

SUPREME COURT OF INDIA**REPORTABLE****Bench: Justice Vikram Nath Justice Rajesh Bindal****Date of Decision: January 03, 2024**

CIVIL APPELLATE JURISDICTION

Civil Appeal No. 7502 of 2012

BRIJ NARAYAN SHUKLA (D) THR. LRS.**...APPELLANT(S)****VERSUS****SUDESH KUMAR ALIAS SURESH KUMAR (D)****THR. LRS. & ORS.****...RESPONDENT(S)****Legislation:**

Code of Criminal Procedure, 1973, Section 145

Code of Civil Procedure, 1908, Section 100

Civil Appeal against the High Court's judgment dismissing the appellant's suit on the ground of limitation in a property dispute involving adverse possession and rightful ownership.

Headnotes:

Title and Possession of Property – Ownership Claim through Sale Deed Validated – Plaintiff appellant's ownership of disputed land established through registered sale deed dated 21.01.1966 from erstwhile Zamindar. Attempt to construct on land led to dispute in 1975. Trial Court and First Appellate Court's findings upheld, decreeing suit for possession in plaintiff's favor. High Court's dismissal on grounds of limitation, based on adverse possession claim by defendants, set aside. [Paras 1-9.6]

Adverse Possession – Incorrect Application by High Court – High Court erred in applying concept of adverse possession. First, plaintiff's ownership was not disputed; second, the defendants' possession, originating from tenancy, could not be adverse to the Zamindars or the subsequent owner, plaintiff appellant. The suit filed in 1975 was within 12 years of the sale deed, negating adverse possession claim. [Paras 9-9.5]

Non-Agricultural Land – Relevance in Zamindari Abolition – First Appellate Court found the disputed land to be non-agricultural, negating defendants' claim of ownership through Zamindari abolition. This finding, not disturbed by the High Court, supported the plaintiff's title claim. [Para 9.6]

Decision – High Court's Judgment Set Aside, First Appellate Court's Decree Upheld – Supreme Court allows the appeal, setting aside the High Court's judgment on limitation grounds. Upholds the First Appellate Court's decree for possession in favor of the plaintiff appellant. [Para 10]

Referred Cases: None.

J U D G M E N T

VIKRAM NATH, J.

1. The plaintiff is in appeal assailing the correctness of the judgment and order dated 15.05.2012 passed by the Lucknow Bench of the Allahabad High Court allowing Second Appeal No.202 of 1980, Sudesh Kumar and others vs. Brij Narayan Shukla and others, whereby, both the judgments of the First Appeal Court and the Trial Court were set aside and the suit of the plaintiff appellant was dismissed on the ground of limitation being barred by time.
2. Dispute relates to an area of 3500 sq. ft. (70 ft. x 50 ft.) (2 Biswa 12 Biswani) of Plot No.1019 situated in Village Hardoi within the limits of Nagar Palika Hardoi, Uttar Pradesh. The plaintiff claimed title through a registered sale deed dated 21.01.1966 from the erstwhile Zamindar Rai Bahadur Mohan Lal. They also claimed to have received possession pursuant to the sale deed. It is also relevant to mention that the land purchased was an open piece of land. In 1975, when the appellant tried to raise the construction over the land purchased, the defendants objected and caused hindrance giving rise to the filing of the suit in question on 28.05.1975, registered as O.S.No.161 of 1975 praying for the relief of injunction with alternative relief for possession.

3. The defendant respondent filed their written statement primarily alleging that there had been prior proceedings between Rai Bahadur Mohan Lal and his co-sharers and their tenants (ancestors of the respondent) in the year 1944 where a suit was filed for arrears of rent with respect to Plot No.1019, 1022 and 1023.
 - 3.1 Further under the settlement between the Zamindar and co-sharers, the land in question came to Siddheshwari Narain and Deep Chandra in a private partition and as such these cosharers became the owners of the land.
 - 3.2 The defendant respondents having continued in possession at the time of abolition of Zamindari, became the owners.
 - 3.3 Lastly, it was contended that soon after the sale deed of January, 1966 in favour of plaintiff appellant, there was proceedings under section 145 of the Code of Criminal Procedure, 1973¹ in May, 1966. In the said proceedings, it was found that the defendant respondents were in possession.

4. Both the parties led evidence, both documentary and oral. The Trial Court found the plaintiff appellant to be the owner of the land in dispute as also in possession and accordingly decreed the suit for injunction vide judgment dated 19.09.1979.

5. The Trial Court had placed reliance upon the sale deed, the Mutation and the Khasra and Khewat entries. Further, the Trial Court had held that the proceedings under section 145 CrPC would not be of any benefit to the defendant respondents as it was not clear from the material placed that the said proceedings related to the land in question.

6. The defendant respondent preferred appeal before the District Judge which was registered as Civil Appeal No.14 of 1979. The District Judge, Hardoi, vide judgment dated 29.11.1979 dismissed the appeal. It however did not agree with a couple of findings recorded by the Trial Court and accordingly, recorded its own findings. According to the appellate court, the proceedings under section 145 CrPC were related to the land in dispute and

¹ CrPC

that the possession of the defendant respondent was found over the land in dispute. It accordingly decreed the suit for possession and not for injunction as had been done by the Trial Court. The Appellate Court further held that the plaintiff-appellants were the owners of the land in dispute and they had been successful in establishing their title.

7. Another finding recorded by the Appellate Court was that the land in dispute was a nonagricultural land and there was no question of abolition of Zamindari with respect to the said land and therefore the claim of the defendants of becoming the owners on the abolition of Zamindari was not correct. It further found that the suit for arrears of rent filed in 1944 was with respect to some other land and not the land in dispute in as much as the suit land was vacant open piece of land whereas the 1944 suit for arrears of rent was with respect to the house of the defendants. Even the plot areas in the two suits were different. The Plot No.1019 being a huge piece of land where as the plaintiff appellant had purchased only a part of it, they had derived valid title from the Zamindars, the erstwhile owners.
8. It accordingly held that the period of 12 years for perfecting rights on the basis of adverse possession would commence from 1966 and the suit having been filed in 1975 was well within time.
9. The defendant respondent preferred Second Appeal before the High Court which was registered as Second Appeal No.202 of 1980. It is this appeal which has been allowed by the impugned judgment giving rise to the present appeal. The High Court dismissed the suit of the appellant on the ground of limitation as according to it, the defendant respondent had matured their rights or rather perfected their rights by adverse possession having continued so since 1944 when the first suit for arrears of rent was filed. We are, however, of the firm view that the High Court fell in serious error in holding so, for the following reasons:
 - 9.1 It has not dealt with the findings recorded by the Trial Court and the First Appeal Court with respect to the issue of Limitation and the evidence considered by them.

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