
(2015) 04 RAJ CK 0197

Rajasthan High Court

Case No: Civil First Appeal No. 71 of 1986

Mahendra

APPELLANT

Vs

Banarsi Devi

RESPONDENT

Date of Decision: April 9, 2015

Acts Referred:

- Civil Procedure Code, 1908 (CPC) - Section 96

Hon'ble Judges: Vineet Kothari, J

Bench: Single Bench

Advocate: R.K. Singhal and Vishal Singhal, for the Appellant; Rajeev Purohit, Advocates for the Respondent

Final Decision: Dismissed

Judgement

Dr. Vineet Kothari, J.

This first appeal filed by the defendant arising out of the judgment and decree dated 15.05.1986 passed by the learned Additional District Judge No. 2, Sriganganagar in Civil Suit No. 32/1985 "Banarsi devi and Anr. v. Bhagwati Devi and Anr." by which, the learned Additional District Judge No. 2, Sriganganagar had decreed the suit filed by the plaintiffs-Banarsi Devi and Anr. seeking possession of the shop and recovery of Rs. 5400/- from the defendant.

2. The present first appeal has been filed by the defendant-Mahendra S/o Mam Raj under Section 96 of the Code of Civil Procedure against the plaintiffs-respondents-Banarsi Devi and Ors., legal representatives of Hari Ram. Both Hari Ram and Mam Raj were real brothers and sons of Chimna Ram.

3. The suit aforesaid (No.32/1985) was filed by the plaintiffs-Smt. Banarsi Devi Wd/o of late Hari Ram and Narayani Devi minor daughter of late Hari Ram for possession in respect of shop No. 23, N-Block, Sriganganagar, which was not in fact a shop but a residential house situated at a plot of land admeasuring 25 ft. x 30 ft. and the property

comprised of three rooms and a chowk. The plaintiffs-Smt. Banarsi Devi and her minor daughter Narayani Devi, the legal representatives of Hari Ram filed the suit for possession and mesne profits on the ground that the shop/house No. 23, N-Block, Sriganaganagar was purchased by a registered sale-deed dated 22.06.1961 for which an oral Agreement to Sell was executed in favour of father-Chimna Ram on 13.08.1958 and for a total consideration of Rs. 2,000/- against which, Rs. 600/- were paid on the date of entering into the agreement to sale on 13.08.1958 and Rs. 1400/- upon the registered sale deed on 12.06.1961 in name of son Hari Ram. The sellers of the property were Harbans Lal and Kundan Lal. The said sale-deed in original was produced by the defendants as Ex. A/5 whereas, a copy of the same has been produced as Ex. 1 by the plaintiffs and the document Ex. A/1 is the Agreement to Sell which was produced by the defendants.

4. The learned Trial Court had decreed the suit of the plaintiffs giving the findings in favour of the plaintiffs on issue No. 1 which are reproduced herein below for ready reference:--

5. The present first appeal under Section 96 of the Code of Civil Procedure has been filed by the appellants, the legal representatives of Mam Raj namely, his widow Bhagwati Devi and their son Mahendra, who were the defendants before the learned Trial Court.

6. The learned counsel Mr. R.K. Singhal with Mr. Vishal Singhal appearing for the defendants-appellants submitted that though the sale-deed in question was executed in the name Hari Ram, who is the real brother of the Mam Raj but the consideration of Rs. 600/- against Rs. 2000/- was paid by the father of the parties namely, Chimna Ram and the said Chimna Ram had orally stated before the family members of Mam Raj that even if the property is purchased in the name of Hari Ram but that would belong to them. The

learned counsel Mr. R.K. Singhal further submitted that the property in question was actually of the father of the parties namely, Chimna Ram and Hari Ram was only a benami owner thereof and having a share in the said property, the present defendants were also entitled to retain the possession and they could not be treated as trespassers in the property viz., Shop/House No. 23, as having obtained only a permissive possession from the plaintiffs or Hari Ram and, therefore, the decree under appeal deserves to be reversed.

7. On the other hand, the learned counsel Mr. Rajeev Purohit appearing for the plaintiffs-respondents submitted that the shop/house in question was purchased not only in the name of Hari Ram but the same also only belongs to Hari Ram. The learned counsel Mr. Rajeev Purohit further submitted that the learned Trial Court had rightly decreed the suit of the plaintiffs and the learned Trial Court has rightly given the findings about the source of the consideration paid to the sellers. While doing so, the learned Trial Court has drawn a comparison of the monthly earnings of both the parties. At the relevant point of time, the monthly income of Hari Ram was more than his elder brother Mam Raj. It was in the range of Rs. 500/- to Rs. 600/-, as Hari Ram was employed as a teacher in a private school and he was also doing the work of taking tuitions whereas, the monthly income of Mam Raj was only Rs. 225 /- to Rs. 250/- at that time. The learned counsel Mr. Rajeev Purohit also submitted that the possession of the suit property with the defendants was only a permissive possession from the time prior to the death of Hari Ram and the same was revoked by the plaintiffs and the defendants were asked to hand-over the possession of the suit property but they refused to hand over the possession and, therefore, the need to file the present suit arose.

8. I have heard the learned counsels for the parties at length and perused the record of the case including the impugned judgment and decree dated 15.05.1986 passed by the learned Trial Court. This Court finds little force in the contentions raised by the appellants-defendants. Against their oral evidence that the property in question was given by Chimna Ram to the defendants, as against the registered sale deed which was executed in favour of younger son Hari Ram. This Court is of the opinion that it is well settled that the documentary evidence will prevail over the ocular and oral evidence. The learned Trial Court has also found that the sources of income of Hari Ram were much more than his elder brother Mam Raj and when the plaintiffs were out of town to Haridwar, the defendants were took the possession of the suit property in question, whereas the defendants were already residing in their adjacent house No. 22, but the defendants had forcibly taken the possession of the suit property in question, i.e., House No. 23, N-Block, Sriganganagar. There is no evidence on record to establish that the house in question was a joint family property of father Chimna Ram in which, the present defendants could also claim any share. The property in question, i.e., House No. 23, it is crystal clear from a bare perusal of the sale deed that the same was in the name of Hari Ram, husband and father of the plaintiffs, Smt. Banarsi Devi and Narayani Devi. In these circumstances, this Court is of the opinion that the learned Trial Court had rightly decreed

the suit in favour of the plaintiffs on the basis of relevant and cogent evidence and there is no contra evidence available on record to take a different view of the matter than the one taken by the learned Trial Court. The present first appeal of defendant is found to be devoid of any merit and the same is liable to be dismissed with costs which is quantified at Rs. 10,000/- (Rupees Ten Thousand only) to be paid by the defendants to the plaintiffs.

9. The Hon"ble Apex Court in the case of [Maria Margarida Sequeria Fernandes and Others Vs. Erasmo Jack de Sequeria \(Dead\) through L. Rs.](#), AIR 2012 SC 1727 : (2012) 3 SCALE 550 : (2012) 5 SCC 370 : (2012) AIRSCW 2162 : (2012) 2 Supreme 602 also held that possession on the basis of title of property is always better claim as against the claim on the basis of adverse possession. The Hon"ble Supreme Court in a very detailed and researching judgment, detailing the four types of possession under property law; Easements Act, 1882, Transfer of Property Act, 1882 and Specific Relief Act, 1963, dealing with a case of a well known and respected Christian family of Goa where the permissive and free of cost possession of suit premises was given by a sister to her brother as a caretaker, while the sister with her husband was out of Goa in relation to his service in Navy and which brother illegally denied her possession of her own house with title undisputed for 20 long years. The Hon"ble Supreme Court allowing the sister"s appeal with costs of Rs. 50,000/- and mesne profits of Rs. 1 lac per month for the residential house, held in para 32 to 36 as under:--

"Truth as guiding star in judicial process

32. In this unfortunate litigation, the Court"s serious endeavour has to be to find out where in fact the truth lies.

33. The truth should be the guiding star in the entire judicial process. Truth alone has to be the foundation of justice. The entire judicial system has been created only to discern and find out the real truth. Judges at all levels have to seriously engage themselves in the journey of discovering the truth. That is their mandate, obligation and bounden duty. Justice system will acquire credibility only when people will be convinced that justice is based on the foundation of the truth.

34. In [Mohanlal Shamji Soni Vs. Union of India and another](#), AIR 1991 SC 1346 : (1991) CriLJ 1521 : (1991) 1 Crimes 818 : (1991) 33 ECC 18 : (1992) 61 ELT 521 : (1991) 3 JT 17 : (1991) 1 SCALE 401 : (1991) 1 SCC 271 Supp : (1991) 1 SCR 712 : (1991) 2 UJ 43 , this Court observed that in such a situation a question that arises for consideration is whether the presiding officer of a Court should simply sit as a mere umpire at a contest between two parties and declare at the end of the combat who has won and who has lost or is there not any legal duty of his own, independent of the parties, to take an active role in the proceedings in finding the truth and administering justice? It is a well accepted and settled principle that a Court must discharge its statutory functions - whether discretionary or obligatory- according to law in dispensing justice because it is the duty of a Court not only to do justice but also to ensure that justice is being done.

35. What people expect is that the Court should discharge its obligation to find out where in fact the truth lies. Right from inception of the judicial system it has been accepted that discovery, vindication and establishment of truth are the main purposes underlying the existence of the courts of justice.

36. In [Ritesh Tewari and Another Vs. State of U.P. and Others](#), AIR 2010 SC 3823 : (2011) 111 CLT 137 : (2010) 10 JT 1 : (2010) 10 SCALE 38 : (2010) 10 SCC 677 this Court reproduced often quoted quotation which reads as under:

"..... Every trial is voyage of discovery in which truth is the quest"

..... The quest of truth continues....., also in this case.

10. Deprecating false claims and defences, which are considered really serious problems with real estate litigation, predominantly because of ever-escalating prices of the real estate, the Hon"ble Supreme Court in the aforesaid judgment in para 81 and 82 observed as under:--

"False claims and defences are really serious problems with real estate litigation, predominantly because of ever-escalating prices of the real estate. Litigation pertaining to valuable real estate properties is dragged on by unscrupulous litigants in the hope that the other party will tire out and ultimately would settle with them by paying a huge amount. This happens because of the enormous delay in adjudication of cases in the Courts. The Supreme Court in [Rameshwari Devi and Others Vs. Nirmala Devi and Others](#), (2011) 8 JT 90 : (2011) 3 RCR(Civil) 932 : (2011) 6 SCALE 677 : (2011) 8 SCC 249 : (2011) 8 SCR 992 : (2011) 5 UJ 2962 aptly observed that unless wrongdoers are denied profit from frivolous litigation, it would be difficult to prevent it. In order to curb uncalled for and frivolous litigation, the courts have to ensure that there is no incentive or motive for uncalled for litigation. This problem can be solved or at least can be minimised if exemplary costs is imposed for instituting frivolous litigation. Imposition of actual, realistic or proper costs and/or ordering prosecution in appropriate case would go a long way in controlling the tendency of introducing false pleadings and forged and fabricated documents by the litigants. Imposition of heavy costs would also control unnecessary adjournments by the parties. In appropriate cases, the courts may consider ordering prosecution otherwise it may not be possible to maintain purity and sanctity of judicial proceedings."

And then finally, allowing the sister"s appeal as aforesaid and laying down the principles of law in para 97 to 101, the Hon"ble Supreme Court held as under:--

"97. Principles of law which emerge in this case are crystallized as under:--

1. No one acquires title to the property if he or she was allowed to stay in the premises gratuitously. Even by long possession of years or decades such person would not acquire any right or interest in the said property.

2. Caretaker, watchman or servant can never acquire interest in the property irrespective of his long possession. The caretaker or servant has to give possession forthwith on demand.

3. The Courts are not justified in protecting the possession of a caretaker, servant or any person who was allowed to live in the premises for some time either as a friend, relative, caretaker or as a servant.

4. The protection of the Court can only be granted or extended to the person who has valid, subsisting rent agreement, lease agreement or license agreement in his favour.

5. The caretaker or agent holds property of the principal only on behalf of the principal. He acquires no right or interest whatsoever for himself in such property irrespective of his long stay or possession.

98. In this view of the matter, the impugned judgment of the High Court as also of the Trial Court deserve to be set aside and we accordingly do so. Consequently, this Court directs that the possession of the suit premises be handed over to the appellant, who is admittedly the owner of the suit property.

99. In the peculiar facts and circumstances of this case, the legal representatives of the respondent are granted three months time to vacate the suit premises. They are further directed that after the expiry of the three months period, the vacant and peaceful possession of the suit property be handed over to the appellant. The usual undertaking to this effect be filed by the legal representatives of the respondent in this Court within two weeks.

100. The legal representatives of the respondent are also directed to pay Rs. 1,00,000/- (Rupees one Lakh) per month towards the use and occupation of the premises for a period of three months. The said amount for use and occupation be given to the appellant on or before the 10th of every month. In case the legal representatives of the respondent are not willing to pay the amount for use and occupation as directed by this Court, they must hand over the possession of the premises within two weeks from the date of this judgment. Thereafter, if the legal representatives of the respondent do not hand over peaceful possession of the suit property, in that event, the appellant would be at liberty to get the possession of the premises by taking police help.

101. As a result, the appeal of the appellant is allowed. In the facts and circumstances of the case, the respondents are directed to pay a cost of Rs. 50,000/- to the appellant within four weeks. (We have imposed the moderate cost in view of the fact that the original respondent has expired). Ordered accordingly."

Thus, strongly deprecating the holding over of possession by the persons like care-takers and persons with permissive possession, Chowkidars etc., the Hon'ble Apex Court allowed the plaintiff's appeal in that case with exemplary cost of Rs. 50000/- and mesne

profit of Rs. 1,00,000/- in respect of a residential house situated at Goa.

11. Accordingly, the present first appeal filed by the appellant-defendant-Mahendra S/o Mam Raj is dismissed with costs, as indicated above. A copy of this order be sent to the learned Trial Court below and to both the parties concerned forthwith.

12. The defendants-appellants shall hand over the vacant and peaceful possession of the suit property, i.e., House No. 23, N-Block, Srigangangar to the plaintiffs, i.e., the legal representatives of late Hari Ram and shall also pay mesne profits from the date of institution of the suit at the rate of Rs. 150/- per month as fixed by the learned Trial court and from the month of May, 2015, the defendant-appellant is liable to pay mesne profits at the rate of Rs. 2000/- per month till the actual handing over of the peaceful and vacant possession of the suit property in question to the plaintiffs. The appellants-defendants shall also not sub-let, assign or part with the possession of the suit shop or any part thereof in favour of any one else and would not create any third party interest in the same during the aforesaid period and if it is so done, the same would be treated as void and such third parties will also be bound by this decree. The appellants-defendants shall furnish a written undertaking incorporating the aforesaid conditions in the Trial Court within three months and one copy thereof along with affidavit, in this Court. It is made clear that if the peaceful and vacant possession of the suit premises is not handed over to the respondents-plaintiffs or mesne profits are not paid as directed above, besides the expeditious execution of the decree in normal course, the respondent-plaintiff shall also be entitled to invoke the contempt jurisdiction of this Court.