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SA-1208-2024

IN THE HIGH COURT OF MADHYA PRADESH
AT INDORE
BEFORE
HON'BLE SHRI JUSTICE PRANAY VERMA

SECOND APPEAL No. 1208 of 2024

RAMKUWAR BAI AND OTHERS

Versus

NANDKISHORE AND OTHERS

.....
Appearance:

Shri Akhil Godha - Advocate for the appellants.

Shri Rohit Sinnarkar -Advocate for the respondent/caveater.

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Reserved on : 19.09.2024

Pronounced on : 12.11.2024

ORDER

This appeal under Section 100 of the Code of Civil Procedure has been preferred by defendants 1 to 4 being aggrieved by the judgment and decree dated 26.04.2024 passed in Civil Appeal No.40 of 2022 by the Third District Judge, Shajapur partly reversing the judgment and decree dated 05.11.2022 passed in RCS 138A/2014 by the First Civil Judge, Junior Division, District Shajapur and decreeing the claim of plaintiffs for permanent injunction.

2. The plaintiffs instituted an action before the trial Court for declaration of their title to the suit lands, permanent injunction restraining the defendants from interfering with their possession over the same and for declaration that the sale deed dated 30.09.2014 executed by defendants 1 and 2 in favour of defendants 3 and 4 is null and void.



3. As per the plaintiffs, the suit lands were earlier held by Babulal, predecessor in interest of defendants 1 and 2. On 04.07.2005 he had entered into an agreement to sale with respect to the same in their favour for a consideration of Rs.4,80,000/- upon payment of the entire consideration. The plaintiffs have been in possession of the suit lands ever since then as owners thereof. However, by a registered sale deed dated 30.09.2014, defendants 1 and 2 have sold the suit lands in favour of defendants 3 and 4 which is illegal.

4. The defendants 1 to 4 contested the plaintiffs' claim by filing their written statement submitting that no agreement to sale was executed by Babulal in favour of plaintiffs who have never been in possession of the suit lands. Sale deed has been legally executed by defendants 1 and 2 in favour of defendants 3 and 4 who have been mutated over the same and are in possession thereof.

5. The trial Court held that plaintiffs have not been able to prove their title to the suit lands on the basis of the agreement to sale as set up by them and since their title has not been proved, their possession would also be deemed not to have been proved. In appeal by plaintiffs, while the dismissal of their claim for declaration of title has been maintained by the lower appellate Court, but upon recording finding that they are in possession of the suit lands, a decree for permanent injunction restraining the defendants from forcibly dispossessing them from the suit lands otherwise than by following the due process of law has been granted. It is this decree for permanent injunction which has been challenged by defendants 1 to 4 in this appeal.

6. Learned counsel for the appellants has submitted that the trial Court had recorded a perfectly just finding negating possession of plaintiffs over the suit lands. No document was brought on record by plaintiffs to show their possession. Even otherwise since their title



was disbelieved, they could not have been held to be in possession. Having found defendants 3 and 4 to be the owners of the suit lands, no decree for permanent injunction could have been passed in favour of plaintiffs. Reliance in this regard has been placed upon the decision of the Apex Court in *Padhiyar Prahladji Chenaji (Deceased) through L.R.s. vs. Maniben Jagmalbahi (Deceased) through L.R.s. and Ors., (2022) 12 SCC 128*.

7. I have considered the submissions of learned counsel for the appellants and have perused the record.

8. The trial Court had primarily negated possession of plaintiffs over the suit lands on the ground that their title has not been proved. There was only a fleeting reference to the agreement to sale as set up by them observing that therein the description of the suit lands had not been given. The lower appellate Court has however discussed in detail the documents available on record and has recorded a categorical finding that plaintiffs have been in settled possession of the suit lands.

9. The agreement to sale Exhibit P/1 recites that possession of the suit lands was delivered thereunder. PW.1 Nandkishore was himself suggested by defendants that defendant No.3 had instituted proceedings for his dispossession from the suit lands. It was also suggested that he is in illegal possession. Similar suggestions were also given to PW.2 Chagalal Partidar. Defendant No.3 Mohammed Shafi admitted that in revenue proceedings possession of plaintiffs over the suit lands was found upon demarcation. In the spot inspection done on 05.12.2014 as evidenced by Exhibits- P/2, P/3 and P/4 possession of plaintiffs over the suit lands was found. Relying upon these documents and the oral statements of witnesses, the lower appellate Court has held that plaintiffs have been in settled possession over the suit lands since a long time. The said finding is a finding of



fact and has not been shown to be perverse or illegal in any manner. The same is not liable to be interfered with at this second appellate stage.

10. In *Padhiyar Prahladji Chenaji (supra)*, it has been held by the Apex Court that an injunction cannot be issued against a true owner or title holder and in favour of a trespasser or a person in unlawful possession. If substantive relief of declaration of title is refused, then no injunction can be granted, which is the consequential relief. If the title is negated possession cannot be said to be lawful. However, it may be noticed that the aforesaid decision has been rendered by a two Judge Bench.

11. In *Rame Gowde (dead) by Lrs. vs. M. Varadappa Naidu (dead) by Lrs. and another, (2004) 1 SCC 769*, it has been categorically held by the Apex Court that a person in peaceful and settled possession would be protected by law by injuncting even a rightful owner from using force or taking the law in his own hands, and also by restoring him in possession, even from the rightful owner, if the latter has dispossessed the prior possessor by use of force. If trespasser is in settled possession or effective possession of the property belonging to the rightful owner, the rightful owner shall have to take recourse to law and he cannot take the law in his own hands and evict the trespasser or interfere with his possession. This is a judgment of a three Judge Bench. The relevant portions of the judgment are as under:

"7. ****

The Court quoted with approval the law as stated by a Full Bench of the Allahabad High Court in *Yar Mohd. v. Lakshmi Das* [AIR 1959 All 1 : 1958 All LJ 628 (FB)] (AIR at p. 4):

“Law respects possession even if there is no title to support it. It will not permit any person to take the law in his own hands and to dispossess a person in actual possession without having recourse



to a court. No person can be allowed to become a judge in his own cause.” (AIR p. 5, para 13)

In *M.C. Chockalingam v. V. Manickavasagam* [(1974) 1 SCC 48] this Court held that the law forbids forcible dispossession, even with the best of title. In *Krishna Ram Mahale v. Shobha Venkat Rao* [(1989) 4 SCC 131] it was held that where a person is in settled possession of property, even on the assumption that he had no right to remain on the property, he cannot be dispossessed by the owner of the property except by recourse to law.

8. If the trespasser is in settled possession of the property belonging to the rightful owner, the rightful owner shall have to take recourse to law; he cannot take the law in his own hands and evict the trespasser or interfere with his possession. The law will come to the aid of a person in peaceful and settled possession by injuncting even a rightful owner from using force or taking the law in his own hands, and also by restoring him in possession even from the rightful owner (of course subject to the law of limitation), if the latter has dispossessed the prior possessor by use of force.

9. It is the settled possession or effective possession of a person without title which would entitle him to protect his possession even as against the true owner. The concept of settled possession and the right of the possessor to protect his possession against the owner has come to be settled by a catena of decisions. Illustratively, we may refer to *Munshi Ram v. Delhi Admn.* [AIR 1968 SC 702 : (1968) 2 SCR 455 : 1968 Cri LJ 806] , *Puran Singh v. State of Punjab* [(1975) 4 SCC 518 : 1975 SCC (Cri) 608] and *Ram Rattan v. State of U.P.* [(1977) 1 SCC 188 : 1977 SCC (Cri) 85] The authorities need not be multiplied. In *Munshi Ram case* [AIR 1968 SC 702 : (1968) 2 SCR 455 : 1968 Cri LJ 806] it was held that no one, including the true owner, has a right to dispossess the trespasser by force if the trespasser is in settled possession of the land and in such a case unless he is evicted in the due course of law, he is entitled to defend his possession even against the rightful owner. But merely stray or even intermittent acts of trespass do not give such a right against the true owner.



The possession which a trespasser is entitled to defend against the rightful owner must be settled possession, extending over a sufficiently long period of time and acquiesced to by the true owner.

* * * *

10. In the cases of *Munshi Ram* [AIR 1968 SC 702 : (1968) 2 SCR 455 : 1968 Cri LJ 806] and *Puran Singh* [(1975) 4 SCC 518 : 1975 SCC (Cri) 608] the Court has approved the statement of law made in *Horam v. R.* [AIR 1949 All 564 : 50 Cri LJ 868] wherein a distinction was drawn between the trespasser in the process of acquiring possession and the trespasser who had already accomplished or completed his possession wherein the true owner may be treated to have acquiesced in; while the former can be obstructed and turned out by the true owner even by using reasonable force, the latter may be dispossessed by the true owner only by having recourse to the due process of law for reacquiring possession over his property."

12. In *Puran Singh and others vs. State of Punjab, (1975) 4 SCC 518* also, it was held by the Apex Court that a trespasser in settled possession is not entitled to be evicted except in due course of law and is entitled to resist his possession even against the rightful owner. It was held as under :

"12. * * * This Court clearly pointed out that where a trespasser was in settled possession of the land he is not entitled to be evicted except in due course of law and he is further entitled to resist or defend his possession even against the rightful owner who tries to dispossess him. The only condition laid down by this Court was that the possession of the trespasser must be settled possession. The Court explained that the settled possession must be extended over a sufficiently long period and acquiesced in by the true owner. This particular expression has persuaded the High Court to hold that since the possession of the appellants' party in this case was only a month old, it cannot be deemed to be a settled possession. We, however, think that this is not what this Court meant in defining the nature of the settled possession. * * *



13. In *Ram Rattan and others vs. State of Uttar Pradesh (1977) 1 SCC 188*, which is also a decision of a three Judge Bench of the Apex Court, it was held that if trespasser has been successful in accomplishing his possession to the knowledge of the true owner, law requires that the true owner should dispossess the trespasser by taking recourse to the remedies available under the law. It was held as under:

"4. It is well-settled that a true owner has every right to dispossess or throw out a trespasser, while the trespasser is in the act or process of trespassing and has not accomplished his possession, but this right is not available to the true owner if the trespasser has been successful in accomplishing his possession to the knowledge of the true owner. In such circumstances the law requires that the true owner should dispossess the trespasser by taking recourse to the remedies available under the law."

14. In *Munshi Ram and others v. Delhi Administration., AIR 1968 SC 702* also it was held by a three Judge Bench of the Apex Court that no one including the true owner has the right to dispossess the trespasser by force and the trespasser is entitled to defend his possession even against the rightful owner.

15. Thus, the consistent view of the Apex Court has been that a person in settled possession of property, even if he is a trespasser, cannot be dispossessed even by the true owner without taking recourse to law and by following the procedure as prescribed under the law. The judgment in the case *Padhiyar Prahladi Chenaji (supra)* has not taken into consideration any of the previous judgments of the Apex Court including that of larger benches in the cases of *Rame Gowde(supra)*, *Ram Rattan and Others (supra)* and



Munshi Ram and Others (supra) which hence cannot be held to be a binding precedent for this Court in view of the Full Bench decision of this Court in *Jabalpur Bus Operators Association and Others Vs. State of M.P. and Another, 2003 (1) MPLJ 513* and reliance placed by the learned counsel for the appellants upon the same is of no avail to him.

16. From the facts of the case, it is apparent that plaintiffs have been in settled possession of the suit lands since a very long time and at least since the year 2014. Proceedings were also instituted against them for their dispossession in the year 2015, but did not yield any result and plaintiffs have ever since then continued in possession. They being in settled possession cannot be forcibly dispossessed by the defendants without taking recourse to law. The decree for permanent injunction passed by the lower appellate Court in favour of plaintiffs restraining the defendants from dispossessing them from the suit lands without taking recourse to law is hence perfectly legal, justified and in accordance with law. As a result of the aforesaid discussion, I do not find involvement of any substantial question of law in this appeal. The same is accordingly dismissed *in limine*.

(PRANAY VERMA)
JUDGE