



THE HIGH COURT OF SIKKIM : GANGTOK
(Civil Appellate Jurisdiction)

S.B. : HON'BLE MR. JUSTICE S. K. AGNIHOTRI , JUDGE

R.F.A. No. 12 of 2014

- Appellants:**
- 1. State of Sikkim,
through the Chief Secretary,
Government of Sikkim,
Gangtok, East Sikkim.
 - 2. The Secretary,
Land Revenue Department,
Government of Sikkim,
Gangtok.
 - 3. The Secretary,
Department of Industries,
Government of Sikkim,
Gangtok.
 - 4. The Secretary,
P.W.D. (Building),
Government of Sikkim,
Gangtok.
 - 5. The Director,
Department of Handicrafts & Handloom,
Government of Sikkim,
Gangtok.
 - 6. The District Collector,
Office of the District Collectorate,
Gangtok, East Sikkim.

versus

Respondent: Shri Dilli Prasad Sharma,
Son of Late Karna Prasad Sharma,
Resident of Sichey Busty,
P.O. Sichey and P.S. Gangtok,
East Sikkim.



An appeal under Order XLI Rules 1 and 2 Read with
Section 151 of the Code of Civil Procedure, 1908.

Appearance:

Mr. J. B. Pradhan, Additional Advocate General with
Mrs. Pollin Rai, Assistant Government Advocate and Mr.
D. K. Siwakoti, Advocate for the State-Appellants.

Mr. Ashok Pradhan, Legal Retainer, DDHH, State
Appellant No.5.

Mr. B. Sharma, Senior Advocate with Mr. Bhola Nath
Sharma, Advocates for the Respondent.

J U D G M E N T

(8th June, 2016)

S. K. Agnihotri, J.

1. The instant first Appeal emanates from the
judgment and decree dated 27.08.2013 rendered in Title
Suit No. 22 of 2010 filed by the Respondent herein.

2. The parties are referred herein as per their
litigative status in the suit before the Court below.

3. The brief facts as projected by the plaintiff are
that his grandfather, namely, late Shyam Lall, Sharma
being the absolute owner of plot number 40 and 41
measuring 0.54 acre and 0.32 acre respectively, situated



at Pioneer Reserve Block, Development Area, Gangtok, East Sikkim, (hereinafter referred to as the "suit land") constructed two storied G.C.I. roofing house and resided therein until his death, in the year 1977.

4. The father of the plaintiff, namely, late Karna Prasad Sharma, predeceased his father late Shyam Lal Sharma, in the year 1970. The grandfather of the plaintiff had two sons, one, father of the plaintiff and, other late Bishnu Prasad Sharma, who died childless. The plaintiff in succession became the absolute owner of the aforestated suit land. The plaintiff's sisters namely, Purnima, Jasodha and Narmada are settled in marriage, not claiming any share in the property.

5. It was further stated that long time back with the permission of his grandfather, the Public Works Department (PWD), the defendant No.4 (4th Appellant herein) constructed some official quarters temporarily, with understanding that the same would be vacated as and when required by the land owner. There was a further understanding between the grandfather of the plaintiff and the officials of the PWD that some contract work in and around Gangtok Block would be given to his family members in lieu thereof.



6. It was also agreed upon that in the event the said temporary structure are kept for a longer period, the plaintiff and his predecessor in title would be provided with alternative land. It is further case of the plaintiff that the plaintiff has been enjoying possession the remaining land for the purpose of fodders and grasses.

7. It is next stated that the said two storied house collapsed on account of non-maintenance. The family member left the premises after death of the plaintiff's grandfather and shifted to old house at Sichey, Gangtok. However, the plaintiff erected one temporary structure in the year 2009 with the help of old remnants of the house which was dismantled by the defendant No.6 unauthorizedly and necessitated filing of the present suit, seeking a declaration of ownership and title of the suit land and also possession of the same with the structures thereon.

8. The plaintiff further sought a declaration to the effect that the plaintiff is entitled to mutation of the suit land in his name in the revenue records and also a decree for permanent injunction restraining the defendants/appellants herein, their officials, agents,



representatives from interfering with the possession and ownership of the plaintiff and also the restoration of the house (shed) illegally demolished by the defendant No.6.

9. The 4th defendant in its written statement has denied the ownership of the grandfather of the plaintiff on the suit land stating therein that the possession of the suit land was with the Directorate of Handloom and Handicrafts since time immemorial and the official quarters were constructed, thereon. The land was recorded as "SARKAR land" in the land records maintained by the Government of Sikkim.

10. It was further stated that no land records are available as all the records in the office had been gutted in fire in the year 1991. The Government quarters were repaired and constructed long time back in the year 1973, neither the grandfather namely late Shyam Lal Sharma nor his legal heirs including the plaintiff had ever objected the construction of government quarters. The compound wall on the said land was made in the year 1950, repaired and renovated, thereafter in the year 1973.



11. The 5th defendant reiterated the same in its written statement further stating that the Government of Sikkim was in exclusive possession and physical enjoyment of the suit land for more than 40 years. Accordingly the land was recorded as "SARKAR land". It was also stated that there was no understanding between the PWD and late Shyam Lall Sharma, for allotment of alternative land. The PWD was in possession uninterruptedly without any objection till the year 2008.

12. The 6th defendant has also filed a written statement taking slightly different view that the except recording of the name of late Shyam Lall Sharma in the records of 1950 as owner of the suit land for the past 40 years, the suit land was in physical possession of the 5th defendant which was known as "Palden Thondup Cottage Industries", and as such the land was rightly recorded as "SARKAR land".

13. It is further stated that late Shyam Lall Sharma has apparently abandoned his ownership for the last 40 years and as such his legal heirs i.e, the plaintiff, is not entitled to any right, title and ownership over the suit land. The survey record for 1978-80 also clearly



indicates that the 5th defendant was in exclusive physical possession and enjoyment of the land.

14. On the basis of the pleadings, the Learned District Judge framed the following issues for consideration: -

“(1) Whether Late Shyam Lall Sharma (Brahmin) is the recorded owner of the suit property as per the old land record of 1950-51 and whether the plaintiff, being his grandson is entitled to inherit the same as per the provision of law?

(2) Whether the suit land is recorded in the name of SARKAR or not?

(3) Whether the defendant No.5 is in exclusive physical possession of the suit land without objection from anybody for more than 40 years or not?

(4) Whether the plaintiff has trespassed into the suit land and have tried to illegally construct a temporary shed or not?

(5) Whether the grandfather, father and the plaintiff have alienated the suit property to the Government at any point of time. If so, whether they have been compensated for the same?

(6) Whether there is any interpolation in the record of rights of suit land or not?

(7) Whether the suit is barred by law of limitation?

(8) Whether the plaintiff is entitled to any relief or reliefs?”

15. The issue No.1 was held in favour of the plaintiff, holding as under: -

“.....Late Shyam Lall Sharma (Brahmin) is the recorded owner of the suit property as per the old land record of 1950-51. It follows that the plaintiff, being



the grandson of Late Shyam Lal Sharma (Brahmin) is entitled to inherit the same as per the provision of law."

16. The issue in respect of recording of the name of "SARKAR" in the land records was decided in favour of the plaintiff holding that it was an interpolation in the land records. On the issue of the exclusive physical possession of the suit land, it was held that the 5th defendant was in exclusive possession of the suit land for more than 40 years.

17. On the issue of limitation, the Learned District Judge came to a categorical conclusion that the 5th defendant has not matured his title over the suit land by virtue of its possession. It was further held that the plaintiff had not constructed the temporary shed illegally by allegedly trespassing into the suit land. The next finding is that neither late Shyam Lal Sharma nor father late Karna Prasad Sharma, have at any point of time, alienated the suit land to the government and also no compensation for the same was paid to them.

18. The alleged understanding to construct temporary quarters by the P.W.D. Department and also to provide contract work to the family was also not held as proved.



19. The suit was accordingly decreed in favour of the plaintiff.

20. Assailing the impugned judgment and decree, the Learned Additional Advocate General would contend that the 5th defendant was in exclusive physical possession of the suit land for almost 40 years which was accordingly recorded as "SARKAR land" in the Khasra maintained by the 6th defendant. It is further contended that the land records, namely, Khatian Parcha of 1951-52 (Exhibit-1) and the map pertaining to the survey operation (Exhibit-4) are insignificant as the same ceased to become operative by virtue of the State Government Notification No.6 dated 04.02.1984.

21. Mr. Pradhan would next contend that the Directorate of Handicrafts and Handlooms, being in exclusive possession of the suit land had constructed a compound wall without any objection from anyone including the plaintiff. Lastly, it is contended that the Learned District Judge had misinterpreted and misapplied the ratio laid down by the Supreme Court in ***State of Haryana vs. Mukesh Kumar and Others***¹.

1. (2011) 10 SCC 404



22. On the other hand, Mr. B. Sharma, Learned Senior Counsel appearing for the plaintiff, would contend that the suit land was in possession of PWD with permission of the grandfather of the plaintiff, there was one temporary structure in the suit land and the remaining open space was used by the Plaintiff for fodder and grasses.

23. The Learned Senior Counsel would further contend that the question of limitation would not apply in the instant case as possession of the 5th defendant was permissive and became hostile and adverse only when they dismantled structure put up by the plaintiff on 13.11.2009 after Notice received on 12.11.2009. The instant suit was filed on 24th February, 2011. The Learned Senior Counsel relies on ***C. Natarajan vs. Ashim Bai and Another*²**; ***Kanaya Ram and Others vs. Rajender Kumar and Others*³**; and ***Bangalore Development Authority vs. N. Jayamma*⁴**.

24. I have perused the pleadings, documents annexed thereto, the impugned judgment and decree carefully and also considered the submissions advanced by the Learned Counsel for the parties thoughtfully.

2. AIR 2008 SC 363 4. AIR 2016 SC 1294
3. AIR 1985 SC 371



25. A copy of the Khasra (Exhibit D/5D) indicating the survey operation of 1970 maintained in the office of the 6th defendant indicates that the name of the grandfather of the plaintiff late Shyam Lall Sharma was struck out and 'SARKAR' was mentioned therein without there being any description as to how the suit land was transferred to 'SARKAR' (Government).

26. The Learned District Judge on examining the documents had rightly come to the conclusion that it was clear case of interpolation as the Khatiyani Parcha (Exhibit-1) is the survey operation of 1951-52 East Sikkim which clearly indicates the name of late Shyam Lall Sharma in respect of the suit land as the owner.

27. The Learned Additional Advocate General had further produced a copy of the letter dated 3rd July, 1957 (Exhibit D/5A and D/5B) in support of his contention that Palden Thondup Institute for Cottage Industries was in exclusive possession of the suit land, the said letters reveal only appointment of Superintendent of the said Industries. They do not reflect the location of the said Cottage Industries and as such both the letters are of no assistance.



28. The defendants could not produce any other document except Exhibit D/5D wherein the words 'SARKAR' is mentioned after striking out name of late Shyam Lall Sharma. The defendants have produced the sketch map (Exhibit D/5E) wherein the plot No.40 and 41 are indicated as vacant with one temporary structure. The Cottage Industry is not located on the said plots, except the entire area comprising plot nos. 36, 35, 40, 41, 39, 38 and 37, are shown as now under possession of Directorate of Handicraft and Handloom, Government of Sikkim.

29. The defendants have also produced certain communications (Annexures D/4A, D/4B, D/4C and D/4D) which indicate that some repair work was done in respect of quarters in May 1973, August 1976, August, 1977 and September, 1974, respectively.

30. The repair and construction of the quarters, thereon the suit land do not establish that the suit land belongs to the government. The plaintiff have produced certain certificates, namely, Certificates of Identification (Exhibits 13 and 14) wherein the residents of the family members of the plaintiff are shown as Pioneer Reserve, the location of the suit land.



31. I have also examined the depositions made by the various witnesses, wherein the constant stand taken by the witnesses of the defendant are that the 5th defendant was in continuous possession of the suit land and attempt was made by the plaintiff for construction of the small kutcha structure which was demolished as the plaintiff had no right to enter into the suit land. However, it is not stated by any witness as to how the 5th defendant came into possession of the suit land and also from which date or year, the 5th defendant was in possession.

32. No evidence have come forward in respect of the stated understanding between the PWD and grandfather of the plaintiff to the effect that PWD was allowed to construct temporary structure and also about assurance of the PWD to give some contract work in and around Gangtok town in lieu thereof.

33. On examination of the aforestated documents and also the deposition of the witnesses, I am of the considered view that the findings as aforestated recorded by the Learned District Judge to the effect that the suit land belongs to late Shyam Lall Sharma, grandfather of the plaintiff and the plaintiff is entitled to inherit the



same under provisions of law is just, proper and lawful. The appellants have not assailed the finding of the relationship of the plaintiff with late Shyam Lal Sharma, being grandson and also his entitlement of being successor in interest and title.

34. On the question of adverse possession, the possession of the 5th defendant as aforestated was permissive and not hostile. The case of the plaintiff is that there was a temporary structure and family members of late Shyam Lal Sharma were enjoying grasses and fodders grown in the vacant land, could not be contradicted by the defendants. Mere possession of the suit land does not confer any title on the 5th defendant as the first and foremost requirement is that the possession should be open and hostile to the legal owner of the land. The period of limitation prescribed in Article 65 of the Limitation Act, 1963, is 12 years from the day, possession of the defendant becomes adverse to the plaintiff.

35. In *State of Haryana vs. Mukesh Kumar and Ors.*¹ (supra) where the State Government through Superintendent of Police filed a suit for a declaration to the effect that it has acquired the rights of ownership by



way of adverse possession over the land belonging to the respondent therein on the ground that the possession of the State Government perfected the title, the Supreme Court, considering all aspects of matters held as under -

“45. If the protectors of law become the grabbers of the property (land and building), then, people will be left with no protection and there would be a total anarchy in the entire country. It is indeed a very disturbing and dangerous trend. In our considered view, it must be arrested without further loss of time in the larger public interest. No government department, public undertaking, and much less the Police Department should be permitted to perfect the title of the land or building by invoking the provisions of adverse possession and grab the property of its own citizens in the manner that has been done in this case.”

36. Further, contention of Mr. Pradhan is that the facts in ***Mukesh Kumar and Ors.***¹ (supra) is distinguishable and as such ratio laid down is not applicable to the facts involved in the instant case as defendants herein, being the public authorities, have not sought for declaration of title. To bolster this, he relies on a decision of the Supreme Court in ***State of Madhya Pradesh vs. Narmada Bachao Andolan & Anr.***⁵ wherein

5. 2011 7 SCC 639



it was held as under: -

"64. The court should not place reliance upon a judgment without discussing how the *factual situation fits* in with a fact situation of the decision on which reliance is placed, as it has to be ascertained by analysing all the *material facts* and the issues involved in the case and argued on both sides. A judgment may not be followed in a given case if it has some *distinguishing features*. A little difference in *facts* or *additional facts* may make a lot of difference to the precedential value of a decision. A judgment of the court is not to be read as a statute, as it is to be remembered that judicial utterances have been made in *setting of the facts of a particular case*. *One additional or different fact may make a world of difference between the conclusions in two cases*. Disposal of cases by blindly placing reliance upon a decision is not proper. (*Vide MCD v. Gurnam Kaur*⁴³, *Govt. of Karnataka v. Gowramma*⁴⁴ and *State of Haryana v. Dharam Singh*⁴⁵.)"

37. Mr. Pradhan has further referred to a decision of the Supreme Court in ***Natural Resources Allocation, in Re, Special Reference No.1 of 2012***⁶, contending that the ratio laid down in a particular set of facts would be a decision on the facts of the case decided in the case in hand. Since the facts of ***Mukesh Kumar***¹ (supra) case was different, the ratio laid down is not applicable to the facts of the instant case.

38. There is no quarrel on the issue that the law

6. (2012) 10 SCC 1



declared by the Supreme Court under Article 141 of the Constitution emanates from a Judgment upon which, the question of law is raised and decided.

39. Indisputably the facts involved in ***Mukesh Kumar and Ors.***¹ (supra) was different to that of the instant one, however, the ratio laid down therein was that the government, or public authorities, shall not take recourse to the principle of adverse possession on the basis of being in possession for a long time, depriving an ordinary citizen of his Constitutional right to the property, without satisfying the basic essentials of adverse possession.

40. The Supreme Court in ***C. Natarajan Vs. Ashim Bai & Anr.***² after analyzing all the cases on issue has held as under: -

“18Limitation would not commence unless there has been a clear and unequivocal threat to the right claimed by the Plaintiff. In a situation of this nature, in our opinion, the application under Order VII, Rule 11(d) was not maintainable.....”

41. In ***Hemaji Waghaji Jat vs. Bhikhabhai Khengarbhai Harijan and Others***⁷ the Supreme Court

7. AIR 2009 SC 103



referring to the earlier decision of Karnataka Board of ***Wakf vs. Government of India and Others***⁸ reiterated the prerequisites for claiming adverse possession as under: -

"18.The court further observed that plea of adverse possession is not a pure question of law but a blended one of fact and law. Therefore, a person who claims adverse possession should show: (a) on what date he came into possession, (b) what was the nature of his possession, (c) whether the factum of possession was known to the other party, (d) how long his possession has continued, and (e) his possession was open and undisturbed. A person pleading adverse possession has no equities in his favour. Since he is trying to defeat the rights of the true owner, it is for him to clearly plead and establish all facts necessary to establish his adverse possession."

42. In JA Pye (Oxford) Ltd and another v Graham and another⁹. Lord Browne-Wilkinson, LJ., formulated the principle of adverse possession as under: -

"[40] ... To be pedantic, the problem could be avoided by saying there are two elements necessary for legal possession: (1) a sufficient degree of physical custody and control ('factual possession'); (2) an intention to exercise such custody and control on one's own behalf and for one's own benefit ('intention to possess'). What is crucial is to understand that, without the requisite intention, in law there can be no possession."

In the case on hand the defendants expressed their intention to possess the suit land first time on 13.11.2009 when the structure put up by the plaintiff

8. (2004) 10 SCC 779

9. [2002] 3 All England Law Reports 865



was demolished recently, not 12 years prior to the date of the filing of the instant suit.

43. Applying the well settled Principle of law in respect of claim of adverse possession to the case on hand, the defendant have not perfected their title in the suit law on the basis of the continuous possession as the defendant have not produced any evidence or documents except a copy of the Khasra (Exhibit D/5D) survey operation of 1970 wherein the word "SARKAR" was found as interpolation, without stating the complete description of transfer/alienation of the suit land in favour of the 5th defendant. Consequently the alleged possession of the 5th defendant is permissive entitling the plaintiff to obtain declaration and possession thereof. The Learned District Judge has rightly decreed the suit in favour of the plaintiff.

44. I do not find any infirmity, impropriety and illegality in the judgment and decree rendered by the Learned District Judge which is sought to be impugned in the instant appeal.



45. Resultantly the Appeal is dismissed. No order as to costs.

(S.K. Agnihotri)
Judge
08-06-2016

Approved for reporting : Yes

Internet : Yes

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