
(2016) 04 MP CK 0059

MADHYA PRADESH HIGH COURT (GWALIOR BENCH)

Case No: Second Appeal No. 1714 of 2005

Sunil Rao

APPELLANT

Vs

State of M.P.

RESPONDENT

Date of Decision: April 30, 2016

Citation: (2016) AIRCC 2916 : (2016) 4 CivilLJ 449 : (2016) 3 MPLJ 332

Hon'ble Judges: Mr. S.A. Dharmadhikari, J.

Bench: Single Bench

Advocate: Shri Ravindra Sarvate, Advocate, for the Appellant; Shri Amit Bansal, Govt.
Advocate, for the Respondent

Final Decision: Dismissed

Judgement

Mr. S.A. Dharmadhikari, J.—Heard on the question of admission. Records of the case is perused.

This appeal by the plaintiff under Section 100 of CPC is directed against the concurring judgment and decree dated 18.08.2005 passed in Civil Appeal No.77-A/2005 by the learned District Judge, Sheopur, confirming the judgment dated 15.04.2005 passed in Civil Suit No.19-A/2004 by II Civil Judge, Class-I, Sheopur. Plaintiff's suit for declaration and permanent injunction has been dismissed.

2. Facts necessary for the disposal of this appeal are that the plaintiff claimed to be in possession of the suit land of Area 5 Bigha 14 Viswa falling in Survey No.1134/1. The said land is registered as Government land in the Khasra entries and is in the name of Khidak Maveshi. Out of the said Survey number 0.251 Hectare land is in the possession of the plaintiff and on that a house has been constructed and he is living in the same. The land is being used for housing purpose and many houses have been built on the said land. The plaintiff is residing in that house for about 35-36 years and the Gram Panchayat has granted permission for construction of a new house. The plaintiff has acquired the title on the basis of adverse possession but the Respondent/Defendant No.1 has initiated the proceedings for dispossessing him from the suit land. As such, the instant suit has

been filed for Declaration and Permanent Injunction.

3. Respondent/Defendant No.1 has not filed written statement whereas Respondents/Defendants No.2 and 3 have filed the written statement and denied the plaint allegations. It is submitted that the suit land is a Government land. The Appellant/Plaintiff is not in possession for the last 35-36 years. The Gram Panchayat has not given any permission but the land was permitted to be used as cattle yard. The Plaintiff is an encroacher and does not have the title over the suit land. With the aforesaid pleadings, suit was prayed to be dismissed.

4. On the aforesaid pleadings the trial Court framed issues and allowed the parties to lead evidence. Upon critical evaluation of the entire evidence on record, the trial Court has dismissed the suit. Aggrieved, the Appellant/Plaintiff filed an appeal. The first Appellate Court has again re-appreciated the entire oral and documentary evidence on record. As per Exhibit P-13 which is a Khasra Panchsala from Samvat 2046 (year 1989) to Samvat 2050 (year 1993) in which the Survey No.1134/1 has been registered in the name of Khidak Maveshi and is a Government land. Plaintiff's possession was registered in Samvat 2047 (year 1990). No documents were produced by the Plaintiff to prove that he was in continuous possession of the suit land. The Plaintiff's claim to be in possession for 35-40 years stands negated for the reason that he himself was aged about 37 years at the time of filing of the suit. Non filing of Khasra Panchsala for the earlier years itself proves that the Plaintiff was not in possession of the suit land for last 35-36 years but in fact he had encroached the land in Samvat 2047 (year 1990). Moreover, the defendant State had filed Exhibits P-6, P-7 & P-8 to show that the Plaintiff has been fined from time to time for being an encroacher. Exhibit P/9 is the notice for eviction. As such the Plaintiff has failed to establish his assertion of becoming "bhumiswami" over the suit land by virtue of adverse possession. Suit land has been found to be in ownership of the Government. The First appellate Court while concurring with the findings has affirmed the judgment and decree passed by the trial Court.

5. Law with regard to adverse possession is well settled. The Hon"ble Supreme Court in the case of Karnataka Board of Wakf v. Government of India and Others, (2004) 10 SCC 779, in paragraph 11 has observed as under:-

"11. In the eye of the law, an owner would be deemed to be in possession of a property so long as there is no intrusion. Non-use of the property by the owner even for a long time won't affect his title. But the position will be altered when another person takes possession of the property and asserts a right over it. Adverse possession is a hostile possession by clearly asserting hostile title in denial of the title of the true owner. It is a well-settled principle that a party claiming adverse possession must prove that his possession is "nec vi, nec clam, nec precario", that is, peaceful, open and continuous. The possession must be adequate in continuity, in publicity and in extent to show that their possession is adverse to the true owner. It must start with a wrongful disposition of the rightful owner and be actual, visible, exclusive, hostile and continued over the

statutory period."

6. Having gone through the concurrent impugned judgments rendered by the Courts below and after perusal of the records, I am of the opinion that both the Courts below have recorded the pure finding of facts that too after proper appreciation of the entire evidence on record and dismissed the suit. As such the Courts below are fully justified in dismissing the suit of the Plaintiff. No substantial question of law arises warranting interference under Section 100 of the Code of Civil Procedure.

7. Accordingly, the appeal being bereft of merit and substance, is hereby, dismissed.

8. No order as to costs.