

(2005) 2 AWC 1637

Allahabad High Court

Case No: Second Appeal No. 1902 of 1978

Chandra Pal and
Another

APPELLANT

Vs

Ram Lal

RESPONDENT

Date of Decision: Sept. 22, 2004

Acts Referred:

- Limitation Act, 1963 - Article 65, 10, 12, 14, 16
- Uttar Pradesh Zamindari Abolition and Land Reforms Act, 1950 - Section 143, 144

Citation: (2005) 2 AWC 1637

Hon'ble Judges: S.N. Srivastava, J

Bench: Single Bench

Advocate: Sankatha Rai and P. Saxena, for the Appellant; D.N. Mishra, P. Gupta and Ashish Gupta, for the Respondent

Final Decision: Dismissed

Judgement

S.N. Srivastava, J.

The dispute in the second appeal which was preferred against the judgment and decree dated 21.3.1978, passed by Additional Civil Judge, Allahabad in Civil Appeal No. 369 of 1977 and also judgment and decree dated 23.4.1977 passed by Munsif (East) Allahabad in Suit No. 439 of 1972 revolves round the house constructed over a silver of plot No. 559 which is a grove land situated in village Kajia Pargana Nawabganj Post Office Athrampur district, Allahabad.

2. The plaintiffs initially instituted Suit No. 439 of 1972 for the relief of ejectment and possession of the land in suit and the premises in suit which are marked by letters Ka, Kha, Ga, Gha, Ta and Tha. The facts set out in the plaint are that the grandfather of the plaintiff had given permission to the father of the defendant to reside in the house in question and after his death, to the defendant who had assured the plaintiff to vacate the premises in question but subsequently, he recanted on his assurance and consequently,

he was served with a notice whereby licence was revoked. Ultimately, when notice served to him evoked no response, suit was instituted. In the written statement filed by the defendant, it was averred that sister of Ganga Ram who was grandfather of the plaintiff had been yoked in marriage to Gaya Din grandfather of the defendant and it was with consent precipae that the house was raised on the land in question which was the grove land of Ganga Ram. It was further averred that Gaya Din had acquired rights as owner over the property and after his death, property devolved on his son Maya Ram and subsequently, it devolved on the defendants. It was further averred that since the house fell into decrepitude due to vagaries of time, it was re-built by the defendants.

3. The learned counsel for the appellants canvassed that the property in question had been in possession since the time of their grandfather who had initially raised the construction on the grove land owned by the plaintiff with his consent and in this view of the matter, they have perfected their right over the land in question by reason of adverse possession. It was denied that they were licensee and instead claimed that the" land in question had been given by the grandfather of the plaintiff to the grandfather of the defendant. It was further canvassed in the alternative that even if it be assumed that there was no valid transfer they have attained ownership by perfecting their rights by reason of the fact that it was since the time of their grandfather that they have been in possession. It was further submitted that the trial court framed issue No. 7 on the question of limitation. On the other hand, learned counsel appearing for the respondents contended that the father of the defendant had merely been given licence to reside in the house in question and that a licensee cannot attain any right as claimed by the defendants. It is further urged that licence In favour of father of the defendant came to end with the death of Gaya Din father of the defendant and possession of defendant thereafter became adverse and in this perspective, the defendants cannot be treated as licensee.

4. I have heard the learned counsel and have given anxious considerations to the arguments advanced across the bar.

5. It" would appear that second appeal was admitted on two substantial questions namely question Nos. 5 and 7, which are quoted below.:

"(i) Whether the suit was liable to be abated for non-impleadment of Mst. Jarau, daughter of defendant No. 3? ; and

(ii) Whether the plaintiff"s suit was barred by time?"

In connection with the above questions, averments made in paragraphs 27 and 28 of the written statement are very significant. In para 27 of the written statement, the defendant has admitted that the land in dispute is grove land. He also pleaded therein that he became owner of the land admeasuring 8 biswas which comprised of residential accommodation, Sehan, goruvar, charni, Khoota etc. after abolition of Zamindari and also raised a question of jurisdiction of the civil court pleading in paragraph 31 of the written

statement that it was revenue court which had jurisdiction and not the civil court. What quintessentially flows from the above is that the land in dispute was a grove land and the house thereon was constructed over a small portion of the grove land which sprawled over an area of one Bigha 8 Biswa. In view of this admitted position, it brooks no dispute that no adverse rights could accrue in favour of the defendant over the grove land particularly when no declaration has been made as envisaged in Sections 143 and 144 of the Z.A. and L.R. Act which required declaring of grove land as Abadi land and as such, the land was covered by the provisions of Zamindari Abolition and Land Reforms Act and the defendant cannot derive any right over an area of 8 biswa over which house in question stands on the ground of being in adverse possession over the house which is situated on a part of the grove land.

6. The learned counsel for the appellants further argued that the defendants had acquired adverse rights after the death of their father who was a licensee according to the plaintiff. It was further claimed that as licence was a personal right of the father of defendant, therefore, the possession of the defendant after the death of their father shall be deemed to be adverse and not permissive. It would also appear from a perusal of paragraph 32 of the written statement that the defendant had taken a specific plea pertaining to limitation on the ground that the defendants and his ancestors were in actual possession and they had perfected their title by adverse possession and that the suit was barred by limitation. Before proceeding further it may be ascertained whether the points urged at this stage were argued and dealt with by the trial court or appellate court. I have searched the entire record in order to ascertain whether the point being agitated at this stage was agitated and argued at the initial stage. From a perusal of the record, it would seem that the appellant has raised this point for the first time at the stage of second appeal and it was never agitated or argued either at the stage of trial court or appellate court. In this view of the matter, it is a new plea introduced by the appellant that after the death of his father for the first time at this stage and in view of the fact that a new ground is neither permissible nor can be entertained at this stage, it merits no consideration or consequential adjudication at this stage. It was nowhere claimed by the defendants that they had perfected their title by adverse possession for being in possession after the death of defendant's father who was licensee and his licence was not ratified and as such appellant will acquire his right on the basis of possession without permission and perfected title by adverse possession. From a perusal of the plaint allegation, it would crystallise that the plaintiff had also pleaded that after the death of father of defendant, the plaintiff had requested the defendant to vacate the house in question but on persuasion of the defendants, he permitted them to continue in possession for sometime more on the assurance that the defendants would deliver vacant possession to the plaintiff after some time which assurance, it would transpire, the defendants did not abide by and hence written notice was served and subsequent suit was filed within a period of one year from the date of notice.

7. I have also scanned the findings of the courts below on the other points including the point of limitation recorded by the trial court, which was subsequently affirmed in appeal by the appellate court. It would appear that the trial court addressed itself to ascertain the status of the defendant over the" property in question. It would further appear that after appraising pleading and evidence adduced in the case, the trial court converged to the conclusion that the defendants were mere licensee and the licence was revoked by means of a valid notice and further the suit was instituted immediately thereafter within one year. The trial court also repelled the argument that the suit was barred by limitation. As stated supra, in view of averments made in paras 27 and 28 which contained admission that the land in dispute was a grove land and also having regard to the fact that it has not been manifested that any declaration as envisaged in Sections 143 and 144 of the Z.A. and L.R. Act has been made declaring grove land as abadi land, the rights claimed by the defendants cannot accrue to them on the basis of adverse possession and they being mere licensees, the limitation- would commence to run from the date of revocation of licence by the plaintiffs. In connection with this proposition. Section 3 and Article 65 of the Limitation Act being germane to the point argued before this Court are quoted below :

"Bar of limitation.--(1) Subject to the provisions contained in Sections 4 to 24 (inclusive), every suit instituted, appeal preferred, and application made after the prescribed period shall be dismissed although limitation has not been set up as a defence.

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Article 65. For possession of immovable property or any interest therein based on title.

Twelve years.

When the possession of the defendant becomes adverse to the plaintiff.

Explanation.--For the purposes of this article,--

(a) where the suit is by a remainder man, a reversioner (other than a landlord) or a devisee, the possession of the defendant shall be deemed to become adverse only when the estate of the remainder man, reversioner or devisee, as the case may be, falls into possession ;

(b) where the suit is by a Hindu or Muslim entitled to the possession of immovable property on the death of a Hindu or Muslim female, the possession of the defendant shall be deemed to become adverse only when the female dies ;

(c) where the suit is by a purchaser at a sale in execution of a decree when the judgment-debtor was out of possession at the date of the sale, the purchaser shall be deemed to be a representative of the judgment debtor who was out of possession."

From a conjoint reading of the above provisions of the Limitation Act and also having regard to the fact that it is borne out from the concurrent finding and also from the materials on record including para 11 of the plaint that the possession of the defendants was permissive in nature, it is thus not difficult to hold that the suit was filed within one year of determination of licence by means of notice and therefore, it was not barred by time. It also brooks no dispute that the limitation would commence to run from the date the licence was determined by the plaintiff. In the instant case, the licence was determined by notice dated 16.9.1972 and the suit was filed immediately thereafter within one year, i.e., on 6.12.1972. It cannot be said that the suit filed was beyond the period of limitation and was barred by the provisions of Limitation Act.

8. Yet another aspect strenuously urged by the learned counsel for the plaintiff respondent was that the land in question was the grove land and as such right claimed by the petitioner on the dint of adverse possession cannot be sustained. Since elaborate discussion has been made in connection with this proposition in the preceding part of this judgment, I do not propose to enlarge upon this point any further.

9. Coming to the finding recorded by the trial court, I am of the view that the trial court correctly appraised the evidence adduced in the case and rightly converged to the conclusion upon regard being had to cogent and convincing evidence adduced on record. It was also found by the trial court that there was no transaction or basis to claim ownership over the land in question and in consequence, discarded the plea that the defendant had acquired any right or ownership. I am in full agreement with the finding recorded by the courts below and the learned counsel for the petitioner has not been able to point out any valid ground which could distract me from the finding of fact recorded by the trial court that the defendant appellant's father was given possession of house as licensee and that he did not construct or reconstruct the house in question. All other pleas raised by the appellants have been cogently dealt with by the trial court and in my considered view, the same cannot be reappraised at the stage of second appeal. On the question of limitation, elaborate discussion has been made above and in consequence, it has been held that the suit was filed within one year after written notice considering that the defendants were mere licensees.

10. In the facts and circumstances as discussed above, I am of the view that there is no illegality or infirmity pervading the impugned orders nor any error writ large on the record has been adverted to warranting interference by this Court with the impugned judgment and decree and in the circumstances, the judgment and decree passed by the courts below are just and valid and do not suffer from any perversity.

11. In the above conspectus, so far as question No. 1 is concerned, in the conspectus of above discussion, it is negatived. In so far as question No. 1 is concerned, it is obvious that the said question was dealt with by the trial court by means of order dated 5.11.1976 and it converged to the conclusion that the suit did not abate due to non-impleadment of Smt. Jarau daughter who was not residing with Gaya Din on the date of his death

inasmuch as the trial court was of the view that a licence is a personal right to the person granted and it confers no right on his heirs. In view of the above discussion, this question is also negatived.

12. In the result, the appeal fails and is accordingly dismissed. In the facts and circumstances, there would be no order as to costs.