
(2013) 01 MP CK 0050
In the Madhya Pradesh High Court
Case No : F.A. No. 117 of 1999

Purshotam and Another

APPELLANT

Vs

State of M.P. and Others

RESPONDENT

Date of Decision : 31-01-2013

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 41 Rule 27, 80

Citation : (2013) 1 MPLJ 716

Hon'ble Judges : S.K. Seth, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

S.K. Seth, J.—This is plaintiffs' first appeal against the judgment and decree passed by the Additional District Judge Khachrod District Ujjain in Civil Suit No. 14-A/96. Shorn of verbiage, facts which are relevant and necessary for deciding this appeal may be stated as under. Plaintiffs filed a suit for declaration and permanent injunction. The suit property is Survey No. 486/2 situated in village Khachrod. The suit is based on a sale-deed said to have been executed by collaterals of Gafoor Khan in favour of plaintiffs. Since then, plaintiffs claim to be in possession of suit property. It was alleged that initially suit property was agriculture land but after its diversion plaintiffs carved out and sold certain plots to others. Plaintiffs claimed that the suit property is situated to the south of their other lands. It was further alleged that respondent Nos. 5 and 6 acting hand-in-glove, foisted false revenue cases against appellants casting clouds on their title. They sought declarations that various orders passed against them in false revenue cases were non est and it be declared that the suit property is situated on the southern side. They also claimed permanent injunction restraining the defendants from interfering with their possession. It seems that their efforts to get the suit property demarcated were all in vain therefore, plaintiffs came out with the suit for declaration and permanent injunction after giving notice u/s 80, CPC to have a shot at the litigation.

2. In their joint written statement, respondent Nos. 1 to 4 and 6 denied all the material allegations in the plaint. It was denied that collateral had any right to effect the sale or that the sale-deed was valid. According to defendants, Survey No. 486/2 is recorded in revenue records as Government Land and the sale-deed conferred no right, title or interest to plaintiffs. Plaintiffs' possession was denied and it was further stated that in the garb of alleged sale-deed, plaintiffs were trying not only to grab the government land but to avoid lawful action against them. Respondent No. 5 also filed his written statement denying all allegations. All personal allegations of mala-fides made against respondent No. 5 and 6 (who were impleaded by name) were also specifically and categorically denied. It was submitted that plaintiffs were not entitled to any relief and the suit was liable to be dismissed with costs.

3. On the material on record learned trial Court found that the sale-deed was valid but found that plaintiffs were unable to prove their possession over the suit property. It was also found that plaintiffs could not prove the location of the suit property as claimed by them in the plaint. On issue No. 3-A to 3-C, trial Court found against the plaintiffs. With these findings trial Court partly decreed the suit by the impugned judgment and decree.

4. Dissatisfied with the decision, the plaintiffs have come up in appeal, as stated above.

5. The only point for consideration is whether the findings of the trial Court regarding plaintiffs' possession and location of the suit property are unsustainable ?

6. We have heard learned counsel at length. He has very assiduously taken us through the entire pleadings as well as evidence adduced by the parties at the trial.

7. After having heard the counsel and going through the material on record, we find no merit and substance in this appeal. No doubt, plaintiffs examined five witnesses and adduced plethora of documentary evidence but in our considered opinion none of it is of any avail to the plaintiffs. The most vulnerable part of the plaintiffs' case is about their possession and location of the suit property and there is the least evidence in support thereof. Material on record, in all probability, tends to support defendants' contention that the suit property is a government land and plaintiffs were trying to grab it under the cover of the alleged sale-deed. We are not impressed with the bald and sweeping allegations of mala fides made against respondent Nos. 4 and 6 which are bereft of necessary details in pleadings and evidence. It is very easy to level allegations of personal mala fides, but for a Court to accept and act on those allegations there has to be clear and clinching evidence of unblemished character. Mere ipse dixit of plaintiffs in this regard is insufficient. In our considered opinion, plaintiffs having failed to meet the challenge squarely cannot be permitted to skirt around to get the location of the suit property fixed as desired and claimed by them. But

we are anguished to note undue and harsh language used by the Court below in some places in the judgment. Court should remember that sobriety is always the hallmark of judicial temperament. Be that as it may, in view of foregoing discussion, we see no justification to upset the findings recorded by the trial Court. We now come to the application (I.A. No. 581/2013) under Order 41 Rule 27, CPC filed yesterday. After careful scrutiny we find no ground to entertain the application. We are not at all satisfied with the reasons assigned in the application for such belated attempt to fill up the lacuna in case. Hence the application deserves dismissal and is hereby dismissed. In the result the appeal fails and is hereby dismissed. The judgment and decree passed by the lower Court are hereby affirmed, with the modification as indicated above. Plaintiffs to bear costs throughout.