

(2003) 07 MP CK 0050

Madhya Pradesh High Court (Indore Bench)

Case No: Second Appeal No. 176 of 2003

Rajaram

APPELLANT

Vs

State of M.P. and Others

RESPONDENT

Date of Decision: July 18, 2003

Acts Referred:

- Civil Procedure Code, 1908 (CPC) - Section 100
- Madhya Pradesh Land Revenue Code, 1959 - Section 114, 117

Citation: (2003) 4 MPHT 163

Hon'ble Judges: A.M. Sapre, J

Bench: Single Bench

Advocate: S.G. Gokhle, for the Appellant;

Final Decision: Dismissed

Judgement

A.M. Sapre, J.

Two Courts have dismissed plaintiffs suit for declaration of title in relation to land in suit. It is against this concurrent dismissal, the plaintiff has come up in second appeal u/s 100 of CPC contending that the appeal involves substantial question of law within the meaning of Section 100 ibid. The question, thus, that arises for consideration in this appeal is, whether any substantial question of law arises in this second appeal as contemplated u/s 100 ibid. The impugned judgment/decrees is dated 16-12-2002, passed by learned IVth Additional District Judge (Fast Track), Dhar, in C.A. No. 71-A of 2001 which in turn arises out of Civil Suit No. 26-A of 1996, decided by Civil Judge, Class I, Badnawar, dated 18-9-1996.

2. Heard Shri S.G. Gokhle, learned Counsel for the appellant on the question of admission.
3. Having heard learned Counsel for the appellant and having perused record of the case, I find no substance in the appeal. In other words, the appeal does not involve

any substantial question of law within the meaning of Section 100 of CPC and hence, the appeal must merit dismissal in limine.

4. Firstly it is concurrent dismissal of plaintiff's suit and all finding of fact recorded by two Courts become finding of fact and are binding on this Second Appellate Court. Secondly, and even otherwise, the suit for declaration of title in relation to suit land can not be decreed unless there are adequate documentary evidence filed by the plaintiff in support of his plea of ownership such as sale deed, partition deed, Will, Gift or any other testamentary documents which creates an interest in Immovable property. In the event of any plea regarding acquisition by legal fiction recognised under the Revenue Law, conferring ownership rights, the plaintiff must tender evidence which is in accord with the requirement of law. This also require very strict proof else, ownership rights can not be conferred.

5. I have not been able to notice any such type of documentary evidence forthcoming from the custody of the plaintiff in seeking a declaration of title in relation to suit land. Reliance on Khasra Entry which is not a substitute for document of title nor create a title in favour of person is of no significance. But that apart, two Courts have held that even the Revenue Papers filed and relied on by the plaintiff do not indicate the name of plaintiff but records the name of defendant No. 3 - Vainkat (since dead) and Jaswant Singh (since dead).

6. I, therefore, do not find any case to take any other view than the one taken by the two Courts below. It is viewed based on evidence and capable of being taken for dismissal of suit. No interference is thus, called for in this second appeal in such concurrent finding of fact.

7. Appeal, thus, fails and is dismissed in limine.