

IN THE HIGH COURT OF JUDICATURE AT PATNA

Second Appeal No.187 of 2014

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1. Chandra Shekhar Vishwakarma Son of Late Shiv Prasad
2. Samrathi Devi Wife of Late Shiv Prasad Both residents of Chhoti Keshopur
Nakki Nagar, Police Station Jamalpur, P.O. Jamalpur, District-Munger. **Appellants**
Versus

Janardan Sharma Son of Late Chandra Mistri Resident of Mohalla - Nakkinagar
Keshopur, Police Station Jamalpur, P.O. Jamalpur, District – Munger. **Respondent**

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Appearance :

For the Appellant/s : Mr. Harshwardhan Sahay, Adv
For the Respondent/s : Mr.

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CORAM: HONOURABLE MR. JUSTICE V. NATH

ORAL JUDGMENT

Date: 05-07-2016

Heard learned counsel appearing for the appellants.

2. The plaintiff filed the suit for recovery of possession on the basis of title. The plaintiff claimed to have obtained title for the suit property by registered sale deed on 04.08.1983. The defendants contested the claim of the plaintiff mainly on the ground that the suit of the plaintiff for recovery of possession was barred by limitation. Both the courts below have decided the said issue against the defendants. The suit was decreed and the appeal thereafter was dismissed by the impugned judgment and decree.

3. Mr. Sahay, learned counsel appearing for the appellants has strenuously submitted that the suit filed by the plaintiff was barred by limitation. It has been canvassed that since the possession of the defendant-appellant is admitted over the suit property, the same would be deemed to have become adverse from



the date of execution of the sale deed on 04.08.1983. The learned counsel for the appellants has propounded that it was for the plaintiff to establish his bonafide in not filing his suit within 12 years of the date of the sale deed, for recovery of possession and as the plaintiff has not so done, his right to recover possession over the suit property stands extinguished by virtue of Section 27 of the Limitation Act. No other submission has been made on behalf of the appellants.

4. After considering the submissions and perusal of the judgment of both the courts below, the factual expose' reveal that the plaintiff and defendants initially belonged to one family. The genealogy has been provided by the learned counsel for the appellants during the course of submission which shows that one Chandan Mistri had two sons namely Shiv Prasad Sharma and Janardan Sharma. The wife of Chandan Mistri was Akli Devi and wife of Shiv Prasad Sharma is Samarthi Devi who is appellant no. 2 (defendant in the suit). Appellant No. 1 Chandra Shekhar Viswakarma is the son of Shiv Prasad Sharma. The sale deed for the suit property admittedly stands in the name of Akli Devi.

5. From the perusal of the judgments and also during the course of submission on behalf of the appellants the fact has been accepted that a suit for partition was filed by these appellants being



Title Suit No. 68 of 1979 claiming their half share in the suit property. In that suit the present plaintiff-respondent Janardan Sharma as well as Shiv Prasad Sharma and Akli Devi were also parties. The said suit for partition was decreed granting the decree for half share in the suit property to the plaintiffs of that suit (appellants in this appeal). In appeal, however, the said decree for partition was set aside and the present appellants preferred Second Appeal No. 341 of 1992 against the judgment and decree passed by the appellate court below dismissing the suit for partition. However, this second appeal stood dismissed for default in the year 2007.

6. The plaintiff-respondent Janardan Sharma, who has claimed to have obtained a sale deed of the suit house on 04.08.1983 from Akli Devi, along with his brother Shiv Prasad Sharma filed the suit for recovery of possession on the basis of his title through the sale deed. The present appellants were impleaded as defendants in that suit. The suit was contested mainly on the ground that it was barred by limitation as the same was not filed within 12 years from the date of the sale deed i.e. 04.08.1983. It appears from the judgment of the appellate court below that in appeal the present appellants pressed the appeal only on the point of limitation. Both the courts below have held that the suit was not barred by limitation.

7. It is transparent from the above facts that the present



appellants as plaintiffs in the suit for partition had accepted their joint title and possession over the suit premises with the present plaintiff-respondent and other defendants of that suit and on that basis they had claimed a decree for partition of their share. It is nowhere the case of the present appellants that during the pendency of the said suit and up-till the stage of Second Appeal No. 341 of 1992 the present appellants had ever asserted their exclusive possession over the suit property much less their hostile possession. The fact of filing of second appeal before this Court by the present appellants also clearly demonstrates that the present appellants were pursuing their claim made in the Title Suit No. 68 of 1979 for partition accepting it to be joint property. The provision under Article 65 of the Limitation Act prescribes limitation of 12 years for a suit for possession on the basis of title and the starting point of the said period of limitation is the date on which the possession of the defendant becomes adverse. It is well settled that so long the possession of a person over a property is asserted on the basis of title which may be joint or otherwise, the same will not take the nature of adverse possession. The defendant, therefore, in a suit for recovery of possession on the basis of title will have to clearly plead and prove his hostile possession over the suit property for the prescribed period in order to secure dismissal of such suit filed by



the plaintiff on the ground of limitation. The principle of law in this regard has been clearly noticed in all its amplifications by the Apex Court in the case of ***Karnataka Board of Wakf vs Government of India & Ors 2004 (3) PLJR S.C. 245*** laying down in particular that a defendant who claims adverse possession must have the element of *animus possidendi* in his favour. Tested on the anvil of the dictum of the Apex Court as above, it is more than apparent from the facts of this case that even though the sale deed which is the basis of the title of the plaintiff-respondent over the suit property has been obtained during the pendency of the suit for partition filed by the present appellants but the present appellants never asserted their hostile title over the suit property rather in that suit or even in this suit also they have continued to question the legality and validity of the said sale deed which clearly leads to the inevitable inference that the present appellants have never accepted the plaintiff to be the real owner of the suit property. The element of *animus possidendi* is, thus, demonstrably absent.

8. Mr. Sahay the learned counsel for the appellants has strongly relied upon a decision in the case of ***Rajendra Singh and Ors vs Santa Singh and Ors AIR 1973 S.C. 2537*** in support of his submission that both the courts below have erred in law in coming to the conclusion that the pendency of the suit will not stop running



of the limitation. In this decision their Lordships have taken into notice the inter play between the provision of *lis pendens* and limitation and thereafter have ruled that *lis pendens* will not arrest the running of limitation. However, it has nowhere has been laid down in the decision that the party who claims adverse possession over the property is under no obligation to establish before the court that he has been asserting his hostile possession over the suit property to the knowledge of the real owner. The said decision apparently has been rendered in an entirely different setting of facts. In the present case, this Court does not find that the defendant-appellants have succeeded in establishing their claim of adverse possession over the suit property and both the courts below have decided the said issue rightly against the appellants.

9. As no perversity or unreasonableness in the findings by both the courts below could be shown or established on behalf of the appellants, this Court does not find any substantial question of law arising for consideration in this appeal, which is accordingly, dismissed.

(V. Nath, J)

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AFR/NAFR	NAFR
CAV DATE	
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