(1956) 12 MP CK 0004

Madhya Pradesh High Court

Case No: C.S.A. No. 647 of 1950

Mannoolal		APPELLANT
	Vs	
Kundanlal		RESPONDENT

Date of Decision: Dec. 5, 1956

Citation: (1957) JLJ 192

Hon'ble Judges: B.K. Chaturvedi, J

Bench: Single Bench

Advocate: P.K. Tare, for the Appellant; A.C. Halwe, for the Respondent

Final Decision: Allowed

Judgement

Chaturvedi, J.

This second appeal is filed by the defendant against a decision, dated 3rd August 1950, of the Additional District Judge, Sagar, and arises out of a suit filed by the plaintiff-respondent for possession of land. The parties are brothers and they separated in the year 1924 when all villages and lands were divided, The suit relates to Khasra No. 143 of patti No. 1 of village Ronda of which the plaintiff was the Lambardar. The dispute relates to a strip of land, O''10 acres, adjacent to Khasra No. 143 but adjoining to Khasra No, 142 which is sir land of the defendant. Now, it appears that Mahant Kishan Das was an occupancy tenant, in possession of Khasra No. 143. At the settlement the land was recorded in the name of Gopidas, who was succeeded by Mahant Kishan Das in 1941-42. This Kishan Das surrendered the land to the plaintiff on 27th February 1946 (Ex. P-1).

2. The plaintiff''s case is that out of the area of 0.77 acres of Khasra No. 143 the defendant had encroached upon an area of 0.10 acres adjoining his field for the first time in 1933, and in June 1945 he took possession of an additional area of 0.10 acres. The plaintiff therefore claimed to eject him from this area of 0.20 acres as a trespasser.

3. The defendant resisted the suit on the ground that he was only in possession of 0.10 acres of land out of Khasra No. 143 and had not made any encroachments. If there was any encroachment, that had been since the partition of 1924 in which the sir land was allotted to him. The plaintiff therefore could not sue for possession. The defendant also pleaded alternatively that he had been in adverse possession of this area of 0,10 acres for over 12 years and the right of the plaintiff had been extinguished.

4. The Civil Judge, class II, Khurai, gave a finding to the effect that the encroachment on 0,10 acres bad been made at the time of the partition of 1924. The plaintiff''s suit was therefore dismissed. The first appellate Court reversed this finding and passed a decree for delivery of possession of 0.10 acres of land adjacent to Khasra No. 143 on the east out of the land in possession of the defendant.

5. The finding of the first appellate Court is to the effect that the defendant was continuously in possession of 0.8 acres from 1933-34 and he added 0.2 acres more from 1938-39. If any title was acquired at all, it was only in respect of 0 8 acres, since the possession over the additional 0.2 acres had not run for the statutory period. The learned Judge of the first appellate Court then came to the conclusion that the existence of a trespasser on the land held by a tenant is no immediate concern of the landlord. So long as the tenancy subsists, the landlord is not compelled to sue the trespasser in ejectment. On the basis of a ruling of the Privy Council reported in Katyayani Debi vs. Uday Kumar Das ILR 25 Cal. 417 p.c. it was held by the Court below that in spite of encroachments for the statutory period over a part of the holding, the tenancy continued to subsist in respect of the entire holdings, and so long as the tenancy subsisted, the existence of a trespasser on any part of the holding did not effect the right of the landlord. The possession of the defendant became adverse to the plaintiff only on the date of the effacement of Kishandas''s tenancy by surrender to the plaintiff in 1946, and from that date the suit was well within limitation. The decree of the Civil Judge, class II, Khurai was therefore reversed.

6. In my opinion, the point of law decided by the first appellate court cannot be disputed. It was held in Uday Kumar Das vs. Katyayani Debi ILR 49 Cal. 948 that the possession of a trespasser, during the continuance of a lease, does not become adverse against the lessor; the lessor remains in possession by receipt of rent from the lessee, and so long as such rent is not intercepted by a trespasser he cannot be said to have been dispossessed. The entire case-law has been reviewed by Justice Asutosh Mookerjee in this ruling and this decision has been substantially affirmed by their Lordships of the Judicial Committee in Katyayani Debi vs. Uday Kumar Das. In my opinion, this ruling fully applies to the facts of the present case and the learned first appellate Court was right in reversing the decree passed by the Civil Judge class II. This appeal is therefore devoid of substance and must fail.

7. Shri P.K. Tare who appeared on behalf of the appellant, could not show me other ruling of the Supreme Court which might have gone contrary to the Privy Council ruling alluded to before. He, however, drew my attention to the facts of Chhote Khan vs. Mohammad Obedullah khan, ILR 1953 Nag 702 (F.B.) and urged that after the Madhya Pradesh Abolition of Proprietary Rights (Estates, Mahals, Alienated Lands) Act, 1950 (No. 1 of 1951), the rights which were exercisable by the proprietor, Lambardar and Sadar Lambardar by reason of holding that character can no longer now be exercised by them, and that the Lambardar''s powers to institute a suit for evicting the unauthorised occupant had come to an end. He, therefore, argued that the decree must be set aside on this ground and the plaintiff''s suit must be dismissed. Shri Halwe, on the other hand, took me through Ex. D.-3 which is on page 60 of the paper-book and is a copy of Ex. P.-11, Khasra Panchsala of village Ronda for the years 1946-47, which shows that after the surrender of the tenancy by Kishan Das, chela of Gopidas Bairagi, the land in dispute was recorded as Khudkasht. It is also mentioned that there is illegal possession of Seth Mannulal on 0.10 acres, Shri Halwe therefore contended that it should be taken and presumed that the land was recorded as the plaintiff''s khudkasht in the annual papers for 1948-49 and that its character was that of khudkasht. On this ground the learned counsel urged that it should be taken to be a suit by a holder of a property for obtaining possession thereof from a wrong-doer and that the observations of Mudholkar J. in Rahmatullah Khan vs. Mahabir Singh, 1956 N.L.J. 1 should be applied to the facts of this case. In this case it has been held that the Full Bench decision in Chhotekhan vs. Mohammad Obedullahkhan does not apply to the case of an ex-proprietor who has sued for possession of his own private property or khud-kasht land. In my opinion this contention is well-founded and the principle laid down in Rehmatulla Khan vs. Mahabir Singh fully applies here. It therefore follows that the appeal will be dismissed with costs.