

CASE NO.:
Appeal (civil) 636 of 1997

PETITIONER:
Deva (Dead) Thr. L.Rs.

RESPONDENT:
Vs.
Sajjan Kumar (Dead) By L.Rs.

DATE OF JUDGMENT: 26/08/2003

BENCH:
Shivaraj V. Patil & D.M. Dharmadhikari.

JUDGMENT:
J U D G M E N T
Dharmadhikari J.

By the judgment impugned in this appeal, the High Court of Madhya Pradesh in Second Appeal No. 518 of 1978 under Section 100 of the Code of Civil Procedure has reversed the concurrent findings in the judgments of the two courts below and decreed the suit filed by the plaintiff [respondent herein] for delivery of possession of suit land to the extent of 70' X 20' in Survey No. 452. The land in Survey No. 452 has been found by all the courts to be of the ownership of the plaintiff. The land is alleged to have been encroached upon by deceased 200\223 Deva, the sole defendant, who is succeeded by his legal representatives as appellants in this appeal. Deva was owner and in possession of the adjoining land in Survey No. 453.

The plaintiff's case is that while he was out of the village in the course of his duties being in government service, the defendant 200\223 Deva encroached upon suit land in July, 1966. The suit of possession was instituted on 18.12.1972.

The trial court dismissed the suit as barred by limitation on a finding that the defendant is in possession of the encroached land since Samvat 1996 i.e. the year 1940.

The first appellate court confirmed the above finding of the trial court and upheld the dismissal of the suit on the ground of limitation.

The High Court in Second Appeal has reversed the judgments of the two courts below by relying on defendant's own admission in the witness-box that he came to know of his alleged encroachment of land in Survey No. 452 belonging to the ownership of the plaintiff only after filing of the suit. The High Court, therefore, came to the conclusion that on this admission of the defendant, he could not be held to have prescribed title by adverse possession.

Learned counsel appearing for the appellant in this appeal, questions the jurisdiction of the High Court in Second Appeal under Section 100 of the Code of Civil Procedure to interfere with the concurrent findings of the facts of two courts below it.

Learned senior counsel appearing for the respondent/plaintiff supported the judgment of the High Court.

It is submitted that since a very important piece of evidence in the nature of admission of the defendant had been overlooked by the courts below and thus the suit was wrongly dismissed on the ground of limitation, there was full justification for the High Court in Second Appeal to reverse the judgments of the courts below.

Since a doubt arose with regard to the content and effect of the alleged admission of the defendant in the witness-box, we directed the parties to supply translated copies of the depositions of the witnesses recorded in the trial court. The necessary copies of the depositions were not available with the counsel. We have, therefore, requisitioned the record of the trial court. On looking into the record, we find that the High Court was right in interfering with the judgments of the courts below on the basis of admission contained in the statement of the defendant. It clearly negatives his case of being in adverse possession of the encroached portion of the land from the year 1940. The relevant part of the admission in the statement of defendant â\200\223 Deva (SDW-6) [rendered into English] reads as under :-

"The land measuring 70' X 20' of Survey No. 453 of Sajjan Kumar is in my possession - since last 10 to 12 years, Sajjan Kumar is out of village in service but he keeps on coming off and on. It is wrong that 10 years back, I raised a compound and encroached on the suit land. On the contrary, the suit land is in my possession right from the beginning. After filing of this suit, it came to my knowledge that I am in possession of two biswas of land of Survey No. 453. Before filing of this suit, Patwari and others had come to the land for measurement and they told me that on land in Survey No. 453, your possession has been found. Then I told them that I am in possession since beginning."

In the above part of the deposition, the defendant admits that the dispute of encroachment concerning suit portion 70' X 20' came to his knowledge only after filing of the suit. The defendant has described suit land 70' X 20' to be part of his Survey No. 453. But all the courts have come to a concurrent finding that suit land to the extent of 70' X 20' is part of Survey No. 452 belonging to the plaintiff.

From the deposition of the defendant, it appears that he had encircled by a compound suit land 70' X 20' by treating it to be a part of his adjoining Survey No. 453.

The deposition extracted above, in any case, negatives the defendant's case of having prescribed title by adverse possession from the year 1940. The animus to hold the land adversely to the title of the true owner can be said to have started only when the defendant derived knowledge that his possession over the suit land had been alleged to be an act of encroachment - on plaintiff's survey number.

The above-quoted admission contained in the defendant's deposition, does not make out a case in his favour of having acquired title by adverse possession. Mere long possession of defendant for a period of more than 12 year without intention to possess the suit land adversely to the title of the plaintiff and to latter's knowledge cannot result in acquisition of title by the defendant to the encroached suit land.

The plaintiff's suit is not merely based on his prior

possession and subsequent dispossession but also on the basis of his title to Survey No. 452. The limitation for such a suit is governed by Article 65 of the Limitation Act of 1963. The plaintiff's title over the encroached land could not get extinguished unless the defendant had prescribed title by remaining in adverse possession for a continuous period of 12 years.

The High Court, therefore, was right in upsetting the judgments of two courts below on the question of adverse possession and limitation while granting decree of possession in favour of the plaintiff.

Consequently, we find no merit in this appeal and the same is, accordingly, dismissed but in the circumstances without any order as to costs.

JUDIS