
Smt. Anika Bi Vs Anees Ahmad Siddiqui and Others

First Appeal No. 484 of 2000

Court: Madhya Pradesh High Court

Date of Decision: Nov. 19, 2003

Acts Referred:

Civil Procedure Code, 1908 (CPC) â€” Order 41 Rule 27, 96#Evidence Act, 1872 â€” Section 90#Transfer of Property Act, 1882 â€” Section 109

Citation: AIR 2005 MP 64 : (2004) 1 MPLJ 315

Hon'ble Judges: S.P. Khare, J

Bench: Single Bench

Advocate: A.S. Usmani, for the Appellant; Shobha Menon and Masood Malik, for the Respondent

Final Decision: Dismissed

Judgement

S.P. Khare, J.

This is plaintiff's appeal u/s 96, C.P.C. against, judgment and decree by which her suit for declaration that she is the owner of the house in dispute

and for permanent injunction for restraining the defendants from interfering with her possession has been dismissed.

It is not in dispute that Mustaq Ahmad was owner of House No. 42 situated near Old Imambada, Lakherapura, Bhopal as per boundaries shown

in para 1 of the plaint. The house in dispute is in occupation of two tenants.

The plaintiffs case is that her husband Mustaq Ahmad had given the house in dispute to her in lieu of her dower and she became the owner of this

house. She has further pleaded that two tenants living in this house are her tenants. In the alternative she has pleaded to have acquired title to the

house by adverse possession.

The defendants's case is that the story of giving the house by Mustaq Ahmad to the plaintiff in lieu of dower is false. They pleaded that this house

was sold to Mohd. Ismile, father of the defendant No. 1 by registered sale deed dated 15-1-1957 (Ex. D.1) for Rs. 2543/- and since then the

house in dispute was in his possession. After his death this house came in possession of the defendants who are his legal heirs. It is also pleaded by

the defendants that the two tenants attorned to Mohd. Ismile and they became his tenants.

The trial Court after appreciation of documentary and oral evidence on record held that Mustaq Ahmad did not give this house in lieu of dower to

the plaintiff. It has been further held that Mustaq Ahmad sold this house to Mohd. Ismile by registered sale-deed dated 15-1-1957 (Ex. D.1) and

he became the owner of the house. It has been further held that Mazid and Gayaprasad who are living as tenants in this house are tenants of the

defendants. The plea of the plaintiff that she has acquired title to the house in dispute by adverse possession has been held in the negative.

In this appeal it has been argued on behalf of the appellant that the house in dispute was given to her by her husband in lieu of dower and she was

all along in possession of this house and she has acquired title to the house in dispute by adverse possession. It is submitted that she is in

possession of the house through her tenants. On the other hand it is argued that the findings of the trial Court are based on proper appreciation of

evidence on record and these cannot be disturbed in appeal.

The appellant has submitted an application under Order 41, Rule 27, C.P.C. along with certified copies of the plaint and the written statement in

another civil suit. These are brought on record.

The points for determination in this appeal are (a) whether Mustaq Ahmad had given the house in dispute to the plaintiff in lieu of dower, (b)

whether Mustaq Ahmad had sold this house to Mohd. Ismile, father of the defendant No. 1 by registered sale deed dated 15-1-1957 (Ex. D.1)

and (c) whether the plaintiff has been in adverse possession of the house in dispute for more than 12 years and has acquired title by adverse

possession.

Point (a) :

The plaintiff claimed to have got the house in dispute from her husband in lieu of dower. She has produced Nikahnama (Ex. P.1) to show that an

amount of Rs. 11,000/- was settled as dower at the time of her Nikah with Mustaq Ahmad. But there is no document to prove that the house in

dispute was given by Mustaq Ahmad to plaintiff in lieu of dower. It is not pleaded by the plaintiff precisely in which year or month this house was

given to her by her husband in lieu of dower. It is not shown that the house was recorded in the name of the plaintiff in any document before the

death of her husband. There is no oral evidence regarding giving of this house by Mustaq Ahmad to the plaintiff. The oral evidence is either hearsay

or unsatisfactory. The deposition-sheets of Anika Bi (P.W. 1), Sardar Mohd. Khan (P.W. 2), Savitri (P.W. 3) and Iftikhan Mohd. Khan (P.W. 4)

have been perused by this Court and the testimony of these witnesses does not prove that the house in dispute was given by Mustaq Ahmad to the

plaintiff in lieu of dower. The story of creation of oral dower in favour of the plaintiff is false.

Point (b) :

The defendants have produced registered sale deed dated 15-1-1957 (Ex. D.1). The plaintiff also knows that there is some document executed by

her husband Mustaq Ahmad in favour of Mohd. Ismile. That finds vague reference in her plaint. Siddique Hasan (D.W. 3) has deposed that this

sale deed was registered in his presence. He is nephew of the plaintiff. He marked his thumb impression as a witness on this sale deed. According

to him Mustaq had signed on this sale deed in his presence and it had been attested by another witness Jiyaul Bari. Thus, the execution of the

registered sale deed by Mustaq is proved. Even otherwise the document has become more than 30 years old by the time it came to be

considered by the trial Court. This registered sale deed has been produced in the Court from proper custody. Therefore, the Court could presume

the signature of the executant on this document. It is well settled that the period of thirty years mentioned in Section 90 of the Evidence Act is to be

counted from the date which the document bears. The outer limit of time is to be reckoned not from the date on which the document is filed in

Court, but the material date is the date on which, it having been tendered in evidence, its genuineness or otherwise becomes the subject of proof.

In the present case Siddique Hasan (D.W. 3) has been examined as a witness on 26-3-1998 and on that date this document had become more

than 30 years old. It had come in the category of "ancient document". It has been held by the Supreme Court in Sri Lakhi Baruah and others Vs.

Sri Padma Kanta Kalita and others, , that ""Section 90 of the Evidence Act is founded on necessity and convenience because it is extremely difficult

and sometimes not possible to lead evidence to prove handwriting signature or execution of old documents after lapse of thirty years. In order to

obviate such difficulties or improbabilities to prove execution of an old document. Section 90 has been incorporated in the Evidence Act, which

does away with the strict rule of proof of private documents. Presumption of genuineness may be raised if the document in question is produced

from proper custody. It is, however, the discretion of the Court to accept the presumption flowing from Section 90. There is, however, no manner

of doubt that judicial discretion u/s 90 should not be exercised arbitrarily and not being informed by reasons"".

Point (c) :

In view of the legal position discussed above and also the actual proof of execution of registered sale deed dated 15-1-1957 (Ex. D.1) by Mustaq

Ahmad, the trial Court has rightly held that Mohd. Ismile had become the owner of the house. The two tenants were living in the house in dispute

before the sale took place and therefore, as per Section 109 of the Transfer of Property Act they must, be held to have attorned to the vendee.

The two tenants have been examined by the plaintiff as her witnesses and they have stated that they executed two rent notes dated 25-7-1985 (Ex.

P.2 and Ex. P.3) in favour of the plaintiff. They were living in this house since long and it appears that these rent notes have been obtained by the

plaintiff from them in her favour so as to serve as evidence in the present case. There is already an eviction decree against Abdul Mazid who is one

of the tenants. That is Ex. D.3. The other tenant has also admitted in the application supported by the affidavit (Ex. D.6) that he is the tenant of the

defendant No. 1. The plaintiff has not acquired title to the house in dispute by adverse possession.

The appeal is dismissed. Costs as incurred.