



**IN THE HIGH COURT OF MADHYA PRADESH  
AT GWALIOR  
BEFORE**

**HON'BLE SHRI JUSTICE G. S. AHLUWALIA**

**ON THE 23<sup>rd</sup> OF JULY, 2025**

**SECOND APPEAL No. 788 of 2007**

***GANESH RAM***

***Versus***

***RATANLAL AND OTHERS***

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**Appearance:**

Shri Prashant Sharma - Advocate for the appellant.

Shri Sanjay Singh Kushwaha, Government Advocate for respondent  
No.5/State.

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**JUDGMENT**

This second appeal, under Section 100 of CPC, has been filed against the judgment and decree dated 17.05.2007 passed by II Additional District Judge, Fast Track Court, Ganj Basoda in Regular Civil Appeal No. 6A of 2006, as well as, judgment and decree dated 02.08.2003 passed by Civil Judge Class I, Ganj Basoda, District Vidisha in RCS No. 94A of 2001.

2. Appellant is plaintiff who has lost his 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 pleading *inter alia* that name of



Bhagwati Bai is recorded as *Bhuswami Krishak* in respect of Survey No. 53, area 2.811 hectares situated in Village Panwariya. Bhagwati Bai has expired whereas defendants are legal representatives of Bhagwati Bai. It was claimed that plaintiff is in possession of property in dispute for the last 25 years in an open and hostile manner and therefore he has perfected his title by way of adverse possession. Defendants were proceeded *ex parte*. They did not appear in spite of service of notice by substituted mode of publication.

4. Ganesh Ram (PW1), Karan Singh (PW2), and Hari Singh (PW3) appeared as witnesses. Ganesh Ram (PW1) stated that he is in possession of the property in dispute for last 35 years. Karan Singh (PW2) and Hari Singh (PW3) have also stated that Ganesh Ram is in possession of property in dispute. The trial court after recording evidence dismissed the suit.

5. Being aggrieved by the judgment and decree dated 02.08.2003 passed by the trial court, appellant preferred an appeal, which too has been dismissed by the appellate court.

6. Challenging the judgment and decree passed by the Courts below, it is submitted by counsel for appellant that once defendants were proceeded *ex parte* and they decided not to contest the case by rebutting the pleadings of plaintiff, then the Courts below have committed material illegality by not relying upon the evidence and documents produced by the appellants, and proposed the following substantial questions of law:-

- “i- Whether learned courts below have committed the grave illegality in dismissing the suit of plaintiff particularly when there is uncontroveted pleading and un-crossed testimony ?
- ii- Whether the learned trial has erred in law in not decreeing the suit under the provision of Order 8 Rule 5 of CPC?
- iii- Whether the reasons behind discarding the document Ex-P/1 to Ex-P/3 and uncrossed testimony of plaintiff witnesses are not sustainable being based on conjuncture and surmises?”



7. Heard learned counsel for the appellant.
8. Order 8 Rule 10 CPC reads as under:

**“10. Procedure when party fails to present written statement called for by Court-** Where any party from whom a written statement is required under rule 1 or 9 fails to present the same within the time permitted or fixed by the Court, as the case may be, the Court shall pronounce judgment against him or make such order in relation to the suit as it thinks fit and on the pronouncement of such judgment, a decree shall be drawn up.”

9. Thus, it is clear that where the parties fail to present the written statement, then the Court can pronounce the judgment or may make such order in relation to the suit as it thinks fit. Thus, it is clear that where the parties fail to present the written statement, then either the trial court can pronounce the judgment or may require the plaintiff to prove his case. In the present case, the trial court had adopted second approach and plaintiffs were called upon to prove their case.

10. If evidence of Ganesh Ram (PW1) is seen, then he has not stated that his possession was open and hostile. Long possession by itself would not result into adverse possession. Possession would become adverse only if it is open and hostile to the knowledge of true owner. Ganesh Ram (PW1), Karan Singh (PW2) have not stated that Ganesh Ram is in open and hostile possession even to the knowledge of true owners.

11. Under these circumstances, this Court is of considered opinion that the Courts below did not commit any mistake by holding that plaintiff has failed to prove his case that he has perfected title by way of adverse possession. Even otherwise, this Court cannot interfere with concurrent findings of fact unless and until they are shown to be perverse. No perversity could be



pointed out by counsel for appellant.

12. Accordingly, no substantial question of law arises in the present appeal. Consequently, judgment and decree dated 17.05.2007 passed by Second Additional District Judge, Fast Track Court, Ganj Basoda in Regular Civil Appeal No. 6A of 2006, as well as, judgment and decree dated 02.08.2003 passed by Civil Judge Class I, Ganj Basoda, District Vidisha in RCS No. 94A of 2001 are hereby affirmed.

13. Appeal fails and is, hereby, dismissed.

**(G.S. Ahluwalia)**  
**Judge**

(and)