A

SOMNATH BARMAN

v.

DR. S. P. RAJU & ANR.

October 16, 1969

B [J. C. SHAH AND K. S. HEGDE, JJ.]

Specific Relief Act (1 *of* 1877), *s.* 9—*Suit for possession, filed more than* 6 *months after dispossession—Plaintiff's possession proved but not title—Whether plaintiff entitled to decree for possession.*

In a suit for possession of immovable property filed in 1949, it was
C found that the plaintiff had not established his title to the property, but it was proved that he was in possession from 1930 to 1945 and that the defendant trespassed on the property in 1946.

On the question whether a decree could be passed in plaintiff's favour,

HELD : Possessory title is a good title as against everybody other than the lawful owner. Therefore, in an action of ejectment against a
D wrong doer, prior possession of the plaintiff is sufficient title even if the suit was not brought within 6 months of dispossession as required by s. 9 of the Specific Relief Act, 1877. The wrongdoer (trespasser) cannot successfully resist the suit by showing that the title and right to possession are in a third person. [874 B-D]

Ismail Ariff v. *Mohamed Ghouse,* I.L.R. 20 I.A. 99, applied.

E *Narayana Row* v. *Dharmachar,* I.L.R. XXVI Mad. 514, *Krishnarav Yashwant and Ors.* v. *Vasudev Apaji Ghotikar (deceased) by l rs.* I.L.R. 8 Bom. 371, *Umrao Singh* v. *Ramji Das & Ors.* I.L.R. 36 All. 51, *Wali Ahmad Khan & Ors.* v. *Ajudhia Kandu* I.L.R. XIII All. 537, and *Subodh Gopal Bose* v. *Province of Bihar and Ors.* A.I.R. 1950 Pat. 222, approved.

F *Debi Churn Boldo* v. *Issur Chunder Manjee,* I.L.R. IX Cal. 39, *Ertaza Hossein & Anr.* v. *Bany Mistry* I.L.R. IX Cal. 130, *Purmeshur Chowdhry & Ors.* v. *Brijo Lal Chowdhry,* I.L.R. XVII Cal. 256 and *Nisa Chand Gaita and Ors.* v. *Kanchiram Bagani,* I.L.R. XXVI Cal. 579, overruled.

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 2342 of 1966

G Appeal from the judgment and decree dated October 8, 1963 of the Andhra Pradesh High Court in C.C.C. Appeal No. 47 of 1959.

H. R. Gokhale, K. R. Chaudhuri and *G. Kaushalya,* for the appellant.

M. C. Chagla, R. V. Pillai and *Subodh Markandya,* for res-
H pondent No. 1.

M. C. Bhandare and K. Rajendra Chaudhuri, for respondent No. 2.

The Judgment of the Court was delivered by

Hegde, J. This appeal has been brought by the 1st defendant in O.S. No. 210 of 1958 on the file of the 1st Additional Judge, City Civil Court, Hyderabad. That was a suit brought by the 1st respondent-plaintiff for possession of the suit property. That suit was dismissed by the trial court but in appeal the High Court of Andhra Pradesh reversed the decree of the trial court and decreed the plaintiff's suit for possession. Thereupon this appeal has been brought after obtaining a certificate under Art. 133(1)(a) of the Constitution.

The subject matter of the suit is a piece of land in Himayatnagar measuring 2856 sq. yards. The plaintiff's case is that he purchased this land from one Jamsheer Khan with other plots in the vicinity under two sale deeds marked Exhs. P-2 and P-3; thereafter he was in possession of the same. When he was in possession, the second defendant trespassed into the said property and took possession of the same, thereafter he illegally sold the same to the 1st defendant. The defendants denied the plaint allegations. They denied that the plaintiff had any title to the suit property or that he was in possession of the same at any time. On the other hand they pleaded that the second defendant who had acquired title to the suit property by adverse possession had sold the same to the 1st defendant in the year 1946.

The trial court came to the conclusion that the plaintiff has not established his title to the suit property. It also held that the plaintiff has not satisfactorily proved that he was in possession of the suit property at any time. In view of those findings it thought that it was not necessary to go into the defendants' plea of adverse possession. In the result it dismissed the plaintiff's suit. In appeal the High Court agreed with the trial court that the plaintiff has not proved his title to the suit properly. It rejected the plea of the defendants that they have perfected their title to the suit property by adverse possession. But differing from the trial court it came to the conclusion that the plaintiff was put into possession of the suit property by his vendor Jamsheer Khan Sahab in about the year 1930 and he was in possession of the same till about the year 1945, when the second defendant trespassed on the same and took possession of it.

In view of the concurrent finding reached by the trial court and the High Court that the plaintiff has not proved his title, that question was not reopened in this Court. The finding of the High Court that the defendants have not established their pleas of title by adverse possession was challenged though feebly. It was contended before us that the plaintiff who based his suit on

A title and prior possession having failed to establish his title, his suit has to fail. Further the finding of the High Court that the plaintiff was in possession of the said property between 1930 to 1945 was also assailed before us.

The appellant claims that he came into the possession of the
B suit property on the strength of the sale deed executed by the second defendant in his favour on 1-10-1946. The suit from which this appeal arises was initially instituted on the original side of the High Court of Hyderabad in the year 1949. Therefore to establish his claim of title by adverse possession, the 1st defendant must primarily depend on the fact that the second defendant
C was in possession of the suit property for a period of over nine years before he sold the same to him. Though the second defendant filed a written statement supporting the case of the 1st defendant and though he was present at the time of hearing on several occasions, he was not examined as a witness in this case to support the plea of adverse possession put forward by the
D defendants. No explanation is forthcoming for his non-examination. This circumstance goes a long way to discredit the defendant's plea of adverse possession. The 1st defendant's evidence as regards adverse possession is of very little significance as his knowledge of the suit property prior to the date he purchased the same is very little. The only other evidence relied on in support of the plea of adverse possession is that of D.W.2,
E Shambhu Prashad who claims to have taken the suit property on lease from the second defendant. The lease deed said to have been executed by him is marked as Exh.D/1. It is not explained how the 1st defendant came into possession of Exh.D/1. Though the suit was filed as far back as 1949, Exh.D/1 was produced into court for the first time in the year
F 1960. No explanation has been given for this inordinate delay in producing Exh.D/1, (an unregistered document) in court. According to D.W.2, the 1st defendant knew about this document as far back as 1950. Under these circumstances, the High Court was fully justified in rejecting the testimony of D.W.2 and not relying on Exh.D/1. The other evidence adduced by the
G 1st defendant relating to the plea of adverse possession was not commended for our acceptance. Therefore we need not consider the same. Hence we agree with the High Court that the defendants have failed to establish their plea of adverse possession.

Now coming to the evidence relating to the plaintiff's posses-
H sion of the suit property from the year 1930 to 1945, we have firstly the oral testimony of the plaintiff. The High Court has accepted the plaintiff's evidence as credit-worthy. The plaintiff is a responsible person. He held important offices both under the

State Government as well as under the United Nations. *Prima facie* his evidence is worthy of acceptance. This would be particularly so in view of the non-examination of the second defendant. The question before the trial court and the High Court was whether the plaintiff was in possession of the suit property between 1930 to 1945 or whether the second defendant was in possession of the same during that period? On this aspect, the evidence is really one sided. The evidence of the plaintiff that he came into possession of the suit property under Exhs.P-2 and P-3 is supported by the recitals in those documents. In considering the question whether Jamsheer Khan, the vendor under Exhs.P-2 and P-3, had put the plaintiff into possession of the suit property, the fact that Jamsheer Khan had no title to the same is not very material. There is no reason to think that the recitals contained in Exhs. P-2 and P-3 as to the delivery of possession are false recitals. There is documentary evidence to show that the plaintiff paid the "Nazul" for the properties purchased by him under Exhs. P-2 and P-3 after his purchase. It is true that those documents do not show how much 'Nazul' was paid in respect of the suit property but the second defendant has produced no documents to show that he had paid any 'Nazul' in respect of the suit property. Ex. P-4 is a stamped revenue receipt on a printed form executed in favour of the plaintiff by the Maqtadar on August 16, 1939 for Rs. 331/14/4 pies. It relates to the lands which belonged to Jamsheer Khan and situate at Narayanguda. Evidently that recital refers to the lands covered by Exts. P-2 and P-3. It recites that a sum of Rs. 331/14/4 Ps. was received from the plaintiff as 'Nazul' for the period from 15th Aban 1338 Fasli to the end of the Aban 1346 Fasli at the rate of Rs. 41/4/5 Ps. per year. The sale under Exhs. P-2 and P-3 was made in 1930. Evidently the 'Nazul' in respect of those properties was in arrears till 1939. The 'Nazul' due under Exhs. P-2 and P-3 comes to Rs. 41/- and odd per year as seen from Exh. P-6.

Ex. P-5 is a letter dated 11-12-1937 received by the plaintiff from Mr. J. D. M. Dean (P.W.2), First Divisional Engineer, Hyderabad City. It relates to the construction of a road from Musheerabad to Bashir Bagh. It states that under the Ferman dated 29th Shaban 56 Hijri, H.E.H. The Nizam was pleased to accord sanction to the acquisition of 20 per cent of the land without any compensation for the construction of road, from the owners of the land and that for the excess land required, compensation will be paid. That letter further mentions that total area of the land belonging to the plaintiff was 7,815 sq. yds. out of which 2,112 sq. yds. were required for the construction of the road. Out of that 1,563 sq. yds. being the 20 per cent of the

A entire area was to be taken without any compensation and the value of the remaining 549 sq. yds. will be paid to the plaintiff. That letter further informed the plaintiff that the value of the additional area which might finally be determined after the marking may be obtained from the department. It is established that road from Musheerabad to Bashir Bagh was laid not only across B the plot covered under P.3 but also across the site purchased under Ex. P-2 in which the suit land is situate. That was obvious because if the road did not touch any portion of Exh. P-2, the entire area of the land belonging to plaintiff would have been only 5,114 sq. yds. and not 7,815 sq. yds. as mentioned in Exh. P-5. It also establishes that the plaintiff was recognised by C the City Improvement Board as the person entitled to compensation in respect of that land. Evidence further discloses that the plaintiff was paid compensation in respect of the land taken from him in excess of 20 per cent referred to earlier. The oral evidence adduced in the case coupled with Exh. P.2, P.4 and P.5 satisfactorily establishes the fact that the plaintiff was in possession of the suit property till about 1945.

In addition to the evidence referred to earlier, the High Court has also relied on two other documents namely Exts. D-8 and D-9, but those documents were produced as additional evidence in the High Court. Their connection with the suit property is not satisfactorily established. Therefore we have excluded them E from consideration. If we bear in mind the fact that the question for decision is whether the plaintiff or the 2nd defendant was in possession of the suit property between the years 1930 to 1945, there is hardly any doubt that the preponderance of evidence is in favour of the plaintiff's case. As seen earlier, the defendants have not produced any reliable evidence to support their case. F Hence we agree with the High Court that the plaintiff has succeeded in establishing that he was in possession of the suit property prior to 1945.

It was next contended on behalf of the appellant that in a suit for possession brought on the basis of title, the plaintiff G cannot succeed unless he proves his title to the suit property as well as its possession within 12 years. According to the appellant, except in a suit under S. 9 of the Specific Relief Act, the plaintiff, for succeeding in the suit, has to prove both existing title to the suit property and its possession within 12 years. We are unable to accept this contention as correct. In our opinion the possession H of the plaintiff prior to 1945 is a good title against all but the true owner. The defendants who are mere trespassers cannot defeat the plaintiff's lawful possession by ousting him from the suit property. Possessory title is a good title as against everybody

other than the lawful owner. In *Ismail Ariff* v. *Mohamed Ghouse*(1), the Judicial Committee came to the conclusion that a person having possessory title can get a declaration that he was the owner of the land in suit and an injunction restraining the defendant from interfering with his possession. Therein it was observed that the possession of the plaintiff was a sufficient evidence of title as owner against the defendant.

In *Narayana Row* v. *Dharmachar*(2) a bench of the Madras High Court consisting of Bhashyam Ayyangar and Moore, JJ. held that possession is, under the Indian, as under the English law, good title against all but the true owner. Section 9 of the Specific Relief Act is in no way inconsistent with the position that as against a wrong doer, prior possession of the plaintiff, in an action of ejectment, is sufficient title, even if the suit be brought more than six months after the act of dispossession complained of and that the wrong-doer cannot successfully resist the suit by showing that the title and right to possession are in a third person. The same view was taken by the Bombay High Court in *Krishnarav Yashvant and Ors.* v. *Vasudev Apaji Ghotikar (deceased) by l.rs.*(3). That was also the view taken by the Allahabad High Court—see *Umrao Singh* v. *Ramji Das and Ors.*(4); *Wali Ahmad Khan and Ors.* v. *Ahjudhia Khandu*(5). In *Subodh Gopal Bose* v. *Province of Bihar and Ors.*(6) the Patna High Court adhered to the view taken by the Madras, Bombay and Allahabad High Courts. The contrary view taken by the Calcutta High Court in *Debi Churn Boldo* v. *Issur Chunder Manjee*(7), *Ertaza Hossein and Anr.* v. *Bany Mistry*(8) *Purem-eshur Chowdhry and Ors.* v. *Brijo Lall Chowdhry*(9) *and Nisa Chand Goita and Ors.* v. *Kanchiram Bagani* (10), in our opinion does not lay down the law correctly.

In the result this appeal fails and the same is dismissed with costs. We see no reason to accept any additional evidence in this Court. Hence C.M.P. No. 3588 of 1968 is dismissed; but no costs.

V.P.S. *Appeal dismissed.*

(1) I.L.R. 20 I.A. 99.
(2) ILR XXVI Mad. 514.
(3) ILR 8, Bom. 371.
(4) ILR 36 All. 51.
(5) ILR XIII All 537.
(6) AIR 1950 Pat. 222.
(7) ILR IX Cal. 39.
(8) ILR IX Cal. 130.
(9) ILR XVII Cal. 256.
(10) ILR XXVI Cal. 579.