

(2003) 01 JH CK 0024**Jharkhand High Court****Case No:** AFAD No. 55 of 1997 (R)

Ram Lakhan Prasad and Others

APPELLANT

Vs

Malti Devi and Others

RESPONDENT

Date of Decision: Jan. 24, 2003**Acts Referred:**

- Civil Procedure Code, 1908 (CPC) - Section 100

Citation: (2003) 4 JCR 135**Hon'ble Judges:** M.Y. Eqbal, J**Bench:** Single Bench**Advocate:** P.K. Prasad, for the Appellant; Manjul Prasad, for the Respondent**Final Decision:** Allowed

Judgement

M.Y. Eqbal, J.

The plaintiffs are the appellants. The appeal is against the judgment of reversal. The plaintiffs suit being title suit No. 97/88 for declaration of right title, interest and possession has been decreed by the Munsif, Daltonganj, Palamau.

2. The appeal, filed by the defendant respondent being Title Appeal No. 4/92, the appellate Court by the impugned judgment and decree reversed the judgment passed by the Munsif and dismissed the suit and allowed the appeal.

3. The aforementioned suit was instituted by the plaintiff in respect of upper half portion of house standing on Khas Mahal plot No. 227 bearing Khas Mahal holding No. 113 situated at Rahat Road, Daltonganj. The undisputed fact is that the suit property was purchased by joint family of which late Babu Brij Bihari Lal and Baveri Lal were members of the family. In the year 1952 a partition suit was instituted which was registered as partition suit No. 45/52 and in the said suit a decree for partition on the basis of compromise was passed and the suit property was allotted in the Takhta of the plaintiffs. They Jointly became the owners of the entire holding. The plaintiffs farther case is that the defendant is the own sister's son of plaintiff

No. 1 who was the resident of Aurangabad. In 1956 he got employment in the local college as librarian and he had a house of his own at Daltonganj. So he approached the plaintiff for allowing him to reside in the suit premises. Accordingly it is alleged by the plaintiff that the defendant was permitted to occupy the premises. When the defendant was asked to vacate the premises he alleged to have avoided the same on one pretext or other which necessitated the filing of the suit.

4. The defendant's case on the other hand, is that he is occupying the suit premises on his own right. According to the defendant the suit is barred by limitation and adverse possession. The defendant denied the title of the plaintiffs and took the stand that the suit property exclusively belongs to him and he has been occupying the same openly since last several years with his right title and interest with full knowledge of the plaintiff.

5. The trial Court framed following issues for consideration.

1. Is the suit as framed maintainable?

2. Have the plaintiffs valid cause of action for the suit?

3. Whether the plaintiffs have got exclusive right title and interest over the suit premises?

4. Whether the suit is barred by adverse possession?

5. Are the plaintiffs entitled to the reliefs claimed?

6. To what other relief or reliefs if any plaintiffs are entitled for?

6. After examining the entire documents filed by the parties and appreciating the evidence the trial Court decided the suit in favour of the plaintiff-appellant. The trial Court further disbelieved the case of the defendant that the suit property was gifted by his maternal grandfather Brij Bihar Lal by virtue of oral gift. On the question of adverse possession the trial Court relied upon Exhibit I which is a document executed by the defendant at the time of his induction in the premises to continue to occupy the same by way of permissive possession. Finally the trial Court came to the conclusion that possession of the defendant is permissive possession and he has not perfected his title by adverse possession.

7. It appears that against the judgment of the trial Court the defendant preferred the aforementioned appeal which was finally heard by the 4th Additional District Judge Palamau at Daltonganj (in short the appellate Court). The appellate Court affirmed the finding of the trial Court with regard to title of the plaintiff over the suit property. The appellate Court further affirmed the finding of the trial Court on the issue of permissive possession of the defendant as he was inducted to occupy the premises with the permission of the plaintiffs. However, the appellate Court has taken a very typical view with regard to adverse possession. Para 24 of the appellate

Court judgment is worth to be quoted herein below.-

"Further contention of the defendant-appellant that in mutation case, the plaintiffs were not basing their case on partition is also of no avail as if there was none to oppose them for mutation, then they were at liberty to put their claim in any manner. They were descendants of Brij Bihari Lal and admittedly during his life time, there was no mutation. It was matter between the son and father though partitioned, but after the death of the father the sons were to come in possession. So, non-taking of any serious view is not a matter of debate. This may be left in the name of father in case where there is a decree of the Court also. But, what appeared in mutation case, that is important and debatable. Defendant appeared and filed objection in the case asserting therein that in the year 1956, when he was appointed as librarian in the G.L.A. College, his grand father Brij Bihari Lal inducted the defendant and he started to live with Brij Bihari Lal. He had opined to gift the half share of the building, but died in the year 1970. But, keeping in view the declaration of the grand-father, share of half portion, who was Rukum Devi her daughter and applicants of mutation case did not take initiative to remove him and on the date of filing of the objection also in the knowledge of the above persons and hostile to their interest, the defendant was residing in the house and so he completed right over half of the building including portion which was in this possession. According to the learned counsel for the appellant, this, much has to be taken into consideration for adverse possession and limitation which has been objected by the respondents with the submission that on one hand contradictory to the pleadings of the written statement only half of the building has been claimed and on the point of gift it is only said that Brij Bihari Lal had only opined to gift the property. In the written statement, it is said that whole building was gifted by Brij Bihari Lal orally.

8. It is also very interesting to quote the relevant portion of paragraph 25 of the appellate Court judgment.

"It is dais on behalf of the respondents that in present case plea of adverse possession or limitation does not arise as on one hand, the defendant is in possession of only a portion of the building of upper floor for which also different pleas have been made at different stages. As in objection in mutation proceeding, half of the building has been claimed to be in possession of the defendant and for which also it has been said that the defendant was inducted by Brij Bihari Lal with assurance that the same would be gifted to the defendant. While in written statement, it is said that whole building was gifted by Brij Bihari Lal. This much is not be emphasized much as dispute is only concerned with the part of the upper floor of the building and what is important is the denial of the plaintiff's title. The pleading of the defendant on this point is that he challenged the plaintiffs interest asserting therein his own right in the building including this portion through filing objection in mutation case. The certified copy of objection has been filed in the case on behalf of the plaintiff which has been used by the defendant and so it has been marked Ext. C

in which there is clear assertion that after the death of defendant's grand father in the year 1970 half of the sharer and the applicants of that proceeding who are plaintiffs of this case did not remove him and from that date also in the knowledge of the applicants hostile to their right, he was residing in the house. In case if it is admitted that the defendant is in possession of the suit premises then above assertion is sufficient to conclude that he was adequate, in continuity, in publicity and extent and date has also been given Ext. i.e. 22.1.1975. Not only this, a rejoinder has also been given to contest the claim. Certainly, the defendants's claim was negatived in the mutation proceeding but, that is sufficient to conclude that he put his claim of adverse possession covering all the ingredients observed by their Lordships in 1964 S.C. 1254. As about suit concerning only a portion of the upper floor, Article 65 states not only for possession of Immovable property, but also the interest therein based on title. So, the plaintiffs are not entitled to get any benefit on this score. This aspect has not been considered by the Court below. As about plaintiffs possession over the rest portion of the building that has elaborately been discussed by the Court below and nothing was suggested on behalf of the appellants which can be based for reversing the findings of the Court below. But, rest of the building Is not in dispute. So, till existence of the portion occupied by the defendant, respondent's right covering defendant's dispossession is clearly barred by limitation. As from 22.1.1975 more than 12 years have elapsed as the suit was filed on 12.10.88 this right cannot be disturbed till this portion exists.

9. Curiously enough having coming to the concurrent finding with regard to title and induction of the defendant in the premises by the plaintiff by way of permissive possession the appellate Court has completely mis-construed the law with regard to adverse possession. The appellate Court has further committed serious error of law in so far as it held that the defendant has proved all the ingredients for claiming title by adverse possession. The appellate Court has not correctly understood the ratio decided by the Supreme Court in the case of Abdul Karim v. Dy. Custodian. General 1964 SC 1254. The appellate Court has also not taken notice of Section 116 of the Evidence Act nor appreciated the law that even licensee occupying the property by way of permissive possession cannot deny the title of the person by whom he was granted license to occupy the premises.

10. Be that as it may. In view of the concurrent finding recorded by the two Courts with regard to title of the plaintiff and the permissive possession of the defendant over the suit property, the view taken by the appellate Court that the defendant has perfected title by adverse possession is wholly illegal and against the settled principles of law. The Impugned judgment and decree passed by the appellate Court therefore is liable to be set aside.

11. For the aforesaid reasons this second appeal is allowed and the impugned judgment and decree passed by the appellate Court is set aside and that of trial Court is restored.