

(2015) 03 MP CK 0157
In the Madhya Pradesh High Court
Case No : Second Appeal No. 764 of 2000

Sunderlal and Others

APPELLANT

Vs

Shivkant Tiwari

RESPONDENT

Date of Decision : 20-03-2015

Acts Referred:

Madhya Pradesh Abolition of Proprietary Rights (Estates, Mahals, Alienated Lands) Act, 1950 — Section 3, 4, 5

Citation : (2015) 03 MP CK 0157

Hon'ble Judges : Sanjay Yadav, J

Bench : Single Bench

Advocate : Kishore Shrivastava, Learned Senior Counsel and Ankur Shrivastava, Learned Counsel, for the Appellant

Final Decision : Dismissed

Judgement

Sanjay Yadav, J—Heard on admission.

2. This is defendants' second appeal directed against judgment and decree dated 12.5.2000 passed by First Additional District Judge, Hoshangabad in Civil Appeal No. 14-A/1999, affirming the judgment and decree dated 15.11.1999 passed by First Civil Judge Class I Hoshangabad in Civil Suit No. 17-A/1983.

3. Plaintiff brought an action for possession of suit plot situated at Mouja Babai Tahsil and District Hoshangabad by demolishing the house constructed thereover, on the plea that the suit property was sold by Kashiram, father of defendants, by registered sale deed dated 30.6.1967 to the plaintiff. However, on 15.7.1983, the defendants forcefully encroached the suit plot by breaking over the boundary and raised the hutment thereover. Contending that defendants have no right, title over the suit property, plaintiff brought the subject action.

4. Defendants denied the plaint allegations contending that the sale deed dated 30.6.1967 was a nominal sale as the suit plot was tendered as a security towards the loan taken by their father from plaintiff's father who was a money lender.

That, no possession was ever parted with and being in possession for over 25 years, they had perfected the title by adverse possession.

5. Trial Court framed following issues -

6. Evidently, issues no. 1, 2, 4 and 6 were deleted with the consent of both the parties by order-dated 7.2.1994 by trial Court, recording -

7. The trial Court, while recording the findings on additional issue no. 4 in favour of plaintiff and by negating the contention by the defendants of having perfected the title over the suit plot by adverse possession, decreed the suit.

8. In paragraph 12, the trial Court found -

9. The trial Court also found -

10. The trial Court further found -

11. In paragraph 27, the trial Court observed -

12. As to taking of forceful possession, the trial Court, on the basis of material evidence, found -

13. All these findings being pure finding of facts were affirmed by the Appellate Court which re-appreciated entire evidence and affirmed the findings recorded by the trial Court.

14. The contention, therefore, that the finding arrived at by both the Courts suffers the vice of perversity does not get substantiated as would give rise to substantial question of law.

15. Additional submissions as to whether both the Courts committed an error in not considering the effect of Section 3 of the M.P. Abolition of Proprietary Rights (Estates, Mahals, Alienated Lands) Act, 1950. The Act as apparent from the preamble provided for the acquisition of the right of proprietary in Estates, Mahals, Alienated Villages and Alienated Lands in Madhya Pradesh and to make provisions for other matters connected therewith. Section 3 provided for vesting of proprietary rights in the State and Section 4 envisaged consequences of the vesting. Section 5 carved out an exception to the extent that the properties which finds mention in clauses (a) to (h) were to continue in possession of proprietor or other person. Thus, in order to establish that the effect of Section 3 of 1950 Act, incumbent it was upon the defendants to have specifically pleaded the same in the written statement. Because if pleaded, the plaintiffs could have led the evidence to establish being one of the class of person under Section 5 of the 1950 Act. Therefore, in absence of pleadings and factual foundation, the issue as to the effect of Section 3 of 1950 Act cannot be allowed to be raised for the first time at second Appellate stage.

16. Thus considered, there being no substantial question of law arising for consideration, appeal fails and is dismissed. No costs.