**THE HIGH COURT OF MADHYA PRADESH**
**S.A. No. 328/2016**
**1** ***Shivnarayan Verma (Panchal) Vs.***
***Anjuman Ismail Muslemin & others.***

**Indore, dated : 25.06.2018**

Shri M.B. Baraniya, learned counsel for the appellant.

Heard on the question of admission.

# JUDGMENT

The appellant/defendant No.1 has filed the present appeal being aggrieved by the judgment dated 12.2.2016 passed by 17th Addl. District Judge, Indore in Appeal No. 22/2015 whereby the judgment and decree dated 30.11.2011 passed by First Civil Judge, Class-I, Indore in Civil Suit No.146-A/2009 has been affirmed and the appeal preferred by the appellant has been dismissed.

**2.** Facts of the case, in brief, are that the respondent No.1/plaintiff is a registered Wakf. In the property known as Idgah Compound is belonging to the plaintiff Wakf, there are certain shops given on rent to various persons. The plaintiff filed the suit for eviction from one of the shops having area 22 x 25 Sq.ft. situated with Idgah compound. According to the plaintiff, shop No.11 was given to the father of the appellant viz. Bhagirath Verma who used to run the workshop therein. After the death of Bhagirath Verma, all the defendants became the tenants. In addition to said shop, the defendants had also encroached upon 14 x 11 Sq.ft. area by way of shed without the permission of the plaintiff. The plaintiff alleged that the defendants have stopped paying rent

since June, 2001 and there was arrears of rent of Rs.1,925/-. The plaintiff served the legal notice and also terminated the tenancy and thereafter filed the suit.

**3.** After notice, the defendants No.2, 3, 4 to 7 filed their joint written statement by submitting that earlier, the plaintiff filed the suit before the Rent Controlling Authority which had been dismissed vide order dated 30.8.2001. The defendant No.1 (present appellant) filed separate written statement by submitting that the Municipal House No. 19/2, 20/2 and 21/2 were given to 'Panch' of Muslim community 53 years back by the erstwhile Holkar State. Thereafter, the State Government had taken back the said land. The plaintiff is not the owner of the said shop as the same belongs to Indore Municipal Corporation.

**4.** The learned trial Court framed 10 issues for adjudication. The plaintiff examined Muneer Ahmed Khan as P.W.1 and Fazluddin as P.W.2 and got exhibited 20 documents Ex. P/1 to P/20. The present appellant/defendant No.1 examined himself as D.W.1 and Jagdish Yadav as D.W.2 and got exhibited three documents as Ex. D/1 to D/3. The learned trial Court vide judgment dated 30.11.2011 decreed the suit in favour of the plaintiff. Being aggrieved by the said judgment and decree, the appellant/defendant No.1 alone filed the first appeal. Learned Additional District

Judge has dismissed the appeal vide judgment and decree dated 12.2.2016, hence the present appeal before this Court.

**5.** Shri Baraniya, learned counsel for the appellant submits that the learned trial Court as well as the appellate Court have failed to appreciate that the plaintiff is not the owner of the suit shop. The appellant is not the tenant of plaintiff. He has never paid the rent to the plaintiff. The suit land belongs to Indore Municipal Corporation. The plaintiff filed the suit before the Wakf Tribunal claiming ownership of the suit land and the same has been dismissed and the Civil Revision preferred against the said order passed by the Wakf Tribunal is pending before this Court. Unless the ownership of the plaintiff is proved, the impugned judgments and decrees are liable to be stayed and the appeal is liable to be admitted for hearing.

**6.** The present appellant took a defence before the trial Court that the plaintiff is not the owner of the suit land and the same had been taken back by the State Government long back and the plaintiff has lodged the case before the Wakf Tribunal. The appellant has not filed any documentary evidence in support of this pleadings. In his cross-examination, in Para 13, he has admitted that the entire Idgah Compound was given to 'Panch' of Muslim community by the Holkar State. Out of total 15 Bighas of land, 13 Bighas of land had been taken back from them. He

has further admitted that it is correct that 2 Bighas of land continued in the possession of 'Panch' of Muslim community, in which Idgah and compound is there. He has further admitted that the suit shop is within the said 2 Bighas of land. He has further admitted that he has not filed any document in support of the litigation between the plaintiff and the Municipal Corporation. Para 13, 14 and 15 of the cross-examination of the appellant is reproduced below :

> ''13. दाविया जमीन के संबंध में नगर निगम का संपत्ति कर का रेकार्ड पेश नहीं किया है। स्वतः कहा कि इसका संपत्ति कर नही लगता। दाविया जमीन नगर निगम सीमा में कब आयी आज याद नही है।
> 14. प्रपी 2 के ''आई'' से ''आई'' भाग पर भागीरथ जी रामजी भाई वर्मा की लिखावट हमारी कमेटी के दूसरे सदस्य के हाथ की है, यह लिखावट मेरे हाथ की नही है। यह बात सही है कि ''जे'' से ''जे'' के 1 लगायत 16 तक के किरायेदारों के नाम उल्लेखित है उनके साइन नही है। मुझे इस बात की जानकारी नहीं हैं कि दि0 11.1.01 को भागीरथ जी राम जी भाई वर्मा जीवित थे या नहीं। मैने इस संबंध में कोई जांच पड़ताल नही की कि प्रतिवादीगण के पिता भागीरथ वर्मा के पिता का नाम राम जी भाई वर्मा ही है या नहीं।
> प्रश्न दाविया स्थान स्थित ईदगाह को छोटी ग्वालटोली ईदगाह के नाम से जाना जाता है ?
> उत्तर इस नाम से भी जाना जाता है।
> 15. दाविया स्थान स्थित छोटी ग्वालटोली ईदगाह का म्यूनिसिपल मकान नं0 क्या है, इसकी मुझे आज जानकारी नहीं है। दावा लगाया तब मकान नं0 याद था। दावे में मकान नं0 लिखा है या नही आज मुझे याद नहीं है।''

It is clear from the aforesaid that the appellant himself has admitted that the present suit property which is in his possession is a part of Idgah Compound of the plaintiff. He

has also admitted in the cross-examination that he is not having any document in support of ownership of the suit property and he is not paying the rent either to the plaintiff or to the Indore Municipal Corporation. Both the Courts below have concurrently recorded the finding against the appellant. I do not find any question of law that too substantial question of law is involved in this appeal.

**7.** Even otherwise, the apex Court in the case of **Kondiba Dagadu Kadam v. Savitribai Sopan Gujar : (1999) 3 SCC 722,** has held as under:

> **5.** It is not within the domain of the High Court to investigate the grounds on which the findings were arrived at, by the last court of fact, being the first appellate court. It is true that the lower appellate court should not ordinarily reject witnesses accepted by the trial court in respect of credibility but even where it has rejected the witnesses accepted by the trial court, the same is no ground for interference in second appeal when it is found that the appellate court has given satisfactory reasons for doing so. In a case where from a given set of circumstances two inferences are possible, one drawn by the lower appellate court is binding on the High Court in second appeal. Adopting any other approach is not permissible. The High Court cannot substitute its opinion for the opinion of the first appellate court unless it is found that the conclusions drawn by the lower appellate court were erroneous being contrary to the mandatory provisions of law applicable or its settled position on the basis of pronouncements made by the Apex Court, or was based upon inadmissible evidence or arrived at without evidence.
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> **6.** If the question of law termed as a substantial question stands already decided by a larger Bench of the High Court concerned or by the Privy Council or by the Federal Court or by the Supreme Court, its merely wrong application on the facts of the case would not be termed to be a substantial question of law. Where a

point of law has not been pleaded or is found to be arising between the parties in the absence of any factual format, a litigant should not be allowed to raise that question as a substantial question of law in second appeal. The mere appreciation of the facts, the documentary evidence or the meaning of entries and the contents of the document cannot be held to be raising a substantial question of law. But where it is found that the first appellate court has assumed jurisdiction which did not vest in it, the same can be adjudicated in the second appeal, treating it as a substantial question of law. Where the first appellate court is shown to have exercised its discretion in a judicial manner, it cannot be termed to be an error either of law or of procedure requiring interference in second appeal. This Court in Reserve Bank of India v. Ramkrishna Govind Morey [AIR 1976 SC 830]held that whether the trial court should not have exercised its jurisdiction differently is not a question of law justifying interference.

**8.** In case of **Laxmidevamma v. Ranganath : (2015) 4 SCC 264**, again the apex court has held as under:

**16.** Based on oral and documentary evidence, both the courts below have recorded concurrent findings of fact that the plain-tiffs have established their right in A schedule property. In the light of the concurrent findings of fact, no substantial questions of law arose in the High Court and there was no substantial ground for reappreciation of evidence. While so, the High Court proceeded to observe that the first plaintiff has earmarked the A schedule property for road and that she could not have full-fledged right and on that premise proceeded to hold that declaration to the plaintiffs' right cannot be granted. In exercise of jurisdiction under Section 100 CPC, concurrent findings of fact cannot be upset by the High Court unless the findings so recorded are shown to be perverse. In our considered view, the High Court did not keep in view that the concurrent findings recorded by the courts below, are based on oral and documentary evidence and the judgment of the High Court cannot be sustained.

**9.** Recently, the Apex Court in case of **Adiveppa & Others Vs. Bhimappa & Others : (2017) 9 SCC 586** has held as under:

> "17. Here is a case where two Courts below, on appreciating the entire evidence, have come to a conclusion that the Plaintiffs failed to prove their case in relation to both the suit properties. The concurrent findings of facts recorded by the two Courts, which do not involve any question of law much less substantial question of law, are binding on this Court.
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> 18. It is more so when these findings are neither against the pleadings nor against the evidence and nor contrary to any provision of law. They are also not perverse to the extent that no such findings could ever be recorded by any judicial person. In other words, unless the findings of facts, though concurrent, are found to be extremely perverse so as to affect the judicial conscious of a judge, they would be binding on the Appellate Court."

**10.** In view of the above, this appeal does not involve any question of law much less substantial question of law and the same is hereby dismissed.

No order as to costs.

**( VIVEK RUSIA )**
**JUDGE**

***Alok/-*** Digitally signed by Alok Gargav
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