
Kamal Singh and Another Vs Roop Singh (since dead) through L.Rs and Another

Second Appeal No. 332 of 2001

Court: Madhya Pradesh High Court (Gwalior Bench)

Date of Decision: May 12, 2011

Acts Referred:

Civil Procedure Code, 1908 (CPC) – Order 26 Rule 9, 100

Citation: (2011) ILR (MP) 1731 : (2011) 3 MPHT 528

Hon'ble Judges: Anil Kumar Sharma, J

Bench: Single Bench

Final Decision: Allowed

Judgement

Anil Kumar Sharma, J.

This Second Appeal has been filed by Appellants/Defendants No. 1 and 2 u/s 100 of CPC against the judgment

and decree dated 29.06.2011 passed by learned District Judge, Guna, in Civil Appeal No. 100-A/2000 confirming the judgment dated 13.9.2000

passed in Civil Suit No. 121-A/98 by learned Second Civil Judge, Class I, Guna. Learned trial has allowed the suit for declaration and injunction

filed by Respondent/Plaintiff Roop Singh by declaring him owner and possessor of suit land Survey No. 2/2 area 12 bigha i.e. 2.613 hectares, and

also granting permanent injunction not to interfere in the suit land.

2. This Court has framed the following substantial questions of law by order dated 20.8.2001.

(1) Whether, in the absence of proper pleadings and specific map of the disputed property Courts below were justified in decreeing the suit?

(2) Whether, in the absence of agreed map between the parties the controversy should have been resolved by Courts below by issuing commission

?

(3) Whether, in the facts of the case, Plaintiff is entitled for grant of mesne profits ?

3. All the substantial questions of law are dealt with simultaneously because they depend on common fact whether in the absence of agreed map,

the dispute between the parties should have been resolved by issuing commission. This so because another suit No. 120-A/98 has been filed by

Appellant Kamal Singh against Respondent Roop Singh for declaration and injunction of this suit land Survey No. 2/5/2 area 0.983 hectare of

village Renjhai of Tehsil and District Guna. Both the lands are situated in neighbourhood and they seem to be dispute of boundary between both

the parties. The dispute between both the parties started after demarcation of boundary on 9.6.1994 in which it has been found that whole land of

Survey No. 2/2 disputed land belongs to Plaintiffs. Learned trial Court held that Defendants encroached 0.209 (one bigha) hectare land of Survey

No. 2/2 of 1.7.1999 which shown as A, B, C in the map. Learned Counsel for the Appellants has submitted that looking to the dispute of

boundaries, the commission should have been issued to demarcate the boundaries of lands of both Plaintiff/Defendant.

4. Learned Counsel for the Appellant has cited a judgment of this High Court in the matter of Keshav Singh v. Dhantobai and Ors. 2009 (1)

MPJR 182 in which it has been held that application for appointing a commissioner may be filed even before casting the issues - If the court deems

a local investigation to be proper for the purpose of elucidating the matter the Court may issue commission - Even after demarcation of land by a

Revenue Officer commission can be issued.

5. Learned Counsel for Appellant has also cited the judgment of this High Court in the matter of Hajarilal v. Jaychand and Anr. 1999 Revenue

Nirnaya 219 in which it has been held that for a question of encroachment if there is no agreed map, the local commissioner should be appointed

because such a dispute cannot be resolved without appointment of local commissioner. The case was remanded back to the First Appellate Court

after setting aside the judgment and decree passed by First Appellate Court for appointing a commissioner preferably a revenue officer undertake

local investigation and measurements of the disputed land.

6. Learned Counsel for the Appellant has also cited the judgment of Hon"ble Apex in the matter of Shreepat v. Rajendra Prasad and Ors. 2000

(6) Supreme 389 in which it has been held that the suit for declaration Defendant disputing identity of property on the ground that property is not

part of Khasra No. ... stated in plaint decree only on the basis of oral evidence is not correct. The Court should have got identity of property

established by issuing survey commission. After setting aside the decree, case was remitted back to trial Court for disposal afresh.

7. Learned Counsel for the Appellant has also cited the judgment of this Court in the matter of Durga Prasad V. Parveen Foujdar and Ors. 1975

JLJ 440 in which it has been held that in case of dispute regarding encroachment, the dispute can be determined on the basis of either on agreed

map or a report of a Commissioner under Order 26 Rule 9 of CPC If agreed map is not existing then it can be decided by appointment of a

Commissioner.

8. Learned trial Court has not considered the map Ex.P-3 filed by Appellant Kamal Singh as it was not a detailed map and, therefore, has not

committed any error in pleading the map filed by Respondent Roop Singh (Ex.P-11). This shows that no agreed map was available before the trial

Court on the basis of dispute between the parties could have been resolved. Further, in the absence of agreed map, it was also not available to

give a finding that whether both the Plaintiff and Defendants were having possession over the real area of land mentioned in their Khasra.

Therefore, considering the above aspects, it was necessary to get the report from Commissioner regarding lands of both the parties and their

possession over the area in the light of judgments cited above.

9. Therefore, it is held that in the absence of proper pleadings and specific map on the disputed property, Courts below were not justified in

decreeing the suit. Further in the absence of agreed map between the parties, controversy should have been resolved by trial Court by issuing

commission. Therefore, substantial questions No. 1 and 2 is decided again in favour of Appellant. Resultantly, question No. 3 which relates to

mesne profits will be decided by the trial Court if mesne profits are claimed by any party to the suit on the basis of commissioner's report regarding

possession of one party over the party belonging to other party.

10. Therefore, judgment and decree passed by both the Courts below are quashed and appeal is allowed and the case is remanded back to the

trial Court with the direction that let a commissioner preferably a Revenue Officer at least in the rank of Revenue Inspector be appointed for

surveying the land belong to Plaintiff and Defendant and submit a report regarding encroachment of one party over the land belonging to the other

party and submit a map with report. The expenses of commissioner will be borne by the parties. The parties are directed to remain present before

the trial Court i.e. Second Civil Judge, Class I, Guna in Civil Suit No. 121-A/98 on 1st July, 2011 for which no notice will be issued to them.