

PETITIONER:
HINDUSTAN LEVER LTD.

Vs.

RESPONDENT:
B.N. DONGRE

DATE OF JUDGMENT 17/08/1994

BENCH:
JEEVAN REDDY, B.P. (J)
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JEEVAN REDDY, B.P. (J)
AHMADI, A.M. (J)
DAS, SUDHI RANJAN (CJ)
RAMASWAMY, K.
SAHAI, R.M. (J)

CITATION:
1995 AIR 817 1994 SCC (6) 157
JT 1994 (4) 599 1994 SCALE (3) 529

ACT:

HEADNOTE:

JUDGMENT:

ORDER

1. The appellants are the defendants. One Murthuza Hussain Sahib, the 2nd plaintiff and his brother Nawab Basha @ Syed Badrajjalami Hussain Sahib under partition deed dated 4-12-1952, Ex. A-2 partitioned the properties and Item Nos. 1 and 2 of the ancestral property fell to the share of Syed Murthuza Hussain Sahib. The partition deed recites thus:

"The share of properties allotted to the respective person, shall be enjoyed by them with absolute right and freedom thereto undisputedly from this day onwards hereditarily from son to grandson and with powers of effecting gift, sale and alienation, one individual shall have no right in respect of properties belonging to the other individual."

Ever since they have been in possession and enjoyment of the property. The 2nd plaintiff by an oral gift settled Item No. 1 to the 1st plaintiff. When the appellants attempted to trespass into the land on 6-1-1968, the respondents filed suit on 4-7-1968 for declaration of title and for recovery of possession. The trial court dismissed the suit. On appeal, the District Judge, Madurai in AS No. 358 of 1975 by its judgment and decree dated 7-7-1977 reversed the judgment and decree of the trial court and decreed the suit. The High Court in S.A. No. 1640 of 1977 by judgment and decree dated 9-8-1978 dismissed the second appeal. Thus this appeal by special leave.

2. It is contended by Mr G. Viswanatha Iyer, learned Senior Counsel for the appellants that the property belongs to Badralam Sahib and the appellants, the 5th defendant and defendants 3 and 4 are the daughters of Syed Badralam Sahib

son of Babjan Sahib. Defendants 1 and 2 are the husbands of defendants 3 and 4. The property belonged to Babjan Sahib and the respondents have no title to the property unless they established the title through Babjan who is claimed to be the owner of the property. The declaration of title and possession of the property is clearly illegal. We find no force in the contention. It is seen that in the partition deed, Ex. A-2 there is a clear recital of the properties which admittedly form part of ancestral property. There is also a clear recital that they separated the property and thereafter the properties continued to be in possession and enjoyment of the respective parties. Thereby Murthuza Hussain Sahib had the properties allotted to his share. Thereafter he remained in possession and enjoyment till he parted with possession of Item No. 1 by a gift given to the 1st respondent, his daughter and second item in his own possession. Admittedly, the suit was filed on 4-7-1968 by which date more than 16 years have passed and he remained to be in uninterrupted possession and enjoyment in assertion to his own right as an owner having obtained the same under partition deed, Ex. A-2. Thereby he had possessory title right from 1952 till date of the suit. The declaration of title thereby given is clearly legal. It is found that they were in possession of the property and were enjoying the same by lease out etc. It is

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also found by the District Judge and affirmed by the High Court that the appellants trespassed the property on 6-1-1968. The plea of adverse possession set up by the appellants has been negatived. The assertion that they have the title by adverse possession is found false because the learned District Judge and the High Court found that the trespass was for the first time on 6-1-1968 and the suit was filed on 4-7-1968. Therefore, the question of adverse possession does not arise. Under these circumstances, the decree granted by the appellate court and affirmed by the High Court is perfectly legal. It does not warrant any interference. The appeal is accordingly dismissed. No costs.

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