



IN THE HIGH COURT OF MADHYA PRADESH

AT GWALIOR

BEFORE

HON'BLE SHRI JUSTICE G. S. AHLUWALIA

ON THE 14th OF JULY, 2025

SECOND APPEAL No. 213 of 2024

RAMCHARAN SEHARIYA AND ANOTHER

Versus

SANTOSH KUMAR JAIN

Appearance:

Shri Yashvardhan Goswami, Advcoate for the appellants.

Shri Rishi Kumar Soni, Advocate for the respondent.

JUDGMENT

This second appeal, under Section 100 of CPC, has been filed against the judgment and decree dated 24/11/2023 passed by Principal District Judge, Guna in Regular Civil Appeal No. 20/2021, as well as, judgment and decree dated 24/6/2021 passed by VII Additional Judge to the Court of First Civil Judge, Junior Division, Guna in RCSA No. 87 of 2017.

2. Appellants are defendants who have lost their case from both the Courts below.

3. Facts necessary for disposal of present appeal, in short, are that plaintiff filed a suit for declaration of title and permanent injunction pleading



inter alia that he purchased a plot admeasuring 450 square feet situated in Pratibha Colony behind Shri Ram Colony, District Guna. The property was purchased by registered sale deed dated 20/07/2009 from Ashish Agarwal. Plaintiff was placed in possession from the date of execution of sale deed. It is pleaded that on 28/3/2017 when he went to the plot, then defendants came there and started abusing him and also threatened to dispossess him and falsely implicate him under SC/ST Act. The plaintiff reported the matter to the police but no action was taken and accordingly the suit was filed for declaration of title and permanent injunction as plaintiff was apprehensive that he may be dispossessed by the defendants/appellants at any point of time.

4. Appellants/defendants filed their written statement and it was claimed that the suit property is not an open plot but house belonging to defendants of two rooms has been constructed and electricity meter has also been installed and defendants are in possession for last more than 30 years. The spot map which was filed was also denied. It was denied that defendants had ever tried to take possession of the property in dispute. It was claimed that defendant No.2 was working with elder brother of plaintiff and at that time he had paid Rs.50,000 to Kailash Jain and had constructed the house.

5. The trial court after framing issues and recording evidence decreed the suit.

6. Being aggrieved by the judgment and decree passed by the trial Court, appellants preferred an appeal which too has been dismissed by the appellate Court.

7. Challenging the judgment and decree passed by the Courts below, it is submitted by counsel for appellants that appellants had filed an application under Order 41 Rule 27 CPC before the appellate Court and along with said



application, appellants had also filed tax receipts as well as electricity bills to show that the appellants are in possession of the property in dispute. It is submitted that the appellate court has wrongly rejected the application and, accordingly, proposed following substantial question of law:-

- “1. Whether the judgment and decree passed by Ld. Courts below are based on perverse finding?
2. Whether Ld. Trial Court fell in error in dismissing the application under Order 26 Rule 9 CPC so moved by the appellants when it was a clear case of the appellants that on spot there was two rooms constructed in which appellants have been living for more than 30 years?
3. Whether Ld. First Appellate Court committed grave error in law while not forming the opinion on the aspect that as to whether Ld. Trial Court was right in dismissing the appellant's application under Order 29 Rule 9 CPC ?
4. Whether Ld. First Appellate Court was justified in dismissing the appellants' application under Order 41 Rule 27 CPC which suffice to substantiate the better position on the disputed land as well as existence of the appellants concerning the land in dispute?
5. Whether Ld. Courts below were justified in wrongly relying on the complaints/documents exhibited as P/4 to P/6 when over it there was no stamp of the Authorities on whose offices it were filed and statements of that very Authorities never inscribed in the Court?
6. Whether Ld. Courts below were justified in not framing the very crucial issue as to whether the area in question is a plot of land owned and possessed by the plaintiff or a residential building/two rooms owned by defendants?
7. Whether Ld. Courts below were justified in decreeing the plaintiff's suit where plaintiff has to stand on his own legs, not on the legs of the defendant?
8. Whether Ld. Trial Court fell in error in rectifying the issue no. 1 on its own motion on the date of pronouncement of judgment?”



8. Heard learned counsel for the appellants.
9. Respondent has purchased the property in dispute from Ashish Agarwal by registered sale deed dated 20/07/2009 (Ex.P/1). Thus, it is clear that the name of plaintiff was also mutated in the revenue records which is evident from Khasra Panchsala (Ex.P/2) and Kishtabandhi Khatauni (Ex. P/3). The police reports lodged by the plaintiff have also been filed as Exhibits P/4 and P/5 and the complaint made to SDM is Ex.P/6. Santosh Kumar Jain (PW1) has also proved these documents and he has categorically stated that he has purchased the property in dispute. Kailash Chand Jain (PW2) has also stated that the plaintiff after purchasing the said property by registered sale deed dated 20/07/2009 is in possession of the property. On 28/03/2017 defendants had come on the spot and abused the plaintiff.
10. Ramshri Bai (DW1) has stated that plaintiff Santosh Kumar Jain is not known to her and she has not encroached upon the plot of plaintiff and the suit has been filed on false grounds. In paragraph 6 of the cross-examination, she has stated that she has not purchased any land. Vishnu Prasad (DW2) has stated that he is residing after 2-3 houses of defendant. He has stated that he is an auto driver and he leaves the house at 8 in the morning and comes back at 8 in the evening. He does not know what transpires in the colony in his absence. He has also stated that even on 28/03/1997 he had left the colony along with his auto in the morning and even if any dispute had taken place between plaintiff and defendant then it is not in his personal knowledge.
11. Thus, it is clear that defendants have no title in the land in dispute. Defendant has examined only two witnesses, i.e., Ramshri Bai (DW1) and



Vishnu Prasad (DW2). Examination-in-chief of Ramshri Bai (DW1) was filed in the form of affidavit under Order 18 Rule 4 CPC which reads as under:

मैं श्रीमति रामश्रीबाई पत्नि रामचरण सेहरिया आयु 50 साल निवासी – श्रीराम कोलोनी म0प्र0 गुना म0प्र0 की रहने वाली हूं –

मैं शपथपूर्वक सत्य कथन करती हूं कि –

1. यहकि मैं संतोष कुमार जेन को नहीं जानती हूं एवं मैंने संतोष कुमार जैन के प्लाट पर कब्जा नहीं किया है ।
2. यहकि मैंने संतोष जैन को गालियां नहीं दी ओर न ही झूठे केस में फंसाने की धमकी दी हैं ।
3. यहकि मैंने दिनांक 24.04.2016 को संतोष जेन के प्लाट पर कब्जा करने का प्रयत्न नहीं किया है । वादी द्वारा असत्य आधारों पर दावा प्रस्तुत किया गया है ।

दिनांक : 4.3.2021

हस्ताक्षर : सही / –

सत्यापन

मैं शपथकर्ता, शपथ पूर्वक सत्यापन करती हूं कि, उक्त शपथ पत्र के पैरा क्रमांक 1 लगायत 3 में लिखाये गये तथ्य सत्य व सही है, इसमें कुछ भी असत्य नहीं है, अस्तु यह शपथपत्र मैंने आज दिनांक को स्थान गुना में संपादित किया गया हैं ।

दिनांक : 4.3.2021

हस्ताक्षर : सही / –

Thus, it is clear from her examination-in-chief that she has not claimed that in what capacity she is in possession of the property in dispute. She has also not stated as to whether she has perfected her title by way of adverse possession or not. Although it was pleaded by defendants that the house was constructed with permission of elder brother of plaintiff, but there is no such evidence to that effect. Even this fact was also not mentioned by Ramshri Bai (DW1) in her affidavit filed under Order 18 Rule 4 CPC.



12. So far as rejection of application under Order 41 Rule 27 CPC is concerned, this Court is of considered opinion that the appellate Court did not commit any mistake by rejecting the said application. The appellants had filed downloaded copy of ledger of property tax. By no stretch of imagination it can be said that the said property tax was paid by the appellants. At the most it can be held that the property tax is being deposited regularly. Appellants had also filed copy of receipt to show that Ramshri Bai (DW1) had deposited Rs.360/- on 16/09/2022 towards *Swachhata Kar* (sanitation tax). The suit was filed in the year 2017. Suit was decreed by judgment and decree dated 24/06/2021 and the only tax which was paid by Ramshri Bai (DW1) is on 16/09/2022, that is during the pendency of appeal. Furthermore, it is not clear from this receipt as to whether *Swachhata Kar* was paid in respect of suit property or not.

Be that whatever it may be.

Solitary deposit of *Swachhata Kar* and that too during pendency of appeal cannot be taken as a convincing evidence to show that appellants are in possession, specifically when nothing has been stated by Ramshri Bai (DW1) in her affidavit filed under Order 18 Rule 4 CPC.

Appellants have also filed copy of certain electricity bills. The bill which was issued on 27/12/2011 merely shows that electricity meter is installed in Radha Krishna Mandir near Shri Ram Colony. By no stretch of imagination, it can be presumed that electricity meter was installed in the suit premises which is claimed by the defendants. Furthermore, another bill of March, 2017 shows that from August 2016 to January 2017 the reading of electricity meter was zero i.e. for 6 months not a single unit was consumed by defendants. Similarly, another electricity bill is of 30/05/2018 which



shows that electricity consumption from 13/11/2017 to 13/04/2018 was zero i.e. once again for 6 months not a single unit of electricity was consumed. Another bill is of 04/09/2018 which shows that from February 2018 to July 2018 electricity consumption was zero. Thus, it is clear that appellants have not consumed even a single unit of electricity from August 2016 till July 2018. Another electricity bill is of 28/01/2020 which shows that 100 units were consumed in the months of September 2019, October 2019, November 2019 and December 2019, 109 units were consumed in the month of August 2019 and 159 units were consumed in the month of July 2019. This bill is of Radha Krishna Mandir. There is another electricity bill which shows that 100 units were consumed in the months of January 2020, February 2020 and March 2020, 92 units were consumed in the month of April 2020, 138 units were consumed in the month of May 2020 and 119 units were consumed in the month of June 2020. Once again the address given in this bill is of Radha Krishna Mandir. Therefore, it is clear that the bills which were filed by the appellants along with application under Order 41 Rule 27 CPC were not essential for just decision of the case. Even otherwise, no convincing reason was assigned by the appellants as to why the said documents which were already in existence during the pendency of trial were not filed. Under these circumstances, the appellate Court did not commit any mistake by rejecting the application under Order 41 Rule 27 CPC.

13. Since the appellants/defendants have not proved that from which date they are in possession of the property in dispute, they have not proved that any amount of Rs. 50,000/- was paid to Kailash Chand Jain before taking permission to construct the house, they have failed to state that when the house was constructed, Ramshri Bai (DW1) has not stated anything in her



affidavit under Order 18 Rule 4 CPC about her possession over the property in dispute, further in absence of sale deed no title would transfer to appellants, accordingly, this Court is of considered opinion that the Courts below did not commit any mistake by passing the decree of permanent injunction and declaration of title in favour of plaintiffs. Even otherwise it is well established principle of law that even if concurrent findings of fact are erroneous, still this Court in exercise of power under Section 100 of CPC cannot interfere with the said findings unless and until they are found to be perverse. This Court has already considered the pleadings and evidence led by the parties. Even otherwise, no perversity could be pointed out by counsel for the appellants. Accordingly it is held that no substantial question of law arises in this appeal.

14. *Ex consequenti* judgment and decree dated 24/11/2023 passed by Principal District Judge, Guna in Regular Civil Appeal No. 20/2021, as well as, judgment and decree dated 24/6/2021 passed by VII Additional Judge to the Court of First Civil Judge, Junior Division, Guna in RCSA No. 87 of 2017 are hereby affirmed. Appeal fails and is, hereby, dismissed.

(G. S. AHLUWALIA)
JUDGE

(and)