

HIGH COURT OF MADHYA PRADESH: JABALPURSINGLE BENCH:HON. SHRI JUSTICE A.K. SHRIVASTAVASECOND APPEAL NO. 259/1994

..... Appellant : Raghuvars Brahmin,
son of Shri Ramgarib Brahmin,
aged about 26 years, resident
of village Bilonhi Kumran,
Tehsil Hanumana, District
Rewa, M.P.

Versus

..... Respondents : 1. Brijendra Bahadur Singh
Plaintiffs son of Shri Kamal Bhan Singh,
aged about 25 years, resident
of village Bilonhi, Tehsil
Hanumana, District Rewa,
M.P.

2. Smt. Deokali, widow of
Kamalbhan Singh, aged about
56 years, resident of Village
Bilonhi, Tehsil Hanumana,
District Rewa, M.P.

..... Defendant : State of M.P. through
Collector, Revenue, District
Rewa, M.P.

.....
Appellant - Shri Mrigendra Singh and
Gagandeep Singh, Advocate.

Respondent No.1 & 2 - Shri K.S. Jha,
Advocate

Respondent No.3/State - Shri Anand Nema,
(formal party) Government Advocate.

J U D G M E N T

(26/04/2011)

1. This second appeal is filed at the instance of defendant against the impugned judgment and decree passed by learned First Appellate Court decreeing the suit of the plaintiffs/respondents and thereby reversing the judgment and decree passed by the learned Trial Court dismissing their suit.

2. The facts necessary for disposal of this second appeal lie in narrow compass. A suit for declaration of Bhoomi-swami rights having possession; cancellation of the order of mutation passed in favour of the respondents has been filed by the plaintiffs. According to the plaint averments, the suit land is owned by the father of the plaintiff no.1 and the husband of plaintiff no.2. However, the defendant/appellant illegally got his name mutated in the revenue record. According to the plaintiffs, they are in possession of the suit property and hence suit for declaration that they are the Bhoomi-swami having title and possession on the suit property with a further relief that mutation order passed in favour of the appellant/defendant be declared null and void.

3. In the Trial Court, defendant/appellant did not appear as a result of which the Trial Court proceeded *ex parte* against him. In the *ex parte* proceedings, the plaintiffs were

examined. The learned Trial Court, however dismissed the suit of the plaintiffs as a result of which they filed First Appeal before learned First Appellate Court which has been allowed and the suit has been decreed.

4. In this manner, this second appeal has been filed by the defendant no.1/appellant.

5. This Court on 02.09.1994 has admitted this Second Appeal on the following substantial question of law:-

“Whether, the appellant has perfected title by virtue of adverse possession?”

6. It has been put forth by learned counsel for the appellant that on the basis of adverse possession he has perfected the title on the suit property. However, Shri Jha, learned counsel appearing for the respondents/plaintiffs argued in support of the impugned judgment and submitted that defendant did not appear in the Trial Court despite he was served as a result of which he was proceeded *ex parte*. Since he was *ex parte*, no written statement was filed by him and since no written statement was filed by the defendant it cannot be said that he has acquired Bhoomi-swami rights by way of adverse possession. In support of

his contention, Shri Jha, learned counsel has placed heavy reliance on the judgment of the Supreme Court in **S.M. Karim Vs. Mst. Bibi Sakina, AIR 1964 SC 1254U (para 5).**

7. Having heard learned counsel for the parties, I am of the view that this appeal deserves to be dismissed.

Regarding substantial question of law framed:-

8. In order to establish the title on the basis of adverse possession, a party who is claiming right on its basis is admitting the ownership of the other party. Thus, admittedly, the appellant is admitting the ownership (Bhoomi-swami rights) of the plaintiffs on the suit property. The question now would rest on the point whether defendant/appellant had perfected Bhoomi-swami right by way of adverse possession. In order to prove this plea, first of all there should be a pleading that defendant is possessing the suit property as owner for a continuous period of 12 years or more in the knowledge of the plaintiffs without any interruption. The plea of adverse possession is also required to be proved by placing cogent evidence. Since there is no written statement, it cannot be said that defendant has raised the plea of adverse possession that he had perfected Bhoomi-swami right on the suit property

by adverse possession. Further, since the defendant remained *ex parte* and did not file written statement and had not adduced any evidence, neither there is a plea of adverse possession nor the same is proved by him.

9. Thus, the substantial question of law is answered against the defendant/appellant and it is hereby held that he has not perfected Bhoomi Swami right by way of adverse possession in the suit property.

10. Resultantly this appeal fails and is hereby dismissed with costs. Counsel fee Rs.2000/-, if pre-certified.

(A.K. SHRIVASTAVA)
JUDGE

rao

Second Appeal No. 259/199426.04.2011

Shri Mrigendra Singh and Shri Gagandeep Singh,
learned counsel for the appellant.

Shri K.S. Jha, learned counsel for the respondents
no. 1 and 2.

Shri Anand Nema, learned Government Advocate for
respondent no.3/State of M.P. (formal party).

They are heard.

Order dictated. Signed and dated separately.

(A.K. SHRIVASTAVA)
JUDGE

rao