
(2017) 09 MP CK 0008
In the Madhya Pradesh High Court
Case No : 282 of 1999

Smt. Laxmibai Pandey

APPELLANT

Vs

State of M.P. & Others

RESPONDENT

Date of Decision : 08-09-2017

Acts Referred:

[Code of Civil Procedure, 1908](#), [Section 100](#)/
[Section 80](#) - Second appeal - Notice

Citation : (2017) 09 MP CK 0008

Hon'ble Judges : S.A.Dharmadhikari

Bench : Single Bench

Advocate : Abhishek Mishra, ?Ravi Gupta

Final Decision : Dismissed

Judgement

1. This appeal has been preferred against the confirming judgment and decree dated 14/5/1998 passed by Ist Additional District Judge, Gwalior in Civil Appeal No. 48A/1997. Suit for declaration and permanent injunction preferred by the plaintiff in respect of the suit property has been decreed by the trial Court vide order dated 19/4/1995 passed by Civil Judge Class I, Gwalior in Civil Suit No. 104A/94.

2. On 16/1/2006, this appeal was considered on the

question of admission and admitted on the following substantial question of law:-

"Whether the plaintiff is under a legal obligation to prove the derrivated title of the vendors and is under legal obligation to prove the source of title of his vendors ?"

3. Facts relevant and necessary for adjudication of this appeal lie in narrow compass.

4. Plaintiff filed a suit seeking declaration and permanent injunction in respect of the suit property; Old House No. 1114 (New No. 744) situated at Manir Shah Ki

Pared, Kampoo, Lashkar and shown in red ink in the map annexed to the plaint. Plaintiff pleaded that the said property was purchased by him vide registered sale deed dated 30/9/1978 (Ex.P/1) and is in possession thereof. The said property is also mutated in the name of plaintiff in the revenue records. He has also levelled the land and fenced it. Defendant-State has no right, title or interest in the suit property, but Officers of SAF Batallion are forcibly trying to dispossess the plaintiffs of the said land, for which purpose they had threatened the plaintiffs also. Apprehending forcible dispossession at the hands of defendant, predecessor-in-title of the suit property namely Ramchandra had sent a notice under section 80 of the CPC to the defendant, and after expiry of the period of said notice, the instant suit was being filed for declaration and injunction.

5. Defendant filed written statement and denied plaint allegations. It was pleaded that the suit property is part of Government Survey No. 49 located at Village Gudhi whereupon 20 residential houses of SAF have been constructed and the remaining open land is also in possession of SAF. As such, plaintiffs are not entitled to any declaration. On the contrary, they had annexed the map of Government Survey No.49 along with the plaint and, therefore, the suit deserves to be dismissed.

6. On the aforesaid pleadings, trial Court framed issues and allowed parties to lead evidence. To prove his title over the disputed property plaintiff examined his predecessor-in- title Dr. Shravan Lal Sharma (PW2) who deposed in his evidence that he had purchased the suit land from previous owner Mustar Ali, and, in the year 1937 Mustar Ali had purchased the same from Chimman Khan. He had purchased the said land vide registered sale deed (Ex. P/4). Mustar Ali had got the map (Ex.P/7) sanctioned from Cantonement. He deposed that when he had sold the suit land to plaintiff he had handed over the said map to him. This witness also deposed that after purchasing the said land from Mustar Ali, he had got his name mutated in the revenue records vide Ex.P/5. After purchasing the same from Mustar Ali and obtaining possession, he had sold the suit property to the present plaintiffs through Lokumal Dalal vide sale deed (Ex.P/1) and also delivered possession thereof to the plaintiffs. This witness remained firm on the point that the suit land was not Government land. The evidence of Shravanlal was also supported by plaintiff witness Bhagwandas.

7. After dealing with the evidence of plaintiff and his witnesses trial Court has also considered the evidence of defendant-State in paragraph 16 of its judgment. Ganesh Bahadur Thapa (DW1) deposed in his evidence that the suit land belonged to second Batallion SAF and was part of Survey No. 47. The said land was allotted to SAF by the State vide order (Ex.D/1). This witness in cross-examination

deposed that Patwari had given the possession of said land before him to SAF. He deposed that Patwari Haribabu Shrivastava was alive. However, Haribabu Shrivastava was not examined by the defendants. This witness deposed that he had no document to show that possession was handed over to defendant. This

witness deposed that he had no knowledge that the suit land was registered in the revenue records in the name of plaintiffs and in 1937 it was a Cantonment area. This witness further deposed that he did not know that the suit land previously belonged to Chman Khan and Mustar Ali and Shravan Lal and presently is recorded in the name of plaintiffs.

8. Thus, after considering the entire evidence trial Court in paragraph 18 found it proved that plaintiff was the owner and in possession of the suit land. The trial Court found that the defendant had not been able to produce a single document so as to prove that the said land was a Government land and was transferred to SAF. It was also the admitted position that the suit land was not agricultural but residential land. The trial Court found that defendant had not been able to prove the documents tendered in evidence. Accordingly, the trial Court decreed the suit of the plaintiffs.

9. In appeal, the first appellate Court upon critical evaluation of the evidence on record, as discussed in paragraphs 8 to 17 of its judgment reached the conclusion that plaintiffs had proved their title and possession over the suit property, while defendant-State had not been able to prove its ownership or possession thereon. Accordingly, the first appellate Court dismissed the appeal.

10. Learned counsel for the appellants confining his

arguments to the substantial question of law submitted that plaintiff should have proved their derivative title and the suit could not have been decreed on the ground of sale deed.

11. In response, learned counsel for the plaintiff submitted that the suit land was purchased by plaintiff vide registered sale deed dated 30/9/1978 (Ex.P/1) and the name of plaintiff was mutated in the revenue record vide order dated 17/5/1980 (Ex.P/5). The plaintiff's predecessor-in-title had purchased the suit land from Mustar Ali vide registered sale deed dated 16/6/1971 (Ex.P/4) who in turn had purchased the same from Chimman Khan vide sale deed dated 2/6/1937, which being more than 30 years old has a presumptive value under section 90 of the Evidence Act. For this, reliance has been placed on decision in the case of Jugal Kishore and others Vs. Ramnath and others (1992 J.L.J. 92). With the aforesaid submissions, it is submitted that no interference, as such, is warranted with the judgments impugned.

12. Having heard, learned counsel for the parties and upon bare perusal of the judgments of the Courts below, it is evident that the plaintiff has been successful in proving his title over the suit land by leading cogent evidence. Predecessor of the plaintiff Dr. Shravan Lal Shrama (PW2) had purchased the land in question from Mustar Ali, who in turn had purchased the same on 2/6/1937 from Chimman Khan. The said sale deed being more than 30 years old, had a presumptive value under section 90 of the Evidence Act even at the time of execution of sale deed 16/6/1971 (Ex.P/4) executed by Mustar Ali in favour of Dr. Sharavan Kumar, predecessor-in-title of the plaintiff. Thereafter, plaintiff has

purchased the land in question from Dr. Shravan Kumar vide registered sale deed dated 30/9/1978 (Ex.P/1) and name of

plaintiff has been mutated in the revenue records vide order dated 17/5/1980. Therefore, it cannot be said that source of title of vendor of plaintiff has not been proved by the plaintiff. The learned trial Court, as well as, first appellate Court have critically examined the evidence and recorded concurrent findings of facts. Further, it is well settled that under section 100 CPC, this Court cannot interfere in findings of facts, even if they are erroneous (Pakeerappa Rai Vs. Seethamma Hengsu ((2001)9 SCC 521) referred to). The substantial question of law formulated above is answered accordingly.

As such, no interference is warranted under section 100, CPC. The appeal fails and is, hereby, dismissed.