



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

BEFORE

HON'BLE SHRI JUSTICE G. S. AHLUWALIA

ON THE 28th OF JULY, 2025

SECOND APPEAL No. 1413 of 2025

SMT MADHU JAIN AND OTHERS

Versus

KUSUM JAIN AND OTHERS

Appearance:

Shri Abhishek Singh Bhadoriya – Advocate for appellants.

Shri Girija Shankar Sharma- Advocate for respondent No.5/Caveator.

JUDGMENT

This Second Appeal, under Section 100 of CPC, has been filed against the judgment and decree dated 07.05.2025 passed by I District Judge, Morena, District Morena (M.P.) in Regular Civil Appeal No.02/2024 as well as judgment and decree dated 30.11.2023 passed by Additional Judge to the Court of 1st Civil Judge, Senior Division, Morena (M.P.) in Civil Suit No.2800017-A/2014.

2. The facts, necessary for disposal of the present appeal, in short, are that one Reeta Devi (whose legal heirs are respondents No.1 to 3), Manoj (respondent No.4) and Prashant (respondent No.5) filed a suit for declaration of title, possession and permanent injunction pleading *inter alia* that old house No.99/03 situated at Ward No.5 whose new number is 581, Ward No.7 was purchased by two different sale deeds. Half of the building was purchased by registered sale deed dated 27.01.1990 in the name of plaintiffs No.1 and 2 and the remaining part of building was purchased by registered sale deed dated 27.01.1990 executed



in favour of plaintiff No.3. Accordingly, it was pleaded that by two different sale deeds executed on 27.01.1990, half part of the house was purchased by plaintiffs No.1 and 2 whereas remaining half part of building was purchased by plaintiff No.3.

3. It is the case of plaintiffs that after the execution of sale deeds, they were placed under possession. Although defendants No.1, 3 and 4 are the family members of plaintiffs' family but they have no right or title in the property in dispute. Defendants No.1 and 2 have filed a civil suit against plaintiff No.3 on incorrect facts which is pending in the Court of II Additional District Judge, Morena in RCS No.24-A/2011 and wrongly claimed their title in respect of property purchased by plaintiff No.3 by registered sale deed dated 27.01.1990. An application under Order XXXIX Rule 1 and 2 of CPC was filed by defendants which was dismissed by II Additional District Judge, Morena by order dated 12.09.2011 and it was held that defendants No.1 and 2 are not in possession of the part of property purchased by plaintiff No.3. However, plaintiff No.3 was restrained from creating any third party right and interest for a period of 5 months. It was pleaded that since period of 5 months has expired, therefore, now there is no temporary injunction order against plaintiff No.3. It was pleaded that defendants No.1 and 2 in connivance with defendants No.3 and 4 are trying to dispossess the plaintiffs and are trying to somehow take the possession of the property in dispute. It was the case of plaintiffs that they have constructed the suit property out of their own personal finances. Plaintiff No.1 had mortgaged his cold storage for payment of consideration amount for purchase of half part of building by registered sale deed dated 27.01.1990. The finances were repaid and NOC was issued by Satpura Narmada Kshetriya Gramin Bank on 25.04.2011. On 18.08.2013, the defendants tried to forcibly take possession of building. However



it was resisted by plaintiffs. It was pleaded that defendants extended a threat that they would forcibly take possession of the property and would alienate the same to the others. Accordingly, it was prayed that it has become necessary for plaintiffs to file a suit for declaration of title to the effect that plaintiffs are the joint owner and in possession of the property in dispute and the defendants be restrained permanently from interfering in the peaceful possession of plaintiffs. However, during pendency of the suit, this plaint was amended and the prayer for possession was also sought.

4. The defendants filed their written statement. It was pleaded that Babulal was the head of the family whereas Harishchandra, Narendra, Kumari Manorama, Kanta, Nirmal, Madhu, Rakesh and Meena are the children of Babulal. Reeta Devi the widow of Harishchandra and Prashant and Manoj who are the sons of Harishchandra are the plaintiffs. Smt. Madhu and Smt. Meena are defendants No.1 and 3. Rakesh is defendant No.4. It was the case of defendants that Ku.Manorama Jain was the real sister of Harishchandra. Defendants No.1 and 2 had purchased the suit house through Ku. Manorama Jain by two different sale deeds by making payment of the consideration amount. For the satisfaction of defendants No.1 and 2, two gift deeds were also executed by the plaintiffs in favour of Ku. Manorama Jain on 28.05.2003 and the original sale deed, the notarized gift deed etc. were handed over to the defendants. Since then defendants No.1 and 2 are in possession of the part of the property which was purchased in the name of plaintiff No.3 and on the property which was purchased in the name of plaintiffs No.1 and 2, the Kasturba Vidyalaya is situated. It was denied that the defendants are not in possession of the property in dispute. It was claimed that the defendants are in possession for the last 12 years and therefore, they have perfected their title by way of adverse possession also. So far as the



findings recorded by the trial court in an order passed under Order XXXIX Rule 1 and 2 CPC are concerned that will not have any binding effect on the final disposal of the suit. Thus, in nutshell, it was claimed by counsel for the defendants through Manorama Jain had purchased the property out of their own funds in the name of plaintiffs No.1, 2 and 3. In return, plaintiffs No.1, 2 and 3 had executed a notarized gift deed in favour of Manorama Jain.

5. It is the defence of defendants No.1 and 2 that property was purchased in the name of plaintiffs No.1 to 3 by Ku. Manorama Jain. It is not the case of the defendants that the property was purchased out of the proceeds of the Joint Hindu Family Property. Thus, the arguments which have been advanced by counsel for appellants that the property in dispute was purchased from the proceeds of Joint Hindu Family property is contrary to the pleadings of appellants themselves. Furthermore, it is the case of the defendants that plaintiffs had executed a notarized gift deed in favour of Ku. Manorama Jain, however, it is fairly conceded by counsel for appellants that since the gift deed is not the registered one, therefore, no right or title would stand transferred to Manorama Jain by virtue of a notarized gift deed.

6. However, defendant No.3 filed her written statement taking a stand that the house in dispute was purchased from the proceeds of Joint Hindu Family property. It was pleaded that a Society had started a school in the name of Kasturba Primary School which was initially upto Class V and later on it was extended upto class XII. Madhu, Manorama Jain and defendant No.3 Meena Jain were office bearers and the building was purchased out of the income of the society. It was further pleaded that the society was placed in possession and the society had renovated the building which was earlier in a dilapidated condition.



The factum of the execution of gift deed by the plaintiffs was also contended by the defendants.

7. The Trial Court, after framing issues and recording evidence, decreed the suit. Being aggrieved by the judgment and decree passed by the Trial Court, appellants preferred an appeal which too has been dismissed by the Appellate Court.

8. Challenging the judgment and decree passed by the courts below, it is submitted by counsel for appellants that the plaintiffs No.1 and 2 did not enter into the witness box and therefore, evidence which was given by plaintiff No.3 will not cover the portion of the house which was purchased by plaintiffs No.1 and 2. It is further submitted that the property in dispute was a joint hindu family property purchased from the proceeds of the school and therefore, the courts below have committed a material illegality by decreeing the suit filed by the plaintiffs and accordingly, proposed the following questions of law:

- i) Whether learned courts below have erred in decreeing the suit of Plaintiffs without recording the requisite findings on the respective pleadings of the parties?
- ii) Whether the suit was maintainable in light of the fact that Plaintiffs were merely the Benamidar and not the real Owner of Property?
- iii) Whether learned courts below have erred in decreeing the suit once it was established on record that Plaintiff No.3 had admitted they had no source of income and the pivotal issue according to Trial court itself was if the plaintiff had purchased the property by paying consideration?
- iv) Whether the courts below have erred in granting benefit of Weakness of Defendant to Plaintiffs despite there being any proof regarding Ownership, Cause of Action and right to sue?



v) Whether the learned courts below have erred in not holding the property to be vested in the society when the factum of running of school of the society, in the disputed property has been established?
vi) Whether Appellate court has gravely erred in discharging its duties as enshrined in order 41 rule 31 CPC?

vii) Whether learned appellate court has erred in not considering a single document of Defendant while deciding the issue of entitlement of Plaintiffs to possession ?

viii) Whether learned courts below have erred in not considering the documents pertaining to construction of house which were filed by the Defendants and while the case of Plaintiffs regarding non-construction has been clearly found to be not proved ?

ix) Whether learned courts below have erred in not referring to the principle of Jointness of Property once the Plaintiff herself was a member of the given society, which had constructed the house?

x) Whether case of Plaintiffs is clearly barred by principle of estoppel?

xi) Whether the sale deed in favour of Plaintiff can be held to be proved on basis of which the suit has been decreed ?

xii) Whether without proving the quantum of profit which could be earned more so without recording any finding about their dispossession the mense profit could have been decreed ?

xiii) Whether the judgment and decree passed by learned Courts below being based on non-consideration of evidence, admissions and pleadings and being based on wrong assumptions, are perverse and contrary to law and record and therefore are not sustainable?

9. Heard learned counsel for appellants.

10. In the present case, the sale deeds Ex. P-1 and P-2 stand in the name of plaintiff No.1 and 2 and plaintiff No.3 respectively. Therefore, *prima facie* there is a sale deed to show that the plaintiffs No.1 and 2 are the owner of half of the



building which was purchased by them by registered sale deed dated 27.01.1990 and plaintiff No.3 is the owner of the remaining half of the building which was purchased by him by registered sale deed dated 27.01.1990. Now, it is the case of the defendants/appellants that the property in dispute was a Joint Hindu Family property. Therefore, the initial burden is on the appellants/defendants to prove that the property in dispute was not the self-acquired property of plaintiffs 1 to 3 but it was a Joint Hindu Family property having been purchased from the proceeds of the educational society.

11. By referring to the report Ex.D-50, it is submitted by counsel for the plaintiffs that the society had submitted a report that the school is being run in a building which is owned by the society. Thus, it is submitted that the property in dispute was purchased from the proceeds of the Joint Hindu Family property.

12. Merely because in a report submitted by Society itself to the Education Department by itself would not decide the question of title.

13. Furthermore, it is clear that neither the books of accounts nor the audit reports nor the returns of income tax of the society have been placed on record. Nothing has been placed on record that what was the income of the society and how much money was spent for purchase of the property and renovation/construction of the building. Furthermore, the defence of defendant No.1 and 2 was contrary to defence of defendant No.3. Defendants No.1 and 2 never pleaded that the property was purchased out of proceeds of Joint Hindu Family property or the income of the society.

14. Considering the facts and circumstances of the case, this Court is of considered opinion that no Substantial Question of Law arises in the present appeal. Accordingly, judgment and decree dated 07.05.2025 passed by I District Judge, Morena (M.P.) in Civil Appeal No.02/2024 as well as judgment and



decree dated 30.11.2023 passed by Additional Judge to the Court of 1st Civil Judge, Senior Division, Morena (M.P.) in Civil Suit No.2800017-A/2014 are hereby affirmed.

15. *Ex. consequenti*, appeal fails and is hereby ***dismissed***.

(G.S. Ahluwalia)
Judge

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