



**IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION
CIVIL APPEAL NO.5049 OF 2009**

SABIR HUSSAIN (DEAD) THR. LRS. AND ORS. ... Appellant(s)

VERSUS

**SYED MOHAMMAD HASSAN (DEAD)
THR. LRS. AND ANR.**

... Respondent(s)

J U D G M E N T

RAJESH BINDAL, J.

1. Aggrieved against the judgment dated 11.11.2008 passed by the High Court¹ in Civil First Appeal², the respondents are before this Court.

2. The trial court³ had decreed the suit⁴ filed by the predecessor-in-interest of the appellants, whereas the High Court had

¹ High Court of Madhya Pradesh Bench at Indore

² Appeal No. 128 of 1995

³ 15th Additional Judge, Indore to the District Judge, Indore, (MP)

⁴ Civil Suit No. 2A/1993

reversed the judgment and decree of the trial court, i.e., the judgment impugned in the present appeal.

3. The brief facts to be noticed are that Kallu Bhai purchased the property in dispute⁵ from Amanat Ali in the name of Mohd. Jafar vide registered sale deed dated 03.04.1913. Mohd. Jafar was the son of brother of Late Kallu Bhai. At that time, Mohd. Jafar was stated to be three years old. Kallu Bhai died issueless on 25.10.1952. His first wife had pre-deceased him. On 27.08.1970, Bashirun Nisha, the second wife of Late Kallu Bhai, died. The defendant-respondent-Syed Mohd. Hasan was 7-8 years old when his mother died. He was brought by Late Kallu Bhai to live with him. Late Mohd. Jafar was not keeping good health. On 05.11.1975, Late Mohd. Jafar entered into an agreement to sell the property in favour of Raza Hussain, which was purchased by Late Kallu Bhai in his name in the year 1913. The sale deed was got registered on 20.11.1975 in favour of Raza Hussain. On 17.01.1977, Raza Hussain filed suit against Syed Mohd. Hasan praying for restoration of possession of the property in dispute and claiming damages from 26.10.1976 onwards. The trial Court decreed the suit on 24.04.1995, whereas the

⁵ House No. 24, Chhatripura Main Road, Indore City.

High Court in first appeal filed by Syed Mohd. Hasan reversed the judgment and decree of the Trial Court.

4. In the aforesaid undisputed factual matrix, learned senior counsel for the appellants submitted that well-reasoned judgment of the trial court has been reversed by the High Court in first appeal without discussing the entire evidence on record, which it was duty-bound to. By passing a short order, the findings have been reversed without giving any reason. In the written statement filed by the respondent-defendant, no plea of adverse possession was taken. It is not a matter of dispute that the property in dispute, which was sold by Late Mohd. Jafar to Raza Hussain, was duly registered in his name as the same was purchased in his name by Late Kallu Bhai way back on 03.04.1913. The agreement to sell and the sale deed executed by Late Mohd. Jafar being registered documents, the genuineness thereof could not be doubted. Clear title of the property having been transferred in favour of the predecessor-in-interest of the appellants, the respondent-defendant could not possibly claim any title thereof.

5. After the property in dispute was purchased by predecessor-in-interest of the appellants, a notice was issued to the respondent-defendant on 01.01.1976 clearly mentioning that he had been in occupation of the part of the premises as a licensee of Mohd.

Jafar. Because the respondent-defendant Syed Mohd. Hasan had stopped taking care of Mohd. Jafar, at the old age, he had to shift to live with his brother-Nakki Hussain. Thereafter, another notice was got issued on 21.10.1976. In the aforesaid notice, one correction was made regarding identity of the property. The respondent-defendant was called upon to stop recovering rent from Mohd. Ismail, the tenant in the property in dispute and he was called upon to deliver possession of the property in dispute to the predecessor-in-interest of the appellants. The needful was to be done within a period of one week, failing which the predecessor-in-interest of the appellants may have to file a civil suit. In the sale-deed, it was specifically mentioned in para-No. 6 thereof *'Bashirun Nisha Bai wife of Kallu Bhai who happened to be elder mother of seller had been staying in the property with the permission of seller along with Hasan, son of brother of first wife of Kallu Bhai, who used to take care of her. Hasan continued to stay there even after the death of Bashirun Bai'*. It was also mentioned therein that it shall be the responsibility of the buyer to take the possession thereof. There being error apparent on the record of the judgment of the High Court, the same deserves to be set aside and that of the trial court be restored.

6. On the other hand, learned counsel for the respondent-defendant submitted that the admitted fact on record is that the

agreement to sell and the sale deed were got registered from Late Mohd. Jafar within a period of fifteen days. At that time, he was not keeping good health. He was never in possession of the property in question as it always remained with the predecessor-in-interest of the respondent-defendant, who had been living with Late Kallu Bhai, after the death of his mother. The argument raised by learned counsel for the appellants that no plea of adverse possession was taken in the written statement is wrong as there was specific plea raised to that effect in the form of additional plea in the written statement, to which no reply was given by the appellants. He further submitted that the respondent-defendant was never in possession of the property as a licensee rather it was in his own right. His possession was hostile to the knowledge of the owners, who had sold the property. As the owners had lost title in the property, the same could not have been passed on to the predecessor-in-interest of the appellants.

7. Heard learned counsel for the parties and perused the relevant record.

8. The primary argument raised by learned senior counsel for the appellants was that well-reasoned judgment of the trial court had been reversed by the High Court in first appeal without discussing the evidence produced on record. The sale deed has been doubted. The

findings recorded by the trial court regarding validity of the sale deed dated 20.11.1975 has been reversed without giving any reason. The High Court lost sight of the fact that the agreement to purchase dated 05.11.1975 and sale deed dated 20.11.1975 were registered documents.

9. There is an opinion of the Handwriting Expert who examined three signatures on three documents, namely, Ex. P1 and Ex. D8 (sale deed and photocopy thereof) and Ex.P5 (agreement to purchase) and came to the following conclusion:

“Thus, three different persons have written the above mentioned signatures. The signatures marked A to A, B to B, C to C and D to D on Ex. P-5 dated 05.11.1975 have been written by one person. The signatures marked B to B, on page-6 of Ex.P-1 and the signature marked B to B on Ex. D-8 have been written by another person, and the signatures marked E to E on the reverse of page-2 on Ex.P-1 dated 20.11.1975 have been written by yet another person.”

10. Masrur Hussain appeared as PW3. He identified his signatures on the sale deed (Ex. P1) and also stated that Mohd. Jafar

(now deceased) had appended his signatures on the sale deed in his presence.

11. There is statement of Dr. Badrul Hasan Naqvi son of Dr. Maznafar Ali, who appeared as PW6. He is one of the witness on the sale deed dated 20.11.1975. He stated that when the sale deed was registered, Mohd. Jafar was admitted in the hospital, where Registrar had come to get the sale deed registered. He had signed the sale deed as a witness in the presence of the Registrar.

12. The High Court has seen the sale deed with suspicion only because it was noticed that there was some difference in the signatures of the vendor on the agreement to sell and the sale deed, however, failed to take notice of the evidence of the witness to the sale deed who was present in the hospital where the Registrar had gone to register the document.

13. Immediately after purchase of the property, the predecessor-in-interest of the appellants had initiated the process to evict the respondent-defendant by issuing notice on 01.01.1976 followed by another notice dated 21.10.1976. From the record, it was not pointed out that any reply was given to the aforesaid notice. Thereafter, civil suit was filed on 17.01.1977 seeking restoration of

possession and also claiming damages for use and occupation of the premises from 26.10.1976, onwards after issuance of the second notice for eviction.

14. We have briefly noticed the material which has not been considered by the High Court while appreciating the evidence produced on record by the parties, especially in the first appeal where it is the duty of the court to address all the issues and decide the case by giving reasons. The First Appellate Court is required to record its findings dealing with all the issues of law as well as fact and with the evidence, oral as well as documentary, led by the parties. The judgment of the First Appellate Court must show conscious application of mind. The findings should be supported by reasons on all the issues and contentions.

15. In the case in hand, the High Court being the First Appellate Court had not referred to the evidence produced on record by the parties on various issues for re-appreciation and has recorded the finding referring to the evidence in part. The judgment and decree of the Trial Court was reversed. In that situation, the onus was more on the First Appellate Court to have discussed the entire evidence in detail.

16. For the reasons mentioned above, the impugned judgment of the High Court is set aside, and the matter is remitted back to the High Court for fresh consideration. The matter being quite old, we request the High Court to give it priority in disposal.

17. The appeal is accordingly disposed of.

18. We make it clear that this Court has not recorded any finding on any of the issues on appreciation of evidence. The High Court will decide the matter afresh, without being prejudiced by any of the observations made in the order, strictly considering the documentary as well as oral evidence produced on record by the parties.

.....J
(VIKRAM NATH)

.....J
(RAJESH BINDAL)

New Delhi
November 06, 2023.