

IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION

Civil Appeal No. 6801 of 2010

Murti Shri Durga Bhawani (Hetuwali)
Trust & Anr. ...Appellants
Versus

Sh. Diwan Chand (Dead) through
LRs & Ors. ...Respondents

WITH

CIVIL APPEAL NO. 6802 OF 2010

CIVIL APPEAL NO. 6803 OF 2010

CIVIL APPEAL NO. 6804 OF 2010

JUDGMENT

Rajesh Bindal, J.

1. The plaintiffs are before this Court impugning the orders passed by the High Court in the Regular Second Appeal Nos. 2306 & 2307 of 1997, which upheld the judgments and decrees of the Lower Appellate Court, reversing that of the Trial Court in Suit Nos. 273 and 274 of 1989. The appeals filed by the appellants were dismissed. The orders dated 5.4.2010 passed in Review Application Nos. RA-RS-25C & 26-C of 2010 against the aforesaid appeals are also under challenge.

2. The case has a chequered history. However, the facts leading to the present appeals are being noticed from Civil Appeal No. 6801/2010. However, wherever required, the previous litigation pertaining to the said property shall be referred to.

3. The appellant is a registered Charitable Trust, which is the owner of the land forming part of Khasra No. 4833. A suit was filed by the appellant on 26.5.1982 for possession. It was alleged that the land was encroached upon by the respondents/defendants. The suit was contested by the respondents/defendants raising objection that the appellants/plaintiffs are not the owners of the property in dispute; they have no locus to file the suit; the defendants are in possession of the property for more than 34 years and running their business; and the suit property is not part of Khasra No. 4833. It was also pleaded that they had become owners of the suit property by way of adverse possession.

4. The suit was decreed by the trial court vide judgment dated 28.2.1991. The respondents/defendants were ordered to be ejected from the suit property. Appeal filed by the respondents/defendants, was accepted by the learned Additional District Judge. The judgment and decree of the Trial Court was set aside primarily on the ground that they had failed to prove their title to the property.

5. The judgment and decree of the lower appellate court was upheld by the High Court in appeal vide order dated 13.10. 2009 and the Review Application was also dismissed on 5.4.2010.

6. Mr. Neeraj Jain, learned senior counsel appearing for the appellants submitted that the trial court, while appreciating the evidence, had rightly decreed the suit. However, on a misreading of the evidence, the first appellate court had reversed those findings. High Court also fell in error in upholding the judgment of the Lower Appellate Court. He further submitted that before the Trial Court, during the course of arguments, learned counsel appearing for the respondents/defendants had categorically admitted that the disputed site is part of Khasra No. 4833. In fact, plea of adverse possession could be raised only if the ownership of property is not in dispute. The High Court also recorded a categorical finding that Khasra No. 4833 belongs to the appellants. However, the relief was denied to the appellants only on the ground that the identity of the property was in dispute. The High Court was of the opinion that it is not forming part of Khasra No. 4833. The finding of the High Court that Khasra No. 4833 is owned by the appellants/plaintiffs has not been challenged by the respondents.

7. He further submitted that an application was filed by the Respondents on 2.8.1993 before the Tehsildar-cum-Assistant Collector, 2nd Grade, Karnal for correction of Khasra Girdawari from Rabi 1990 onwards. A categorical admission was made by the respondents therein that the area in possession of the respondents was part of Khasra No. 4833 and they are in possession thereof, which is evident from Jamabandi for the year 1994-95. The report of the Local Commissioner, submitted in a different litigation i.e. Civil Suit No. 371 of 1981, which was relied upon by the Lower Appellate Court (Ex. D-16), was without ascertaining any pucca points. He further referred to document at page 97 of the paper book whereby the respondents submitted building plans to the Municipal Committee for the property in dispute specifically mentioning that it is part of Khasra No. 4833. With the aforesaid material on record, the findings recorded by the lower appellate court as well as the High Court that identity of the property was in dispute, are totally perverse, as it was the admitted case of the respondents themselves that property in their possession was part of Khasra No. 4833.

8. It was also argued that earlier the respondents, namely, Sunder Dass and Gopal Singh had filed Civil Suit No. 371 of 1981 on 29.05.1975 for permanent injunction restraining Bhagwat Sarup, Anand Sarup and Pt. Har Sarup from dispossessing them from the suit property and the plea of adverse possession was also raised. As far as the plea of adverse possession is concerned, the findings were against the present respondents/the plaintiffs therein whereas decree of permanent injunction was passed on account of long possession of respondents holding that they cannot be

dispossessed except in due course of law. It was with reference to the same suit property. The suit was partly decreed on 30.09.1981.

9. On the other hand, Sh.Sanjay Parikh, learned senior counsel appearing for the respondents submitted that it is too late for the appellants to raise all the factual issues before this Court. There is concurrent finding of facts recorded by both the courts below in favour of the respondents and there is nothing on record to dislodge that finding. The respondents are unnecessarily being dragged in litigation. The report of the Local Commissioner dated 2.12.1978, already on record, clearly points out that the premises in possession of the respondents is not part of Khasra No. 4833, rather it is 434 feet beyond that. New issues are sought to be raised before this Court, which cannot be permitted. The respondents are in possession of the property for the last more than 34 years. In fact, even in the appeal before the High Court, no substantial question of law was framed and there is no legal issue as such, which requires determination by this Court.

10. We have heard learned counsel for the parties and perused the relevant material on record.

11. From the judgments on record it is evident that a judgment and decree dated 30.7.1965 was passed in favour of the predecessors in interest of the appellants in Harsarup vs. Municipal Committee by Sub Judge, Karnal. (Suit No. 292 of 1962).

12. The appellant filed a petition for execution of the aforesaid decree against the Municipal Committee for the 2 disputed property in the year 1974. The predecessor-in-interest of the respondents were also impleaded as respondents in the Execution Petition as they were obstructing the execution of decree and trying to raise construction thereon.

13. A Local Commissioner was appointed in the aforesaid execution proceedings, who after visiting the site, submitted his report on 19.1.1975 before the Court. In the report, he stated that the shops in question constructed by the respondents are built on Khasra No. 4833. Nothing was pointed out from record about the status of the aforesaid execution proceedings.

14. As has been noticed by the Lower Appellate Court in judgment dated 16.1.1997 that during the course of proceedings in the aforesaid Execution Petition, the respondents were allowed to raise construction on an undertaking given by their predecessor-in-interest that in case they lose, they will not claim any compensation.

15. During the pendency of the aforesaid execution petition, the predecessor-in-interest of the respondents filed a suit bearing No. 371/1981 against Bhagwat Sarup, Trustee of the appellant Trust. In the said suit, two main issues were framed, namely, whether the plaintiffs therein had become owners of the property by way of adverse possession and the second was as to whether the plaintiffs are bound by the decree in Suit No. 292 of 1962, Harsarup vs. Municipal Committee, Karnal. The mere fact that the predecessor-in-interest of the respondents had filed the suit claiming ownership of the property on the basis of adverse possession, pre-supposes

that the ownership of the appellants on the suit property was admitted. In any case, the issue regarding the predecessor-in-interest of the respondents having become owner of the property in dispute by way of adverse possession was decided against the plaintiffs therein. It was specifically held that the plaintiffs in the aforesaid suit had failed to prove their adverse possession. Finally, the plaintiffs therein partly succeeded as only a decree of permanent injunction was passed in their favour restraining the defendants therein from interfering in their possession except in due course of law on 30.09.1981. In the aforesaid suit Sadar Kanoongo was appointed as Local Commissioner. He had given his report on 02.12.1978 stating that property in possession of the respondents was 434 feet away from Nala. The report did not even mention about Khasra No.4833. No pucca points were mentioned. It was as vague as possible. The decree attained finality.

PRESENT LITIGATION

16. The Trust filed a Civil Suit No. 273 of 1989 on 26.5.1982 for possession. The main reliance of the respondents was on the report of the Local Commissioner submitted in earlier Suit No. 371/1981 filed by the respondents. A perusal of the report of the Local Commissioner dated 2.12.1978 shows that the pucca points were not ascertained before carrying out the measurements. In the above said report, where Kanoongo was the Local Commissioner, the finding was given that the property in dispute was located 434 ft. beyond naala. The site plan was also annexed with the report in which except showing the road and a naala, no khasra numbers were mentioned to identify the property properly. The fact that there was already a report of Local Commissioner dated 19.1.1975 pertaining to the same property, was not even referred to. This was a report by the Local Commissioner appointed in the Execution Proceedings filed by the predecessor-in-interest of the appellant, in which predecessor- in-interest of the respondents were also party. This report inspires confidence as before carrying demarcation of the property pucca points were marked and specific khasra no.4833 was measured. Proper plan is also annexed with the aforesaid report.

17. The stand taken by the defendants in the present suit was that they are in possession for the last 34 years. The suit property is not part of Khasra No. 4833 and further that they had become owners of the property by way of adverse possession. The suit was finally decreed in favour of the appellants. In para 13 of the judgment, the trial court recorded the statement made by the learned counsel appearing for the defendants that the suit property is part of Khasra No. 4833. The same reads as under :-

"13. During the course of arguments, Sh.T.P.S. Bedi, Advocate has conceded this fact that the disputed site is part of Khasra No. 4833. No doubt, he has at one stage argued that the identity of the property is not established but since he has conceded this fact that the disputed site is part of Khasra No. 4833 there is no necessity to look into the evidence that it is not within Khasra No. 4833."

18. As far as the plea raised by the defendants therein regarding they becoming the owner of the property by way of adverse possession, the finding was that in the earlier litigation, the defendants had already lost on that ground alone (Ref. Suit No. 371/1981). The aforesaid two facts clearly established the identity of the property.

19. Another fact which clearly establishes that it was the admitted case of the respondents herein that the property in dispute is part of Khasra No. 4833 is evident from an application filed by the predecessor-in-interest of the respondents before the Tehsildar-cum-Assistant Collector on 2.8.1993 seeking correction of Khasra Girdawari, wherein it was claimed that the applicants were the owners in possession of the shops since 1950 and the same was part of Khasra No. 4833. The Assistant Collector, Second Grade, Karnal, vide order dated 17.2.1994 directed for correction of Khasra Girdawari holding that the applicants therein/predecessor-in-interest of the respondents were in possession of part of Khasra No. 4833.

20. Aggrieved against the judgment and decree of the trial court dated 28.2.1991, the predecessor-in-interest of the respondents filed appeal. The same was allowed by the learned ADJ vide judgment and decree dated 16.1.1997. In para 14 of the judgment, while referring to Suit No. 292 of 1962, the opinion expressed by the First Appellate Court was that the appellants were co-owners of Khasra No. 4833. However, relying upon the report of the Local Commissioner dated 2.12.1978, it was opined that the suit property being different and the present appellants not being the owners thereof, they are not entitled to any relief.

21. The appellants challenged the judgment and decree of the lower appellate court by filing RSA No. 2306/1997 before the High Court of Punjab and Haryana. Even in the order passed by the High Court dismissing the appeal, it has been specifically recorded that undisputedly, the appellants are the owners of Khasra No. 4833. Still referring to the report of the Local Commissioner dated 2.12.1978, the appellants were held not to be entitled to any relief. Even the Review Application filed against the aforesaid judgment was dismissed.

22. It is evident from the facts, which have come on record in the present litigation, that the appellants have been admitted to be owner of the property being Khasra No. 4833. This finding has even been recorded in the impugned order passed by the High Court dismissing the Second Appeal. There is no challenge to the aforesaid finding recorded by the High Court by the respondents. In fact, they could not as there was admission of the respondents to that effect before the Trial Court as well.

23. The only issue on which the appellants have been non-suited is that the respondents are not in possession of any part of Khasra No. 4833 as the property in their possession is different. However, on that issue as well, the findings recorded by the lower Appellate Court as well as the High Court are perverse if considered in the light of two material documents which are in the form of admission of respondents themselves regarding the identity of the property in their possession. First being the statement of the counsel for the respondents made before the Trial court as has been noticed in para no. 17 above and second is the application filed by the respondents before the Tehsildar-cum-Assistant Collector for correction of Khasra

Girdawari specifically admitting that they are in possession of part of Khasra No. 4833. In addition to that, there is a report of the local Commissioner dated 19.1.1975 submitted by the Naib Tehsildar. It was in the execution petition filed by the predecessor-in-interest of the appellants of the decree passed in his favour in Harsarup vs. Municipal Committee by the Sub Judge, Karnal. Still further the plea of the respondents about adverse possession pre-supposes ownership of the specific property of the appellants, which is claimed to be in possession of the respondents.

24. For the reasons mentioned above, the order passed by the High Court dismissing the review applications and appeals filed by the appellants and the judgments and decrees of the Lower Appellate Court cannot be legally sustained and the same are set aside and the appeals are allowed. The judgments and decrees passed in Suit Nos. 273 and 274 of 1989 by the trial court are restored.

25. The decree sheet be prepared.

_____, J.

(Abhay S. Oka)

_____, J.

(Rajesh Bindal)

New Delhi

11.04. 2023.