
(2014) 10 MP CK 0053
In the Madhya Pradesh High Court
Case No : Second Appeal No. 1124 of 2012

Santosh Bai

APPELLANT

Vs

Tahsildar

RESPONDENT

Date of Decision : 30-10-2014

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 100

Citation : (2015) 1 MPLJ 396

Hon'ble Judges : U.C. Maheshwari, J

Bench : Single Bench

Advocate : Dinesh Upadhyay, learned counsel, Advocate for the Appellant;
Arvind Singh, learned PL, Advocate for the Respondent

Judgement

U.C. Maheshwari, J.

Heard on the question of admission.

1. On behalf of the appellant, plaintiff this appeal is preferred under Section 100 of the CPC being aggrieved by the judgment dated 30.8.2012, passed by the District Judge, Sehore in Civil Regular Appeal No. 22-A/12 affirming the judgment dated 6.3.2012 passed by IInd Civil Judge, Class-II, Sehore in COS No. 89-A/10, whereby the suit of the appellant filed for perpetual injunction with respect of plot in dispute was dismissed.

2. The facts giving rise to this appeal in short are that the appellant herein filed the impugned suit for perpetual injunction contending that under some residential scheme a plot 15x60 sq. ft. of the survey no. 179 of village charnal was given by the Naib Tahsildar on lease to the mother of the appellant, vide dated 13.8.1991 for the purpose of construction of residential house. Subsequent to that, the house was also constructed by the mother of the appellant and near about before fifteen days from the date of filing the suit, the mother of the appellant Kalibai had passed away. Since the death of mother of the appellant, the appellant is residing with her family in such house. Some political persons

having the enmity with the family of the appellant under some conspiracy with the Tahsildar of Shyampur are trying to dismental the house of the appellant. In this regard some enquiry was also held on the spot by the Tahsildar through Patwari and such Patwari had informed the appellant that proceeding to dismental her house is 2 being carried out in the Tahsil. In continuation, it is stated that if such house is dismentaled by the authority of respondent, then she being poor person has to suffer irreparable injury. With these averments, the impugned suit for perpetual injunction against the authority of respondent to protect her house and possession over the plot was filed.

3. In the WS of the respondents averments of the plaintiff are denied. In addition to it, it is stated that on dated 2.8.1998, the Gram Panchayat of the concerning village had passed the resolution for rejection of the lease of the plot in dispute because the allottee has not constructed the house in accordance with the terms and the conditions of the lease in last eight years and pursuant to such resolution the lease of the plot granted to Kalibai was cancelled. It is also stated that right under the lease of the alleged patta was given only to Kalibai, therefore, her successor, the appellant did not have any right to retain such plot, subsequent to such cancellation of the plot. It is further stated that the land of the plot in dispute and its adjoining land have already been allotted to some other villagers on lease to construct the shops and now they are in possession of the same. With these pleadings, the prayer for rejection of the suit is made.

4. In view of pleadings of the parties issues were framed and trial was held. On appreciation of the evidence by holding that the allottee of such plot namely Kalibai had not constructed the house in accordance with the terms of the lease and scheme within the prescribed period on which under vested authority, therefore, Panchayat had passed the aforesaid resolution. Pursuant to that, the land has been further allotted to other villagers and in such premises, also by holding that the appellant is not in possession of the land dismissed the suit.

5. On filing the appeal by the appellant, on consideration by affirming the judgment and decree of the trial court, the same was dismissed, on which the appellant has come to this court with this appeal.

6. The appellant's counsel after taking me through the record of the courts below argued that patta granted by the Tahsildar in the year 1991 to Kalibai could not be cancelled by the Gram Panchayat as such resolution of the Gram Panchayat relating to the plot of the appellant was ab initio void. So pursuant to such resolution, if any action is taken by the authority of the respondent to dismental of her house and dispossess the appellant from plot is not proper under the existing laws unless appropriate proceeding to cancel the lease of such patta could be carried out by the Tahsildar, the same could not have been cancelled by the Gram Panchayat . In such premises, the trial court ought to have decreed the suit against the authority of respondent for perpetual injunction but the same was dismissed under the wrong premises and on filing the appeal, the appellate court has also affirmed the judgment and decree of the

trial court contrary to settled proposition of law and prayed to admit this appeal by framing the substantial questions of law as proposed in the appeal memo.

7. Having heard the counsel, keeping in view the arguments, advanced, I have carefully gone through the records of courts below alongwith the impugned judgments. As per concurrent findings of both the courts below the disputed plot was allotted to one Kalibai, the mother of the appellant in the year 1991, but subsequently, as per terms of such lease within the prescribed period of two years, she did not construct the house in accordance with the scheme. So, on account of violation of such material term of the patta, the same was 4 automatically cancelled. After this, subsequent to aforesaid allotment to Kalibai in 1991 by making some amendment in the M.P. Panchayat Raj Avam Gram Swaraj Adhiniyam, the power to control and regularize such land was given to Gram Panchayat . So in such premises, the aforesaid resolution of the Panchayat could not be questioned by the appellant in the impugned case.

8. Apart from the aforesaid, there is concurrent findings of courts below that on the date of filing the suit the appellant was not in possession of the disputed plot as the same was already allotted alongwith the adjoining land to other persons of the village to construct the shop or other premises on the same. It is apparent that the suit is filed only for perpetual injunction but in the lack of possession of the appellant on the date of suit on the plot, her suit could not have been decreed by the courts below. So in such premises, the suit has been rightly dismissed by the trial court and on the term of the appellate court, such court also has not committed any error in dismissing the appeal by the impugned judgment.

9. As per settled proposition of law, the concurrent findings of the courts below on the question of possession over the property being finding of fact could not be interfered under Section 100 of the CPC. So, in the light of such concurrent findings of facts holding that the appellant was not in possession of the disputed property, this appeal does not have any question of law rather than substantial question of law, hence this appeal could not be admitted by framing the substantial questions of law.

10. So far other question raised by the appellant's counsel that resolution of the Gram Panchayat is ab initio void is concerned, such question could not have been considered by any of the courts below 5 and the same could not be considered by this court at this stage because the appellant has neither impleaded the Gram Panchayat, which had passed the aforesaid resolution nor such resolution has been challenged in the suit. Even otherwise, against the resolution of the Gram Panchayat the affected person has a right to approach the superior authority under the concerning provision of M.P. Panchayat Raj Avam Gram Swaraj Adhiniyam. So I am of the view that such question on account of non joinder of necessary party, the Gram Panchayat could not have been considered by the courts below in the present matter and the same could not be considered by this court. In such premises, the argument of the appellant's counsel in this regard is

not sustainable.

11. In the aforesaid premises, I have not found any material or substance in the case giving rise to any question of law rather than substantial question of law which requires any interference at this stage by framing the substantial question of law under Section 100 of CPC. Consequently, this appeal being devoid of any merits deserves to be and is hereby dismissed. There shall be no order as to cost.