to the land in question.

6. The defendant respondent preferred appeal before the District Judge which was registered as Civil Appeal No.14 of 1979. The District Judge, Hardoi, vide judgment dated 29.11.1979 dismissed the appeal. It however did not agree with a couple of findings recorded by the Trial Court and accordingly, recorded its own findings. According to the appellate court, the proceedings under section 145 CrPC were related to the land in dispute and that the possession of the defendant respondent was found over the land in dispute. It accordingly decreed the suit for possession and not for injunction as had been done by the Trial Court. The Appellate Court further held that the plaintiff-appellants were the owners of the land in dispute and they had been successful in establishing their title.

7. Another finding recorded by the Appellate Court was that the land in dispute was a non-agricultural land and there was no question of abolition of Zamindari with respect to the said land and therefore the claim of the defendants of becoming the owners on the abolition of Zamindari was not correct. It further found that the suit for arrears of rent filed in 1944 was with respect to some other land and not the land in dispute in as much as the suit land was vacant open piece of land whereas the 1944 suit for arrears of rent was with respect to the house of the defendants. Even the plot areas in the two suits were different. The Plot No.1019 being a huge piece of land where as the plaintiff appellant had purchased only a part of it, they had derived valid title from the Zamindars, the erstwhile owners.

8. It accordingly held that the period of 12 years for perfecting rights on the basis of adverse possession would commence from 1966 and the suit having been filed in 1975 was well within time.

9. The defendant respondent preferred Second Appeal before the High Court which was registered as Second Appeal No.202 of 1980. It is this appeal which has been allowed by the impugned judgment giving rise to the present appeal. The High Court dismissed the suit of the appellant on the ground of limitation as according to it, the defendant respondent had matured their rights or rather perfected their rights by adverse possession having continued so since 1944 when the first suit for arrears of rent was filed. We are, however, of the firm view that the High Court fell in serious error in holding so, for the following reasons:

9.1 It has not dealt with the findings recorded by the Trial Court and the First Appeal Court with respect to the issue of Limitation and the evidence considered by them.

9.2 The High Court was hearing the Second Appeal under section 100 of Code of Civil Procedure, 1908² and it having reappreciated the findings to disturb findings of fact, committed an error.

9.3 The High Court has not recorded any finding that the plaintiff appellants were not the owners or that they have failed to prove the ownership.

9.4 The suit of the year 1944 was for the arrears of rent and not relating to any dispute of possession. The defendant respondents were tenants and therefore their possession

² CPC

was permissive as against the then landlords. There was no question of them claiming any adverse possession from 1944.

9.5 In our considered view, the plaintiff appellants got their ownership/title under the registered sale deed on 21.01.1966. The dispute for possession vis-à-vis the defendant respondents would arise only after the said date and not on any date prior to it. Admittedly from the date of the sale deed, the suit was filed within the period of 12 years in May, 1975. Even if it is assumed that the defendant respondents were in possession from prior to 1944, their possession could not have been adverse even to the Zamindars as they were tenants and their tenancy would be permissible in nature and not adverse. There were no proceedings for possession prior to 1966.

9.6 Further, the first appellate court having recorded a specific finding that the land in suit was not covered by Zamindari Abolition as it was non-agricultural land, the claim of ownership from the date of abolition of Zamindari was also without any merit. The finding has not been disturbed by the High Court. The defendant-respondents thus having failed to establish their title, would have no right to retain the possession.

10. Accordingly, the appeal is allowed, the impugned judgment and order of the High Court is set aside and that of the First Appellate Court decreeing the suit for possession is maintained.

11. There shall be no order as to costs.

12. Pending application(s), if any, is/are disposed of.

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