

(2020) 03 MP CK 0181

In the Madhya Pradesh High Court

Case No : Second Appeal No. 3160 Of 2018

Smt. Rajmanibai And Others

APPELLANT

Vs

Prembai And Others

RESPONDENT

Date of Decision : 12-03-2020

Acts Referred:

Citation : (2020) 03 MP CK 0181

Hon'ble Judges : Vandana Kasrekar, J

Bench : Single Bench

Advocate : Shailendra Polekar, Akshay Kheriya, Shishir Purohit,

Final Decision : Dismissed

Judgement

1. The appellants have filed the present appeal against the judgment and decree dated 20/11/2018 passed by II Additional District Judge, District-Barwaha in Regular Civil Appeal No.100017-A/2016, whereby confirming the judgment and decree dated 29/09/2012 passed by Civil Judge, Class-II, District-Barwaha in Civil Suit No.55-A/2011.

2. Short facts of the case are that a suit was filed by the respondent No.1/ plaintiff for declaration, partition and permanent injunction against the appellants/defendants. The respondent No.1 has pleaded various grounds in the suit and claimed for allowing the same. After notice to the appellants/defendants, the suit was contested by the appellants denying all the averments made in the suit. The said suit was contested by appellants and pleaded that the averments made in the plaint are false. After hearing the parties, learned trial Court decreed the suit, against which appellants have filed the appeal, which was dismissed by the learned appellate Court. Being aggrieved by the said judgment and decree, the appellants have preferred the present appeal.

3. Learned counsel for the appellants argue that both the Courts below have erred in decreeing the suit. He further submits that both the Courts below have ignored the pleadings made by the appellants and documents have been filed by

the appellants, therefore, the finding of the Appellate Court is perverse which is against the evidence available on record. He further argues that as per the settled law, the respondent No.1 has to prove her case beyond reasonable doubt, but in the present case, both the Courts below have decreed and dismissed/confirmed the suit and appeal. Thus, in the light of the aforesaid, he submits that the appeal deserves to be admitted on the substantial questions of law proposed by the appellants.

4. Learned counsel for the respondents supports the impugned judgment and decree passed by both the Courts below and prayed for dismissal of the appeal.

5. I have gone through the judgment and decree passed by the Courts below and have also perused the record. The judgment passed by both the Courts below are well reasoned and are based on due appreciation of oral as well as documentary evidence available on record. The findings recorded by the Courts below are the concurrent findings of facts. Learned counsel for the appellants has failed to show that how the findings of facts recorded by the Courts below are illegal, perverse or based on no evidence. Thus, no substantial question of law arises for consideration in this appeal.

6. The Hon'ble Supreme Court in number of cases has held that in exercise of powers under Section 100 of the Code of Civil Procedure can interfere with the findings of fact only if the same is shown to be perverse and based on no evidence. Some of these judgments are *Hajazat Hussain vs. Abdul Majeed & others*, 2011 (7) SCC, 189, *Union of India vs. Ibrahim Uddin*, 2012 (8) SCC 148 and *Vishwanath Agrawal vs. Sarla Vishwanath Agrawal*, 2012 (7) SCC, 288.

7. For the aforesaid reasons, no substantial question of law arises for consideration in this appeal. The appeal fails and is hereby dismissed.