

CASE NO.:
Appeal (civil) 4031 of 1995.

PETITIONER:
BALKRISHAN

Vs.

RESPONDENT:
SATYAPRAKASH & ORS.

DATE OF JUDGMENT: 22/01/2001

BENCH:
Ruma Pal, S.S.M.Quadei

JUDGMENT:

L.....I.....T.....T.....T.....T.....T.....T...J

J U D G M E N T

Syed Shah Mohammed Quadri, J.

This appeal, by special leave, is from the judgment and decree of the High Court of Madhya Pradesh (Bench at Gwalior) in Civil Second Appeal No.161 of 1991 dated September 1, 1994. The plaintiff in the suit (Case No.51-A/86 in the court of Second Civil Judge Class I, Guna, Madhya Pradesh) is the appellant. He laid the suit for declaration of his title on the ground that by adverse possession he perfected his title to the agriculture land bearing Survey No.1216, admeasuring 1.902 hectares (Khasara No.1216 area 9 bighas 2 viswas) situated in village Guna, Tehsil and District Guna, Madhya Pradesh (hereinafter referred to as, the suit land) and for permanent injunction against respondent Nos.1 to 4 on December 6, 1986. The following facts need to be noticed for understanding the controversy between the parties. The appellant claimed that he purchased the suit land for consideration of Rs.451/- from Sukhlal and Phulchand who were said to be the owners thereof on August 25, 1960. The suit land was under attachment by orders of the Tehsildar, Guna and in the auction that followed the attachment, one Mohan Singh purchased it in the name of his minor son Rajendra Singh in 1963. Rajendra Singh through guardian - his father Mohan Singh - filed an application under Section 250 of Madhya Pradesh land Revenue Code, 1959, before the Tehsildar, Guna, against the appellant claiming restoration of possession of the suit land. On the alleged ground of interference in his possession, the appellant instituted a suit (for declaration praying for declaration and injunction) (Civil Suit No.82A/64) in the court of Civil Judge, Class II, against Rajendra Singh & Mohan Singh and his vendors (Sukhlal & Phoolchand) in 1964. On December 23, 1966 the suit was dismissed holding that the sale in his favour was not valid. Notwithstanding the dismissal of that

suit, he remained in possession of the suit land. On June 20, 1971, the Tehsildar ordered the appellant to put the said Rajendra Singh in possession of the suit land. Against that order the appellant filed an appeal before the Sub-Divisional Officer who dismissed the appeal on September 4, 1973. While so Rajendra Singh sold the suit land to respondent Nos.2 and 4; respondent No.1 is husband of respondent No.2 and respondent No.3 is the husband of respondent No.4. The appellant, however, continued to remain in the possession of the suit land. The said respondents resisted the suit denying the possession of the appellant and pleading that Mohan Singh and Rajendra Singh were in continuous possession of the suit land and that the appellant acquired no title to the suit land. They stated that the appellant failed in the Civil Court, Revenue Court, and before the Executive Magistrate and therefore that suit was also liable to be dismissed. After considering the evidence placed before it the trial court found that the appellant had been in continuous possession of the suit land and perfected his title by adverse possession. Accordingly, the suit of the plaintiff was decreed by the trial court. Against the judgment and decree of the trial court, respondent Nos.1 to 4 filed appeal (Civil Appeal No.97-A/1990) before the IIInd Additional District Judge, Guna. On 30 July, 1991, the First Appellate Court dismissed the appeal. The said respondents filed Civil Second Appeal No.161 of 1991 in the High Court of Madhya Pradesh (Bench at Gwalior), which was allowed, setting aside the judgment and decree of the First Appellate Court, by the impugned judgment and decree. Mr.Niraj Sharma, the learned counsel appearing for the appellant contended that inasmuch as the trial court as well as the First Appellate Court found that the appellant had perfected his title by adverse possession, the High Court erred in reversing the well-considered judgments of the lower courts on the ground that possession of the appellant was not sufficient in the eye of law to confer the title by adverse possession. Mr.M.P.Verma, the learned senior advocate appearing for the respondents, contended that the earlier suit of the appellant was dismissed and that there was an order of the Tehsildar directing him to handover the possession of the suit land to the respondents, therefore, the appellant could not claim to be in continuous uninterrupted possessions as such the High Court rightly held that the appellant did not perfect his title by adverse possession and dismissed the suit of the appellant. The short question that arises for consideration in this appeal is : whether the High Court erred in holding that the appellant had not perfected his title by adverse possession on the ground that there was an order of Tehsildar against him to deliver possession of the suit land to the auction purchasers? The law with regard to perfecting title by adverse possession is well settled. A person claiming title by adverse possession has to prove three nec - nec vi, nec clam and nec precario. In other words, he must show that his possession is adequate in continuity in publicity and in extent. In S.M. Karim Vs. Mst. Bibi Sakina [AIR 1964 SC 1254] speaking for this Court Hidayatullah, J. (as he then was) observed thus: Adverse possession must be adequate in continuity, in publicity and extent and a plea is required at the least to show when possession becomes adverse so that the starting point of limitation against the party affected can be found.

In the instant case, the trial court on appreciating the evidence produced by the parties recorded the following

among other findings: (i) Accordingly it is decided that since 23.12.1966 negating the title of actual Bhumiswami, the plaintiff has been in continuous, uninterrupted and open possession of the suit land;

(ii) As a result the plaintiff had acquired the rights of Bhumiswami on the basis of the adverse possession of the suit land.

The First Appellate Court on reappraisal of the evidence on record found that the appellant was in continuous possession from the date of the purchase i.e., August 25, 1960, but as the predecessor-in-interest of the respondents, Rajendra Singh, initiated the proceedings under Section 250 of the M.P. Land Revenue Code, 1959 before the Tehsildar, Gunna, against the appellant for recovery of possession so the period from August 25, 1960 till initiation of proceedings and from 1.12.1964 to 4.9.73 during which the proceedings remained pending, cannot be counted for perfecting the title of the plaintiff so his adverse possession would commence from 4.9.1973 and the period of 12 years was completed on 4.9.85 before the purchase of the suit land by the respondents on 11.12.85. The present suit was filed on December 6, 1986, therefore, the appellant perfected his title by adverse possession. The High Court while accepting those findings of the courts below, however, held : In spite of the fact that the plaintiff continued in possession in spite of the order against him in proceedings under Section 250 M.P.L.R. Code, his possession cannot be said to be sufficient in the eye of law to confer a title upon him by adverse possession, as claimed.

In our view this conclusion of the High Court is erroneous. The fact remained that in spite of order of the Tehsildar against the appellant which was not acted upon, nor executed, the appellant continued in possession of the suit land and, therefore, the continuity of his possession of the suit land was neither interrupted nor lost. Mere passing of an order of ejectment against a person claiming to be in adverse possession neither causes his dispossession nor discontinuation of his possession which alone breaks the continuity of possession. The fact that under Section 250(2) of the M.P.L.R. Code read with Section 38 thereof the Tehsildar was bound to restore possession of the suit land would, in our view, make no difference and it is difficult to accept the contention that failure of the Tehsildar in handing over possession would have the effect of causing discontinuation of possession of the suit land by the appellant so as to prevent such possession from ripening into adverse possession after statutory period. In Singaravelu Mudaliar Vs. Chokka Mudaliar [AIR 1923 Madras 28 (2)] the Madras High Court took the view that an adjudication that the true owner had a good title to possession is entirely consistent with the fact that actual possession is with party who ousted the true owner and has been holding possession as against the true owner on his own behalf. It is difficult to understand as to how a decree which negated the first defendants right could possibly be regarded in the nature of an interruption of the continuity of possession. In Shaik Mukbool Ali Vs. Shaik Wajed Hoossein [AIR 1923 Madras 88 (2)] the High Court held : Whatever the decree might have been, the defendants possession could not be considered as having ceased in consequences of that decree, unless he were actually

dispossessed. The fact that there is a decree against him does not prevent the statute of limitation from running.

In our view, the Madras High Court correctly laid down the law in the aforementioned cases. It will be apt to note here the decision of Privy Council in A.S.S. Subbaiya Pandaram Vs. Mohammed Mustafa Maracayar [AIR 1923 PC 175] which was approved by this Court in Soni Lalji Jetha (deceased) through his L.Rs. Vs. Soni Kalidas Devchand and others [AIR 1967 SC 978]. In that case, in 1913 a suit was brought by the appellant against the respondents for possession of immovable property in question. In 1890 the appellants grandfather created a trust of his properties including the property in question. That property was purchased by the respondents in execution of a decree against the appellants father in 1898. The purchaser and other respondents claiming under him had been in possession since the date of purchase. In a subsequent suit, filed in 1904 in which the respondents were parties, a decree was passed declaring that the trust created by the appellants grandfather was valid. However, no steps were taken pursuant to the decree to dispossess the respondents prior to filing of the suit by the appellant. The Privy Council negatived the contention that the decree in the suit holding the property as trust property was res judicata as against the respondents so as to preclude them from asserting title in the property. The Privy Council observed as follows : At the moment when it was passed the possession of the purchaser was adverse and the declaration that the property had been subject to a trust disposition, and therefore ought not to have been seized, did not disturb or affect the quality of his possession; it merely emphasised the fact that it was adverse. No further step was taken in consequence of that declaration until the present proceedings were instituted, when it was too late.

From the above discussion it follows that the judgment and decree of the High Court under challenge cannot be sustained. They are accordingly set aside and the judgment and decree of the First Appellate Court confirming the judgment and decree of the trial court is restored. The appeal is accordingly allowed but in the circumstances of the case without costs.