



IN THE HIGH COURT OF MADHYA PRADESH

AT GWALIOR

BEFORE

HON'BLE SHRI JUSTICE G. S. AHLUWALIA

ON THE 13th OF MARCH, 2025

SECOND APPEAL No. 464 of 2004

SMT. PREMLATA SHRIVASTAVA

Versus

STATE OF M.P. & ORS.

Appearance:

Shri Sameer Kumar Jain – Advocate for appellant.

Shri G.K. Agarwal- Government Advocate for respondents No.1 and 2/State.

Shri Shyam Prakash Jain- Advocate for respondent No.3.

JUDGMENT

This Second Appeal, under Section 100 of Code of Civil Procedure, 1908, has been filed against judgment and decree dated 30.04.2004 passed by II Additional District Judge (Fast Track), Sheopur (M.P.) in Regular Civil Appeal No.19-A/2004 arising out of the judgment and decree dated 25.11.2002 passed by Civil Judge Class I, Sheopur (M.P.), in Civil Suit No.37A/2000.

2. The facts, necessary for disposal of the present appeal, in short, are that plaintiff/appellant filed a civil suit for declaration of title and permanent injunction. It was her case that on 0.31 hectare of land out of total 10 Bigha 05 Biswa of Survey No.1135/1, the house of plaintiff is situated along with a garden. The disputed property was shown in red colour in the plaint map.



It is the case of plaintiff that the house and garden is in existence from the lifetime of her father and after the death of her father, plaintiff is in possession of the disputed house and garden, being his legal representative. Earlier, her father had filed a civil suit for declaration of his title and permanent injunction which was registered as Civil Suit No.370A/84. By judgment and decree dated 11.05.87, the civil suit was dismissed, however, father of plaintiff was found to be in possession of the property in dispute from *Samvat* 2038. It is submitted that thereafter the State of Madhya Pradesh allotted Survey No.1135/1 to Krishi Upaj Mandi Samiti and now the Krishi Upaj Mandi Samiti has become the owner of Survey No.1135/1. It is submitted that since possession of father of plaintiff was found since *Samvat* 2038, therefore, plaintiff has acquired the title by way of adverse possession. It was alleged that on 31.08.98 and 08.09.98, Tahsildar and Revenue Inspector, Karahal, issued show-cause notices for eviction and twice they made an attempt to remove the house as well as garden. The aforesaid action of the authorities is illegal and contrary to the interest of the plaintiff and thus the suit was filed for declaration that the plaintiff is the owner of the disputed house and garden as well as for permanent injunction that the defendants be restrained from interfering with the peaceful possession of the plaintiff.

3. Defendants filed their written statement and denied that father of plaintiff is in possession of land in dispute since *Samvat* 2038, however, it was alleged that father of plaintiff had encroached upon the land for a period of one year and accordingly, plaintiff did not acquire any title by way of adverse possession. For the time being, the construction work of the Mandi committee is going on and the suit filed by the father of the plaintiff was already dismissed.

4. The Trial Court after framing issues and recording evidence dismissed the suit filed by appellant.

5. Being aggrieved by the judgment and decree passed by the Trial Court,



appellant preferred an appeal which too has been dismissed by the impugned judgment and decree.

6. By order dated 16.02.2012, the appeal was admitted on following substantial questions of law:-

"(1) Whether in view of the fact that the suit land has been transferred by the State Government to the Mandi Committee, the learned Courts below are justified in holding that the Plaintiff was required to prove her possession for over 30 years for perfecting the rights by adverse possession?

(2) Whether for perfecting the rights by adverse possession over the property which does not belong to the State Govt. possession for over 12 years would suffice and not 30 years?

(3) Whether in view of the fact that the possession of the predecessor of the Plaintiff has been found since Samvat 2038 and there is no evidence in record that either the predecessor of the Plaintiff or the Plaintiff herself has ever been dispossessed from the suit premises, the learned Courts below are justified in dismissing the suit of the Plaintiff?"

7. The plaintiff has relied upon the judgment dated 11.05.1987 passed by Civil Judge Class I, Sheopur (M.P.) in Civil Suit No.370A/84 which was instituted by her father against the State of M.P. and Tahsildar. It was held by the Trial Court that the plaintiff therein i.e. the father of plaintiff has encroached upon the land and is in possession since *Samvat* 2038. If *Samvat* 2038 is converted into calendar year, then it would come to the year 1981. The suit was filed by father of plaintiff in the year 1984 which was dismissed in the year 1987. Therefore, it is clear that father of plaintiff had not perfected his title against the State of Madhya Pradesh as he was not found to be in possession of the property in dispute for the last thirty years but he was found in possession from the year 1981 only. Therefore, it is clear that the dispute was already going on between the parties and it cannot be said that father of plaintiff was in open and hostile possession of the property in



dispute. Undisputedly, the land was the government land and it was allotted by the Government to Krishi Upaj Mandi Samiti.

8. The Supreme Court in the case of **Ravinder Kaur Grewal v. Manjit Kaur and others**, reported in **(2019) 8 SCC 729** has held as under:

“63. When we consider the law of adverse possession as has developed vis-à-vis to property dedicated to public use, courts have been loath to confer the right by adverse possession. There are instances when such properties are encroached upon and then a plea of adverse possession is raised. In such cases, on the land reserved for public utility, it is desirable that rights should not accrue. The law of adverse possession may cause harsh consequences, hence, we are constrained to observe that it would be advisable that concerning such properties dedicated to public cause, it is made clear in the statute of limitation that no rights can accrue by adverse possession.”

Thus, it is clear in the statute of limitation that no rights can accrue by adverse possession in respect of the properties dedicated to public cause.

9. According to the plaintiff as well as defendants, Krishi Upaj Mandi Samiti had started functioning from the year 1985. Whereas father of plaintiff filed Civil Suit in the year 1984 which was decided in the year 1987. Krishi Upaj Mandi Samiti was not made a party by father of plaintiff. Admittedly, even otherwise father of plaintiff had not perfected his title by way of adverse possession against Krishi Upaj Mandi also.

10. The land is being used for public utility purposes as Krishi Upaj Mandi has been established on Survey No.1135/1 and plaintiff has admitted that the plot of plaintiff is in the mid of the land. In order to go to her house and garden, she has to go through the premises of Krishi Upaj Mandi and the house and garden is situated within the boundaries/premises of Krishi Upaj Mandi and has also admitted that within the boundary Tin-shed of Mandi, godowns etc. are situated and the work of sale and purchase of crops has begun. It is clear that otherwise also in the light of the judgment passed by the Supreme Court in the case of



Ravinder Kaur Grewal (supra) no right can be declared in favour of plaintiff on the basis of adverse possession. Furthermore, the suit filed by plaintiff was barred by principles of *res judicata*.

11. Accordingly, all the substantial questions of law are answered in negative. As a consequence thereof, the judgment and decree passed by the courts below are hereby affirmed.

12. Appeal fails and is hereby *dismissed*.

(G.S. Ahluwalia)
Judge

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