



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

BEFORE

HON'BLE SHRI JUSTICE G. S. AHLUWALIA

ON THE 16th OF JUNE, 2025

SECOND APPEAL No. 1766 of 2024

MUNNI DEVI

Versus

THE STATE OF MADHYA PRADESH AND OTHERS

Appearance:

Shri Bhupendra Singh Dhakad - Advocate for appellant.

Shri S.S. Kushwaha – Government Advocate for respondent/State.

JUDGMENT

This Second Appeal, under Section 100 of CPC, has been filed against the judgment and decree dated 20.05.2024 passed by II District Judge, Ambah, District Morena (M.P.) in Regular Civil Appeal No.16/2023 as well as judgment and decree dated 26.04.2023 passed by II Civil Judge (Junior Division), Ambah, District Morena (M.P.) in RCSA 49/2020.

2. Appellant is the plaintiff who has lost her case from both the courts below.
3. The facts, necessary for disposal of the present appeal, in short, are that plaintiff filed a suit for permanent injunction on the ground that she is the owner and in possession of Survey No.2979/2/2 area 0.5540 hectare situated in village Rajoudha, Tahsil Porsa. On northern side of the aforesaid land, there is a public



road and on another side of the road Survey No.2916/2 area 4.4080 hectares land is situated which is government land. By order dated 24.02.2014 passed by defendant No.1, 0.408 hectare of land was used for the purposes of construction of road and 0.418 hectare of land was diverted and it was allotted to M.P. Vidyut Vitaran Co. Ltd. for construction of power house and accordingly the power house has been constructed. The remaining land is lying vacant.

Under the pressure of Secretary and Sarpanch of Gram Pachayat, Rajoudha, defendants are trying to construct a cremation ground on the government land. It was pleaded that on 18.06.2020, defendant No.6 started getting the land levelled by employing labourers. When plaintiff objected as to why the cremation ground is being constructed just on the other side of the road which is virtually in front of the door of the house of the plaintiff, then it was replied by defendant No.6 that it is a government land and the cremation ground would be constructed on the said land. It was pleaded by the plaintiff that on account of cremation of dead-bodies, the air is likely to get polluted which would result in spreading of diseases and the persons using the road including children would get afraid because of cremation rites and thus she made an application to the different authorities not to construct the cremation ground on the said place. It is further pleaded that although the plaintiff has no right or title over the land on which the cremation ground is proposed to be constructed but it is going to be constructed to harass the plaintiff. Therefore, it was prayed that defendants No.5 and 6 may be restrained from constructing the cremation ground nearer to the house of the plaintiff.

4. Defendants/respondents filed their written statement and specifically stated that there is nothing on record that cremation ground is being constructed out of



any ill-will. Cremation ground is being constructed over the government land and the plaintiff has no right or title over the said land.

5. The Trial Court, after recording the evidence of the parties, dismissed the suit by judgment and decree dated 26.04.2023 passed in RCSA 49/2020. Being aggrieved by the said judgment and decree, the plaintiff/appellant preferred an appeal which too has been dismissed by impugned judgment and decree dated 20.05.2024 passed by II District Judge, Ambah, District Morena (M.P.) in Regular Civil Appeal No.16/2023.

6. Challenging the judgments and decrees passed by the courts below, it is submitted by counsel for appellant that in case if the cremation ground is constructed nearer to the house of the plaintiff, then it would cause air pollution which would result in spreading of diseases. Thus, it is prayed that cremation ground may not be constructed.

7. By filing I.A. No.2566/2025, appellant/plaintiff has proposed the following substantial questions of law:-

1. क्या विद्वान विचारण न्यायालय व अपील न्यायालय अपीलार्थी द्वारा प्रस्तुत वाद को समझने में असफल रहा है और वाद पत्र को निरस्त करने में गंभीर त्रुटि कारित की है? एवं विचारण न्यायालय व अपील न्यायालय द्वारा निकाले गये तथ्यों के निष्कर्ष विपर्यस्त होकर अपास्त किये जाने योग्य हैं?
2. क्या विद्वान विचारण न्यायालय व अपील न्यायालय मरघट का निर्माण किये जाने से मरघट से होने वाले प्रदूषण और उसके प्रभाव से उत्पन्न होने वाली क्षति के संबंध में वाद पत्र में किये के अभिवचनों एवं उनके प्रत्याख्यान के आधार पर वाद प्रश्न निर्मित करने में असफल रहा है? यदि हाँ तो इसका क्या प्रभाव होगा?
3. क्या वादी का वाद सुखाधिकार के संबंध में नहीं होकर वायु प्रदूषण और न्यूसेंस के संबंध में होने के कारण स्वीकार किये जाने योग्य है?
4. क्या गलत वाद प्रश्नों की रचना किये जाने के कारण वादी न्यायप्राप्त करने से वंचित हुआ है? यदि हाँ तो क्या प्रकरण में उचित वाद प्रश्न के निर्माण उपरांत पुनः विचारण किया जाना आवश्यक है?



8. Heard learned counsel for the parties.
9. Counsel for appellant could not point out any evidence i.e., whether documentary or scientific to show that on account of cremation of dead bodies in accordance with Hindu rites and rituals, any air pollution is caused which may be detrimental to the health of the nearby residents. The land on which the cremation ground is being proposed or is being constructed is undisputedly a government land and admittedly the plaintiff has no right or title over the said land. How the easementary rights of the plaintiff are getting adversely affected could not be explained by counsel for plaintiff/appellant. Furthermore, the counsel for the appellant could not point out any provision of M.P. Panchayat Evam Gram Swaraj Adhiniyam to show that the cremation ground cannot be constructed nearer to the house of appellant. Even otherwise, it is well established principle of law that this Court in exercise of power under Section 100 CPC cannot set aside an order passed by the Civil Court even if the concurrent findings are erroneous. No perversity could be pointed by counsel for appellant. Accordingly, no substantial question of law arises in the present appeal.
10. *Ex. Consequenti*, judgment and decree dated 20.05.2024 passed by II District Judge, Ambah, District Morena (M.P.) in Regular Civil Appeal No.16/2023 as well as judgment and decree dated 26.04.2023 passed by II Civil Judge (Junior Division), Ambah, District Morena (M.P.) in RCSA 49/2020 are hereby affirmed.
11. Appeal fails and is hereby *dismissed*.

(G.S. Ahluwalia)
Judge