

CASE NO.:
Appeal (civil) 427 of 1999

PETITIONER:
Tej Narain and Anr.

RESPONDENT:
Shanti Swaroop Bohre and Anr.

DATE OF JUDGMENT: 28/09/2004

BENCH:
ASHOK BHAN & S.H. KAPADIA

JUDGMENT:
J U D G M E N T

BHAN, J.

Plaintiff-Baijnath since deceased now represented by his legal representatives, the appellants herein, filed the suit for declaration and possession of house known as "Gadaiya Wali Haveli" situated in the town of Bhind. Both the parties are closely related to each other and belong to the same family. The genealogy tree of the family is as under:

Mool Chand
(Died in Samvat 1940)

Sukhwasi Lal

Saligram
(died on 15.9.1949)

Govind Prasad
(Died Samvat 2002)

Baijnath-Plaintiff
(died on 4.2.1980)

Tej Narayan
(Both are legal representatives of the
Plaintiff)

Prayag Naryan

Kishan
Swaroop
(Defendant)

Shanti
Swaroop
(Defendant)

Jagdish
Swaroop
(Defendant)

On 25.2.1879 the original owner mortgaged the house to Mool Chand and his son Sukhwasi Lal. Mortgagor had filed a suit for redemption of the mortgage and a decree for redemption was passed but as he failed to pay the mortgage amount he lost his ownership right in the house and the house remained in the family of Mool Chand. The family was joint at that time.

It seems that near about 1928 a partition took place between Sukhwasi Lal and Saligram, predecessors-in-interest of the plaintiffs\026 appellants and defendants \026 respondents. The house in dispute came to the share of the predecessor of the appellant Saligram, but Govind Prasad \026 defendant took forcible possession of the same in the year 1928. Present suit for declaration of title and possession was filed in the year 1955 alleging therein that respondents took forcible possession of the house on 7.7.1949. Two questions arose for determination in the suit : (a) whether the plaintiffs have been able to prove their title over the disputed house; (b) whether the suit of the plaintiffs was barred by limitation in view of the fact that they were not in possession for more than 12 years since 10.7.1928. The courts below as well as the High Court have held that the plaintiffs were owners of the house but they have lost their title to the house as the defendants had perfected their title to the house by adverse possession. Defendants were found to be in possession since 10.7.1928 and the plaintiffs had lost their right to maintain the suit for recovery of possession by lapse of time.

The predecessor-in-interest of the appellant Saligram had filed a criminal case against Govind Prasad \026 defendant, now represented through his legal representatives, the respondents herein, which was got dismissed by him on 5.7.1929 as is evident from the certified copy of the application filed by Saligram (Exhibit D-1) on the record. In this application, it has been mentioned that Govind Prasad who had taken forcible possession of the disputed house on the intervention of some panchas had returned the possession to Saligram and therefore he did not want to pursue the criminal case and the same be dismissed. This application does not bear the signatures of Govind Prasad. There is nothing on record to suggest that Govind Prasad had entered into any such compromise with Saligram and returned back the possession to the appellants' predecessor at any point of time. This application simply discloses that Govind Prasad had taken forcible possession of the house in dispute and the alleged compromise in the application is not an evidence to prove that Govind Prasad had returned the possession. This application instead binds the appellants and their predecessor on the point that Govind Prasad had taken possession over the house in the year 1928 and the criminal case filed by Saligram was got dismissed by him by moving an application. There is no evidence on record to show that Govind Prasad had ever surrendered the possession of the house to Saligram or his successors at any point of time or that he had started living somewhere else. On the other hand, continuous living of Govind Prasad in the house is established by the documentary evidence as well as the oral evidence. The story put up by the appellants that the defendants had taken possession on 7.7.1949 is false. The courts below on appreciation of the evidence, oral as well as the documentary, have held that Govind Prasad and his successors remained in possession of the house ever since 1928 and the story put forth by the appellants and their predecessor that Govind Prasad had taken forcible possession of the suit property on 7.7.1949 was incorrect and false.

Besides this, documents Exhibits P-1 to P-9 indicate that a Criminal Case No. 330 of 1949 under Sections 440, 505 and 332 of IPC was instituted by Baij Nath on 8.7.1949 arraying the defendants as the accused. This case was decided on 30.4.1952. Defendants-respondents were acquitted of the charge with the observation that defendants \026 respondents had not dispossessed the appellant forcibly. This again shows that the defendant had not come in possession on 7.7.1949 as was projected by the plaintiffs \026 appellant in the plaint.

Govind Prasad had filed civil suit 1-A of 1950 for partition of

the joint Hindu family property in the year 1950 between the two branches. The suit was dismissed by Trial Court holding that the partition had already taken place between the parties. The family had ceased to be joint and were in possession of their respective shares. Counsel for the appellant argued that since the defendants themselves had, in their suit filed in the year 1950, taken the stand that the status of the family was joint, the question of their perfecting title to the house by adverse possession is untenable. We do not find any merit in this submission. In an appeal arising in the said suit, the High Court in its order in First Appeal No. 14 of 1960 dated 16.2.1964 (Exhibit P-11) held that the family had ceased to be joint and had separated. This finding of the court that the families had separated in the year 1928 and were in possession of the respective shares coupled with the fact that Saligram had admitted that Govind Prasad had taken forcible possession of the house in dispute in the year 1928 clearly establishes that Govind Prasad and his successors have been in continuous possession of the house since 1928 and the suit filed by the plaintiff-appellant in the year 1955 is clearly barred by limitation. The respondents have perfected their title by way of adverse possession.

Accordingly, judgment and decree passed by the courts below is affirmed and the appeal is dismissed with no order as to costs.