

PETITIONER:
CHANDRABHAGABAI & ORS.

Vs.

RESPONDENT:
RAMAKRISHNA & ORS.

DATE OF JUDGMENT: 29/07/1998

BENCH:
S.B. MAJMUDAR, M. JJAGANNADHA RAO

ACT:

HEADNOTE:

JUDGMENT:

J U D G M E N T

S.B. Majmudar, J

In this Appeal by way of special leave, the heirs of original Plaintiff No. 1 and the remaining Plaintiff Nos. 2 to 8, have brought in challenge the judgment and order rendered by the High Court of Bombay dismissing their Second Appeal and confirming the decree of dismissal of their suit by the Trial Court and as confirmed by the First Appellate Court. In order to highlight the grievances of the appellants in the present proceedings, it will be necessary to note a few relevant introductory facts.

BACKGROUND FACTS:

We shall refer to the appellants as Plaintiffs and the respondents as Defendants for the sake of convenience in the later part of this judgment. The Plaintiffs filed a Regular Civil Suit No. 246 of 1970 in the Court of the 4th Joint Civil Judge, Junior Division, Nagpur for possession of the suit property, which, according to them, consisted of three rooms in their house situated at Circle No. 13/19, Tandapeth in Nagpur city. Their case was that for brother along with Ramkrishna, s/o Suryabhan and one Shankar, s/o. Soma mortgaged the house including the suit three rooms with one Maroti Laxman and Narayan Vithobaji, who formed a joint Hindu family along with other members. The original mortgagees filed a Civil Suit No. 19-A of 1935 for recovering the mortgage debt by sale of suit house and for final decree for sale. The plaintiffs' further case is that on 4th April, 1938 the mortgaged house was auctioned and it was purchased by Narayan, one of the decree holders. On confirmation of the sale, a sale-certificate (Exh. 32) was issued in favour of Narayan. The sale-certificate dated 6th July, 1938 (Exh. 32) is at page 49 of the paper book. Narayan is stated to have taken possession of the suit house through Court on 22nd December, 1938. It is then alleged that Narayan had rented out a portion of the said house to Suryabhan in 1939 on a monthly rent of Rs.9/- . The portion of the house which was stated to have been rented out to Suryabhan, however, was not described in the schedule to the plaint, though it was stated to be described as such. According to the plaintiffs', Narayan's name was mutated in

the municipal records and it was he who was paying the taxes and exercising all the rights of ownership. It was alleged that Suryabhan failed to pay the rent and hence, Narayan obtained permission of the House Rent Controller on 20.7.1959 (Rev. Case No. 688/A-71 (2) of 58-59 under the provisions of the Central Provinces and Berar Regulation of Letting of Accommodation Act, 1946 (hereinafter referred to as 'the Act') read with Central Provinces and Berar Letting of Housing and Rent Control Order, 1949. it may be stated at this juncture that earlier though the Rent Controller took the view that Suryabhan was tenant of Narayan, application for permission to evict him was rejected in the first instance. However, the Addl. Collector, Nagpur in appeal while agreeing with the view of the Rent Controller that there was a relationship of landlord and tenant between Narayan and Suryabhan, allowed the appeal and granted permission to Narayan to terminate the tenancy of Suryabhan by his decision dated 29th April, 1960. This can be called the first set of proceedings. On the basis of the aforesaid permission, Narayan issued notice of termination of tenancy and filed a Civil Suit No. 120 of 1966 for possession of the suit property consisting of three rooms. The filing of the said suit may be treated as second set of proceedings.

In the second set of proceedings, though initially the Trial Court decreed the suit, in Civil Appeal 162 of 1967, the suit was dismissed on the ground that there was no relationship of landlord and tenant between Narayan and Suryabhan. The said appellate decision was rendered by the 4th Extra Assistant Judge on 16th August, 1969. Thereafter, the plaintiffs have filed the Suit No. 246 of 1970 from which the present proceedings arise on the strength of title for possession, accepting the finding of the Appellate Court rendered in Civil Appeal No. 162 of 1967 on 16th August, 1969, as aforesaid. This suit of 1970 can be treated as third set of proceedings.

In the present suit, two questions fell for consideration of the Trial Court:

- i) Whether the plaintiffs had proved their title to the suit rooms;
- ii) If yes, whether the defendants were in adverse possession of the suit property.

After permitting the contesting parties to lead evidence in support of their respective cases, the Trial Court came to the conclusion that the Plaintiffs had failed to establish their title to the suit property. An alternative finding was also rendered on evidence that the defendants had proved adverse possession in the suit property. Consequently, the suit was dismissed on 30.3.1970. The appellants, unsuccessfully contested the matter in appeal which came to be dismissed by the learned Extra Session Judge on 6th September, 1973. Thereafter, the plaintiffs approached the High Court in Second Appeal 68 of 1974. The said second appeal was dismissed on 28th April, 1987. That is how the appellants plaintiffs are before us by way of this appeal on special leave.

RIVAL CONTENTIONS:

Shri U. U. Lalit, learned counsel for the appellants, vehemently contended before us that the courts below, including the Trial Court, had committed a patent error in not suing the plaintiffs on the ground that they had failed to prove ownership of the suit property. He submitted that the sale certificate (Exh. 32) clearly mentioned the name of the place where the property is situated along with its

certificate number. Not only that, even the boundaries of the suit property were also mentioned in the sale certificate issued by the competent authority in execution of the court decree wherein the plaintiffs' predecessor, Narayan was held to be the auction purchaser of this property. In this connection, in support of his submission, the learned counsel also sought to rely upon the reasoning adopted by the Rent Controller as well as by the appellate authority under the Rent Control Order for showing the defendants' predecessor-in-title. Suryabhan had clearly admitted in the assessment proceedings before the municipality that he was a tenant of Narayan and hence landlord-tenant relationship was held proved and the said finding was binding on the Civil Court which subsequently entertained the plaintiffs' suit No. 120 of 1966. As the Appellate Court in Civil Appeal No. 120 of 1966 went behind the said findings and held that there was no relationship of landlord and tenant between Narayan and Suryabhan, its decision on this point was without jurisdiction and could not act as res judicata. On the basis of the said contention, it was further submitted that hence it must be held that Narayan was the owner of the suit property occupied by Suryabhan and equally the claim of Suryabhan that he was in adverse possession of the property would also not survive as even assuming that Suryabhan had put up a hostile title at the earliest in 1959 in rent control litigation, as the first suit was filed on the strength of the title in 1970, 12 years of hostile possession prior to this suit was not established. Consequently, the plaintiff was entitled to succeed also on the ground that the defendant's predecessor Suryabhan had not established adverse possession of 12 years and more prior to the date of the suit.

The learned counsel, appearing for the respondents - Shri A. K. Sanghi, submitted that all the courts have concurrently held that the plaintiffs have not been able to show that the suit premises were purchased by them in a Court auction and that they formed the sale property which was covered by the sale certificate (Exh. 32). Consequently, the plaintiffs' suit on title was rightly dismissed by the Courts below. He further submitted that the question about landlord and tenant relationship between narayan and Suryabhan stood finally concluded against Narayan by the decision of the Appellate Authority in Civil Appeal No. 162 of 1967. That the question of jurisdiction of the Civil Court to decide this question do novo despite the contrary decision of the Rent Control Authorities was also decided against Narayan in Civil Appeal No. 162 of 1967 and that decision had become final. Consequently, right or wrong, that decision operated against narayan. It was further submitted that there was no question of any admission of Suryabhan in favour of Narayan in assessment proceedings before the municipal authorities as Suryabhan's statement was not legally proved on the record of the present case. Therefore, the only document which remained for supporting the plaintiffs' case was auction sale certificate (Exh. 32) which did not connect Narayan's title to the suit premises and consequently both on title as well as on the question of the adverse possession, the finding reached by the courts below and as confirmed by the High Court, have remained well sustained on record. It has been found on fact that Suryabhan remained in possession as owner of this property since last more than 30 years prior to the filing of the suit in 1970 and consequently, the plaintiffs' suit was required to be dismissed and was rightly dismissed by the

Trial Court and that decree of dismissal was rightly not interfered by the First Appellate Court as well as by the High Court.

In view of the aforesaid rival contentions, the following points arise for our consideration:

(1) Whether the plaintiffs' have been able to prove their title to the suit premises;

(2) Whether the finding of the Rent Control Authorities was binding on the Civil Court in Civil Suit No. 120 of 1966 which was filed by Narayan pursuant to the permission obtained by him from the rent control appellate authority;

(3) Whether Suryabhan was in adverse possession of the suit property.

We shall deal with these points seriatim.

Point No. 1

So far as the question of plaintiffs' title to the suit property is concerned, it has to be kept in view that the only evidence on which plaintiffs could rely was sale certificate (Exh. 32). When we turn to the said certificate, we find that the property which was the subject matter of the sale certificate is described as the House More Division No. 3 Serial No. 13/19, Landa Peth Tah, District Nagpur. It was sold to Narayan in court auction. Of course, the boundaries of the said property were also mentioned in the certificate but the exact number of the property is not mentioned therein. The location of the house purchased by Narayan is indicated to be one in Division No. 3 Serial No. 13/19 in locality of Landa Peth Tah in Nagpur town. However, the question is whether this is the same house in which suit property is situated as the plaintiffs have staked their claim for these three rooms on the strength of this certificate. The Trial Court as well as the Appellate Court, on facts have found that the auction certificate (Exh. 32) does not clearly connect the property covered by the said certificate (Exh. 32) with the suit rooms. Reliance is also placed on one feature of the case namely, that the plaintiff has recited that in the schedule attached to the plaint, the description of the suit property is given. But that schedule is conspicuously absent and not traceable on the record. It is also found that the so called statement of predecessor-in-interest in title of present defendants' namely, Suryabhan before the municipal authorities is also not proved on record. Consequently, the only evidence to support the case of the plaintiffs is furnished by sale certificate (Exh. 32) and when that document does not clearly connect property covered by the certificate with the suit rooms, the finding reached by the Trial Court and as confirmed by the Appellate Court as a final court of fact that the plaintiffs failed to establish their title to the suit premises, cannot be said to be in any way illegal. It remained a finding of fact based on relevant evidence which was rightly not interfered with by the High court on Second Appeal. It must, therefore, be held that in this third set of proceedings the plaintiffs failed to establish their title to the suit rooms. This point for determination will have to be answered against the appellants accordingly. Once the aforesaid decision is reached on point no. 1, nothing further would survive in this appeal. However, the learned counsel for the appellant had raised further contentions covered by the

remaining two points. In fairness to him, therefore, we deem it fit to deal with them on merits.

Point No. 2

It is true that in the first set of proceedings the Rent Controller as well as the appellate authority under the Act have held that there was relationship of landlord and tenant between Narayan and Suryabhan. There was also some force in the contention of the learned counsel for the appellants that once the Rent Control Authorities held that there was relationship of landlord and tenant between the contesting parties, the title of Narayan can be said to have been impliedly accepted and held in his favour by these authorities. However, the real question is whether despite such a finding reached by the rent control authorities, in the consequential suit filed by the plaintiff Narayan after terminating the tenancy of the defendants under Section 106 of the Transfer of property Act, i.e. the second set of proceedings, the Civil Court could go beyond the said finding and could reach the contrary finding to the effect that there was no relationship of landlord and tenant between Narayan and Suryabhan. However, we are not required to examine the said contention which seeks to rely on the decision of this Court rendered in the case of Pralhad Lanchad Chavan vs. Iqbal Hussain Inayat Hussain Badri, 1996(5) SCC, 428, wherein it was held that once the Rent Controller grants permission to the landlord to determine the lease by giving notice under Section 106 on the ground specifying therein, in the subsequent proceeding before the Civil Court the decision of the Rent Controller about the ground on which such permission is granted could not be gone behind. However, on the peculiar facts of this case, it is not necessary for us to consider this contention in the present third set of proceedings for the simple reason that in appeal against the decision of the Trial Court in the second set of proceedings being Civil Appeal No. 162 of 1967, this very contention was unsuccessfully canvassed for consideration of the Civil Court which framed point no. 1 for determination as under:

- (1) is it open for the appellants to contend that they are not tenants of the plaintiffs, in spite of the decision against them by the appellate authority of the Rent Control Court?

Learned appellate Judge, after hearing the parties, came to the conclusion that despite the finding of the Rent Control Authorities that there was relationship of landlord and tenant between Narayan and Suryabhan, the Civil Court, in proceeding pursuant to the notice issued under Section 106 of the Transfer of Property Act could reconsider the question and it was still open for the appellants (predecessor-in-interest of the present respondents) to raise the contention that they are not tenants of the plaintiffs in the suit premises and that decision of the Rent Controller was not binding on the Civil Court. Unfortunately for the appellants the aforesaid adverse decision rendered about jurisdiction of the civil court in Civil appeal No. 162 of 1967 has remained final between the parties as the plaintiffs did not think it fit to challenge the same higher up. On the contrary, the said decision was accepted and on that basis and in the light of the finding reached in Civil appeal No. 162 of 1967 that there was no landlord and tenant relation between Narayan and Suryabhan, the present suit which is third set of proceedings, was filed by Narayan and other plaintiffs treating Suryabhan and

others as persons remaining in unauthorised occupation of the suit rooms. In other words, plaintiffs themselves gave ago by to their case about tenancy of the defendants and tried to rely only upon their title to the suit property and sought eviction on the strength of their title in the present proceedings. Consequently, on point no. 2, it must be held on the facts of this case that the finding of the 4th Extra Asst. Judge in Civil appeal No. 162 of 1967 to the effect that there was no landlord and tenant relationship between Narayan and Suryabhan has remained binding between the parties and being res judicata cannot be reopened in the present proceedings. Point No. 2 is answered in the negative as aforesaid.

Point No. 3:

So far as the plea of adverse possession of the defendants is concerned, it has been found by the Trial Court as well as the first Appellate Court that Suryabhan was not a tenant of the suit house and as he was in continuous possession of the suit premises for a period of 30 years and more prior to the date of the suit. He had occupied the same in his own right and consequently, he had become the owner of this property by adverse possession against the plaintiffs, especially, Narayan. Efforts made by learned counsel for the appellant-plaintiffs to show that Suryabhan had admitted that Narayan was the landlord both in 1942 when Narayan sought to insert his name in the municipal records as owner and also in 1958 when Suryabhan is alleged to have made an endorsement on the application of Narayan to the municipality that he was a tenant of the suit property since 250 years cannot be of any assistance to the appellants for the simple reason that none of these documents stand proved on the record of the present case as Suryabhan since deceased who is said to have given such a statement on endorsement before municipal authorities was not available for being confronted with the same for proving it and that statement was even otherwise not tried to be proved by the plaintiffs under Section 32 of the Indian Evidence Act. The so called statement was not legally proved in the present case. The courts below were, therefore, justified in taking the view that the plaintiffs cannot base their case on the so called statement of Suryabhan. Consequently, it has to be held that Suryabhan had perfected his title to the suit rooms by staying for more than 30 years prior to the suit as owners thereof and being in adverse possession against Narayan. This finding reached by the courts below and as confirmed by the High Court also remains well sustained on the record of this case. This fact therefore, is answered in the affirmative in favour of the respondents and against the appellants.

As the result of our conclusions on the aforesaid points, the result is that this appeal fails and is dismissed. In the facts and circumstances of the case, there will be no order as to costs.