(1956) 02 MP CK 0005

Madhya Pradesh High Court

Case No: Second C.A. No. 95 of 1955

Chandrabhan Jagannath and another		APPELLANT
	Vs	
Ramanath Bharosa		RESPONDENT

Date of Decision: Feb. 17, 1956

Acts Referred:

- Limitation Act, 1963 - Section 23

Hon'ble Judges: Jagat Narayan, J.C.

Bench: Single Bench

Advocate: Lal Pradyumn Singh, for the Appellant; Parzand Khan, for the Respondent

Judgement

Jagat Narayan, J.C.

1. This is a second appeal against concurrent decrees of the two Courts below decreeing the suit of Ram Nath plaintiff-respondent against the appellants. I have heard the Learned Counsel for the parties.

2. Two mango trees are standing on plot No. 67 of which Ram Nath plaintiff is the pattedar tenant. These trees have however been in the possession of Chandra Bhan and Radhey Ram defendants since before the Rewa Land Revenue and Tenancy Act, 1935, came into force.

3. It was enacted by it that every pachpan paitalis and every pattedar tenant shall be entitled to utilize and enjoy the natural products of mango trees which may be standing on his holding. If the trees have been planted by him he is not liable to pay any rent. But if the trees have not been planted by him he is liable to pay such rent as the Settlement Officer may have imposed on them (see sections 69-76).

It was also enacted in S. 77 that no interest in trees shall be transferable independently of the land. (Section 77). Provision was made for the acquisition of the interest in trees

standing on land held by pachpan paitalis or pattedars tenants vesting in a person or persons, other than tenants of the land by the land-holder on payment of compensation within a period of Jive years from the commencement of the Act.

The compensation was to be agreed upon between the parties and in the absence of such an agreement the holder of the tree could apply to the Tahsildar who was empowered to determine the compensation. The interest of the separate holder of the tree was to extinguish on the expiry of five years whether or not he had received any compensation.

4. The above Act came into force on 15-6-36 and the interest of Chandra Bhan and Radhey Ram defendants in the mango trees was extinguished on 15-6-1941. They however continued in possession even after that date and when the suit was instituted on 25-2-1955 they had been in such possession for over 12 years. Their contention was that the suit against them was barred by limitation.

This contention was repelled by the two Courts below on the ground that where the acquisition of a property was prohibited by statute, title to it could not be acquired by adverse possession for the statutory period. It is urged on behalf of the appellants that this decision is erroneous. A number of rulings was cited.

''Radhabai v. Anantrau'', 9 Bom 198 (FB) (A) and ''Tuka Lakhu v. Ganu Vithu'', 1931 Bom 24 (AIR V18) (B) are decisions of the Bombay High Court in which Watan land which was inalienable under the Bombay Hereditary Offices Act had been alienated. It was held that the title of the watandar was capable of being barred and extinguished by adverse possession.

''Bageswari Charan v. Jagannath Kuari'', 1929 Pat 117 (AIR V16) (C) and ''Sm. Khemi v. Charan Naplt'', 1953 Pat 365 (AIR V40) (D) are decisions of the Patna High Court in which the Bombay view was followed. They were cases in which land was alienated in contravention of the provisions of Chhota Nagpur Encumbered Estates Act.

''Maha Mangal Rai v. Kishun Kandu'', 1927 All 311 (AIR V14) (E) is a decision of the Allahabad High Court in which occupancy tenancy was mortgaged against the express provision of the Statute. It was held that although the mortgage was invalid at the inception, by the continuance of possession for more than 12 years as usufructuary mortgagee there came into existence a legally operative mortgage which must be redeemed as a condition precedent to a decree for possession of the holding at the suit of the tenant.

The above decisions go to support the contention of the appellants that even if the acquisition of a property is prohibited by statute title to it could be acquired by adverse possession.

5. On behalf of the respondent "Sahabu Mahton v. Hari Ram Mahto", 1952 Pat 43 (AIR V39) (F) was cited in which reliance had been placed on the following observations of their Lordships of the Privy Council in "Madhav Rao Waman v. Raghunath Venkatesh", 1923 PC 205 (AIR V10) (G):

A careful consideration of Sir Charles Sargent"s judgment, as given in 9 Bom 198 (210) (A) shows that he was considering the question referred to the Pull Bench from the point of view of the grantee having been a stranger to the Watan.

It is not necessary for their Lordships to decide in this case whether the answer of the Full Bench, limited as it must have been to the case of a stranger to the Watan, setting up as a defence, 12 years" adverse possession, was or was not correct, although they are constrained to say that it ft some what difficult to see how a stranger to a Watan can acquire a title by adverse possession for 12 years of lands the alienation of which was, in the interests of the State prohibited.

6. The effect of these observations was considered in 1931 Bom 24 (AIR V18) (B) and it was held that the decision in 9 Bom 198 (FB). (A) was still good, law. I respectfully agree with this view and hold that even if the transfer of a right is prohibited by law it is amenable to adverse possession unless there is anything in that law to suggest that it expressly or by necessary implication abrogates the law of limitation.

There is nothing in the Rewa Land Revenue and Tenancy Code, 1935 or in the Vindhya Pradesh Land Revenue and Tenancy Act, 1953 which can be said to abrogate the law of limitation with regard to acquisition of rights contemplated in the Act by adverse possession.

7. It was argued on behalf of the respondent that no one can prescribe for a right which is not known to law. That proposition is unexceptional. The respondent claims to have prescribed only for the right defined under S. 76 of the Rewa Code and under S. 159 of the Vindhya Pradesh Tenancy Act.

8. Another contention on behalf of the respondent was that appropriating the fruit crop from a mango tree was only a continuing wrong within the meaning of S. 23 of the Limitation Act. I am unable to agree with this contention. The right claimed by the appellants is not only a right to take the fruit from the trees periodically but also a right to possess the trees, to tend them and to see that no injury was caused to them.

This right is not of such a nature as to at tract the application of S. 23 by its exercise. On the contrary it is a right by the exercise of which the respondent was dispossessed. He had himself alleged in the plaint that he was dispossessed.

9. I accordingly hold that the appellants have acquired rights over the trees by adverse possession and that the present suit of the respondent is barred under Art. 144 of the Limitation Act as the appellants have been in adverse possession for over 12 years. I

accordingly allow the appeal, set aside the decree of the Court below and dismiss the suit. The appellants are entitled to recover costs throughout from the respondents.