

**HIGH COURT OF MADHYA PRADESH: BENCH AT INDORE**  
**BEFORE HON.MR. JUSTICE ALOK VERMA, JUDGE**

**M.A. No.482/2016**

**Sevantibai & others**

**Vs.**

**Babusingh & another**

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Shri Siraj Khan, learned counsel for the appellant.

Shri Harshad Wadnerkar, learned counsel for respondent  
No.1.

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**O R D E R**

**( Passed on this 21<sup>st</sup> day of September, 2016 )**

This Miscellaneous Appeal is directed against the order passed by learned Additional District Judge, Manawar, District-Dhar in civil suit appeal No.4-A/13 whereby learned Additional Sessions Judge set-aside the judgement and decree passed by learned Civil Judge Class-II, Manawar,

District-Dhar in civil suit No.2-A/11 dated 22.12.2012 and remanded the matter back to the trial court for retrial.

The admitted facts are that deceased-Amar Singh who is husband of appellant No.1 Sevantibai and father of appellants No.2 to 6 and brother-in-law of respondent No.1 Babusingh. Amar Singh died in the year 1997. It is also admitted that suit property bearing survey No.238 area measuring 1.99 hectare situated at village Kawathi is recorded in the name of deceased-Amar Singh. Earlier the suit property belonged to one Rupabai wife of Umrao Singh. Respondent No.1 Babusingh filed a suit for declaration and permanent injunction against the appellants averting therein that the deceased-Amar Singh being closely related to him wanted to purchase the suit property from Rupabai but he was not having necessary resources and amount for payment of price of the land. Accordingly, he requested respondent-Babusingh to make payment on his behalf to Rupabai and it was agreed between them that the whole amount would be refunded back to him within two years and if he failed to return the

amount, respondent-Babusingh would become absolute owner of the land. Under these conditions, a sale deed was executed on 11.01.1988. After execution of sale deed, an agreement was also executed on 23.02.1988 in which it was mentioned that respondent-Babusingh came in possession of the land immediately after execution of sale deed on 11.01.1988 and he was cultivating the land.

Subsequently, deceased-Amar Singh could not refund the amount within the stipulated period of two years, and therefore, after his death in the year 1997, a suit was filed for declaration and permanent injunction, in which, the ownership of the land was claimed on the basis of adverse possession also.

The appellants filed a written statement stating therein that the facts stated by the respondent-Babusingh were all incorrect. After death of deceased-Amar Singh in year 1997 being the widow, she gave the land on ardhbatai to respondent-Babusingh, who took the original sale deed being closely related to deceased-Amar Singh. Appellant No.1 gave him original papers in good faith. Respondent No.1 stopped paying profit from

the year 2004, and therefore, they also filed a counter claim in that suit. Learned trial court gave a finding and did not found the facts stated by respondent as proved. However, counter claim was allowed and the trial court gave a finding that the land was given on ardhbatai by the appellant to respondent No.1.

Aggrieved by these findings, the appeal was filed by the respondent in which he also filed two applications one under Order 6 Rule 17 of C.P.C. and another under Order 41 Rule 27 of C.P.C. By application under Order 6 Rule 17 of C.P.C., - an amendment was sought to be made that under section 169(2) of M.P. Land Revenue Code, respondent No.1 acquired rights of Bhumi Swami after remaining in possession for two years. Learned lower appellate court opined that whether under section 169(2) of M.P. Land Revenue Code, respondent No.1 acquired Bhumi Swami or not is a mixed question of law and fact. Similarly, by application under Order 41 Rule 27 of C.P.C. various documents to show possession over the suit property like certified copy of Khasra, electricity bill and

receipt for payment of land revenue were sought to be brought on record.

Learned lower court allowed both the applications. The learned lower court further opined that issue No.4 was disposed of merely in eight lines and detailed appreciation of evidence was not made by the trial court, and on these three grounds, matter was remanded back for retrial.

Counsel for the appellants places reliance on judgement of Co-ordinate Bench of this Court in case of **Arvind S/o Ganga Vishnu (Dr.) Vs. Mannalal S/o Bherulal Keer**, reported at **2009(1) M.P.L.J. 621**, in which, Co-ordinate Bench places reliance on observations made by Hon'ble Apex Court in case of **P. Purushottam Reddy and another Vs. Pratap Steels Ltd.**, reported at **(2002) 2 SCC 686** and held that only when case is made out for retrial under the provisions of rule 23 and 23-A of rule 41 C.P.C., the matter can be remanded back for the trial. On this point only, the appellant has cited judgement of Co-ordinate Bench of this court in case of **Pushpa Devi Vs. Harvilas &**

**others** reported at **2013(4) MPLJ 135**, and judgement of Hon'ble Apex Court in case of **Municipal Corporation, Hyderabad Vs. Sunder Singh** reported at **(2008) 8 SCC 485**.

While the respondent relies on judgement passed by Co-ordinate Bench of this court in case of **Gendalal & others Vs. Jasoda Bai & another** reported at **2010(5) M.P.H.T. 254**, in which, it was held that if a lessee is in contravention of provisions of section 168 of M.P. Land Revenue Code, the lessee acquires status of occupancy tenant by virtue of section 169 of the Code.

In this appeal, however, it is to be seen whether the plea raised by the respondent of acquiring status of occupancy tenant under section 169(2) of M.P. Land Revenue Code and also in light of document produced by him and whether remand of the case and retrial is warranted or not.

After taking into consideration the arguments raised by counsel for the appellants as well as the counsel for the respondent, this court is of considered opinion that remand in this case is not required. Respondent No.1 being in possession of the

suit property is undisputed. According to respondent No.1, he came in possession of the land after registered sale deed in favour of deceased-Amar Singh in the year 1988 itself, and therefore, he also raised plea of adverse possession. However, according to appellant, the land was given to respondent No.1 on ardhbatai as she was the only widow of deceased-Amar Singh. She claimed possession of the land under the provisions of section 168 of M.P. Land Revenue Code being widow, she can give her land on lease for a period exceeding one year, and therefore, respondent No.1 does not get benefit of provision of section 169(2) of the Code.

In opinion of this court, this question can be decided on the basis of material available on record. Also the certified copy of Khasra can be admitted without any evidence and read in evidence, and therefore, merely by producing some additional document which was already in his possession during pendency of the suit matter should not have been remanded back by the trial court.

In this view of the matter, the order passed

by learned Appellate Court below is liable to be set aside and this appeal deserves to be allowed.

Accordingly, the appeal is allowed.

The impugned order passed by learned Appellate Court below dated 29.01.2016 is set-aside judgement and decree passed by trial court is restored.

The appellate court is directed to hear the case on merit and decide according to law.

**(Alok Verma)**  
**Judge**

Chitranjan