
(2006) 03 MP CK 0040

In the Madhya Pradesh High Court

Case No : Second Appeal No's. 238 and 252 of 1991

State of M.P. and Another

APPELLANT

Vs

Mohammed deceased through Nisar Ahmed and Others

 Administrator, Mpl. Corporation and Another Vs Nisar
Ahmed and Others

RESPONDENT

Date of Decision : 28-03-2006

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 41 Rule 27, Order 6 Rule 17, 100, 151

Citation : (2006) 03 MP CK 0040

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

Bench : Single Bench

Advocate : S.D. Vohra, Government Advocate in S.A. No. 238/1991 and Anand Agarwal, in S.A. No. 252/1991, for the Appellant; S. Bhargava and R. Bhargava, for Respondent Nos. 1 and 2 in S.A. Nos. 238 and 252/1991 and A. Agarwal, for Respondent Nos. 2 and 3 in S.A. No. 238/1991, for the Respondent

Judgement

S.K. Gangele, J.—Appellant-defendant Nos. 1 and 2 have filed this appeal against the judgment and decree dated 15-1-1991 passed by the 8th Additional District Judge, to the Court of District Judge, Indore, in Civil Appeal No. 18-A/89 reversing the judgment and decree dated 5-9-1989 passed by the Ninth Civil Judge Class II, Indore, in Civil Suit No. 398/1984.

2. This appeal has been admitted for final hearing vide order dated 4-3-1992 on the following substantial question of law:

Whether the Lower Court erred in law in decreeing the relief of declaration of title of respondent Mohammad by ignoring the case law as well as the statutory provisions in the case ?

3. The respondent Nos. 2 and 3 Administrator, Indore Municipal Corporation and Municipal Corporation, Indore have also filed a separate against the same judgment which is registered as S.A. No. 252/91, which is also admitted on the same day vide order dated 4-3-1992 on the same substantial question of law.

Both the appeals have arisen against the common judgment and decree passed in Civil Appeal No. 18-A/89, hence both the appeals were heard together and being decided by this common judgment.

4. One Mohammad filed a suit for declaration and permanent injunction. He died during the pendency of the second appeal and his legal representatives have been brought on record. He pleaded in the plaint that he is the owner of a house situated at Dolat Ganj, Street No. 1 alongwith adjoining open land. He received the aforesaid property on a lease of 99 years from Smt. Ramkunwar Bai on 21-10-65. Copy of the lease deed has been filed as Ex. P-I. He further pleaded that he submitted a site plan for construction of a house over the land and it was accepted on 8-11-1966. He began the construction as per the site plan over the land from 23-4-1967. No objection certificate was also granted to him on 4-5-1967 by the Executive Engineer, Public Works Department, which was cancelled on 19-5-1967. Subsequently, Municipal Corporation Indore, also cancelled the permission for construction. It was mentioned by the Municipal Corporation, Indore, in cancelling the permission of construction that as per the information given by the Public Works Department, the P.W.D. is the owner of the land. The plaintiff pleaded that a decree for declaration be granted that he is entitled for construction over the suit land and the defendant Nos. 3 and 4 be directed to grant permission for construction and defendant Nos. 1, 3 and 4 be directed to remove a dust-bin put up by them over the suit land.

5. The defendant Nos. 1 and 2 denied the pleadings of the plaintiff. They pleaded that the land was of the ownership of the Government which was granted to Education Department, Indore, in the year of 1926 and entry to that effect has been registered in Khasra No. 362 showing the land measuring 1.15 acres of the ownership of the Education Department and it had been paying the land revenue of Rs. 27.25 paisa of the land. Earlier due to some mistake no objection was issued which was cancelled subsequently.

6. Plaintiff filed copy of the lease-deed, Ex. P-I and some orders with regard to permission of construction, copies of notices sent through Advocate, copy of the assessment of the property tax as Ex. P-17, some orders and Khasra Entries, Ex. P-21, copy of the letter written by the Chief Executive Officer, Indore Municipal Corporation, Ex. P-27 of the year of 1923. It is mentioned in the letter that earlier the land of Hathipala was in possession of the Municipality and it has been occupied by the Education Department for erecting a school building since 1918. Copy of the letter dated 12-7-39 is Ex. P-28, in which it is mentioned that the land was the Inam land of Zamindar and it was given to the school for educational purpose. The Education Department also paid the land revenue of the land in dispute to the Zamindar.

7. Plaintiff examined himself as P. W. 1 and one Kashinath as P.W. 2. The defendants filed a map of the suit land as Ex. D-1, Naksa Trace, Ex. D-2, Khasra Entries for the year 1969-70, Ex. D-3 and entries of Khasra Bandobast for the year 1925-26 as Ex. D-4 and other documents. On behalf of the defendant Nos.

1 and 2 Head Mistress of the School Smt. Raisa Bano was examined and D.W. 1, one Aminur Rehman, D.W. 3, Abdul Rauf Khan, D.W. 2. Head Master of the School, Bharat Bhusan, Assistant in the Land Record, D.W. 4, Mangilal Patwari, D.W. 5 and one Assistant Engineer of the P.W.D. as D.W. 6.

8. After appreciation of the evidence oral and documentary the learned Trial Court dismissed the suit on the ground that the plaintiff has failed to prove his case with regard to ownership of the suit land because as per the revenue record the suit land is part of Khasra No. 362 area 1.15 acres. It was registered as a Government Land. The case of the plaintiff that he received the aforesaid land by lease, Ex. P-I, could not be believed because there was no land available for lease with the widow of the Zamindar.

9. The Appellate Court reversed the aforesaid findings mainly on the ground that in the lease-deed Ex. P-1, number of Municipal Corporation as 1098 has also been mentioned. The entry in the Revenue Entries of Khasra No. 362 has become redundant and the land was recorded in the ownership of Ramkunwar Bai Joje Rao Murar Rao Zamindar as per Khatoni which was filed before the Appellate Court alongwith an application under Order 41 Rule 27, CPC.

10. Learned Counsel for the appellants submitted that the findings recorded by the Appellate Court with regard to entry of Khasra No. 362 of land is perverse and the Appellate Court has not appreciated the evidence on record properly and in accordance with law. Contrary to this learned Senior Counsel for the respondent No. 1 has submitted that the findings of fact recorded by the First Appellate Court has become final and there is no perversity in the aforesaid findings.

11. From the facts stated above, it is clear that the plaintiff based his case of title on the basis of a lease-deed, Ex. P-I, which is said to be executed by Ramkunwar Bai wd/o Rao Murar Rao, Ex. Zamindar. Ramkunwar Bai was not examined before the Court because she was died by that time. It is mentioned in the lease deed that an area comprising 65288 Sq. Ft. is of the ownership of Ramkunwar Bai situated at Khasra No. 362 and the Municipal Khasra No. 10958 and from this land of 50,100 sq. fts. was given to the Education Department and the total land of 11,340 sq. ft. (252 x 45 ft) has been given to the plaintiff on a monthly rent of Rs. 800/-. Plaintiff in Para 13 of his evidence has admitted that as per 1918 revenue record the land was recorded as Government land and it was granted to the Educational Department in the year 1926. He further admitted that the property of Murar Rao was freed from Courts of Wards in the year 1958 and thereafter he received the lease from Ramkunwar Bai. He further admitted that there were disputes with regard to the land with the Government. Another witness of the plaintiff, P.W. 2 simply stated that the Municipal Corporation granted the lease of the land to the Education Department and the Education Department paid lease rent to the Zamindar upto 1965. The aforesaid witness was working in Bada Rawla.

12. The witnesses of the defendants, Head Mistress Smt. Raisa Bano (D.W. 1) and two other teachers D.W. 2 and D.W. 3 specifically deposed that there was open land alongwith the school building and it was surrounded by the fencing. Some toilets were also constructed over the suit land and it was the part and parcel of the school. The Assistant Superintendent of Land Record, P.W. 4, has stated that the land in question was of Khasra No. 362 and total area is 1.15 Acres and he prepared a map of the land, Ex. D-2 and in the Khasra entries of the year 1925 the land was recorded in the name of the Head Master, High School. In the Khasra Entries of the year 1963, which is Ex. D-3 name of the Director, Education Department, has been recorded. The same has been stated by the Patwari, D.W. 5, D.W. 7, Assistant Engineer, P.W.D. also deposed that in the certificate of the P.W.D. Khasra No. 362 has been recorded in the name of the Government.

13. From the discussion of the aforesaid, it is clear that the land of Khasra No. 362 area 1.15 Acres has been recorded as the land of the School. There is no mention of the Khasra Number 10958 of the Municipal Council as mentioned in the lease deed, Ex. P-1. The plaintiff did not lead any evidence of any Municipal Officer or other person in support of the fact that the land mentioned in Municipal Khasra No. 10958 was ever recorded in the name of the plaintiff and unfortunately the First Appellate Court on the basis of only this entry reversed the findings of the Trial Court and also held that the Khasra No. 362 has become redundant. No reason has been given by the First Appellate Court in support of this important finding. The Trial Court in its judgment has discussed in detail about the findings of Khasra No. 362 and it has also specifically been held that the area 1.15 hectares had already been given to the school, hence there was no land remaining to be leased out to the plaintiff. The Appellate Court did not discuss in detail about the oral and documentary evidence. The Appellate Court further relied on entry of Khatoni on the basis of a document filed by the plaintiff alongwith an application filed under Order 6 Rule 17, CPC read with Section 151, CPC and Order 41 Rule 27, CPC. The aforesaid application was filed on 12-10-1989. Vide order dated 2-3-1990 it was ordered that the aforesaid application shall be considered at the time of final hearing and the said application was allowed without giving any opportunity to the defendants to lead evidence against the aforesaid application.

14. It is an admitted position of law that in a suit for declaration the plaintiff has to succeed on his own strength as held by the Hon"ble Supreme Court in the case of Moran Mar Basselios Catholicos v. Thaukalan Paulo Avira and Ors. reported in AIR 1959 SC 31. In Para 20 of the Hon"ble Supreme Court held as under:

That, in a suit of this description if the plaintiffs were to succeed they must do so on the strength of their own title. Since the election of the plaintiff was not valid their suit, in so far as it was in the nature of a suit for ejectment must fail for want of their title as trustees.

15. The First Appellate Court did not appreciate the oral and documentary evidence properly and reversed the judgment and decree of the Trial Court. The Hon"ble Supreme Court in *Madhukar and Others Vs. Sangram and Others*, , with regard to the duty of the First Appellate Court relying on its earlier judgment in the case of *Santosh Hazari Vs. Purushottam Tiwai (Dead)* by Lrs., , held as under:

However, expression of general agreement with the findings in the judgment under appeal should not be a device or camouflage adopted by the Appellate Court for shirking the duty cast on it. While writing a judgment of reversal, the Appellate Court must remain conscious of two principles. Firstly, the findings of fact based on conflicting evidence arrived at by the Trial Court must weigh with the Appellate Court, more so when the findings on oral evidence recorded by the same Presiding Judge who authors the judgment. This does not mean that when an appeal lies on facts, the Appellate Court is not competent to reverse a finding of fact, arrived at by the Trial Judge. As a matter of law, if the appraisal of the evidence by the Trial Court suffers from a material irregularity or is based on inadmissible evidence or on conjectures and surmises, the Appellate Court is entitled to interfere with the findings of fact.

Secondly, while reversing a finding of fact the Appellate Court must assign its own reasons for arriving at a different finding. An additional obligation has been cast on the First Appellate Court by the scheme of the present Section 100 substituted in the Code. The First Appellate Court continues, as before, to be a final Court of facts; pure findings of fact remain immune from challenge before the High Court in second appeal. Now the First Appellate Court is also a final Court of law even if erroneous may not be vulnerable before the High Court in second appeal because the jurisdiction of the High Court has now ceased to be available to correct the errors of law or the erroneous findings of the First Appellate Court even on questions of law unless such question of law be a substantial one.

16. On the basis of above discussion, I hold that the First Appellate Court committed an error of law in decreeing the relief of the plaintiff ignoring the case law, statutory provisions, facts and evidence on record.

17. I answer the substantial questions of law in affirmative in favour of the appellants. Consequently, both the appeals of the appellants are hereby allowed judgment and decree passed by the First Appellate Court is hereby set aside and judgment and decree passed by the Trial Court is upheld. Suit filed by the plaintiff is hereby dismissed. No order as to cost.