



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

**BEFORE**

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

**ON THE 15<sup>th</sup> OF JULY, 2025**

**SECOND APPEAL No. 415 of 2017**

***MUNICIPAL CORPORATION, GWALIOR  
THROUGH ITS COMMISSIONER.***

*Versus*

***HARNARAYAN KUSHWAH***

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**Appearance:**

*Shri Kamal Kumar Jain - Advocate for appellant.*

*Shri Ram Krishna Soni- Advocate for respondent.*

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**JUDGMENT**

This Second Appeal, under Section 100 of CPC, has been filed against the judgment and decree dated 09.05.2017 passed by District Judge, Gwalior (M.P.) in Regular Civil Appeal No.42-A/2016 by which the judgment and decree dated 18.04.2016 passed by X Civil Judge Class-I, Gwalior (M.P.) in Civil Suit No.36-A/2015 has been set aside.

2. The facts, necessary for disposal of present appeal, in short, are that the plaintiff/respondent filed a suit for declaration and permanent injunction pleading *inter alia* that the plaintiff is the owner and in possession of the House No.40/992 situated in Vijay Nagar, Aam Kho, Lashkar, Gwalior (M.P.). The plaintiff had



purchased the aforesaid property by registered sale deed executed in the year 2001. It was claimed that the house in question was constructed by previous owner Dhaniram by obtaining building permission dated 25.05.1970. The construction was not raised contrary to the building permission. A notice was given by the defendant to the submit the copy of building permission and accordingly documents were submitted on 23.08.2006, however, without giving any opportunity of hearing to the plaintiff defendant passed an order dated 05.04.2010 which was received by the plaintiff on 07.04.2010. The order dated 05.04.2010 was assailed by petitioner (plaintiff) before High Court which was registered as WP. No.1761/2010 and the order dated 05.04.2010 was stayed with liberty to the plaintiff to file a civil suit within a period of two weeks. It was the claim of the plaintiff that the house in question was constructed in accordance with the building permission dated 25.05.1970 and accordingly, it was prayed that the order passed under Section 308(b) of Municipal Corporation Act is contrary to law and a permanent injunction be issued against defendant that they should not demolish or damage the property either by themselves or through their agent.

3. The defendant filed its written statement and denied the plaint averments. It was denied that the house in question was constructed in the year 1970 and it was claimed that the house in question has been constructed by the plaintiff after purchasing the property.

4. The Trial Court after framing issues and recording evidence dismissed the suit. Being aggrieved by the judgment and decree passed by the Trial Court, respondent preferred an appeal which has been allowed by the impugned judgment and decree dated 09.05.2017.



5. Challenging the judgment and decree passed by the Appellate Court, it is submitted by counsel for appellant that the respondent had purchased the open plot by registered sale deed dated 01.06.2001 Ex.P-1 and therefore, it cannot be said that the house was constructed by the previous owner in the year 1970.

6. *Per contra*, the appeal is vehemently opposed by counsel for respondent.

7. The appeal is admitted on the following substantial question of law:

Whether the respondent has raised construction over the plot in question in violation of Section 307 of Municipal Corporation Act or not?

8. Heard the learned counsel for the parties.

9. The plaintiff has relied upon his sale deed Ex.P-1 by which he had purchased the property in question from Rajendra Kushwah. In the aforesaid sale deed, it is specifically mentioned as under:

यह कि उक्त सम्पत्ति में से एक भाग सम्पत्ति जिसमें एक कमरा निर्मित होकर शेष खुला सहन भूमि हो जो इस लिखतम द्वारा क्रेता को बिक्री की जा रही है।

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यह कि बिक्रीत सम्पत्ति खाली पर मौके पर क्रेता को मुझ बिक्रेता ने वास्तविक मालिकाना आधिपत्य सोंप दिया है।

10. The open land which was purchased by the plaintiff was also shown in the drawing and which is the part of sale deed and has been exhibited as Ex.P-2. It clearly shows that the entire land was an open land with a small room admeasuring 2.59 x 2.59 mtrs. Thus, it is clear that by sale-deed executed in the year 2001, open plot was purchased by the plaintiff. Under these circumstances, his contention that the building was constructed by his previous owner as per the building permission granted in the year 1970 is false. Even otherwise, the plaintiff also cannot raise the building in accordance with the building permission



which was granted in the year 1970 because Section 300 of Municipal Corporation Act provides that sanction shall stand lapsed after one year from the date of such building sanction and therefore, if the erection or re-erection of the building is not commenced within a period of one year and completed within a period of two years or such longer period as may have been allowed by the Commissioner, the sanction shall be deemed to have lapsed.

11. Thus viewed from every angle, it is clear that the construction raised by the plaintiff was unauthorized because it was done without obtaining building permission. Thus, the Appellate Court committed a material illegality by holding that the construction was raised in the year 1970. Accordingly, the Substantial Question of Law is answered in affirmative.

12. *Ex. consequenti*, judgment and decree dated 09.05.2017 passed by District Judge, Gwalior (M.P.) in Regular Civil Appeal No.42-A/2016 is hereby set aside and the judgment and decree dated 18.04.2016 passed by Trial Court i.e. X Civil Judge Class-I, Gwalior (M.P.) in Civil Suit No.36-A/2015 is hereby restored.

13. Appeal succeeds and is *allowed*.

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