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 Md. Sahood A

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Against the Judgment and Decree dated 28.05.1982 passed by IVth Addl. Subordinate Judge, Bhagalpur in Title suit No.289 of 1976.

.....Plaintiffs - appellants

Versus

.....defendants-Respondent/s

For the Appellant/s :- Mr. Ashutosh Jha, Advocate

For the Respondent No.1 series :- Mr. Sunil Kumar Singh, Advocate

For the Interveners :- Mr. Vikram Singh, Advocate

Dated : 7th day of July, 2015

PRESENT

CORAM : THE HON'BLE MR. JUSTICE MUNGESHWAR SAHOO

CAV J U D G M E N T

1. The original plaintiff, Md. Ashraf Ali Ansari, since deceased and substituted, had filed this First Appeal against the Judgment and Decree dated 28.05.1982 passed by the learned IVth Addl. Subordinate Judge, Bhagalpur in Title Suit No.289 of 1976 whereby the Court below dismissed the plaintiff's suit for declaration of title.



2. The plaintiffs filed the aforesaid suit for declaration of title over the suit property alleging that one Chethru Momin had acquired 22 bighas 7 kathas land from ex.landlord through settlement and executed a registered Kabuliyat on 03.09.1906. After settlement, he came in possession and died in the year 1921 leaving his son Abdul Gaffur, a daughter Sovia and his widow, Bibi Gunju. Thereafter, in the year 1933, a rent suit was filed by the landlord regarding the suit land wherein the landlord obtained a decree and in the execution case, the suit holding was sold which was purchased by landlord. Immediately, thereafter the heirs of Chethru Momin, i.e., his widow, Gunju and son and daughter who were the judgment debtor paid the entire dues on 5.10.1935. After payment of the dues, they continued in possession. The landlord never came in possession nor he took delivery of possession. Bibi Gunju died in the year 1942 leaving behind her son and daughter named above. Sovia also died in the year 1953-54 leaving behind her three heirs, namely, Ashraf Ansari, the plaintiff and the defendant No.16 and 17. Out of the above three heirs, only the plaintiff came in possession of the suit land and the two others relinquished their share in favour of the plaintiff. As such, the plaintiff is absolute owner.

3. The further case of the plaintiff is that at the time of vesting of Jamindari, Mahabir Singh and Mishri Chaudhary and Lal



Mohammad in collusion with Amla got a false return submitted in their names with respect to the suit land. Thereafter, the descendants of Mishri Chaudhary and Mahabir Singh and others initiated 144 Cr.P.C. proceeding without making heirs of Chethru Momin a party. A compromise was entered into in mutation proceeding wherein all the successors in interest of Chethru Momin admitted to have relinquished their interest in favour of plaintiff and, therefore, plaintiff's name was entered into in Register II in respect of 18 bighas 17 kathas 4 dhurs. The plaintiff is paying rent against the grant of rent receipts and had also sold 4 bighas to Bhola Sah and others by registered sale deed in the year 1975-76 and the purchasers are in possession. The remaining lands are in possession of the plaintiff.

4. The further case is that Narsingh Prasad Singh and others illegally executed three sale deeds on 01.01.1976 in favour of defendant-Ist-party, but the sale deeds are void and without consideration. The purchasers never came in possession. When the defendants threatened the plaintiff to dispossess, the plaintiff approached police and the police after enquiry submitted a report and then 144 Cr.P.C. proceeding was started but the Magistrate ignoring the report wrongly made the order absolute against the plaintiff by order dated 16.10.1976. The plaintiff had also acquired title by

adverse possession.

5. The defendants appeared and filed contesting written statement. Besides taking the plea of limitation and barred under Section 34 of Specific Relief Act and non-joinder of parties, mainly the defendants contended that in the execution case the landlord took delivery of possession of entire land measuring 22 bighas 7 kathas in the year 1933. He came in possession and then settled the entire land with three persons, namely, Mahabir Singh, Mishri Chaudhary and Lal Mohammad equally $\frac{1}{3}^{\text{rd}}$ each. There was 144 Cr.P.C. proceeding which was converted to a proceeding under Section 145 Cr.P.C. Ultimately, the lands in question was attached and remained as such for seven years and then it was decided in favour of the defendants on 29.07.1960. The ex.landlord filed return in the name of Mahabir Prasad Singh, Mishri Chaudhary and Lal Mohammad and accordingly Register II was prepared. In the year 1976, a certificate proceeding was initiated against Mahabir Singh for realization of rent and then the defendants purchased $\frac{1}{3}^{\text{rd}}$ share of Mahabir. One bigha 17 kathas 5 dhurs land of Mahabir Singh was also purchased on 01.01.1976 and then the defendants came in possession. The compromise alleged by the plaintiff is sham transaction and is not binding on the defendants. On these grounds, the defendants prayed

that the plaintiff's suit be dismissed.

6. On the basis of the aforesaid pleadings of the parties, the learned trial Court framed the following issues :-

- (i) Is the suit as framed maintainable?
- (ii) Has the plaintiffs any cause of action for the suit?
- (iii) Is the suit barred by limitation and waiver, acquiescence and estoppel?
- (iv) Is the suit bad for mis-joinder and non-joinder of necessary parties?
- (v) Is the suit hit by section 34 of Specific Relief Act?
- (vi) Is the suit under valued and Court fee paid in sufficient?
- (vii) Is the plaintiff full and absolute owner of suit property (schedule 11).
- (viii) To what relief, or reliefs, if any, is the plaintiff entitled?

7. After trial, the learned Court below dismissed the plaintiff's suit recording a finding that the plaintiffs failed to prove his title and possession, the plaintiff's suit is barred by law of limitation as in 145 Cr.P.C. proceeding, possession of the defendants was declared in the year 1960 whereas the suit has been filed only for declaration in the year 1976. The trial Court also recorded a finding that since the plaintiff had not prayed for further relief and is not in possession, the suit is barred under Section 34 of the Specific Relief Act.

8. The learned counsel, Mr. Ashutosh Jha, for the appellant submitted that the learned Court below has wrongly dismissed the



plaintiff's suit. According to the learned counsel, the heirs of Chethru Momin had deposited the entire dues, therefore, they continued in possession and the ex.landlord never took delivery of possession in the rent execution case. The plaintiff had produced the receipt showing deposit of the entire dues. If the plaintiff had already deposited the amount which was due to be paid then there is no reason as to why the landlord would have taken possession of the property which clearly shows that the landlord never took possession and the heirs of Chethru Momin continued in possession as owner of the suit property. The plaintiff had also sold 4 bighas of land in favour of another person and the purchaser is in possession of the sold property. This is clear proof of the fact that the plaintiff continued in possession and in exercise of his title and possession, he even sold 4 bighas of land which clearly proves the fact that the heirs of Chethru Momin continued in possession having good title on it.

9. The learned counsel further submitted that the plaintiff is not praying for any relief for recovery of possession as the plaintiff is in possession of the property. In such circumstances, the learned Court below has wrongly held that the plaintiff's suit is barred under Section 34 of Specific Relief Act.

10. The learned counsel further submitted that the 144 Cr.P.C.



proceeding was initiated in the year 1976, therefore, there is no question of barred by limitation arises. Moreover, whatever order was passed in the earlier case is concerned will not be binding as the present plaintiff was not party to earlier 145 Cr.P.C. proceeding and further a fresh proceeding under Section 144 was started in the year 1976. The learned counsel further submitted that the learned Court below had not properly appreciated the evidences adduced by the parties. On these grounds, the learned counsel submitted that the First Appeal be allowed and the plaintiff appellant's suit be decreed after setting aside the impugned Judgment and Decree.

11. On the other hand, the learned counsel, Mr. Sunil Kumar Singh, submitted that the return was submitted in the name of three persons. The return was produced before the competent authority and then on the basis of the return, the names of the defendants were entered in Register II. In fact after the decree of rent suit against the heirs of Chethru Momin, the landlord filed rent execution case wherein the property was sold and he took delivery of possession and then he settled the lands in favour of the defendants. A proceeding under Section 145 Cr.P.C. was initiated wherein the ancestor of the plaintiff was party. The dispute of possession was with respect to the suit property and the defendant's possession was declared by order dated 29.07.1960, therefore, in view of Article 47 of the Indian



Limitation Act, 1908, the period of limitation was only three years to recover the property comprised in the order passed under Section 145 Cr.P.C. Therefore, the Court below has rightly held that the suit filed by the plaintiff in the year 1976 is barred by law limitation. Further, the plaintiff had not prayed for any further relief in spite of the fact that the order of possession in 145 Cr.P.C. proceeding was against him. Therefore, the Court below has rightly held that the suit is barred under Section 34 of Specific Relief Act. The learned Court below discussing the evidences the documentary and oral evidences and then recorded the clear finding as such the findings cannot be interfered with lightly in this First Appeal. On these grounds, the learned counsel submitted that the First Appeal be dismissed with cost.

12. It appears that during the hearing of this First Appeal, an intervention application was filed by two persons, namely, Ramdeo Singh and Deo Narain Singh. Since I was hearing the First Appeal, I also heard the interveners in the matter. The interveners case is that they are the sons of late Badri Narain Singh who was brother of Mahabir Singh. Mahabir Singh was also settlee who continued in his possession and the interveners are now in possession of the property. The executive Court has rightly declared the possession under Section 145 Cr.P.C. Since the interveners are in possession, they have got



direct interest in the suit property. For the first time, when the interveners came to know that the lands of their share had been sold by son of Mahabir Singh in favor of defendant Ist party, they have filed the intervention application. The sale deed executed in favour of defendant at Ist party are illegal and the purchasers never came in possession. On these grounds, the learned counsel submitted that the interveners be added in appeal and the matter be remanded to the trial Court for a fresh decision.

13. A counter affidavit has been filed by the appellant objecting the prayer of the intervener. It is submitted that at this stage, the intervener cannot be added as party and the presence of the interveners are not at all necessary as they are not necessary party. Similar counter affidavit has been filed by the contesting respondents one series. I heard the parties on this interlocutory application.

14. In view of the above contentions of the parties, the following points arises for consideration in this First Appeal :-

- (i) Whether the interveners, i.e., the petitioners of I.A. No.3490 of 2015 are necessary party as such whether they are entitled to be added as party-respondent in this First Appeal.
- (ii) Whether the plaintiff is entitled to the relief of declaration of title with respect to the suit property and whether the

impugned Judgment and Decree is unsustainable in the eye of law.

15. Point No.(i) :- The interveners mainly contended that the property has wrongly been sold by Mahabir Singh his uncle even including the share of the intervener in favour of the defendant Ist party. In fact the interveners are the real owner and in possession of the property of their share. The sale deed is illegal sale deed. So far these allegations are concerned, there is nothing on record in support of these facts. According to the defendants, the properties were sold by Mahabir Singh who was one of the settlee. Now, therefore, this dispute raised by the intervener is dispute between defendants because if the intervener will be added, they will be defendant in the suit. In my opinion, therefore, the intersee dispute between the defendants cannot be decided in a suit filed by the plaintiff appellant. Order 1 Rule 10 CPC speaks about the jurisdiction of the Court and not the right of a party for being added as defendant. If the interveners are not necessary party and in absence of the interveners, if the dispute raised between the parties can be effectively decided by the Court, the Court should not add a person whose presence is not required for just decision of the case. Here, as stated above, the plaintiff approached the Court with a particular case which was denied by the defendants. This dispute is to be decided and the trial Court



has dealt with the controversy between the plaintiff and the contesting defendants. Now, these interveners are raising another controversy against the contesting defendants for which neither there is any pleading nor there is any evidence. In such circumstances, for the purpose of setting aside the Judgment and Decree, the intervener cannot be added as a party after such a long period. The suit is of the year 1976 and the application has been filed in this First Appeal in the year 2015, i.e., after 39 years. Further the dispute as to whether the plaintiff has got title or not can very well be decided in absence of these interveners because they are not saying anything against the plaintiff but are making allegation against the contesting defendant. In my opinion, therefore the interveners are not at all necessary party and accordingly, this intervention application, i.e., I.A. No.3490 of 2015 is hereby rejected.

16. Point No.(ii) :- The plaintiff has filed the suit for declaration of his title only. No further relief has been claimed. According to him in spite of the decree and in spite of the fact that ex.landlord purchased the land in rent execution, the heirs of Chethru Momin continued in possession as the owner. The ex.landlord never came in possession nor obtained delivery of possession. In support of the case, the plaintiff had produced ext.'1 series' which are the rent receipts granted by ex.landlord. Ext.'2' series are the rent receipts



granted by State of Bihar. Ext. '3' is the receipt showing deposit of the rent dues in the rent suit. Therefore, the fact that a rent suit was filed which was decreed and in rent execution case, the ex.landlord purchased the suit land has been admitted by the plaintiff. The witnesses examined by the plaintiff also speaks about the possession only. On the contrary, ext. 'E' has been produced by the defendant which is order dated 29.07.1960 passed in a proceeding under Section 145 of the Code of Criminal procedure. From perusal of this Ext. 'E', it is clear that the writ of delivery of possession was filed in the said proceeding showing that the ex.landlord actually took delivery of possession through the rent execution case. Admittedly, there is no suit or any proceeding initiated by the plaintiff for setting aside the decree or auction sale of rent execution case. Therefore, only because the amount was paid, there cannot be any presumption that the title which the landlord got after purchase and / or the possession which was delivered to the landlord automatically reverted or devolved on the persons who deposited the dues through ext. '3'. The other documents, i.e., ext. '4', '5', '6', '7' and '8' are not relevant for deciding the question of title of the plaintiff. So far rent receipts are concerned also, it is settled principle of law that it neither creates title nor extinguishes title. The defendants have also produced ext. C/1 to C/3 which are the registered sale deeds through which the contesting



defendants have purchased 7 bighas 9 kathas of land out of the suit land. The plaintiff never challenged these sale deeds. The settled principle of law is that a registered document is presumed to be valid unless the contrary is proved. The presumption is that the purchaser came in possession on the basis of the registered sale deed unless this presumption is rebutted by adducing sufficient and cogent evidence.

17. The defendants further have produced ext. 'C', the commissioner's report prepared in the 145 Cr.P.C. proceeding and ext. 'H', the sale proclamation. In view of this cogent and reliable evidence produced by the defendants on the basis of oral evidence of the plaintiff, P.W. '7' to '11', it cannot be said that the title and possession remain with the plaintiff. All the witnesses have only stated that the suit lands are in possession of the plaintiff. Such is the evidence of other witness, P.W.14, 17, 18, 19 and 20. P.W.22 is the plaintiff himself. Likewise the defendants have also examined witnesses, D.W.2 to 5, 7, 9 to 12 who has supported the possession of the defendants over the suit property. The most important document is ext. 'E' which has been discussed above. The 145 Cr.P.C. proceeding was initiated wherein the possession of the defendant's ancestor was declared as far back as on 29.07.1960. So far this order is concerned, it was submitted by the appellant that the plaintiff was not party. So far this submission is concerned, it may be stated that

Gaffur Momin was also a party in the said proceeding who is none else then the ancestor of the plaintiff. This fact is not denied. Now, therefore, the plaintiff's interest is same as that of Gaffur Momin who was party in the 145 Cr.P.C. proceeding.

18. Article 47 of the Limitation Act, 1908 read as under :-

“47. By any person bound by an order respecting the possession of immovable property made under the Code of Criminal Procedure, 1898 (V of 1898) or the Mamlatdars’ Courts Act, 1906 (Bom.II of 1906), or by any one claiming under such person, to recover the property comprised in such order.	Three years	The date of the final order in the case.”
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19. In view of this provision, the suit for possession of immovable property or declaration of title could have been filed within three years, i.e., within 28.07.1963. The predecessor in interest of the plaintiff Gaffur Momin did not file the suit within the aforesaid period.

20. Section 28 of the Limitation Act, 1908 reads as follows :-

“At the determination of the period hereby limited to any person for instituting a suit for possession of any property, his right to such property shall be extinguished.”



21. Now, therefore, since no suit was brought within the period prescribed under Article 47 of the Limitation Act, 1908, the right of the predecessor in interest of the plaintiff to the suit property extinguished after expiry of three years. The question is the right which was extinguished because of limitation can be survived, if the descended of Gaffur Miyan filed a suit after the expiry of the period. The answer will be 'No' because the plaintiff is claiming through Gaffur Miyan and he is not claiming independent title. In the present case, the suit has been filed in the year 1976. Since the new Limitation Act, i.e., Act No.36 of 1963 came into force on 01.01.1964 vide Notification No.So3118 dated 29th October, 1963, the provision of new Limitation Act, 1963 will not apply. The title with respect to the property which was extinguished in view of the aforesaid provisions of Limitation Act, 1908, therefore, will not survive.

22. In the present case, the plaintiff has also not prayed for confirmation of his possession nor any further relief has been claimed. Although, the possession of the other side had already been declared in the year 1960. The learned counsel for the appellant submitted that in the year 1976, another proceeding under Section 144 was started is concerned, in my opinion, it will not give rise a fresh cause of action under the new Limitation Act, 1963. In other words, the title which had already been extinguished cannot be revived by subsequent act of

the defendant or by subsequent amendment of the Limitation Act because prior to coming into force of the new Limitation Act, the title had already been extinguished. Since the possession had already been declared and the title had already been extinguished and the plaintiff had not claimed any further relief, his suit is also barred under Section 34 of the Specific Relief Act.

23. In view of my above discussion, I find that plaintiff appellant failed to prove his title and possession over the suit land. The findings of the Court below on this point is, therefore, confirmed. Point No.(ii) is answered against appellants.

24. In the result, I find no merit in this First Appeal. Accordingly, this First Appeal is dismissed. In the facts and circumstances of the case, there shall be no order as to cost.

(Mungeshwar Sahoo, J)

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