

IN THE HIGH COURT OF MADHYA PRADESH
AT INDORE

BEFORE
HON'BLE SHRI JUSTICE HIRDESH
ON THE 16th OF FEBRUARY, 2024

SECOND APPEAL No. 434 of 2020

BETWEEN:-

BABULAL S/O THAWARJI, AGED ABOUT 51 YEARS,
OCCUPATION: AGRICULTURIST VILLAGE
GANGADHADA TEH AGAR DISTRICT AGAR MALWA
(MADHYA PRADESH)

.....APPELLANT

(BY SHRI YASH PAL RATHORE - ADVOCATE)

AND

1. AMRA S/O HEERAJI, AGED ABOUT 55 YEARS,
VILLAGE BHYANA TEH AGAR DISTRICT AGAR
MALWA (MADHYA PRADESH)
2. MADAN S/O HEERAJA, AGED ABOUT 50 YEARS,
VILLAGE BHYANA TEH. AGAR DIST. AGAR
MALWA (MADHYA PRADESH)
3. NARAYAN S/O HEERAJI, AGED ABOUT 48 YEARS,
VILLAGE BHYANA TEH. AGAR DISTRICT AGAR
MALWA (MADHYA PRADESH)
4. DUNGA S/O HEERAJI, AGED ABOUT 45 YEARS,
VILLAGE BHYANA TEH. AGAR DISTRICT AGAR
MALWA (MADHYA PRADESH)
5. DHULIBAI WD/O LATE HEERAJI, AGED ABOUT 80
YEARS, VILLAGE BHYANA TEH. AGAR DISTRICT
AGAR MALWA (MADHYA PRADESH)
6. BHULIBAI D/O HEERAJI, AGED ABOUT 65 YEARS,
VILLAGE BHYANA TEH. AGAR DISTRICT AGAR
MALWA (MADHYA PRADESH)
7. RAJUBAI D/O HEERAJI, AGED ABOUT 42 YEARS,
VILLAGE BHYANA TEH. AGAR DIST. AGAR
MALWA (MADHYA PRADESH)

8. STATE OF MP THROUGH COLLECTOR DISTRICT
AGAR MALWA (MADHYA PRADESH)

.....RESPONDENTS

(SHRI ANAND BHATT - DGA FOR THE RESPONDENT/STATE)
.....

This appeal coming on for admission this day, the court passed the following:

ORDER

This appeal under Section 100 of CPC is filed against the judgment and decree dated 13.12.2019 passed by the learned II Additional District Judge, Agar, District Shajapur (now Agar Malwa) in Regular Civil Appeal No.RCA 45-A/2019 allowing the first appeal and reversing the judgment and decree dated 08.04.2019 passed by the learned Additional Judge to the Civil Judge, Class-I, Agar, District Agar Malwa in Civil Suit No.28-A/16 filed by the appellant/plaintiff for declaration of title and permanent injunction against the respondents/defendants with regard to the suit property.

2. The brief facts of the case is that on 07.12.2015 appellant/plaintiff filed suit for declaration of title and permanent injunction against the respondents/defendants regarding suit property agricultural land survey no.362 area 1.61 hectare (Old survey no.216/2 area 1.615 hectare) situated at village Gangadhada Tehsil and district Agar-Malwa. It is further pleaded that plaintiff's brother Ruggaji purchased the suit land from Heera S/o Khumanji on 18.01.1994 and on this day Heeraji executed an agreement and delivered possession of the suit land to Ruggaji. After the death of Ruggaji appellant was cultivating the land and since then he is in possession till today. After the death of Heeraji, respondents got the land mutated in their name in conspiracy with Patwari and created dispute therefore, with the mediation of the villagers, appellant gave Rs.1 lac to Dunga and Narayan and they executed an agreement

in favour of appellant on 20.04.2009. It was agreed by the defendants that after the soyabean crop they will execute sale deed in favour of appellant/plaintiff. Appellant/plaintiff applied for recording of his possession in the revenue record before the Tehsildar which was allowed vide order dated 19.10.2012 and plaintiff's name was recorded in the revenue records. The appellant/plaintiff is in possession of suit land since 10.01.1994 therefore perfected his title by way of adverse possession. Respondent tried to interfere in the possession of plaintiff therefore, suit for declaration and permanent injunction was filed.

3. Defendant denied the plaint averments and pleaded that plaintiff is not the owner of the suit property and they are in possession. Ruggaji is still alive therefore, plaintiff is not having right title over the land.

4. The trial Court framed the issues in the suit and after recording the evidence of the parties decree the suit vide judgment and decree dated 08.04.2019 in favour of the plaintiff and restrained the defendants to disturb the possession of the appellant/plaintiff and plaintiff be not dispossessed without due course of law.

5. The judgment and decree passed by the trial Court was challenged by the respondents/defendants before the first appellate Court. The learned first appellate Court vide judgment and decree dated 13.12.2019 allowed the appeal by reversing the judgment and decree passed by the trial Court.

6 . Being aggrieved by the judgment and decree passed by the first appellate Court, the appellant/plaintiff filed the present second appeal and argued that the judgment and decree passed by the trial Court as well as the appellate Court are illegal and not based on proper appreciation of evidence. The trial Court as well as the first appellate Court have failed to consider the oral as well as documentary evidence produced by the appellant. The trial Court

as well as the first appellate Court have erred in dismissing the suit preferred by the appellant/plaintiff. The findings of both the courts below are perverse which is against the evidence available on record. Hence, he submits that the appeal deserves to be admitted on the substantial questions of law proposed by the appellant.

7. Both the parties are heard at length and perused the entire record of the trial Court as well as the first appellate Court with due care.

8. From perusal of the record of the trial Court, it appears that the appellant/plaintiff filed a civil suit for declaration of title and permanent injunction, therefore, burden lies upon the appellant/plaintiff to prove his case that he acquired title by way of agreement.

9. The plaintiff pleaded that on 20.04.2009 defendants executed agreement to sell in favour of plaintiff by taking Rs.1 lac. So he accrues his title by way of agreement. Section 54 of the Transfer of Property Act defines the sale which reads as under:-

"54. "Sale" defined.—"Sale" is a transfer of ownership in exchange for a price paid or promised or part-paid and part-promised.

Sale how made.— Such transfer, in the case of tangible immovable property of the value of one hundred rupees and upwards, or in the case of a reversion or other intangible thing, can be made only by a registered instrument.

In the case of tangible immovable property of a value less than one hundred rupees, such transfer may be made either by a registered instrument or by delivery of the property. Delivery of tangible immovable property takes place when the seller places the buyer, or such person as he directs, in possession of the property.

Contract for sale.—A contract for the sale of immovable property is a contract that a sale of such property shall take

place on terms settled between the parties.

It does not, of itself, create any interest in or charge on such property.

10. In the case of **Suraj Lamp and Industries Pvt. Ltd. Vs. State of Haryana reported in JT 2011 (12) SCC 654** the Apex Court held that transfer of immovable property by way of sale can only be by a deed of conveyance (sale deed). In the absence of a deed of conveyance(duly stamped and registered as required by law) no right, title or interest in an immovable property can be transferred.

11. Hence, in view of above provision and verdict of the Apex Court that by way of agreement, title with regard to the disputed property is devolved in favour of the plaintiff. So, by way of this agreement, plaintiff has not accrued any title in regard to the disputed property.

12. Plaintiff also pleaded that his title over suit land accrued by way of adverse possession. The law with regard to perfecting title by adverse possession is well settled. A person claiming title by adverse possession has to prove three "neck" - nec vi, nec clam and nec precario. In other words, he must show that his possession is adequate in continuity in publicity and in extent. Adverse possession must be adequate in continuity, in publicity and extent and a plea is required at the least to show when possession becomes adverse so that the starting point of limitation against the party affected can be found.

13. In the case of **Ravinder Kaur Grewal and others Vs. Manjit Kaur and others reported in 2019(2) RN 129 (SC)**, it has been held that:-

“48. The statute does not define adverse possession, it is a common law concept, the period of which has been prescribed statutorily under the law of limitation Article 65 as 12 years. Law of limitation does not define the concept of adverse possession nor anywhere contains a provision that

the plaintiff cannot sue based on adverse possession. It only deals with limitation to sue and extinguishment of rights. There may be a case where a person who has perfected his title by virtue of adverse possession is sought to be ousted or has been dispossessed by a forceful entry by the owner or by some other person, his right to obtain possession can be resisted only when the person who is seeking to protect his possession, is able to show that he has also perfected his title by adverse possession for requisite period against such a plaintiff.

49. Under Article 64 also suit can be filed based on the possessory title. Law never intends a person who has perfected title to be deprived of filing suit under Article 65 to recover possession and to render him remediless. In case of infringement of any other right attracting any other Article such as in case the land is sold away by the owner after the extinguishment of his title, the suit can be filed by a person who has perfected his title by adverse possession to question alienation and attempt of dispossession.

50. Law of adverse possession does not qualify only a defendant for the acquisition of title by way of adverse possession, it may be perfected by a person who is filing a suit. It only restricts a right of the owner to recover possession before the period of limitation fixed for the extinction of his rights expires. Once right is extinguished another person acquires prescriptive right which cannot be defeated by re- entry by the owner or subsequent acknowledgment of his rights. In such a case suit can be filed by a person whose right is sought to be defeated.”

14. There is the acquisition of title in favour of plaintiff though it is negative conferral of right on extinguishment of the right of an owner of the property. The right ripened by prescription by his adverse possession is absolute and on dispossession, he can sue based on 'title' as envisaged in the opening part under Article 65 of Act. Under Article 65, the suit can be filed based on the title for recovery of possession within 12 years of the start of adverse possession, if any, set up by the defendant. Otherwise right to recover

possession based on the title is absolute irrespective of limitation in the absence of adverse possession by the defendant for 12 years. The possession as trespasser is not adverse nor long possession is synonym with adverse possession. In Article 65 in the opening part a suit “for possession of immovable property or any interest therein based on title” has been used. Expression “title” would include the title acquired by the plaintiff by way of adverse possession. The title is perfected by adverse possession has been held in a catena of decisions.

15. Considering the evidence adduced by the plaintiff before the trial Court, it is not found that he was continuously in adverse possession over the suit land with knowledge of the defendant. Therefore, on the basis of the aforesaid document produced before the trial Court, plaintiff has failed to prove that his possession is adequate in continuity over the suit land against the defendants. So on the aforesaid evidence the trial Court as well as the first appellate Court have given categorical finding that appellant has failed to prove adverse possession and perfected title over the suit land.

16. Learned counsel for the appellant submitted that he entered an agreement with the defendants on 20.04.2009 and have settled possession so his possession must be protected. In this regard the Apex Court in the case of **Shrimant Shamrao Suryavanshi and another Vs. Pralhad Bhairoba Suryavanshi (dead) by LRs and others reported in (2002) 3 SCC 676** has held that there are certain conditions which are required to be fulfilled if a transferee wants to defend or protect his possession under Section 53-A of the Act which reads as under:-

"1) there must be a contract to transfer for consideration of any immovable property;

- 2) the contract must be in writing, signed by the transferor, or by someone on his behalf;
- 3) the writing must be in such words from which the terms necessary to construe the transfer can be ascertained;
- 4) the transferee must in part performance of the contract take possession of the property, or of any part thereof;
- 5) the transferee must have done some act in furtherance of the contract; and
- 6) the transferee must have performed or be willing to perform his part of the contract."

17. In the present case, the appellant has failed to prove that he had done some act in furtherance of some contract and he was willing to perform his part of contract. So, in the considered opinion of this Court, lack of these ingredients the appellant/plaintiff has no right to protect his possession by way of agreement.

18. In the light of the aforesaid discussion, this Court is of the considered opinion that the impugned judgment passed by both the courts below are well reasoned and based upon the due appreciation of oral as well as documentary evidence available on record. The findings recorded by both the courts below are concurrent findings of facts. The appellant has failed to show that how the findings of facts recorded by both the courts below are illegal, perverse and based on no evidence. Thus, no substantial question of law arises for consideration in the present second appeal.

19. Enunciation of law by the Hon'ble Apex Court in the case of **Hari Narayan Bansal Vs. Dada Dev Mandir Prabandhak Sabha (Barah Gaon) Patam, reported in (2015) 16 SCC 540** empowers this Court to finally dispose of this appeal without framing the substantial questions of law at the admission stage itself. The observation made by Hon'ble Supreme Court is

reproduced hereinbelow :-

“In our opinion, a substantial question of law is not required to be framed if the High Court decides to dismiss the second appeal at an admission stage. Only in a case where the second appeal is admitted or is decided finally by allowing the same, a substantial question of law is required to be framed by the High Court. In the instant case, no substantial question of law was involved in the second appeal and therefore, the High Court had rightly dismissed the second appeal at the admission stage by passing the impugned order. We, therefore, see no reason to entertain this Petition.”

20. The Supreme Court in number of cases has held that in exercise of powers under Section 100 of the Code of Civil Procedure can interfere with the findings of fact only if the same is shown to be perverse and based on no evidence. Some of these judgments are **Hajzat Hussain vs. Abdul Majeed & others, 2011 (7) SCC, 189** and **Union of India vs. Ibrahim Uddin, 2012 (8) SCC 148**.

21. Accordingly, present second appeal *sans merit* and is hereby dismissed at the admission stage for the reasons indicated above. No order as to costs.

C.C. as per rules

**(HIRDESH)
JUDGE**