

(2024) 04 MP CK 0074

In the Madhya Pradesh High Court

Case No : Writ Petition No. 7816 Of 2024

Deceased And Others

APPELLANT

Vs

Nilesh And Others

RESPONDENT

Date of Decision : 01-04-2024

Acts Referred:

Madhya Pradesh Land Revenue Code, 1959 — Section 250

Citation : (2024) 04 MP CK 0074

Hon'ble Judges : Vivek Rusia, J

Bench : Single Bench

Advocate : Pourush Ranka

Final Decision : Dismissed

Judgement

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Vivek Rusia, J

1. Petitioners have filed the present Writ Petition against the order dated 15.01.2024 passed by Additional Commissioner, Ujjain Division Ujjain and order dated 07.04.2022 passed by Sub Divisional Officer (Revenue) Block Mandsaur, District Mandsaur.

Facts of the cases;

[2] Late Smt. Manjuladevi filed Civil Suit for declaration and permanent injunction against Bharat Kumar and Smt. Noorjahan in respect of land survey No.99 (new number 35/1 srs 7.32 or 74.32 sqft.) According to the petitioners there are four shops constructed on the aforesaid land which she purchased on 09.11.2001 by way of registered sale deed. She was in jail from 2002 to 2006 and the defendant No.1 prepared forge Power of Attorney and sold the land to the defendant No.2 on 05.07.2003. Thereafter the defendant No.2 constructed the shops. Vide judgment dated 01.12.2015, the Civil Suit decreed in favour of the plaintiffs by declaring Power of Attorney and sale deed as void. The

defendant No.2 was restrained to sale the shops.

[3] After the aforesaid judgment Manjuladevi filed an application under Section 250 of MPLRC before the Tehsildar seeking dispossession of the defendants. Vide order dated 01.11.2021, the application was allowed by directing the Revenue Inspector to dispossess the defendants and hand over the vacant possession to the plaintiffs.

[4] Being aggrieved by the aforesaid order the Nilesh preferred an Appeal before the Sub Divisional Officer, Block Mandsaur District Mandsaur which was allowed vide order dated 17.01.2022 by remanding back the matter to the Tehsildar for deciding afresh. Meanwhile the Manjuladevi expired and legal heirs were brought on record. After the remand, again Naib Tehsildar passed an order dated 26.08.2022 in favour of the legal heirs of Manjuladevi. Nilesh preferred an Appeal before the Sub Divisional Officer, Block Mandsaur District Mandsaur which came on the allowed vide order dated 07.10.2022 on the ground that the provision of Section 250 of MPLRC applies to vacant agricultural not to building.

[5] Being aggrieved by order dated 07.10.2022, the legal heirs of Manjuladevi preferred an Appeal before the Commissioner, Ujjain Division, Ujjain which came to be dismissed vide order dated 15.01.2024, hence, present Writ Petition before this Court.

I have heard learned counsel for the petitioners and perused the record.

[6] Admittedly, the Manjuladevi filed Civil Suit and obtained the decree of title and got the sale deed in favour of defendants declared void. In the said Civil Suit, she did not seek the decree of possession. Even at the time of filing of Civil Suit, the land was not vacant and there were four shops were constructed on it. The land was not used for agriculture purpose. The contention of the learned counsel for the petitioner is that without diversion the shops were constructed therefore the land in question is liable to be treated as agriculture land and for which the proceedings under Section 250 of MPLRC are maintainable.

[7] Admittedly, the land is not vacant land and not used for agriculture purpose. There are four shops were constructed on it. The decree cannot be obtained invoking the provision of MPLRC which applies only on limited circumstances, when the Bhoomiswami was dispossessed illegally within the period of two months. In this case after contesting the Civil Suit, the proceedings of under Section 250 of MPLRC were sought to be invoked for obtained the vacant possession of the shops.

[8] In view of the above, the Commissioner, Ujjain Division, District Ujjain has not committed any error in dismissing the Appeal.

Accordingly, Writ Petition is hereby dismissed.