
(2013) 08 MP CK 0138
In the Madhya Pradesh High Court
Case No : SA. No. 365 of 2001

Manohar Singh

APPELLANT

Vs

Nagar Palika Nigam

RESPONDENT

Date of Decision : 13-08-2013

Acts Referred:

Madhya Pradesh Municipal Corporation Act, 1956 — Section 83

Citation : (2013) 08 MP CK 0138

Hon'ble Judges : Sheel Nagu, J

Bench : Single Bench

Advocate : R.K. Mishra, for the Appellant; Shashank Indapurkar, for the Respondent

Judgement

Sheel Nagu, J.—This is an appeal by the plaintiff. The following substantial question of law was framed on 08.09.2001:-

Whether after recording that the plaintiff is in possession of the suit property, trial Court was justified in refusing the relief of permanent injunction after recording a finding that defendant is the actual owner of the property.

2. Plaintiff filed a suit for permanent injunction against the respondent-Municipal Corporation, praying therein that he should not be dispossessed from the disputed property and the shop in which he is running his business should not be demolished.

3. Both the Courts below have dismissed the suit.

4. However, the first appellate Court recorded a finding that the defendant could not prove its title over the suit property and no document were produced for the same.

5. The first appellate Court recorded a finding in para 12 of its judgment that from the document Ex. D/4 it is not established that the disputed shops are constructed over Survey Nos. 567 and 568 which is recorded as Nazul Land. The

Municipal Corporation has failed to produce documents pertaining to the title over the suit property and the documents maintained by the Municipal Corporation u/s 83 of the M.P. Municipal Corporation Act, 1956 have not been produced D.W. 1 Gajraj Singh, could not explain about the actual demarcation.

6. However, the trial Court held that the plaintiff must prove his case.

7. Both the Courts below have held that the plaintiff is in possession of the property.

Counsel for the respondent-Municipal Corporation submitted that notices were served upon the plaintiff to remove encroachment. However, notices served upon the plaintiff have not been proved.

8. In a case of permanent injunction, possession alone is to be seen. The question whether the possession is lawful is required to be proved.

9. Considering the facts of the case, so long as the appellant-plaintiff is in possession, his possession cannot be disturbed, unless he is dispossessed by lawful authority.

10. It has also been pleaded that the appellant-plaintiff claims to be tenant of Gurunanak Dharmashala but it is not the case of the defendant-Municipal Corporation that they have issued notices to Gurunanak Dharmashala to remove the encroachment.

11. Considering the facts of the case, the appeal is disposed of with the following direction:-

That appellant-plaintiff shall not be dispossessed by the respondent-defendant Municipal Corporation without following due process of law. It is for the defendant Municipal Corporation to demonstrate their title, before taking coercive action against the plaintiff and if there is any relationship between appellant & Guru Nanak Dharmashala of landlord and tenant, it shall also notice the landlord before taking coercive action.

With the aforesaid direction, the judgment of the Courts below are modified and the appeal is allowed to the extent indicated supra with no order as to cost.