



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

HON'BLE SHRI JUSTICE G. S. AHLUWALIA

ON THE 27th OF MARCH, 2025

SECOND APPEAL No. 1418 of 2023

MANIK RAO BHOSLE AND OTHERS

Versus

THE STATE OF MADHYA PRADESH AND OTHERS

Appearance:

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

Shri G.K. Agrawal – Government Advocate for respondent No.1/State.

ORDER

This Second Appeal, under Section 100 of CPC, has been filed against the judgment and decree dated 06.04.2023 passed by XV District Judge, Gwalior (M.P.) in RCA No.108 of 2021, as well as, judgment and decree dated 31.08.2021 passed by VIII Civil Judge, Junior Division, Gwalior (M.P.) in RCSA No.700281/2016.

2. Appellants are plaintiffs who have lost from both the Courts below.

3. Plaintiffs have filed a Civil Suit for declaration of title and possession. It is the case of plaintiffs that Survey Nos. 1846 and 1847, area 0.449 hectare is their joint ownership property and is situated at village Morar, District Gwalior. The aforesaid land was inherited by plaintiffs from their predecessor-in-title late



Putlibai. Putlibai had no son and had only daughter, namely, Jaishri, who was married to Jai Singh Rao. Jaishri was blessed with one daughter and three sons. Elder son of Jaishri, namely, Manik Rao was adopted by Putlibai and accordingly it was pleaded that Manik Rao became the adopted son of Putlibai. Jaishri expired during the lifetime of Putlibai. She was survived by her two sons and one daughter. Putlibai also expired on 24/11/1985 and thereafter her adopted son Manik Rao and legal heirs of her daughter Jaishri i.e. plaintiffs No.2, 3 and 4 became joint owners of the property. On 15.09.2015 plaintiff No.2 filed an application for demarcation of Survey Nos. 1846 and 1847. Report was submitted on 16.10.2015. From the report, plaintiffs came to know that most part of the land belonging to plaintiffs has already been encroached upon by the Education Department of State Government and Government Rajmata College has encroached upon the said land. It was alleged that the land in dispute is still recorded as agricultural land and is not diverted. In spite of that, defendants have constructed a boundary wall and have encroached upon the land belonging to plaintiffs. Accordingly, it was pleaded that plaintiffs are entitled for vacant possession of the said land. It was also pleaded that defendants are unauthorizedly going ahead with the construction work for which they have no right and, thus, the suit was filed.

5. Defendants No.1 and 2 filed their separate written statements. Defendant No.1 submitted that as per revenue records the land in question is a government land. The mutation of the name of plaintiffs was got done in a forged and fabricated manner which is null and void to the interests of the State Government. The mutation was done without there being any order by the competent Authority. In fact, the land has been allotted to Education Department which is running Government Rajmata College and plaintiffs have no right or title over the land in dispute.



6. Defendant No.2 has also filed his separate written statement and denied the plaint averments either specifically or for want of knowledge. It was specifically pleaded that the land in dispute are recorded as a government land in the year 1963. The said land was allotted by the State Government to the Education Department in the year 1963 itself. Respondent No.2 came into existence in 1963 and the construction of college had begun in the year 1963 and since then the College is being run smoothly on the land in dispute.

7. The trial Court after framing issues and recording evidence dismissed the suit.

8. Being aggrieved by the said judgment and decree, plaintiffs preferred an appeal which too has been dismissed by Appellate Court.

9. Challenging the judgment and decree passed by the Courts below, it is submitted by counsel for appellants that the Courts below have wrongly drawn an adverse inference against plaintiffs merely on the ground that in the revenue record which was relied upon by the plaintiffs, it was mentioned that ceiling proceedings are pending. Defendants have not filed any document to show that as to what transpired in those ceiling proceedings and thus should not have relied upon the entries made in the revenue record which was to the effect that ceiling proceedings are pending and proposed the following substantial questions of law:

1. Whether the learned first appellate court committed error of law while not following the procedure as provided under order 41 Rule 28 C.P.C. after allowing the application under order 41 Rule 27 C.P.C?
2. Whether the first appellate court erred in not taking into consideration the documents which were taken on record by allowing the application under Order 41 Rule 27 C.P.C. hence, the First appellate court has committed jurisdictional error of law?
3. Whether the courts below committed error of law while dismissing the suit as barred by limitation?



4. Whether the state and the authorities can be allowed to take the shelter of illegal possession and without pleading and finding about adverse possession, the dismissal of suit as barred by limitation is wrong and liable to be set aside?
5. Whether the finding given by learned trial court with regard to adoption of the Manik Rao Bhosle is perverse and contrary to law and the order dated 12.05.2015 passed by competent authority between the parties?
6. Whether the findings given by both the courts below is contrary to law, the provision of Section 50, 51 & 54 of the Madhya Bharat Land Revenue Tenancy Act and Section 117 & 158 of the M.P. Land Revenue Code?
7. Whether the courts below committed error of law while dismissing the plaintiff's suit inspite of entry in the revenue record of Putli Bai Bhosle @ Putla Bai Bhosle as "Maurusi Krashak" since samvat 2007 onwards?
8. Whether the learned both the courts below committed error of law while not considering the fact that in the revenue record in remark column pendency of ceiling proceedings is mentioned meaning thereby the land was private land and there was no order placed on record by the authority passed by any ceiling authority?
9. Whether the consideration interpretation made by learned courts below with regard to section 243 and Section 2(a) of the M.P. Land Revenue code and on that basis dismissal of plaintiffs suit is wrong and contrary to law?
10. Heard learned counsel for the appellants.
11. Plaintiffs have filed Khasra Panchshala (Ex. P/17, P/18, P/25 and P/28), in which it is specifically mentioned that ceiling proceedings are pending. If the ceiling proceedings were initiated against appellants and the land held by them or by their predecessors was held to be in excess of ceiling limit, then appellants will not have any right in the property. It is a well established principle of law that if a



party, who is in possession of the best evidence, fails to produce the same, then an adverse inference can be drawn. Furthermore, in a civil suit, the plaintiff has to stand on his own legs and cannot take advantage of the weakness of the defendant. Once the plaintiffs themselves have filed the documents to show that ceiling proceedings were pending, then it was obligatory on the part of plaintiffs to plead and prove with regard to the outcome of those ceiling proceedings. Since documents with regard to the outcome of ceiling proceedings have not been placed on record, therefore, the Court below did not commit any mistake by drawing an adverse inference that ceiling proceedings must have been decided against the appellants/plaintiffs.

12. Under these circumstances, this Court is of considered opinion that the Courts below did not commit any mistake by dismissing the suit filed by the plaintiffs.

13. As no substantial question of law arises in the present appeal, accordingly the appeal fails and is hereby dismissed in *limine*.

(G.S. Ahluwalia)
Judge

(and)