REPORTABLE

IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO.829 OF 2002

Bonder & Anr. ... Appellants

Versus

Hem Singh (dead) by LRs. & Ors. ... Respondents

J U D G M E N T

Dalveer Bhandari, J.

1. This appeal is directed against the judgment and decree passed by the High Court of Madhya Pradesh, Indore Bench at Indore in Civil Second Appeal No. 103 of 1982 dated 24.8.2000.

2. In order to appreciate the controversy involved in the case, it is necessary to recapitulate the basic facts of the case.

3. The appellants' father Sukhram (since deceased) filed a suit bearing Civil Original Suit No. 230A of 1972 before the learned Fifth Civil Judge, Indore, Madhya Pradesh against Jagannath (since deceased). It was pleaded, inter alia, that Sukhram (plaintiff) and Jagannath (defendant) were brothers and sons of Narsingh, who died leaving behind 22.39 acres of agricultural land and an ancestral house in village Kadwali Khurd. The said land was jointly cultivated and the house was jointly occupied by both the brothers. Sukhram went to his maternal uncle's house to look after his property. Sukhram before leaving the village went to his brother Jagannath and requested him that he would be looking after his maternal uncle's property and till he returned to his village, the property may be looked after by him (Jagannath) and he be given the usufruct or income from his share of the property.

4. On return, Sukhram demanded the possession of the property of his share and also demanded the income derived from the said property from Jagannath, but he did not pay any attention to his request. Ultimately, Sukhram had to issue a notice on 13.6.1971 to Jagannath. The said notice

was served upon Jagannath on 19.6.1971 but even then he did not give possession of the land and the income from it to Sukhram during the period when he was away. Ultimately, Sukhram filed a civil suit and claimed possession and future mesne profits at the rate of Rs.1,000/- per year and Rs.8,000/- for the past mesne profits.

5. In his written statement, defendant Jagannath surprisingly taken following pleas that:-

(a) the parties were not brothers, but step brothers;

(b) the house in dispute was in a dilapidated condition at the time of death of his father;

(c) the property was not partible and the plaintiff Sukhram was not entitled to any share in it. It was also incorporated in the written statement that father of the parties had taken loan from different persons and had created a charge of Rs.5,000/- over the land and the house and that it was not possible to discharge the debt from the income of the said property and, therefore, immediately after the death of their father, the plaintiff Sukhram went to his in-law's house and started living there. It was further stated by defendant

Jagannath that he discharged the loan from the earnings of the property, income from the service and business of cattle and while doing so rebuilt the house and developed the property. He further stated that he also sunk a well spending a sum of Rs.4,000/-. Sukhram came back to his village and demanded his share, but Jagannath did not accede to his request and turned him out. Defendant Jagannath pleaded absolute ouster of Sukhram and claimed that he had perfected his title by adverse possession. In the alternative, it was also submitted that as he had spent money for construction of the house, development of the land and sinking of the well, in case a decree is to be granted in favour of the plaintiff, half of the expenses be given to him. He, however, prayed for dismissal of the suit.

6. The learned Civil Judge decreed the suit in favour of plaintiff Sukhram. The plaintiff's case is crystal clear that he had entrusted his share of immovable properties to his brother Jagannath to look after it and return the same to him on his return along with the usufruct or income derived from his share of the immovable properties. The evidence

does not reveal that the plaintiff left the suit property with a view to permanently abandoning it.

7. The first Appellate Court relied upon the decision in ***P. Lakshmi Reddy*** v. ***L Lakshmi Reddy*** AIR 1957 SC 314 at para 4, wherein this Court referred to the decision in ***Corea*** *v.* ***Appuhamy*** 1912 AC 230 (C). In the said case the principle of law has been clearly enunciated. The relevant portion of the said judgment reads as under:

> "It is well settled that in order to establish adverse possession of one co-heir as against another it is not enough to show that one of them is in sole possession or enjoyment of the profits of the properties. Ouster of the non-possessing co-heir by the co-heir in possession who claims his possession to be adverse, should be made out. The possession of one co-heir is considered, in law, as possession of all the co-heirs. The co-heir in possession cannot render his possession adverse to the other co-heir not in possession merely by any secret hostile animus on his own part in derogation of the other co-heirs title. It is a well settled rule of law that as between co-heirs there must be evidence of open assertion of hostile title, coupled with exclusive possession and enjoyment by one of them to the knowledge of the other so as to constitute ouster."

8. This principle has been consistently applied by the Indian courts.

9. The first Appellate Court also held that even in the revenue records the name of plaintiff Sukhram continues to show that the defendant Jagannath never considered the plaintiff Sukhram as ousted and not continuing as a co-heir.

10. The first Appellate Court upheld the judgment of the trial court and observed that the trial court was right in holding that it is not proved that the defendant's title over the suit land has been perfected by adverse possession and ouster of the plaintiff to his knowledge for more than 12 years. The first Appellate Court dismissed the appeal with costs and the preliminary decree passed by the trial court was confirmed.

11. The plaintiff respondent, aggrieved by the judgment of the first Appellate Court (Eighth Addl. District Judge, Indore) preferred second appeal before the High Court. The High Court by the impugned order set aside the concurrent findings of facts of the courts below and allowed the appeal. The High Court, while setting aside the concurrent findings of facts of courts below, gave very unusual, strange and

totally unsustainable reasonings. The High Court observed that the plaintiff, according to his own pleadings, left the village somewhere between 1935-40 and received his share in the property up to the year 1950 and thereafter all his rights were denied and defendant Jagannath asserted his absolute right in the property. According to the impugned judgment of the High Court, the two courts had not taken into consideration the pleadings of the parties and the admissions made by the plaintiff which have important bearing on the facts of the case and the appreciation of the evidence.

12. The High Court held that the findings recorded by the two courts are not only wrong and illegal but also perverse. The High Court in the impugned judgment also observed that the plaintiff, though, has proved that he was the joint owner of the property, but has failed to prove that he continued to be the joint owner of the property and had no knowledge about the hostility asserted by defendant Jagannath, and his exclusion. It was further held that the defendant was successful in proving the exclusion of the plaintiff and the said exclusion was to the knowledge of the

plaintiff. According to the High Court, the suit of the plaintiff was patently barred by limitation.

13. The plaintiff Sukhram, aggrieved by the said judgment of the High Court, has preferred this appeal under Article 136 of the Constitution.

14. The High Court has not examined the pleadings of the parties and evidence on record in proper perspective. The High Court ought to have appreciated that the plaintiff while leaving the village asked his brother (defendant) that he should look after the land which was in the share of the plaintiff also and keep the account of usufruct or income from the property of the plaintiff. The plaintiff had always remained a co-owner of the property in question. While leaving the village he asked his brother to look after the property in his absence. From that it can never be construed that the plaintiff at any point of time did not remain co-owner of the property or surrendered his interest in the property. The defendant is guilty of taking entirely dishonest defences before the trial court. The court should always effectively discard such a dishonest conduct.

15. In our considered opinion, the High Court erroneously set aside the concurrent findings of facts of the two well reasoned judgments of the courts below.

16. The impugned judgment of the High Court is wholly unsustainable, illegal, perverse and against the norms of any civilized society. The judgment of the High Court has demolished the entire fiber of joint family system of our country and has put premium on the dishonesty of the defendant and the same deserves to be set aside. It is unfortunate if one brother cannot trust his own brother even to this extent then how can peace and tranquility prevail in the society? The saddest part is that the High Court while setting aside the concurrent findings of the two courts has put judicial seal of approval on such a dishonest conduct of the defendant (Jagannath). The impugned judgment of the High Court cannot be sustained and is accordingly set aside. The defendant did not have any case either in law or equity.

17. This appeal is allowed with costs which is quantified at Rs.50,000/- to be paid by the respondent to the appellant herein within two months.

……..J.
(Dalveer Bhandari)

……..J.
(Dr. Mukundakam Sharma)

New Delhi;
May 15, 2009