(2012) 04 MP CK 0074

Madhya Pradesh High Court

Case No: S.A. No. 380 of 1996

Manik Rao and Others		APPELLANT
	Vs	
Ramesh and Others		RESPONDENT

Date of Decision: April 16, 2012

Acts Referred:

- Madhya Pradesh Land Revenue Code, 1959 - Section 190
- Transfer of Property Act, 1882 - Section 53A

Citation: (2012) ILR (MP) 1644 : (2013) 1 MPJR 18 : (2012) 2 MPLJ 683

Hon'ble Judges: Alok Aradhe, J

Bench: Single Bench

Advocate: B.K. Singh, for the Appellant; Ravish Agrawal, with K. Jha, for the Respondent

Final Decision: Dismissed

Judgement

Alok Aradhe, J.
This appeal has been preferred by the defendant, who have lost in both the Courts. This Court vide order dated 31-7-1996 while admitting the appeal had formulated the following substantial question of law :--

"1. Whether the first Appellate Court was justified in granting a decree for whole of the property when the trial Court has granted a decree for 1/3rd and the plaintiff did not file any cross-objection against rejection of their claim?

2. Whether on the facts and in the circumstances of the case the appellants are entitled to maintain the possession of the property under the provisions of section 53A of the Transfer of Property Act?"

Facts giving rise to filing of the appeal briefly stated are that the plaintiffs filed a suit for confirmation of possession and in the alternative, seeking a decree for possession on the ground that one Prahlad was the owner of the land admeasuring 64.25 acres. On death

of Prahlad, the suit lands devolved on his three sons namely Yashwant Rao, Madhav Rao and Sudarshan Rao. Yashwant Rao and Madhav Rao relinquished their share in the suit lands in favour of Sudarshan Rao i.e. father of the plaintiffs. Sudarshan Rao died in the year 1962. After his death, the suit lands devolved on the plaintiffs. However, during the minority of the plaintiffs, defendants got their names mutated in the revenue records. The defendants on the basis of an agreement dated 7-7-1961 allegedly executed by late Sudarshan Rao, disclosed themselves to be the owner of the suit lands and tried to take forcible possession of the suit lands in the year 1968. It was averred in the plaint that late Sudarshan Rao had neither entered into an agreement for sale with the defendants nor had placed them in possession. If such an agreement is in existence, the same is forged. It was further pointed out that the market value of the land was Rs. 1 Lac whereas, the sale consideration in the agreement is shown as Rs. 13,000/- only. The defendants filed the written statement in which inter alia it was pointed out that Sudarshan Rao i.e. plaintiffs'' father had one-third share in the suit lands. It was denied that Yashwant and Madhav Rao had relinquished their share in the suit property. It was further pleaded that Sudarshan Rao had entered into an agreement dated 7-7-1961 with the defendants for a consideration of Rs. 13,000/- and had received the entire sale consideration. However, on account of his death in the year 1962, the sale deed could not be executed. It was also pleaded that defendants are in possession of the suit lands on the basis of the agreement which has been executed in their favour by late Sudarshan Rao.

2. The trial Court initially, vide judgment and decree dated 25-11-1975 decreed the suit filed by the plaintiff and directed the defendants to handover the joint possession of 1/3rd share in the suit lands. In an appeal preferred by the defendants, the matter was remanded. The trial Court thereafter vide judgment and decree dated 28-3-1990 inter alia held that plaintiff is the sole owner of the suit lands. It was further held that defendants have not been able to prove that plaintiffs'' father had entered into an agreement for sale dated 7-7-1961 and handed over the possession of suit lands to the defendants. Accordingly, it was held that plaintiff is entitled to possession of the suit lands. Being aggrieved by the aforesaid decree, the defendants preferred an appeal. The lower Appellate Court vide judgment and decree dated 23-3-1996 on the basis of Ex. D/7, D/8 and D/9 held that plaintiffs father namely Sudarshan Rao had entered into an agreement for sale with the defendants. It was further held that Sudarshan Rao died in the year 1962 leaving behind his son namely the plaintiff and four daughters, therefore, the plaintiff is not the sole owner of the suit lands. It was further held that plaintiff is entitled to obtain possession of the suit lands.

3. Learned counsel for the appellants submitted that the lower Appellate Court grossly erred in holding that plaintiff is entitled to possession of the suit lands in the face of Ex. D/7, D/8 and D/9. It was also submitted that defendants are in possession of the lands in question under the agreement dated 7-7-1961 and, therefore, are entitled to protection of their possession u/s 53A of the Transfer of Property Act.

4. On the other hand, learned senior counsel for respondents No. 3, 4 and 5 submitted that infact the first substantial question of law framed by this Court on the facts of the case does not arise. It was further submitted that as per the agreement dated 7-7-1961, the sale deed was to be got executed up to June, 1962 however, despite payment of entire sale consideration, no explanation has been offered on behalf of the defendants as to why the sale deed has not been got executed. It was further submitted that from perusal of paragraph 3(ka) of the written statement, it is apparent that in the year 1967, the defendants had initiated proceedings u/s 190 of the M.P. Land Revenue Code. It was further submitted that the aforesaid proceedings were dismissed in default of appearance on 26-10-2007. It was also urged by learned senior counsel that defendants in the facts of the case the defendants are not entitled to protection u/s 53A of the Transfer of Property Act. In support of his submissions, learned senior counsel has placed reliance on decisions reported in Pusaram Maniklal Izardar vs. Deorao Gopalrao Mali (minor) by guardian mother Parwati W/o. Gopalrao, AIR 1947 Nagpur 188, Devisahai vs. Govindrao and others, 1967 MPLJ 711, Shrimant Shamrao Suryavanshi and another vs. Pralhad Bhairoba Suryavanshi (dead) by LRs. and others, AIR 2002 SC 960, Sardar Govindrao Mahadik and another vs. Devi Sahai and others, AIR 1982 SC 989 and Smt. Pilanoni Janakram vs. Anandsingh Sakharam, 1960 MPLJ 962.

5. I have considered the submissions made by learned counsel for the parties and have perused the records. In Smt. Pilanoni Janakram vs. Anandsingh Sakharam, supra, the Division Bench of this Court has held that it is settled view that a co-owner can file a suit for recovery, of property from a person in wrongful possession and that such a suit is regarded as one on behalf of all the co-owners. Thus, even assuming the plaintiff to be the co-owner, the suit filed by him shall be treated as on behalf of all the co-owners. Thus, the first substantial question of law framed by this Court in the facts of the case does not arise.

6. The condition precedent for applicability of section 53A of the Transfer of Property Act are firstly, that there should be a contract to transfer for consideration any immovable property; secondly, that the contract should be in writing and its terms can be ascertained with reasonable certainty; thirdly, that the transferee in part-performance of the contract has taken possession of the property or any part thereof or if he is already in possession, he continues in possession in part-performance of the contract; fourthly, that the transferee has done some act in furtherance of the contract; and fifthly, that the transferee has performed or is willing to perform his part of the contract. Besides that, a party relying on section 53A of the Transfer of Property Act has to plead and prove the readiness and willingness on its part to perform the contract. From perusal of paragraph 3(ka), of the written statement, it is apparent that defendants instead of filing the suit for specific performance of the contract, had initiated proceedings before the revenue Court for acquisition of title. The defendants in their written statement have failed to plead the readiness and willingness to perform their part of the contract. On the other hand, the defendants had initiated the proceedings u/s 190 of the M.P. Land Revenue Code, 1959

for conferral of Bhumiswami rights in 1967 and, therefore, the defendants are not entitled to benefit of section 53A of the Transfer of Property Act. For the aforementioned reasons, the second substantial question of law framed by this Court is answered in the negative and against the appellants.

In the result, the appeal fails and is hereby dismissed.