



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

**BEFORE**

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

**ON THE 16<sup>th</sup> OF JULY, 2025**

**SECOND APPEAL No. 1864 of 2022**

***MAHILA NAGINA AND OTHERS***

*Versus*

***VINOD KUMAR***

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**Appearance:**

*Shri N.K. Gupta- Senior Advocate with Shri Saket Sharma- Advocate for appellants.*

*Shri R.D. Sharma and Shri Ajay Bhargava- Advocates for respondent.*

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**JUDGMENT**

This Second Appeal, under Section 100 of CPC, has been filed against the judgment and decree dated 30.07.2022 passed by II District Judge, Karera, District Shivpuri (M.P.) in Civil Appeal No.08A/2020 by which judgment and decree dated 20.12.2019 passed by Additional Civil Judge Class-I to the Court of I Civil Judge Class-I-Karera, District Shivpuri (M.P.) in Civil Suit No.35A/2015 has been reversed.

2. It is submitted by counsel for parties that respondent/plaintiff had filed a suit for permanent injunction.



3. It is submitted that the plaintiff has purchased 364 Sq. ft. of land forming part of Survey No.333/2. He has not encroached upon either on Survey No.329 or Survey No.334, however, appellants/defendants are threatening to dispossess the plaintiff/respondent and therefore the suit was filed.

4. The suit was resisted by the defendants/appellants. By judgment and decree dated 20.12.2019, the suit was dismissed. Being aggrieved by the judgment and decree passed by the Trial Court, respondent preferred an appeal which has been allowed by judgment and decree dated 30.07.2022 passed by II District Judge, Karera, District Shivpuri (M.P.) in Civil Appeal No.08A/2020.

5. It is submitted by counsel for the parties that it is clear from paragraph 28 of judgment passed by the Appellate Court that the Appellate Court has relied upon the revenue proceedings and orders passed by the various revenue courts. This Court, by a separate order passed today in MP.No.1905/2020 (Smt. Nagina Vs. Madhusudan And Others), has already set aside the order passed by the Board of Revenue and has directed for fresh demarcation. It is submitted that the very basis for decreeing the suit is no more and accordingly it is prayed that the matter may be remanded back to the Appellate Court to decide the appeal afresh after the demarcation report and the order under Section 129(4) of M.P. Land Revenue Code, 1959 is passed by the concerning Tahsildar.

6. However, it is submitted by counsel for respondent that in the meanwhile the appellants have also approached the Waqf Board for the similar purposes.

7. Heard learned counsel for the parties.

8. This Court by a separate order passed in MP.No.1905/2020 (Smt. Nagina Vs. Madhusudan And Others) has set aside the order of Board of Revenue and has directed for fresh demarcation. In view of Para 28 of impugned judgment, it is clear that very basis of foundation of arguments/submissions of respondent's



counsel has demolished. Therefore, in fitness of things, that Appellate Court be directed to decide the appeal afresh. However, another question is as to whether the Khasra No.329 or 334 is a Waqf property or not?

9. Thus, it is made clear that the Appellate Court shall also decide the question as to whether the property in dispute is a Waqf property or not and whether the civil suit filed by the respondent was maintainable or not?

10. Therefore, judgment and decree dated 30.07.2022 passed by Appellate Court i.e. II District Judge, Karera, District Shivpuri (M.P.) in Civil Appeal No.08A/2020 is hereby set aside. Matter is remanded back to the Appellate Court to pass a fresh judgment by deciding as to whether the property in dispute is a Waqf property or not and whether the Trial Court had jurisdiction to entertain the Civil Suit filed by respondent as well as by taking into consideration the fresh order which shall be passed by the Tahsildar under Section 129(4) of M.P. Land Revenue Code, 1959.

11. The appeal succeeds and is hereby *allowed*.

12. The parties are directed to appear before the Appellate Court on **15<sup>th</sup> September, 2025**. No fresh notice shall be required to be issued to any of the parties.

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