

(2022) 03 MP CK 0104
In the Madhya Pradesh High Court
Case No : First Appeal No.802 Of 2017

Principal Secretary And Others

APPELLANT

Vs

Ravi Shankar Sharma

RESPONDENT

Date of Decision : 30-03-2022

Acts Referred:

Code Of Civil Procedure, 1908 — Section 80, 96
Madhya Pradesh Land Revenue Code — Section 115, 166, 189

Citation : (2022) 03 MP CK 0104

Hon'ble Judges : Arun Kumar Sharma, J

Bench : Single Bench

Advocate : C.K. Mishra, Sushil Kumar Tiwari

Final Decision : Dismissed

Judgement

Arun Kumar Sharma, J

1. The appellants / defendants have filed this first appeal under Section 96 of CPC against the judgment and decree dated 07.07.2017 passed by the District Judge, Umariya (MP) in Civil Suit No. 4-A/16, whereby the suit filed by the respondent / plaintiff namely Ravi Shankar Sharma against the appellants / defendants for declaration of title, recovery of possession and permanent injunction has been allowed and the suit filed by the respondent / plaintiff has been decreed in his favour according to para 28 of the impugned judgment.

2. Briefly stated facts of the case are that the respondent / plaintiff filed a suit for declaration of title, recovery of possession and permanent injunction in respect of the land bearing Khasra No.2307/1ka/1ka/1ka ad-measuring 0.274 hectares situated in village Chandiya, General No.205, Patwari Halka Chandiya No.9, R.N.M. Chandiya, Tahsil Chandiya, District Umariya (MP), on the ground that he is the exclusive owner and possession holder of the land in question. The said land was purchased by him from one Tarabai by registered sale deed dated 25.06.2009 in total consideration of Rs.1,30,000/-and thereafter, the possession

was handed over to the respondent / plaintiff and his name was also mutated in the revenue records vide Namantaran Panji No.21 dated 22.08.2009.

3. Thereafter, Tahsildar, Chandiya conducted demarcation of the land in question wherein notice was issued on 13.06.2009 and after receiving the said notice on 14.06.2009 the respondent / plaintiff appeared before the authority concerned and in his presence, demarcation was completed and final order was issued on 23.03.2010 and on the said date, for the first time, the respondent / plaintiff came to know that in the part of the land ad-measuring 0.042 hectare bearing khasra no.2307/1ka/1ka/1ka, Kailodevi Government Hospital is situated. On 02.12.2009 and 25.06.2010 registered notices were issued to the appellants / defendants by the respondent / plaintiff and the same were served to them but no proceeding was done by the appellants regarding the land in dispute and the vacant possession was also not handed over to the plaintiff.

4. Learned trial Court issued notices and consequent upon receiving the notices, appellants filed their separate written statements denying the contentions of the plaintiff and it was stated that the Hospital in question is situated from last sixty years over the disputed land and the plaintiff / respondent was well aware of the said fact. It was also contended in the written statement that the respondent had not made it clear that from what sources, he had purchased the land from Tarabai. It was also not made it clear that how many sale deed were executed by Tarabai in respect of the land bearing khasra no. 2307. Tarabai was necessary party but she was not made party to the suit. It was also stated in the written statements that in the revenue records from 1959-60, land in question was recorded as Abadi Hospital land ad-measuring 0.324 hectare. Some entries were recorded in the revenue records of 1974-75 to 1978-79 and thereafter, 1979-80 to 1983-84. In the revenue entries of 1983-84 to 1988-89 and 1989-90 to 1992-93 and the revenue entries are in favour of the government hospital.

5. However, on the basis of rival pleadings, learned trial court framed as many as six issues and called parties to adduce their evidence. After recording evidence, learned trial Court answered all the issues in favour of the plaintiff / respondent and passed the impugned judgment and decree whereby the respondent has been declared owner of the land in question and the appellants herein have been directed to hand over vacant possession.

6. Learned counsel for the appellants / defendants challenged the impugned judgment and decree on the ground that the same is not in consonance with law and is, therefore, liable to be set-aside. Further, learned Trial Court has erred in holding that the respondent is owner of the land in question. Learned trial Court ought to have appreciated the fact that the hospital in question is situated from last 60 years. In all the revenue entries, the same has been recorded in favour of the hospital right from 1959. Respondent / plaintiff in para 12 of his cross examination has admitted the fact that the Hospital is situated from last sixty years. Ex.P/52 was demolition report, which has not been appreciated by the trial court. Learned trial Court ought to have seen that Tarabai, from whom, the

land in question was claimed to be purchased by the respondent, is a necessary party in the present suit, therefore, the suit filed by the respondent suffered from non-joinder of the necessary party. Hence, the impugned judgment is contrary to law and evidence, and the same deserves to be set-aside.

7. Learned counsel for the plaintiff - respondent herein has supported the findings of impugned judgment and decree and submitted that learned trial Court has not committed any illegality and perversity in passing the impugned judgment and decree which is based on proper appreciation of pleadings, documents and evidence available on record and submitted that the interference is not warranted in the well reasoned impugned judgment and decree. Further submitted that on 25.06.2009 the plaintiff purchased the land from the seller Smt. Tarabai Dwivedi Wd/o. Late Satishchandra Brahman and D/o. Late Bhagwat Prasad Sharma by the registered sale deed (Ex.P/2) and his name was mutated in the revenue records on 22.08.2009 and Bhu Adhikar and Rin Pustika (Ex.P/1) was prepared and the same was issued by the competent authority and thus, he became absolute owner of the land in dispute. Further submitted that the respondent / plaintiff and Tarabai both applied for demarcation, whereupon, Revenue case no. 9-A12/09-10 was registered and notices were issued to all the concerned having land surrounding the disputed land and in the presence of all the parties concerned including In-charge Officer, Community Health Centre, Chandiya, demarcation proceeding was completed after giving full opportunity to all concerned and on 23.03.2010 the same was approved and a final order regarding demarcation was passed and then only for the first time, he came to know that Kailodevi Government Hospital is constructed on an area ad-measuring 0.042 hectare of the land in dispute owned and possessed by the plaintiff bearing khasra no. 2307/1Ka/1Ka/1Ka, (new no.2307/A/Ka/1) area 0.274 situated at village Chandiya, General no. 205 and Patwari Halka No.9. Appellants no. 3 and 4 have admitted in their written statement that proceeding of demarcation was done as per the order of the Tahsildar, Chandiya dated 23.03.2010 which is apparent from para 2 of the impugned judgment and therefore, the appellants / defendants are bound by their admission and on their admission it is contended that the admission of the appellants / defendants is a best evidence which itself proved that in the alleged part of private land which was purchased by the respondent / plaintiff, by way of illegal manner the aforesaid hospital is situated without any permission, authority or occupying the land from the actual private owner or it was not acquired by the State Government for any public purpose and thus, by way of making construction of Kailodevi Government Hospital, the defendants encroached the said part of the respondent / plaintiff and their status is established as encroacher and if the illegal possession on the private land has been found then the such encroachment and illegal possession can be removed and the learned court below has rightly passed the impugned judgment and decree for which no interference is warranted.

8. In support of aforesaid contentions, learned counsel for the respondent /

plaintiff has placed reliance in *State of Haryana v. Mukesh Kumar and others*, (2011) 10 SCC 404. Relevant paras no. 45 & 47 are 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.

47. This Special Leave Petition is dismissed with costs of Rs.50,000/- (Rupees Fifty Thousand only) to be paid by the State of Haryana for filing a totally frivolous petition and unnecessarily wasting the time of the Court and demonstrating its evil design of grabbing the properties of lawful owners in a clandestine manner. The costs be deposited within four weeks from the date of pronouncement of this judgment. In this petition, we did not issue notice to the defendants, therefore, we direct that the costs be deposited with the National Legal Services Authority for utilizing the same to enable the poor litigants to contest their cases.

9. In *Muddasani Venkata Narsalah (Dead) through L.Rs. and others v. Muddasani Sarojana* 2016 (2) SCCD 798 (SC); it has been held that "there was no serious cloud on title of plaintiff so as to force him to seek relief for declaration of title and even if plaintiff is not placed in possession of property on strength of his title conferred by way of sale deed in question he had right to recover possession. First Appellate court was right in decreeing the suit."

10. In *Prem Singh and others v. Birbal and others* 2006 (3) SCCD 1342 (SC) it has been held that there is a presumption that a registered document is validly executed. A Registered document, prima facie could be valid in law and onus of proof, could be a person who leads evidence to rebut the presumption. In the instant case, the respondent no. 1 has not been able to rebut the said presumption.

11. It has been further contended by learned counsel for the respondent / plaintiff that the defendants / appellants were in collusion with each other and intentionally with deliberate manner after the final order of demarcation vide dated 23.3.2010, the Tahsildar Chandiya entered the illegal possession of M. P. Government in column no. 12 of khasra of the year 2009-10. While at the time of purchasing the land, the plaintiff obtained certified copy of Khasra Panchsala of the year from 2003 to 2009 from Tahsildar, Bandhavgarh on 27.06.2009 and the disputed land is recorded as Kastkari Dhan Chirka Unnat 202 Aare in the aforesaid Khasra Panchsala and Kailodevi Government Hospital Community Health Centre, Chandiya is not recorded on any part of the disputed land. Thus, it is crystal clear that the Tahsildar has illegally and mala fide recorded the

aforesaid Hospital in column no. 12 of khasra of the year 2009-10 on a part of the disputed land which is ownership and possession of the plaintiff / respondent. It is settled law that on the basis of such illegal khasra entry of possession in some part of the disputed property, the appellants / defendants have no right over the property of respondent / plaintiff who became sole owner in view of the registered sale deed executed by Tara Bai and the plaintiff / respondent is also entitled for a decree of recovery of possession of area $21 \times 20 = 420$ Sq. feet. Admittedly, other part of the land is lying vacant. Even from the documents filed by the defendants it is crystal clear that the defendants had no right over the property in dispute and their possession is illegal. From their revenue records also it is crystal clear that the alleged land is not recorded in the name of M. P. Govt in the revenue record filed by them and on the contrary, in Ex. D/1 to D/4 the land was belonging to Ramdas who was father-in-law of Tarabai and after his death, Tarabai became the sole owner of the disputed land, is quite evident from Ex.D/5 to Ex.D/8. From time to time Tarabai sold the land to various other persons whose name are mentioned in the plaint and there is no dispute in regard to the said persons who had purchased the land earlier from Tarabai and after that, other remaining land was sold to the respondent / plaintiff by the registered sale deed, is not questioned anywhere by anyone and the defendants have no right to raise the objection against the legal right, title and ownership of the property. Though, the defendants have not filed any counter plaint or sought any relief in respect of their title or retaining their illegal possession on the area of disputed land, in which, the alleged old hospital is situated. The plaintiff has proved his case by the cogent and reliable evidence and documents and it has come on record that Tarabai became owner of the land and the said right was transferred from Ramdas which later-on was transferred in the name of respondent / plaintiff by the registered sale deed and the same has been mutated in his name, is quite evident from khasra of the year 2009-10 (Ex.P/57). The suit is within time and properly valued and therefore, the learned court below has not committed any illegality and perversity in deciding all issues framed in para no. 12 of the impugned judgment in favour of the respondent / plaintiff.

12. In support of his contention he has cited judgments of this Court in the matter of Alka Gupta (Smt.) v. State of M.P. and others, 2013 RN 176, in which relevant para nos. 24 and 25 are reproduced as under :-

24. Considering the above legal proposition as held by this Court from time to time with regard to accrual of Bhumiswami to be shown in possession of agricultural land as krishak in Samvat 2007 and consequential conferral of Bhumiswami rights on them on coming into force of M.P. Land Revenue Code under section 189. The plaintiff is the owner of Bhumiswami of disputed land which has been in the name of Jaswant Singh in the Revenue record as Bhumiswami after coming into force of M.P. Land Revenue Code and name of Jaswant Singh has been entered in the khasra of year 1988-89 Exhibit P-3, appellant has purchased the land by registered sale deed dated 2.6.1989.

Therefore, 12 the learned trial Court is not justified in dismissing the suit without considering the unrebutted documents regarding khasra entries which were not even questioned by this Court while passing judgment for remanding the case for rehearing dated 7.9.2009 passed in FA 135/2004.

25. Therefore, appeal is allowed and setting aside the impugned judgment and decree the suit of plaintiff is decreed as under:- (a) Plaintiff is declared owner and possession holder of the land marked as 'v' in the map annexed with the plaint and defendants No.1 and 2 have no right to take possession of said land. (b) The defendants are further restrained from dispossessing the plaintiff/appellant Smt. Alka Gupta on the disputed land survey No. 937 marked as 'v' in the map annexed with the plaint. The defendants/respondents no.1 and 2 shall pay the cost of this appeal to the appellant/plaintiff and bear their own cost. (c) The counsel fee shall be calculated according to the rules if pre-certified. (d) Decree be framed accordingly.

13. He further cited the judgment of this court in the matter of Nanda v. Poona 1996 RN 382 in which it has been held in para 13 which is as under:-

13. As regards the relief No.2 claiming permanent injunction, it is luculent that the respondent - defendant has no right or interest in the suit land which is held by the appellant - plaintiff, if not exclusively at least jointly, with other co-bhoomiswami. It is further established that the defendant is not only asking ,for half share in the land but also trying to dispossess the appellant – plaintiff thereof. Under these circumstances, the possession of the plaintiff needs to be protected against the defendant who does not seem to have any better title to the suit property. The legal position on the point is made more luculent by Hon'ble the Supreme Court in the case of M.K. Setty v. M.V.L. Rao (1972 SC 2299) in following terms :

"So far as the question of possession is concerned, as mentioned earlier, both the trial Court and the first appellate Court have accepted the plaintiff's case that he was in possession of the suit site ever since he purchased the same in 1947. This is essentially a finding of fact. That finding is based on evidence. The High Court, in our opinion, erred in coming to the conclusion that the possession of the plaintiff after the sale deed in his favour is not a relevant circumstance. We are of opinion that it is an extremely important circumstance. The plaintiff can on the strength of his possession resist interference from persons who have no better title than himself to the suit property. Once it is accepted, as the trial Court and the first appellate Court have done, that the plaintiff was in possession of the property ever since 1947 then his possession has to be protected as against interference by someone who is not proved to have a better title than himself to the suit property. On the findings arrived at by the fact finding Courts as regards possession, the plaintiff was entitled to the second relief asked for by him even if he had failed to prove his title satisfactorily. Therefore, in our opinion, the High Court was not right in interfering with the judgment of the trial Court as affirmed by the first appellate Court regarding relief No.2"

14. He further cited judgment of this court in the case of Ranvir Singh v. State of M.P. and others 1993 RN 25 [kindly see para no.4]; Malti (Smt.) v. Deviram and others 1993 RN 165 [kindly see para no.15]; Premnarayan v. Sodrabai and others 1993 RN 420 [kindly see para no.11]; State of M. P and others vs. Asharam 1996 JIJ, 630 [kindly see para nos. 7 & 18]; Smt. Dulari v. Chooramani 1997 (II) MPJR 11 [kindly see para no.10].

15. Heard learned counsel for the parties and perused the impugned judgment and the record of the court below and also minutely perused the judgments cited by learned counsel for the respondent / plaintiff. It is found that the contentions of the appellants / defendants are not sustainable because defendant no. 1 i.e. Revenue Department of M.P. Government has not filed any written statement and not rebutted the pleadings and documents of the respondent / plaintiff. The main State Agency was defendant no. 1 whose evidence could be better than how and on what legal basis the alleged hospital was constructed on the private land or there was any legal order to occupy the land for public purpose of construction of the Community Health Centre or against it, any compensation was paid to the actual owner of the land. From the revenue records vide Ex.P/1 to P/57 it is not gathered that the land was belonging to the M. P. State Government or it was reserved for the public purpose and the defendants have not filed any single document nor produced evidence to the effect that how and on what legal foundation, the alleged hospital was built up in the private land of Tarabai which is now the land actually belonging to the plaintiff in compliance of registered sale deed and the revenue records filed by the plaintiff, i.e. Ex.P/1 to Ex.P/57. The documents as mentioned in herein-above are so relevant to fortify the findings of the judgment and decree, in which, it has been held that none of the documents filed by the defendants are showing the legal right or any ownership of the appellants / defendants and it is clear as crystal that the disputed land was the private property and Tarabai had rightly sold the land-in-dispute in favour of the respondent / plaintiff. The main contention of appellants / defendants is that in some khasras the entry of Hospital has been shown but merely on those entries it cannot be held that the appellants / defendants had any right over the property in dispute and also because the defendants have admitted in their evidence that in any revenue records the name of State of M.P. as owner of the land is not mentioned or there is no evidence that the land was acquired or it was reserved for the purposes of building of Community Health Centre in the name of Kailodevi Government Hospital and in this regard paras 15, 18 & 19 of the defendant no. 4 Bhagirathe Lahare are very clear. This witness has also admitted that notice under Section 80 of C.P.C. was received but no reply of the said notice was given by the defendants and further stated that according to Sections 115 and 166 of the M.P.L.R.C.; the Patwari has no right to enter any entry regarding the possession in the revenue record without the order of legal authority of Tahsildar and he admitted that in respect of entry in khasra nos. 1969 -70 to 1992-93 the actual record (Sansodhit Panji) has not been filed in the case and he admitted that in document Ex.D/4 i.e. Namantran Panji No. 70 dated

26.4.1976 the land was mutated in the name of Tarabai and in respect of entry in column no. 12 of Ex. D/5 to D/11 the order or source of aforesaid entry in compliance of competent authority and number of revenue case is not mentioned and in fact, those entries have been made without any order of competent authority in due process of proceedings He admitted in Ex.D/9, the head of the land "Dhan Chirka Unnat" is written. Thus, from the admission in paras 15 to 20 of his deposition, the appeal filed by the appellants / defendants has no merit at all and the interference by this Court on well reasoned judgment and decree is not warranted.

16. Similarly on perusal of statement of witness Lalit Prasad Patel vide para 4 it is clear that in Ex.D/11 Kailodevi Community Health Centre is not written and he cannot say anything that the alleged building is situated in government land or private land and looking to his statement, which goes to indicate that the defendants have prima facie no case in regard to the such entry in Ex.D/11 mentioned in illegal manner without any foundation of law or order of competent authority. Even the said document Ex.D/11 does not bear the date and signature of any authority. It is apposite to refer the case of this Court in Ranvir Singh v. State of M.P. and others 1993 RN 25 it has been held that entry as to unauthorized possession of the person other than recorded holder made in remarks column of khasra, such entry does not have any presumptive value. Further in Nanda vs. Poona 1996 RN 382 it has been held that plaintiff establishing his title to the suit land, defendant having no title. Defendant should be restrained to interfere in possession of plaintiff.

17. On perusal of record of the court below, it is evident that the plaintiff has proved his case by cogent and reliable evidence and public documents i.e. from Ex.P/1 to P/58 and the oral evidence adduced by respondent / plaintiff Ravi Shankar Sharma and his witness Chandra Prakash Dwivedi. The learned court below has rightly appreciated the evidence and documents of both the parties and not committed any illegality in holding that from any documents the right or any kind of legal possession of the appellants / defendants is not proved and the defendants have no right to retain the illegal possession as an encroachment on the private land of respondent / plaintiff while Tarbai had arrived to sell her property according to her wish which has been done in favour of the plaintiff by way of registered sale deed. From the cross-examination of DW-1 Lalit Prasad Patel, who admitted that in the present time, a new hospital has already been constructed and ready to run. It is necessary to mention here that during the pendency of civil suit, a new Government Hospital i.e. Community Health Centre, Chandiya has already been constructed in Khasra no. 2492/A area 2.717 hectare and it was a separate land allotted to the said new hospital and there is no dispute at all in respect of new hospital building and even the Chief Medical and Health Officer, District Umairi issued a letter bearing No. 2017/3025 dated 16/2/2017 for its inauguration and thus, admittedly, at present the new hospital has already been constructed in aforesaid khasra and after its inauguration, it is being run and it has been fairly admitted on behalf of the State that the new

hospital has already been constructed and is running smoothly and the old hospital situated in the disputed land i.e. in area $21 \times 20 = 420$ sq. ft. is now useless for any purpose.

18. This court in *Awadh Bihari Asati and others v. Shyam Bihari Asati and others* 2004 (1) MPLJ 225 has held that it is well settled that admission made by the opposite party is the best evidence on which other party can rely upon. Similar view has also been taken by Hon'ble the Apex court in *Ahmedsaheb v. Sayed Ismail*, AIR 2012 SC 3320 in which it has been observed that it is needless to emphasize that admission of a party in the proceedings either in the pleadings or oral is the best evidence and the same does not need any further corroboration.

19. In the present case, the situation is same as held in *State of Haryana* (supra) wherein it has been observed that 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.

20. In view of foregoing analysis and keeping in view the law laid down in the aforesaid judgments, this court does not find any merit in this appeal. Accordingly, the appeal is dismissed with other order as to costs. Interim order dated 24.11.2017 stands vacated.

Accordingly, the decree be drawn up.

Record be sent back to the trial court along with copy of this order for information and its compliance.