
Nirmal Chand Jain Vs Vijay Kumar

Second Appeal No. 1023 of 2000

Court: Madhya Pradesh High Court

Date of Decision: Jan. 4, 2002

Acts Referred:

Registration Act, 1908 & Section 17#Transfer of Property Act, 1882 & Section 58

Citation: (2002) 1 MPHT 529

Hon'ble Judges: P.C. Agarwal, J

Bench: Single Bench

Final Decision: Dismissed

Judgement

@JUDGMENTTAG-ORDER

P.C. Agrawal, J.

This is a second appeal u/s 100 of the Code of Civil Procedure, 1908.

2. Vimalchand Jain (appellant) and Vijay Kumar (R-1) are real brothers. Smt. Vishambai (since deceased on 23-5-98 her legal representatives are

brought on record) was his wife. Sharad Kumar (R-5) is son of Vijay Kumar (R-1) and Smt. Vishambai. Smt. Ritu Jain (R-2), Smt. Babli Jain (R-

3), Ku. Megha Jain (R-4) are the daughters of Vijay Kumar (R-1) and Smt. Vishambai. Vijay Kumar (R-1), his wife late Smt. Vishambai and

Sharad Kumar (R-5) had sold certain agricultural lands situate in village Kelwas, which are disputed in this case, to Vijay Kumar son of

Chhakorilal (R-6) on 2-9-1987 by three different registered sale-deeds. Possession was handed over to Vijay Kumar son of Chhakorilal (R-6).

These lands have been mutated in his name and Bhoo Adhikar and Rin Pustika has also been issued to him.

3. On 25-3-86 the appellant filed a civil suit for declaration of title and permanent injunction against Vijay Kumar (R-1), his wife late smt.

Vishambai and Sharad Kumar (R-5) claiming that all of them were members of joint family till 9-2-79 when there was an oral partition between

them. Suit lands entered in revenue records in names of these respondents were allotted to the appellant and a memo of partition was written.

However, there was no mutation in revenue papers. The appellant had an apprehension that the suit lands may be sold by Vijay Kumar (R-1) and

this became true. Later on by way of amendment the appellant added a prayer for possession of suit lands claiming that the suit lands were sold to

Vijay Kumar son of Chhakorilal (R-6) during the pendency of civil suit and possession was delivered to him.

4. Vijay Kumar (R-1), his wife late Smt. Vishambai and Sharad Kumar (R-5) in their separate written statement admitted oral partition of the

family and allotment of suit lands to the appellant. However, they claimed that by a settlement/rectification deed the appellant was required to pay

Rs. 50,000/- to Vijay Kumar (R-1), his wife late Vishambai and Sharad Kumar (R-5) by Vaishakh Sudi Panchmi Samvat 2026 and then only the

lands would have become the property of Nirmal Kumar Jain. It was also claimed that 15.00 acres of land was mortgaged by way of conditional

sale and on failure of such payment Vijay Kumar (R-1) shall become entitled to suit lands. As the appellant did not pay the amount of Rs. 50,000/-

within period stipulated he did not acquire any title to the suit lands. It was also claimed that name of appellant was never mutated to revenue

papers. The appellant was never in possession of suit lands and Vijay Kumar (R-1), his wife late Vishambai and son Sharad Kumar (R-5) had full

right and title to alienate the lands.

5. Vijay Kumar son of Chhakorilal (R-6), the purchaser had denied any oral petition in the family or allotment of suit lands to the appellant.

According to him, the appellant and respondent Nos. 1 to 5 being of the same family had colluded and invented a false story. He claimed that

Vijay Kumar (R-1), his wife late Vishambai and son Sharad Kumar (R-5) were title holders in possession. Their names were recorded as such in

revenue papers and they were paying the land revenue and thus could sell the suit lands to him. In the alternative, he claimed that he is the

purchaser for valuable consideration without any notice of oral partition or rectification deed and he had made proper enquiry into the title of the

sellers before purchase. According to him, both the partition and rectification deeds should have been registered to be any evidentiary value. He

further claimed that he invested huge amount of money in development of the suit lands to the knowledge of appellant, who is now estopped from

challenging his title and possession.

6. The Trial Court dismissed the suit of the appellant and according to her, he was unable to prove his case. However, the Trial Court agreed with

the appellant that there had been an oral partition of the family and suit agricultural lands were allotted to the appellant in such partition. According

to her, the appellant had failed to pay Rs. 50,000/- in period stipulated in the rectification deed and as such he had no title to the suit lands. Any

how neither the plea of estoppel nor that Vijay Kumar son of Chhakorilal (R-6) was a bona fide purchaser without notice and had invested huge

amount in improvements or any development was effected by her, was not accepted. Vijay Kumar (R-1), his wife late Vishambai and son Sharad

Kumar (R-6) had full title to sell the suit lands to Vijay Kumar son of Chhakorilal (R-6), who was in actual possession thereof.

7. The First Appellate Court held that the memo of partition Ex. P-1 and settlement/rectification deed Ex. D-1 are part of the same transaction and

had to be read together. They did not require any registration. As the appellant had not paid Rs. 50,000/- he did not acquire any title in the suit

lands. Appellant was never in possession of the suit lands and sales of lands by Vijay Kumar (R-1), his wife Smt. Vishambai and son Sharad

Kumar (R-5) were good and binding. He concurred with the Trial Court that the appellant has not been able to prove his case.

8. Here, in this Court, the appellant has contended that:--

(a) in oral partition the appellant had acquired title to the suit lands;

(b) respondent Nos. 1 to 5 had claimed mortgage by conditional sale even then no issue was framed, no finding was recorded.

It was argued that once a mortgage always a mortgage. Fact of mortgage in itself amounted to admission of appellant's title to the suit lands. Mere

non-payment of Rs. 50,000/- by the appellant could not have divested the appellant from his title. The First Appellate Court was wrong in

considering the partition and mortgage as a part of same transaction. They were separate legal events and could not have been co-related

awarding to appellant.

9. Admittedly Vijay Kumar (R-1), his wife late Vishambai and Sharad Kumar (R-5) have executed sale-deeds of the suit lands in favour of Vijay

Kumar son of Chhakorilal (R-6), who has been put in possession of such lands at the time of purchase and is in possession thereof since then.

Thus, the only question to be decided in the case related to the title of the appellant.

10. Obviously, it was a civil suit for possession on the basis of title. In such a case, plaintiff/appellant had to prove his title beyond doubt. In my

considered opinion, neither of the contentions of the appellant has any substance. Oral partition was not well proved. Nirmal Kumar Jain (P.W. 1)

was only one to support it. None of the other sharers was examined. Original memoranda of partition of which Ex. P-1 was a copy, was neither

produced in the Court nor proved, though admittedly it was in custody of Vijay Kumar Jain (D.W. 1). Signatures of signatories or its execution

were not proved. Admissions of Vijay Kumar (R-1), his wife late Vishambai and Sharad Kumar (R-5) in their written statement dated 5-9-90 filed

after execution of sale- deeds in the year 1987 in favour of Vijay Kumar son of Chhakorilal (R-6) were not binding on purchaser Vijay Kumar son

of Chhakorilal (R-6) as they had no subsisting title on suit lands on that date. Vijay Kumar son of Chhakorilal (R-6) . had neither admitted the

partition nor the allotment of suit lands in share of the appellant. Thus, the factum of partition and allotment of suit lands to appellant was not well

proved. In other words, appellant was not able to prove his title.

11. Settlement/rectification deed Ex. D-1 was an unregistered document and could not create any mortgage. A mortgage to be effective has to be

by a registered instrument under the provisions of Section 58 of the T.P. Act and Section 17 of the Registration Act. It was not clear when

mortgage loan was taken, what was the rate of interest, what were the other terms, who was the mortgagee, who were the mortgagers ?

Obviously, this document Ex. D-1 was not sufficient to create any mortgage or charge on the suit lands. There had been no clear plea of mortgage

by the appellant. Actually the appellant had kept complete silence on the point. He had led no evidence on the point of mortgage. Mere casual

reference of mortgage by way of conditional sale in Ex. D-1 did not change this settlement/rectification deed into a mortgage deed. Thus, this

theory of mortgage was also not established nor the appellant could have taken any shelter under this plea.

12. Thus, in the facts and circumstances of the case, the appellant was not able to prove his case either for declaration of title, permanent injunction

or for possession. There is no substantial question of law involved in the case. Hence, the appeal is summarily dismissed.