

1
**IN THE HIGH COURT OF MADHYA PRADESH
AT INDORE**

**BEFORE
HON'BLE SHRI JUSTICE ANIL VERMA**

ON THE 18th OF MARCH, 2024

SECOND APPEAL No. 2425 of 2018

BETWEEN:-

1. JASWANT S/O MOHANLAL JI, AGED ABOUT 57 YEARS, OCCUPATION: AGRICULTURE R/O GRAM AGHORIYA TEHSIL JIRAN, DISTRICT NEEMUCH (MADHYA PRADESH)
2. FATEHLAL S/O MOHANLAL JI, AGED ABOUT 52 YEARS, R/O GRAM AGHORIYA, TEH. JEERAN, DISTT. NEEMUCH (MADHYA PRADESH)
3. RADHESHYAM S/O MOHANLAL JI, AGED ABOUT 47 YEARS, R/O GRAM AGHORIYA, TEH. JEERAN, DISTT. NEEMUCH (MADHYA PRADESH)
4. NEELAM D/O FATEHSINGH JI, AGED ABOUT 29 YEARS, R/O GRAM AGHORIYA, TEH. JEERAN, DISTT. NEEMUCH (MADHYA PRADESH)
5. SUKHABAI W/O DARASINGH JI, AGED ABOUT 37 YEARS, R/O GRAM AGHORIYA, TEH. JEERAN, DISTT. NEEMUCH (MADHYA PRADESH)

.....APPELLANTS

(BY SHRI RAM LAL PATIDAR - ADVOCATE)

AND

**SARAKHALABAI @ SHAKUNTALABAI W/O GOPAL,
AGED ABOUT 53 YEARS, OCCUPATION: AGRICULTURE
R/O GRAM AASHPURA, TEHSIL JIRAN, DISTRICT
NEEMUCH (MADHYA PRADESH)**

.....RESPONDENT

.....
*This appeal coming on for admission this day, the court passed the
following:*

2
JUDGMENT

Heard on admission

1. This second appeal has been preferred by the appellants/defendants under Section 100 of the Code of Civil Procedure, 1908 (in short "CPC") being aggrieved by the judgment and decree dated 4.4.2018 passed by the 3rd Addl. District Judge, Neemuch, District Neemuch (M.P.) in Civil Appeal No.41-A/2016, affirming the judgment and decree dated 21.11.2016 passed by the 2nd Addl. Judge to the Court of 1st Civil Judge Class-1, Neemuch in Civil Suit No.107-A/2011, whereby the suit has been decreed and the counter claim filed by the appellants for permanent injunction has been declined.

2. The facts of the case, in brief, are that the respondent/plaintiff has filed a civil suit before the trial Court for permanent injunction regarding the land in question bearing Survey No.338 admeasuring 6.210 hectare situated at village Aghoriya. Appellants/defendants filed written statement along with the counter claim in respect of the permanent injunction for the land bearing Survey No.342 admeasuring 12.59 hectare. The trial court on the basis of the evidence available on record, decreed the suit and dismissed the counter claim filed by the appellants. Being aggrieved by the aforesaid, appellants preferred First Appeal, but the same has been dismissed. Then the appellants have preferred this second appeal.

3. Learned counsel for the appellants submits that the impugned judgment passed by the first appellate court is against the law and facts and not based upon proper appreciation of evidence. Both the courts below have failed to consider oral as well as the documentary evidence produced by the appellants and erred in dismissing the counter claim filed by the appellants. Hence, he prays that the appeal deserves to be admitted on the substantial question of law

as proposed by the appellants.

4. Learned counsel for the appellant heard at length and perused the entire record with due care.

5. From perusal of the record, it appears that the respondent/plaintiff has filed a civil suit for permanent injunction and the appellants/defendants also filed counter claim. The suit has been decreed in favour of the respondent.

6. Before the trial court respondent/plaintiff has examined the plaintiff Sarkhlabai (PW-1), who categorically stated that she is the owner of the land bearing survey No.338 admeasuring 6.210 hectare. Her statement is well supported by Babulal (PW-2) and Revenue Inspector Mr. Ramvilas (PW-3). Apart from the oral evidence, she has filed Panchshala Khasra and other revenue documents (Ex.P/1 to P/13). In rebuttal, appellant/defendant Radheshyam examined himself as a witness, but he did not examine any other independent witness in corroboration of his statement. Radheshyam claimed that he is the owner of the land bearing Survey No.342 admeasuring 12.59 hectare situated at village Aghoriya and the plaintiff is trying to illegally grab his land with the collusion of revenue authorities.

7. Appellant has filed Panchnama (Ex.D/3 & D/4) before the trial Court, but from perusal of both these documents it appears that the demarcation could not be done in absence of the said map. Respondent has proved Khasra (Ex.D/2) but nothing has been mentioned in the Khasra that respondent/plaintiff has encroached any part of the land owned by the defendants/appellants. Therefore, in absence of the cogent evidence, appellants have failed to prove that they respondent was trying to encroach their land. Therefore, both the courts below have rightly appreciated the evidence available on record.

8. On the basis of the foregoing analysis, this Court is of the considered

opinion that the judgment and decree passed by both the courts below are based upon proper appreciation of evidence. The findings of fact recorded by the courts below are concurrent findings of fact.

9. For the aforesaid reasons, no substantial question of law arises for consideration in this appeal. The appeal fails and is hereby dismissed *in limine*.

C.C. as per rules.

(ANIL VERMA)
JUDGE

trilok

