



IN THE HIGH COURT OF MADHYA PRADESH

AT INDORE

BEFORE

HON'BLE SHRI JUSTICE PRANAY VERMA

FIRST APPEAL No. 353 of 2005

SHAIENDRA

Versus

GURDEEP SINGH & ANR. AND OTHERS

Appearance:

Shri Ajay Mishra, learned counsel for the appellant.

Shri Lokesh Kumar Bhatnagar, learned counsel for the respondents.

ORDER

(Reserved on 03.04.2025)

(Pronounced on 15.04.2025)

1. This appeal under Section 96 of the CPC has been preferred by defendant No.1 being aggrieved by the judgment and decree dated 22.03.2025 passed in Civil Suit No.9-A/2004 by the 13th Additional



District Judge, Indore whereby the claim of plaintiff has been decreed for declaration of title and permanent injunction.

2. As per the plaintiff, by a registered sale deed dated 22.07.2000 he had purchased the suit house No.17/2 from Satyanarayan through his power of attorney holder Munnalal for a consideration of Rs.82,000/- and had obtained possession thereof. The plot on which the house is constructed is measuring 410 sq.ft. After purchasing the house the plaintiff put his lock over the same and started residing in nearby Premnagar Colony. He could not go to the suit house for a considerable period of time taking advantage of which defendant No.1 damaged the rooms of the house and started interfering with the same. Subsequently he started digging holes over the plot of the house. The defendants are interfering with his possession over the suit house and are trying to forcibly dispossess him therefrom.

3. On such contentions the plaintiff instituted an action against the defendants for declaration of his title to the suit house and for permanent injunction restraining them from interfering with his possession over the same.

4. The defendant No.1 contested the plaintiff's claim by filing his



written statement submitting that plaintiff is not the owner of the suit house. The sale deed executed in favour of plaintiff is an ostensible sale deed. The area of the plot and house as shown therein is contrary to the facts. There was no house over the plot at any point of time. Defendant No.1 is making construction upon obtaining due permission from Municipal Corporation, Indore over the plot owned by him.

5. The defendant No.2 also contested the plaintiff's claim by filing his written statement submitting that he has not interfered with the suit house in any manner. His father had developed plot No.141 and had given the same to defendant No.1 on lease over which he has got map sanctioned and has made construction accordingly. He has no concern with plot No.141 and he has been unnecessarily impleaded as a party.

6. By the impugned judgment and decree the trial Court has held that plaintiff has proved that he is the owner of the suit house and defendant No.1 has failed to prove that plaintiff has shown the boundaries of his sale deed incorrectly. Defendant No.1 has interfered with plaintiff's possession over the suit house by digging various holes therein. On such findings the plaintiff's claim has been decreed.



7. Learned counsel for defendant No.1 has submitted that the trial Court has itself held that plaintiff has admitted in his cross-examination that no encroachment has been made by defendant No.1 over his property yet has granted decree of permanent injunction in his favour. From the evidence available on record, it is evident that the properties of both the parties are entirely distinct and are not adjoining to each other. In any case there is no dispute as regards boundaries of plots of both the parties and there is no overlapping of either of them. In proceedings instituted under Section 307(5) of M.P. Municipal Corporation Act, 1956 itself it had been held that properties of both the parties are not adjoining each other. The said judgment has attained finality hence there was no occasion for issuance of any permanent injunction against defendant No.1. The decree hence deserves to be set aside.

8. Per contra, learned counsel for plaintiff has submitted that no error has been committed by the trial Court in passing the impugned judgment and decree. Title of plaintiff has been upheld by the trial Court which finding cannot be assailed in any manner. Defendant No.1 is not claiming title over house No.17/2 purchased by plaintiff and



himself contends that his plot is different hence the decree for permanent injunction has rightly been passed by the trial Court. The appeal hence deserves to be dismissed.

9. I have considered the submissions of the learned counsel for the parties and have perused the record.

10. The plaintiff has purchased his house No.17/2 by registered sale deed dated 22.07.2000 (Ex.P/1) from Satyanarayan. The said fact has not been denied by defendant No.1. Thus, from the sale deed it is conclusively proved that plaintiff has purchased house No.17/2. Even defendant No.1 does not claim any title over the land purchased by the plaintiff under his said sale deed.

11. The dispute between the parties is as regards encroachment having been made by defendant No.1 over plaintiff's land and demolishing the house and/or structure built thereupon. The trial Court has itself held that plaintiff has failed to prove that any structure over his plot has been demolished by defendant No.1. It has also held that it has not been proved that any house/structure was existing over the plot. The same however is not material for decision of the dispute since



whether the structure was existing or not and whether the same has been demolished by defendant No.1 is hardly of any significance.

12. Earlier plaintiff had filed an application under Section 307(5) of the Act, 1956 before the Additional District Judge, Indore registered as Civil Miscellaneous Case No.17/2000 in which by judgment dated 19.03.2001 it was held that he has failed to prove that land of defendant No.1 is adjoining his plot No.17/2. The said judgment has attained finality since the same was not further challenged by the plaintiff. Even from the various sale deeds which have been brought on record by the parties in this suit it is evident that there is no dispute as regards boundaries between them. It is not the case of plaintiff of any encroachment having been made by defendant No.1 over his plot nor has any such encroachment been denied by defendant No.1. The dispute is simplicitor whether defendant No.1 has carried out any illegal activity over land of plaintiff.

13. In paragraph No.25 of his cross-examination plaintiff himself admitted that defendant No.1 has not encroached over any of his land and that whatever construction has been done by him has been done over his own plot. It is hence proved that no encroachment has been



made by defendant No.1 over plaintiff's plot.

14. From the evidence on record it is evident that plot of plaintiff as well as defendant No.1 are entirely distinct. None of them have claimed title over plot of the other party. Encroachment by defendant No.1 over plaintiff's plot has not been proved. Defendant No.1 has constructed shops over his own land and has categorically stated that he is not encroaching over plaintiff's plot or doing any act to harm his interest therein. It has always been the case of defendant No.1 that he is not interfering and shall not interfere with plaintiff's plot. The said stand has been reiterated by him in this appeal also which is taken on record. Defendant No.1 would abide by the same in the future also and shall not attempt to encroach over plaintiff's property.

15. However, since plaintiff has himself admitted that defendant No.1 has not encroached over any of his land and has made construction over his own plot coupled with the finding that plaintiff has failed to prove that defendant No.1 has caused any damage to the structure built over his house the decree for permanent injunction passed by the trial Court in the facts and circumstances of the case is unjustified.



16. Consequently, the appeal deserves to be and is accordingly allowed in part. While the decree for declaration of title in favour of plaintiff is maintained, the decree for permanent injunction is set aside. There shall however be no order as to cost.

(PRANAY VERMA)
JUDGE

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