
(2011) 05 MP CK 0060
In the Madhya Pradesh High Court
Case No : First Appeal No. 179 of 1996

Rashid Khan and Another

APPELLANT

Vs

State of M.P. and Others

RESPONDENT

Date of Decision : 07-05-2011

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 41 Rule 27, Order 6 Rule 17
Evidence Act, 1872 — Section 64, 77
Madhya Pradesh Land Revenue Code, 1959 — Section 248
Specific Relief Act, 1963 — Section 34

Citation : (2011) ILR (MP) 2801 : (2011) 5 MPHT 97

Hon'ble Judges : A.K.Shrivastava, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

Hon"ble Mr. A.K. Shrivastava, J.—This is plaintiff"s first appeal since their suit for declaration and injunction has been dismissed by learned Trial Court.

2. The facts necessary for the disposal of this appeal lie in narrow compass. Suffice it to say that a suit for declaration and injunction in respect of a house, the description whereof has been mentioned in the plaint and which is the subject matter of the suit, has been filed by the plaintiffs against the defendants/respondents on the averments that they have purchased the suit property from Mohammad Sabir on 27-7-1990 and 16-2-1990 by two registered sale-deeds (Exhs. P-1 and P-2) and entered into possession of the suit property. Further the case of the plaintiffs is that their vendor purchased the suit property from Qamal Abbas Khan who was the surviving heir of Musharraf Jahan Begum, the owner of the suit property vide registered sale-deed dated 2-12-1986 and thus, they are the owner of the suit property, but, the respondents/defendants are trying to interfere into their possession. It is the further case of plaintiffs that Sub-Divisional Officer/Additional District Magistrate vide order dated 5-10-1991 in Case No. 10-A/68/1991-92 by holding that the suit property is Government property, has directed to evict the plaintiffs and hence, the present suit has been

filed.

3. The plaint averments were refuted by the defendants by filing written statement. Their stand is that the suit property is owned by the Government and has been recorded in the revenue record as Nazul land, therefore, not only the plaintiffs but their predecessors were also not the title holder of the suit property and, therefore, status of the plaintiffs is that of a tress-passer only and rightly the order has been passed by the Sub-Divisional Officer directing them to evict the suit premises.

4. Learned Trial Court on the basis of the averments made in the plaint and denial in the written statement framed necessary issues and after recording the evidence of the parties dismissed the suit.

5. In this manner, this appeal has been filed by the plaintiffs.

6. It has been put forth by learned Counsel for the appellants that suit property was owned by Musharraf Jahan Begum whose heir sold the property to the vendor of the plaintiffs and thus, the title of the plaintiffs has been proved. Learned Counsel submits that plaintiffs have not only proved their sale-deeds but have also proved the sale-deed of their vendor, hence, they are the title holder of the suit property, this has been emphatically proved. It has also been put forth by learned Counsel that if the land is in the vicinity of the Municipality, the provisions of Section 248 of the M.P. Land Revenue Code, 1959 (hereinafter referred to as "the Code") are not attracted and in this regard he has placed reliance on the Division Bench decision of this Court Sind Mahajan Exchange Ltd., Lashkar Vs. State of M. P. and another, 1980 L.J.L 581.

7. Two applications; I.A. No. 4268/1996 under Order VI Rule 17, CPC and I.A. No. 4222/1996 under Order XLI Rule 27, CPC are also filed before this Court. Learned Counsel for the appellants has addressed on these two applications also and has submitted that by allowing these two applications the case be remanded back to learned Trial Court.

8. On the other hand, Shri Yashpal Rathore, learned Counsel appearing for the respondents/State argued in support of the impugned judgment.

9. Having heard learned Counsel for the parties, I am of the view that this appeal deserves to be dismissed.

10. So far as the contention of learned Counsel for the appellants that since the land is in the Municipal area, the provisions of Section 248 of the Code are not applicable is concerned, the entire argument is based on the pivot of the dictum laid down by the Division Bench of this Court Sind Mahajan (supra), which has been reversed by the Supreme Court State of M.P. and another Vs. Sind Mahajan Exchange Ltd., 1999 RN 328. Hence, this, contention cannot be accepted that in the Municipal area the provisions of Section 248 of the Code are not attracted.

11. So far as the other contention of learned Counsel that they have proved their

title is concerned, suffice it to say that Exhibits P-1 and P-2, which are the sale-deeds dated 27-7-1990 and 16-2-1990 respectively have been filed by them in order to prove that Mohammad Sabir sold the suit property to them by these two sale-deeds. Learned Counsel has also invited my attention to sale-deed (Exh. P-8), dated 2-12-1996 executed by Qamal Abbas in favour of his vendor and submitted that Qamal Abbas was the owner of the suit property being the heir of Musharraf Jahan Begum and therefore, validly the title has been proved. However, the plaintiffs have not filed any document in respect of the titled of Musharraf Jahan Begum in the Trial Court. Along with application I.A. No. 4222/1996 under Order XLI Rule 27, CPC also only a photocopy of certificate of Municipality, Jaora, dated 26-8-1996 has been filed certifying that in the Municipal register 1966-67, Halka No. 1 on Page No. 149 of the register of Municipality, House No. 618/2, which is in dilapidated condition, the ownership of Sahabjadi Musharraf Jahan Begum has been entered. According to me, the document, which has been filed along with the application is nothing but a waste paper because it is a photocopy of some certificate. The photocopy of a document is inadmissible in evidence, since it is neither primary nor secondary evidence. Even if the original would have been filed it could not be a primary evidence because on bare perusal of this document itself it appears that this certificate has been prepared from the entry made in the register at Page No. 149 of the Municipality. Indeed, the certified copy of the Municipal register, which is a public document ought to have been filed and if it would have been filed, u/s 77 of the Evidence Act, mere production of it would have been sufficient because under this provision the production of the certified copy of a public document would be the proof of the public document. Thus, this application cannot be accepted on the ground that the document, which is filed is the photocopy of some certificate and that certificate itself is not a primary evidence. Needless to say that u/s 64 of the Evidence Act, if primary evidence is available, the secondary evidence is inadmissible. In this context, I may profitably place reliance on the decision of Supreme Court *Tukaram S. Dighole Vs. Manikrao Shivaji Kokate*,

12. It is well settled law that if the title of the plaintiff is challenged, he is not only bound to prove his title but he had to further prove the title of his vendor also. In this context, I may cite a decision of this Court in *Sabrani Vs. Muniya*, 1967 RN 507. Since the plaintiffs have utterly failed to prove the title of their predecessor, according to me, learned Trial Court did not err in dismissing the suit of plaintiffs holding that they had failed to prove their title in the suit land.

13. Apart from this, the plaintiffs are also basing their case that there is an order of Sub-Divisional Officer/Additional District Magistrate, dated 5-10-1991, against them passing an order to evict them as they are tress-passers on the suit property and they have been further directed to deposit fine of Rs. 500/-. Indeed, plaintiffs have based this order as a cause of action to file this suit. According to me, if in some revenue proceedings an order has been passed to evict the plaintiffs, unless and until the same is challenged by the plaintiffs and

relief is sought for its quashment, the suit is hit u/s 34 of the Specific Relief Act. In this context, I may profitably place reliance on the decision of Supreme Court *Jugraj Singh and Another Vs. Jaswant Singh and Others*,

14. So far as the amendment application of the appellants to amend the plaint is concerned, I have gone through that application and I find that the plaintiffs are now shifting their case on the basis of adverse possession. According to me, having lost from the Court below, now at this stage they cannot shift over their stand because it will prejudice the respondents and the entire case will be reopened. Indeed, it is apparent that in order to fill up the lacuna this amendment application has been filed. Thus, this application is hereby dismissed.

15. Resultantly, this appeal fails and is hereby dismissed with no order as to costs.