NEUTRAL CITATION NO. 2025:MPHC-GWL:25464

IN THE HIGH COURT OF MADHYA PRADESH
A T G W A L I O R
BEFORE

HON'BLE SHRI JUSTICE G. S. AHLUWALIA

ON THE 9th OF OCTOBER, 2025

SECOND APPEAL No. 2211 of 2025

HARCHARAN (DIED) THR. LRS (A) NARENDRA SINGH AND OTHERS

Versus

STATE OF MADHYA PRADESH AND OTHERS

Appearance:

Shri Anoop P. Chaudhari and Smt. June Chaudhari – Senior Advocates with Shri Manas Dubey and Shri Abhimanyu Verma – Advocates for appellants.

Shri Vivek Khedkar – Senior Advocate/AAG with Shri S.S. Kushwah – Government Advocate for respondents/State.

ORDER

1. This Second Appeal under Section 100 of CPC has been filed against the judgment and decree dated 13-8-2025 passed by 4th District Judge, Gwalior in R.C.A. No. 600024 of 2013, by which the Judgment and Decree dated 22-12-2012 passed by 3rd Civil Judge, Class-1, Gwalior in RCS No.2300032A/2012 has been reversed.

2. The appellants the Plaintiff, who have lost their case from the First Appellate Court.

3. The facts necessary for disposal of present appeal in short are that the plaintiffs/appellants filed a civil suit for declaration of title and permanent injunction, by pleading inter-alia that the plaintiffs are the joint owner and in possession of Survey no. 1914 area 8 Biswa, Survey no. 1915/1 area 2 Biswa, Survey No. 1917/2 area 0.408 hectares, Survey no. 1918/2 area 0.115 hectares and Survey no. 1937/1 area 0.261 hectares, total area 0.836 hectares situated in village Gospura, Tahsil Gwalior on which Balaji Gardens is in operation. The aforesaid property is in ownership and possession of the predecessors of the plaintiff prior to *Samvat 1997.* The predecessors of the plaintiffs had other properties also, but at present the disputed land i.e., 0.836 hectares is in ownership and possession of the plaintiffs. It was pleaded that the disputed property had never been the Govt. land and even in Khasra Panchsala of 2009-2010, the disputed property is recorded in the names of the plaintiffs. On the basis of fake and false complaint, an enquiry was got done by Collector from Tahsildar Gwalior and it was found that the property belongs to the predecessors of the plaintiffs. Even the Revenue Inspector and Nazul Officers had found that the property belongs to the plaintiffs. Without there being any cause of action a writ petition No. 2010/2011 was filed which was disposed of by the High Court by order dated 29-3-2011

and liberty was granted to the plaintiffs. Inspite of that, the defendants are still claiming title over a part of the property and are out and out to dispossess them. On 25-6-2012, a threat was extended for dispossession of the plaintiffs therefore, it has become necessary for the plaintiffs to file a suit. Although a notice under Section 80 CPC is mandatory, but in view of urgent nature of dispute, an application has been filed under Section 8(2) of CPC. Accordingly, it was prayed that plaintiffs may be declared as owner and in possession of Survey no. 1914 area 8 Biswa, Survey no. 1915/1 area 2 Biswa, Survey No. 1917/2 area 0.408 hectares, Survey no. 1918/2 area 0.115 hectares and Survey no. 1937/1 area 0.261 hectares, total area 0.836 hectares situated in village Gospura, Tahsil Gwalior, and defendants have no right or title in the property. A permanent injunction was also sought thereby restraining the defendants from interfering with peaceful possession of the plaintiffs.

4. The respondent/defendant filed its written statement. It was pleaded that the contents of para 1 of the plaint which are contrary to the documentary evidence are denied. The *Batankan* of Survey Numbers claimed by the plaintiff is not available on the field map. The contents of para 2 and 3 relates to document, however, any pleading contrary to documents was denied. It was admitted that on the basis of the complaint, an enquiry was got conducted and demarcation was got done and it was found that at present there is

no *batankan* in the field map. The total area of Survey No.1914 area 0,031 hectares, Survey No. 1918/2 area 0.115 hectares, Survey No. 1917/2 area 0.408 hectares, Survey No. 1918/2 area 0.115 hectares, Survey No. 1937 area 0.261 hectares, is 0.836 hectares. Out of aforementioned land, 0.429 hectares of land is a Bhumiswami Land, whereas 0.407 hectares is a Govt. Land. 0.260 hectares of land is reserved for parking and on 0.576 hectares, Balaji Garden is situated. It was specifically pleaded that the entire land on which Balaji Garden is situation is a Govt. land. The plaintiffs have also encroached upon the Govt. land for parking purposes. The plaintiffs are running Balaji Garden which is evident from the enquiry report. It was further pleaded that the defendants are taking action as per the directions given by the High Court. It was pleaded that the plaintiffs have no right to operate Balaji Garden on the Govt. land. A notice was given to the plaintiffs to immediately remove their encroachment and accordingly eviction proceedings are under contemplation against the plaintiffs. It was further pleaded by amendment that out of 0.836 hectares of land, 0.407 hectares of land is a private land whereas the remaining 0.429 hectares of land is a Govt. land. Only the revenue courts have jurisdiction of doing *Batankan*. Since, the plaintiffs have encroached upon the Govt. land therefore, they do not want to go for *Batankan*. In special plea it was pleaded that during enquiry it was found that in Khasra Panchsala of 2010-11, the name of Ashok Singh is recorded as Bhumiswami in respect of Survey No. 1917/2

Min 1 area 0.314, Survey No. 1917/2 Min 2 area 0.094 hectares, Survey No. 1918/2 Min 2 area 0.021 hectares, and Survey No. 1937/2 Min area 0.105 hectares total area 0.534. It was further pleaded that during demarcation a fact has come to the knowledge that out of 0.836 hectares, 0.429 hectares is a private land whereas 0.407 hectares is a Govt. land.

5. The Trial Court after framing issues and recording evidence, decreed the suit.

6. Being aggrieved by the Judgment and Decree passed by the Trial Court, the defendants/respondents preferred Civil Appeal which has been allowed by the impugned Judgment and Decree and the suit filed by the plaintiffs has been dismissed.

7. Challenging the Judgment and Decree passed by the First Appellate Court, it is submitted by Counsel for the appellant, that the First Appellate Court has reversed the well reasoned Judgment and Decree passed by the Trial Court. Without reversing the findings recorded by the Trial Court pertaining to the ownership of the appellants, it was held by the First Appellate Court, that the suit is barred by Section 257 of M.P.L.R. Code. It is submitted that in view of Section 57 (2) of M.P.L.R. Code, the Bhumiswami Rights of the predecessors of the plaintiffs cannot be disturbed. It is further submitted that once, the defendants had admitted the title of the plaintiff over 0.429 hectares, then the First Appellate Court

should not have dismissed the suit in respect of the entire 0.836 hectares of land. It is submitted that once, the defendants had admitted the title of the appellants over 0.429 hectares then the burden of the appellants to prove their title over the said land, had already stood discharged. Accordingly, proposed the following Substantial Questions of Law :

> "1. Whether in view of finding given by Ld. First Appellate Court in para 28 and 29 the judgment and decree passed by Ld. First Appellate Court is without jurisdiction, contrary to law and liable to be set aside?
>
> 2. Whether the Ld. First Appellate Court committed error of law inspite of giving finding that the suit is not maintainable, deciding the suit on merits hence, the judgment and decree passed by Ld. First Appellate Court is vitiated and liable to be set aside?
>
> 3. Whether the judgment and decree passed by Ld. First Appellate Court is contrary to the candid admission by the parties more particularly defendants?
>
> 4. Whether Ld. First Appellate Court committed wrong while giving the finding contrary to the facts admitted in the written statement and the documents filed by the defendants?
>
> 5. Whether the judgment and decree passed by Ld. Ist Appellate Court is perverse and contradictory to the finding given in para 21?
>
> 6. Whether the Ld. First Appellate Court erred in not granting injunction in favour of plaintiff when the factum of

settled possession of the plaintiff since Samvat 1997 was admitted by the defendants?

7. Whether the Ld. First Appellate Court committed error of law while dismissing the plaintiff's suit as provided under Section 96 CPC?

8. *Per contra*, the Counsel for the State has supported the findings recorded by the First Appellate Court.

9. Considered the submissions made by Counsel for the parties on the question of admission.

Whether the defendants had admitted the title of the plaintiffs over 0.429 hectares of land or not?

10. After referring to the written statement filed by the defendants, it was contended by Counsel for Appellants that the defendants had unequivocally admitted the title of the plaintiffs atleast over 0.429 hectares of land and therefore, the suit in respect of 0.836 hectares of land should not have been dismissed and it should have been decreed at least in respect of 0.429 hectares.

11. This Court has already reproduced the written statement filed by the defendants. From plain reading of the written statement, it is clear that the defendants had merely filed their written statement on the basis of revenue entries and enquiry done by revenue authorities. Therefore, it cannot be said that there was any unequivocal admission by the defendants in their written statement.

Further more, the plaintiffs have filed all the revenue documents to show that they are the owners of entire 0.836 hectares of land, therefore, even otherwise, the vague written statement filed by the State Govt. has not caused any prejudice to the appellants as they have contested the case from tooth to nail with a clear understanding that they have to prove their title in respect of entire 0.836 hectares of land.

12. Order 8 Rule 5 CPC reads as under :

> **5. Specific denial**.—(1) Every allegation of fact in the plaint, if not denied specifically or by necessary implication, or stated to be not admitted in the pleading of the defendant, shall be taken to be admitted except as against a person under disability:
> Provided that the Court may in its discretion require any fact so admitted to be proved otherwise than by such admission.
> (2) Where the defendant has not filed a pleading, it shall be lawful for the Court to pronounce judgment on the basis of the facts contained in the plaint, except as against a person under a disability, but the Court may, in its discretion, require any such fact to be proved.
> (3) In exercising its discretion under the proviso to sub-rule (1) or under sub-rule (2), the Court shall have due regard to the fact whether the defendant could have, or has, engaged a pleader.
> (4) Whenever a judgment is pronounced under this rule, a decree shall be drawn up in accordance with such judgment and such decree shall bear the date on which the judgment was pronounced.

Section 58 of the Evidence Act reads as under :

> "**58. Facts admitted need not be proved**.- No fact need to be proved in any proceeding which the parties thereto or their agents agree to admit at the hearing, or which, before the hearing, they agree to admit by any writing under their hands, or which by any rule of pleading in force at the time they are deemed to have admitted by their pleadings:
>
> Provided that the Court may, in its discretion, require the facts admitted to be proved otherwise than by such admissions."

13. From plain reading of Order 8 Rule 5 CPC & Proviso to Section 58 of Evidence Act, it is clear that even in case of evasive reply, the Trial Court may require the plaintiff to prove any fact so admitted to be proved otherwise than by such admission. Thus, it cannot be said that where the defendant has admitted certain facts either specifically or by filing evasive reply, then the Trial Court is left with no option but to pass a decree on such admission.

14. The Supreme Court in the case of **Balraj Taneja v. Sunil Madan,** reported in **(1999) 8 SCC 396**has held as under :

> **15.** There are thus two separate and distinct provisions under which the court can pronounce judgment on the failure of the defendant to file written statement. The failure may be either under Order 8 Rule 5(2) under which the court may either pronounce judgment on the basis of the facts set out in the plaint or require the plaintiff to prove any such fact; or the failure may be under Order 8 Rule 10 CPC under which the court is required to pronounce judgment against the defendant or to pass such order in relation to the suit as it thinks fit.
>
> * *

18. In *Dharampal Gupta* v. *District Judge, Etah* the Allahabad High Court held as under:

"Therefore, reading Order 8 Rule 10 CPC along with Order 8 Rule 5 CPC, it seems that even though the filing of written statement has been made obligatory and the court has now been empowered to pass a judgment on the basis of the plaint on the ground that no written statement has been filed by the defendant still, the discretion of the court has been preserved and despite the non-filing of the written statement the court may pass any other order as it may think fit (as laid down in Order 8 Rule 10) or the court may in its discretion require any particular fact mentioned in the plaint to be proved as laid down in Order 8 Rule 5 sub-rule (2) CPC."

19. This decision was followed in *State of U.P.* v. *Dharam Singh Mahra*.

20. In *Sushila Jain* v. *Rajasthan Financial Corpn*. and also in *Rosario Santana Vaz* v. *JoaquinaNatividadeFernandes* it was laid down that if the defendant was deliberately delaying the proceedings and had failed to assign a good and sufficient cause for not filing the written statement, the court could forfeit his right of defence.

21. There is yet another provision under which it is possible for the court to pronounce judgment on admission. This is contained in Rule 6 of Order 12 which provides as under:

"6. *Judgment on admissions*.—(1) Where admissions of fact have been made either in the pleading or otherwise, whether orally or in writing, the court may at any stage of the suit, either on the application of any party or of its own motion and without waiting for the determination of any other question between the parties, make such order or give such judgment as it may think fit, having regard to such admissions.

(2) Whenever a judgment is pronounced under sub-rule (1) a decree shall be drawn up in accordance with the

judgment and the decree shall bear the date on which the judgment was pronounced."

22. This rule was substituted in place of the old rule by the Code of Civil Procedure (Amendment) Act, 1976. The Objects and Reasons for this amendment are given below:

"Under Rule 6, where a claim is admitted, the court has jurisdiction to enter a judgment for the plaintiff and to pass a decree on the admitted claim. The object of the rule is to enable a party to obtain a speedy judgment at least to the extent of the relief to which, according to the admission of the defendant, the plaintiff is entitled. The rule is wide enough to cover oral admissions. The rule is being amended to clarify that oral admissions are also covered by the rule."

23. Under this rule, the court can, at an interlocutory stage of the proceedings, pass a judgment on the basis of admissions made by the defendant. But before the court can act upon the admission, it has to be shown that the admission is unequivocal, clear and positive. This rule empowers the court to pass judgment and decree in respect of admitted claims pending adjudication of the disputed claims in the suit.

24. In *Razia Begum* v. *Sahebzadi Anwar Begum* it was held that Order 12 Rule 6 has to be read along with the proviso to Rule 5 of Order 8. That is to say, notwithstanding the admission made by the defendant in his pleading, the court may still require the plaintiff to prove the facts pleaded by him in the plaint.

25. Thus, in spite of admission of a fact having been made by a party to the suit, the court may still require the plaintiff to prove the fact which has been admitted by the defendant. This is also in consonance with the provisions of Section 58 of the Evidence Act which provides as under:

"58. *Facts admitted need not be proved*.—No fact need be proved in any proceeding which the parties thereto or

their agents agree to admit at the hearing, or which, before the hearing, they agree to admit by any writing under their hands, or which by any rule or pleading in force at the time they are deemed to have admitted by their pleadings:

Provided that the court may, in its discretion, require the facts admitted to be proved otherwise than by such admissions."

26. The proviso to this section specifically gives a discretion to the court to require the facts admitted to be proved otherwise than by such admission. The proviso corresponds to the proviso to Rule 5(1) Order 8 CPC.

27. In view of the above, it is clear that the court, at no stage, can act blindly or mechanically. While enabling the court to pronounce judgment in a situation where no written statement is filed by the defendant, the court has also been given the discretion to pass such order as it may think fit as an alternative. This is also the position under Order 8 Rule 10 CPC where the court can either pronounce judgment against the defendant or pass such order as it may think fit.

15. The Supreme Court in the case of **Jagdish Prasad Patel v. Shivnath,** reported in **(2019) 6 SCC 82** has held as under :

15. Section 58 of the Evidence Act, no doubt, postulates that the things admitted need not be proved. However, the proviso to Section 58 of the Evidence Act gives full discretion to the court to require the facts admitted to be proved otherwise than by such admission. When the respondent-plaintiffs have filed the suit for declaration of their title, the respondent-plaintiffs cannot isolate few sentences in the written statement and take advantage of only those parts of the written statement which are favourable to them. The written statement filed by the appellant-defendants has to be read in toto……..

16. Thus, it is clear that even if the facts have been admitted by the defendant(s), still the Court has a discretion to call upon the plaintiff to prove the fact. Thus, the contention of the Counsel for the Appellant that once, the State had admitted the title of the plaintiffs over 0.429 hectares of land therefore, should not have dismissed the suit in respect of entire 0.836 hectares of land is misconceived and is hereby rejected. Further more, this Court has also found that the plaintiffs had contested the suit with an intention to establish their title over the entire 0.836 hectares of land therefore,no prejudice has been caused, merely because the Court below has not taken the admission made by the defendant into consideration.

Whether the revenue entries are document of title

17. It is well established principle of law that the revenue entries are not documents of title and they are meant for fiscal purposes only. The Supreme Court in the case of **Municipal Corpn., Gwalior v. Puran Singh,** reported in **(2015) 5 SCC 725** has held as under :

> **28.** Mutation entries do not confer title. In *Sawarni* v. *InderKaur* this Court held: (SCC p. 227, para 7)
>
> "*7.* … Mutation of a property in the revenue record does not create or extinguish title nor has it any presumptive value on title. It only enables the person in whose favour mutation is ordered to pay the land revenue in question. The learned Additional District Judge was wholly in error in coming to a conclusion that mutation in favour of

InderKaur conveys title in her favour. This erroneous conclusion has vitiated the entire judgment."

18. The Supreme Court in the case of **Union of India v. Vasavi Coop. Housing Society Ltd.,** reported in **(2014) 2 SCC 269** has held as under :

> **21.** This Court in several judgments has held that the revenue records do not confer title. In Corpn.of the City of Bangalore v. M. Papaiah this Court held that: (SCC p. 615, para 5)
>
> "5. … It is firmly established that the revenue records are not documents of title, and the question of interpretation of a document not being a document of title is not a question of law."
>
> In Guru Amarjit Singh v. Rattan Chand this Court has held that: (SCC p. 352, para 2)
>
> "2. … that entries in the Jamabandi are not proof of title."
>
> In State of H.P. v. Keshav Ram this Court held that: (SCC p. 259, para 5)
>
> "5. … an entry in the revenue papers by no stretch of imagination can form the basis for declaration of title in favour of the plaintiffs."
>
> **22.** The plaintiff has also maintained the stand that their predecessor-in-interest was the pattedar of the suit land. In a given case, the conferment of patta as such does not confer title. Reference may be made to the judgments of this Court in Syndicate Bank v. APIIC Ltd.[7] and Vatticherukuru Village Panchayat v. NoriVenkataramaDeekshithulu.
>
> **23.** We notice that the above principle laid down by this Court was sought to be distinguished by the High Court on the ground that in none of the abovementioned judgments, is there any reference to any statutory provisions under which revenue records referred therein, namely, revenue register, settlement register, jamabandi

registers are maintained. The High Court took the view that Ext. A-3 has evidentiary value since the same has been prepared on the basis of the Hyderabad Record-of-Rights in Land Regulation, 1358 Fasli. It was also noticed that Columns 1 to 19 of the pahanipatrika is nothing but record-of-rights and the entries in Columns 1 to 19 in pahanipatrikashall be deemed to be entries made and maintained under the Regulations.

24. We are of the view that even if the entries in the record-of-rights carry evidentiary value, that itself would not confer any title on the plaintiff of the suit land in question. Ext. X-1 is Classer Register of 1347 Fasli which according to the trial court, speaks of the ownership of the plaintiff's vendor's property. We are of the view that these entries, as such, would not confer any title. The plaintiffs have to show, independent of those entries, that the plaintiff's predecessors had title over the property in question and it is that property which they have purchased. The only document that has been produced before the court was the registered family settlement and partition deed dated 11-12-1939 of their predecessor-in-interest, wherein, admittedly, the suit land in question has not been mentioned.

Whether the plaintiffs have proved their title on the entire 0.836 hectares of land or not?

19. It is the case of the plaintiffs that their predecessor were the owner and in possession of the property in dispute prior to *Samvat* 1997 i.e, year 1940. However, the Counsel for the Appellant relied upon Section 57 of MPLR Code which reads as under :

"**57. State ownership in all lands.—** (1) All lands belong to the State Government and it is hereby declared that all such lands, including Standing and flowing water, mines,

> quarries, minerals and forests reserved or not, and all rights in the sub-soil of any land are the property of the State Government :
>
> Provided that nothing in this section shall, save as otherwise provided in this Code, be deemed to affect any rights of any person subsisting at the coming into force of this Code in any such property."

From plain reading of this Section, it is clear that all lands belong to the State Government but nothing shall be deemed to affect any rights of any person subsisting at the time of coming into force of M.P.L.R. Code in any such property.

20. Thus, it was obligatory on the part of the appellants to prove that their rights were existing at the time of coming into force of M.P.L.R. Code. From the plaint pleading, it is clear that the plaintiffs/appellants except by mentioning that their predecessors were the owner and in possession of the property in dispute, has not stated about the source of title. It is not the case of the plaintiffs, that they or their predecessors acquired bhumiswami rights at the time of commencement of M.P.L.R. Code. The appellants have filed the following documents :

(i) Power of Attorney as Ex. P.1;
(ii) Order passed by High Court in W.P. No. 2010 of 2011 as Ex. P.2;
(iii) Order dated 14-2-2011 Ex. P.3;
(iv) Report of Two Revenue Inspectors as Ex. P.4;
(v) Panchnama Ex. P.5;
(vi) Letter written by Nazul Officer to Collector Ex. P.6;
(vii) Order dated 11-4-2011 written by Tahsildar Ex. P.7;

(viii) KhasraPanchsala of *Samvat 2031* Ex. P.8 in which Bungalow No. 3, P.W.D. is mentioned in column no. 2 and the name of persons in possession are mentioned in column no. 3;

(ix) KhasraPanchsala of *Samvat 2036* Ex. P.9 in which Bungalow No. 3, P.W.D. is mentioned in column no. 2 and the name of persons in possession are mentioned in column no. 3;

(x) KhasraPanchsala of year 1989-90 Ex. P.10 in which Bungalow No. 3, P.W.D. is mentioned in column no. 2 and the names of appellants are mentioned in column no. 3. In column no. 14, it is mentioned that by order dated 16-1-1990, the rights of Bhumiswami have been conferred on the appellants:

(xi) KhasraPanchsala of year 1999-2000 Ex. P.11 in which Bungalow No. 3 P.W.D. is mentioned and the names of the appellants are not mentioned;

(xii) KhasraPanchsala of year 1999-2000 Ex. P.11 in which names of the appellants are mentioned in column 3 but the Bungalow No.3 PWD is not mentioned;

(xiii) KhasraPanchsala of year 1999-2000 Ex. P.12 in which the A.G. Office, AbadiNazul is mentioned in respect of Kh. No. 1918/2 and 1918/1, and in respect of Kh. No. 1917/1 and 1917/2, the names of appellants are mentioned in colomn no.3;

(xiv) KhasraPanchsala of year 1994-95 Ex. P.15 in which the AG office, Bungalow No. 3 P.W.D., AbadiNazul is mentioned;

(xv) Photocopy of certified copy of note sheet, Ex. P.16 in which the details of various revenue entries has been mentioned ;

(xvi) KhasraPanchsala of year 2010-2011 in respect of Kh. No. 1917/2 Min 1 Ex. P.16, in which the names of appellants are mentioned;

(xvii) KhasraPanchsala of year 2005-2010 in respect of Kh. No. 1917/2 Min 1 and 1918/2/min 2 Ex. P.17, in which the names of appellants are mentioned;

(xvii) KhasraPanchsala of year 2005-2010 in respect of Kh. No. 1918/2/min 2 Ex. P.18, in which the names of appellants are mentioned;

(xviii) KhasraPanchsala of year 2005-2010 Ex. P.19;

(xix) KhasraPanchsala of year 2005-2010 Ex. P.20;
(xx) KhasraPanchsala of year 2005-2010 Ex. P.21;
(xxi) KhasraPanchsala of year 2005-2010 Ex. P.22;
(xxii) KhasraPanchsala of year 2009-2010 Ex. P.23;
(xxiii) Legal notice under Section 80 CPC Ex. P. 24 and postal receipts Ex. P. 25 and 26.

21. Thus, it is clear that the oldest Khasra is of *Samvat 2031* Ex. P.8 in which Bungalow No. 3, P.W.D. is mentioned in column no. 2 and the names of persons who are in possession are also mentioned. Further in Khasra Panchsala of year 1989-90 Ex. P.10 it is mentioned that by order dated 16-1-1990, the bhumiswami rights have been conferred on appellants. Accordingly, the Counsel for the appellants was directed to explain that if the Bhumiswami Rights were conferred on the appellants by order dated 16-1-1990 only, then how, the appellants can claim the benefit of Section 57(2) of M.P.L.R. Code? In reply, except submitting that the respondents had admitted the title of the appellants in their written statement, therefore, no clarification in respect of query raised by this Court is required, no other explanation was given by the Counsel for appellant.

22. Further, it is well established principle of law that the revenue entry can be made only on the basis of an order passed by the competent authority. However, the appellants have not filed the copy of order dated 16-1-1990, to show that the order was passed by the competent authority. It is not known as to whether any order dated 16-1-1990 was ever passed by any authority or not and if

passed then what was the ground for conferring the rights of bhumiswami in the year 1990?

23. Thus, it is clear that the basic stand taken by the appellants that their predecessors were in possession of the land in dispute in the capacity of owner is false and has been rightly rejected by the First Appellate Court.

24. As already pointed out that revenue entries are not the document of title, therefore, it was obligatory on the part of the appellants to prove that in *Samvat 1997* i.e., year 1940 when the Bungalow No.3 P.W.D. was mentioned in the revenue record and the names of the private persons who were in possession were mentioned, then how the predecessors of the appellants can be held to be the owner? Again merely by referring to the evasive admissions made by defendants, the factual aspect was not clarified by the Counsel for the Appellants.

25. So far as the photocopy of certified copy of the note sheet Ex. P.14 is concerned, it is clear that in the said note sheet, details of certain revenue entries is mentioned. When the Revenue records are available, then note sheet containing the details of those revenue records cannot be said to be primary evidence.

26. Therefore, at the most it can be said that certain private persons were in possession of land in dispute in *Samvat 1997*, but that would not mean that they had become bhumiswami specifically when it is the case of the appellants themselves that bhumiswami

rights were conferred on the appellants only by order dated 16-1-1990, Ex. P.10.

27. Further more, it is not the case of the appellants that they had perfected their title by way of adverse possession Even otherwise, for claiming the benefit of adverse possession, the aspirant has to admit the title of the opposite party and cannot take two self contradictory stand i.e., firstly as owner and secondly as Adverse possession. The Supreme Court in the case of **Hemaji Waghaji Jat Vs. Bhikabhai Khengarbhai Harijan and others** reported in **(2009) 16 SCC 517** has held as under:

> **13.** We deem it appropriate to deal with some important cases decided by this Court regarding the principle of adverse possession.
>
> **14.** In *Secy. of State for India In Council* v. *DebendraLal Khan* it was observed that the ordinary classical requirement of adverse possession is that it should be *nec vi, nec clam, necprecario* and the possession required must be adequate in continuity, in publicity and in extent to show that it is possession adverse to the competitor.
>
> **15.** This Court in *P. Lakshmi Reddy* v. *L. Lakshmi Reddy*, while following the ratio of *DebendraLal Khan case*, observed as under: (*P. Lakshmi Reddy case*[4], AIR p. 318, para 4)
>
> "*4*. … But it is well-settled that in order to establish adverse possession of one co-heir as against another it is not enough to show that one out of them is in sole possession and enjoyment of the profits, of the properties. Ouster of the non-possessing co-heir by the co-heir in possession who claims his possession to be adverse, should be made out. The possession of one co-heir is considered, in law, as possession of all the co-heirs. When

one co-heir is found to be in possession of the properties it is presumed to be on the basis of joint title. The co-heir in possession cannot render his possession adverse to the other co-heir not in possession merely by any secret hostile animus on his own part in derogation of the other co-heir's title. It is a settled rule of law that as between co-heirs there must be evidence of open assertion of hostile title, coupled with exclusive possession and enjoyment by one of them to the knowledge of the other so as to constitute ouster."

The Court further observed thus: (*P. Lakshmi Reddy case*, AIR p. 318, para 4)

"*4*. … the burden of making out ouster is on the person claiming to displace the lawful title of a co-heir by his adverse possession."

16. In *S.M. Karim* v. *BibiSakina*, Hidayatullah, J. speaking for the Court observed as under: (AIR p. 1256, para 5)

"*5*. … Adverse possession must be adequate in continuity, in publicity and extent and a plea is required at the least to show when possession becomes adverse so that the starting point of limitation against the party affected can be found. There is no evidence here when possession became adverse, if it at all did, and a mere suggestion in the relief clause that there was an uninterrupted possession for 'several 12 years' or that the plaintiff had acquired 'an absolute title' was not enough to raise such a plea. Long possession is not necessarily adverse possession and the prayer clause is not a substitute for a plea."

17. The facts of *R. Chandevarappa* v. *State of Karnataka* are similar to the case at hand. In this case, this Court observed as under: (SCC p. 314, para 11)

"*11*. The question then is whether the appellant has perfected his title by adverse possession. It is seen that a contention was raised before the Assistant Commissioner

that the appellant having remained in possession from 1968, he perfected his title by adverse possession. But the crucial facts to constitute adverse possession have not been pleaded. Admittedly the appellant came into possession by a derivative title from the original grantee. It is seen that the original grantee has no right to alienate the land. Therefore, having come into possession under colour of title from original grantee, if the appellant intends to plead adverse possession as against the State, he must disclaim his title and plead his hostile claim to the knowledge of the State and that the State had not taken any action thereon within the prescribed period. Thereby, the appellant's possession would become adverse. No such stand was taken nor evidence has been adduced in this behalf. The counsel in fairness, despite his research, is unable to bring to our notice any such plea having been taken by the appellant."

18. In *D.N. Venkatarayappa* v. *State of Karnataka* this Court observed as under: (SCC p. 571*b-c*, para 3)

"Therefore, in the absence of crucial pleadings, which constitute adverse possession and evidence to show that the petitioners have been in continuous and uninterrupted possession of the lands in question claiming right, title and interest in the lands in question hostile to the right, title and interest of the original grantees, the petitioners cannot claim that they have perfected their title by adverse possession…."

19. In *Md. Mohammad Ali* v. *JagadishKalita* this Court observed as under: (SCC p. 277, paras 21-22)

"*21*. For the purpose of proving adverse possession/ouster, the defendant must also prove animus possidendi.

22. … We may further observe that in a proper case the court may have to construe the entire pleadings so as to come to a conclusion as to whether the proper plea of adverse possession has been raised in the written

statement or not which can also be gathered from the cumulative effect of the averments made therein."

20. In *Karnataka Board of Wakf* v. *Govt. of India* at para 11, this Court observed as under: (SCC p. 785)

"*11*. In the eye of the law, an owner would be deemed to be in possession of a property so long as there is no intrusion. Non-use of the property by the owner even for a long time won't affect his title. But the position will be altered when another person takes possession of the property and asserts a right over it. Adverse possession is a hostile possession by clearly asserting hostile title in denial of the title of the true owner. It is a well-settled principle that a party claiming adverse possession must prove that his possession is '*nec vi, nec clam, necprecario*', that is, peaceful, open and continuous. The possession must be adequate in continuity, in publicity and in extent to show that their possession is adverse to the true owner. It must start with a wrongful disposition of the rightful owner and be actual, visible, exclusive, hostile and continued over the statutory period."

The Court further observed that: (SCC p. 785, para 11)

"*11*. … Plea of adverse possession is not a pure question of law but a blended one of fact and law. Therefore, a person who claims adverse possession should show: (*a*) on what date he came into possession, (*b*) what was the nature of his possession, (*c*) whether the factum of possession was known to the other party, (*d*) how long his possession has continued, and (*e*) his possession was open and undisturbed. A person pleading adverse possession has no equities in his favour. Since he is trying to defeat the rights of the true owner, it is for him to clearly plead and establish all facts necessary to establish his adverse possession."

21. In *Saroop Singh* v. *Banto* this Court observed: (SCC p. 340, paras 29-30)

"*29*. In terms of Article 65 the starting point of limitation does not commence from the date when the right of ownership arises to the plaintiff but commences from the date the defendant's possession becomes adverse. (See *VasantibenPrahladjiNayak* v. *SomnathMuljibhaiNayak*.)

30. '*Animus possidendi*' is one of the ingredients of adverse possession. Unless the person possessing the land has a requisite animus the period for prescription does not commence. As in the instant case, the appellant categorically states that his possession is not adverse as that of true owner, the logical corollary is that he did not have the requisite animus. (See *Md. Mohammad Ali* v. *Jagdish Kalita*.)"

22. This principle has been reiterated later in *M. Durai* v. *Muthu*. This Court observed as under: (SCC p. 116, para 7)

"7. … in terms of Articles 142 and 144 of the old Limitation Act, the plaintiff was bound to prove his title as also possession within twelve years preceding the date of institution of the suit under the Limitation Act, 1963, once the plaintiff proves his title, the burden shifts to the defendant to establish that he has perfected his title by adverse possession."

23. This Court had an occasion to examine the concept of adverse possession in *T. Anjanappa* v. *Somalingappa*. The Court observed that a person who bases his title on adverse possession must show by clear and unequivocal evidence that his title was hostile to the real owner and amounted to denial of his title to the property claimed. The Court further observed that: (SCC p. 577, para 20)

"*20*. … The classical requirements of acquisition of title by adverse possession are that such possession in denial of the true owner's title must be peaceful, open and continuous. The possession must be open and hostile enough to be capable of being known by the parties interested in the property, though it is not necessary that

there should be evidence of the adverse possessor actually informing the real owner of the former's hostile action."

24. In a relatively recent case in *P.T. Munichikkanna Reddy* v. *Revamma* this Court again had an occasion to deal with the concept of adverse possession in detail. The Court also examined the legal position in various countries particularly in English and American systems. We deem it appropriate to reproduce relevant passages in extenso. The Court dealing with adverse possession in paras 5 and 6 observed as under: (SCC pp. 66-67)

"*5*. Adverse possession in one sense is based on the theory or presumption that the owner has abandoned the property to the adverse possessor on the acquiescence of the owner to the hostile acts and claims of the person in possession. *It follows that sound qualities of a typical adverse possession lie in it being open, continuous and hostile*. (See *Downing* v. *Bird*; *Arkansas Commemorative Commission* v. *City of Little Rock*; *Monnot* v. *Murphy*; *City of Rock Springs* v. *Sturm*.)

6. Efficacy of adverse possession law in most jurisdictions depends on strong limitation statutes by operation of which right to access the court expires through efflux of time. As against rights of the paper-owner, in the context of adverse possession, there evolves a set of competing rights in favour of the adverse possessor who has, for a long period of time, cared for the land, developed it, as against the owner of the property who has ignored the property. Modern statutes of limitation operate, as a rule, not only to cut off one's right to bring an action for the recovery of property that has been in the adverse possession of another for a specified time, but also to vest the possessor with title. The intention of such statutes is not to punish one who neglects to assert rights, but to protect those who have maintained the possession of property for the time specified by the statute under claim of right or colour of title. (See *American Jurisprudence*,

Vol. 3, 2d, p. 81.)*It is important to keep in mind while studying the American notion of adverse possession, especially in the backdrop of limitation statutes, that the intention to dispossess cannot be given a complete go-by. Simple application of limitation shall not be enough by itself for the success of an adverse possession claim*."

25. There is another aspect of the matter, which needs to be carefully comprehended. According to *Revamma case* the right of property is now considered to be not only a constitutional or statutory right but also a human right. In the said case, this Court observed that: (SCC p. 77, para 43)

"*43*. Human rights have been historically considered in the realm of individual rights such as, right to health, right to livelihood, right to shelter and employment, etc. but now human rights are gaining a multifaceted dimension. Right to property is also considered very much a part of the new dimension. Therefore, even claim of adverse possession has to be read in that context. The activist approach of the English courts is quite visible from the judgments of *BeaulaneProperties Ltd.* v. *Palmer* and *JA Pye (Oxford) Ltd.* v. *United Kingdom*. The Court herein tried to read the human rights position in the context of adverse possession. But what is commendable is that the dimensions of human rights have widened so much that now property dispute issues are also being raised within the contours of human rights."

28. The Supreme Court also in the case of **Nand Ram (Dead) Through Legal Representatives And others vs. Jagdish Prasad (Dead) Through Legal Representatives** reported in **(2020) 9 SCC 393** has held as under:

"42 ….. In the present proceedings, the respondent has denied his status as that of a tenant but claimed title in

himself. The respondent claimed adverse possession and possession as owner against a person, who has inducted him as tenant. The respondent was to prove his continuous, open and hostile possession to the knowledge of true owner for a continuous period of 12 years. The respondent has not led any evidence of hostile possession to the knowledge of true owner at any time before or after the award of the Reference Court nor has he surrendered possession before asserting hostile, continuous and open title to the knowledge of the true owner. The question of adverse possession without admitting the title of the real owner is not tenable. Such question has been examined by this Court in Uttam Chand v. Nathu Ram [(2020) 11 SCC 263]."

29. The Supreme Court in the case of **A. Shanmugam Vs. Ariya Kshatriya Rajakula Vamsathu Madalaya Nandhavana Paripalanai Sangam represented by its President and others** reported in **(2012) 6 SCC 430** has held as under:

"43.6. The watchman, caretaker or a servant employed to look after the property can never acquire interest in the property irrespective of his long possession. The watchman, caretaker or a servant is under an obligation to hand over the possession forthwith on demand. According to the principles of justice, equity and good conscience, the courts are not justified in protecting the possession of a watchman, caretaker or servant who was only allowed to live into the premises to look after the same. 43.7. The watchman, caretaker or agent holds the property of the principal only on behalf of the principal. He acquires no right or interest whatsoever in such property irrespective of his long stay or possession."

30. Thus, it is clear that the appellants have failed to prove that their predecessors were the owner of the property in dispute. The Appellants have also failed to prove as to how they became the Bhumiswami. Thus, the First Appellate Court did not commit any mistake by holding that the appellants have failed to prove that they are the owners of the property in dispute.

31. Further more, it is submitted by Counsel for State that the Suit was filed through holder of power of attorney and therefore, he could not have deposed for and on behalf of the plaintiffs. Further, the plaintiffs have also not given their pedigree and relied upon judgment passed by Supreme Court in the case of **Manisha Mahendra Gala and others Vs. Shalini Bhagwan Avatramani and others** decided on **10-4-2024** in **C.A. No. 9642 of 2010** in which the Supreme Court has held as under :

> 28. The law as understood earlier was that a General Power of Attorney holder though can appear, plead and act on behalf of a party he represents but he cannot become a witness on behalf of the party represented by him as no one can delegate his power to appear in the witness box to another party. However, subsequently in JankiVashdeoBhojwani vs. IndusInd Bank Ltd., this Court held that the Power of Attorney holder can maintain a plaint on behalf of the person he represents provided he has personal knowledge of the transaction in question. It was opined that the Power of Attorney holder or the legal representative should have knowledge about the transaction in question so as to bring on record the truth in relation to the grievance or the offence. However, to resolve the controversy with regard to the powers of the General Power of Attorney holder to depose on behalf of

the person he represents, this Court upon consideration of all previous relevant decisions on the aspect including that of JankiVashdeoBhojwani (supra) in A.C Narayan vs. State of Maharashtra4 concluded by upholding the principle of law laid down in JankiVashdeoBhojwani (supra) and clarified that Power of Attorney holder can depose and verify on oath before the court but he must have witnessed the transaction as an agent and must have due knowledge about it. The Power of Attorney holder who has no knowledge regarding the transaction cannot be examined as a witness. The functions of the General Power of Attorney holder cannot be delegated to any other person without there being a specific clause permitting such delegation in the Power of Attorney; meaning thereby ordinarily there cannot be any sub-delegation.

29. It is, therefore, settled in law that Power of Attorney holder can only depose about the facts within his personal knowledge and not about those facts which are not within his knowledge or are within the personal knowledge of the person who he represents or about the facts that may have transpired much before he entered the scene. The aforesaid Power of Attorney holder PW-1 had clearly deposed that he is giving evidence on behalf of plaintiff Nos. 2 to 4 i.e. the Gala's. He was not having any authority to act as the Power of Attorney of the Gala's at the time his statement was recorded. He was granted Power of Attorney subsequently as submitted and accepted by the parties. Therefore, his evidence is completely meaningless to establish that Gala's have acquired or perfected any easementary right over the disputed rasta in 1994 when the suit was instituted.

Whether the First Appellate Court has not reversed the findings of fact regarding ownership of appellants and their predecessor ?

32. It was repeatedly argued by Shri Choudhari that the First Appellate Court has passed the judgment in a most casual manner and if the First Appellate Court was of the view that the findings of facts recorded by the Trial Court are perverse, then it should have specifically dealt with the same. However, this submission made by Counsel for Appellants is not correct. The First Appellate Court in para 20 to 28 of its judgment has elaborately considered the same. Even otherwise, this Court has also independently considered the question of title of the appellants and has found that the findings of fact recorded by the First Appellate Court are in accordance with law.

Whether the suit filed by the Appellants was barred under Section 257 of MPLR Code.

33. The Counsel for appellants has also submitted that since, the appellants had claimed their title therefore, the suit was not barred as the revenue courts have no jurisdiction to decide the question of title.

34. It is true that the revenue courts have no jurisdiction to decide the question of title, but in the present case, this Court has already come to a conclusion that the appellants have failed to prove their title.

Whether the admissions made by the State in its Written Statement can be said to be unequivocal admission or not?

35. The Counsel for the Appellants was right in submitting that revenue courts have no jurisdiction to decide the question of title. In the present case, the appellants have only relied upon the revenue entries and if any report was ever submitted by the revenue authorities with regard to the ownership, then the same was based only on the revenue entries. Therefore, it cannot be said that any pleading of the defendants based on the revenue entries would amount to admission of title of the appellants.

36. No other argument was advanced by the Counsel for the Appellants.

37. Thus, this Court is of the considered opinion, that no Substantial Question of Law arises in the present appeal, accordingly the judgment and decree dated 13-8-2025 passed by 4th District Judge, Gwalior in R.C.A. No.600024 of 2013 is hereby affirmed and appeal is **dismissed in *limine.***

38. No order as to cost.

(G. S. AHLUWALIA)
JUDGE

Aman