



**IN THE HIGH COURT OF MADHYA PRADESH**

**AT INDORE**

**BEFORE**

**HON'BLE SHRI JUSTICE PRANAY VERMA**

**SECOND APPEAL No. 2104 of 2019**

***THE STATE OF MADHYA PRADESH***

*Versus*

***SHARAD KUMAR***

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**Appearance:**

Shri Vishwajit Joshi, learned Additional Advocate General for appellant/State.

Ms. Pranjal Kalantre, learned counsel for the respondent.

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**ORDER**

***(Reserved on 25.02.2025)***

***(Pronounced on 02.04.2025)***

1. This appeal under Section 100 of the CPC has been preferred by the defendant/appellant being aggrieved by the judgment and decree passed by the Courts below whereby the claim of plaintiff for declaration of his title to the suit property and for permanent injunction



with respect thereto has been decreed.

2. As per the plaintiff, he is the owner of the suit house. His ancestor Swayamvarlal Murai was its owner and it was recorded in his name in municipality document dated 21.11.1945. After his death issueless name of his brother Vishambharlal was mutated in 1951. Vishambharlal was grandfather of plaintiff and on 27.10.1955 he gifted the suit house to plaintiff which gift was accepted by his father on his behalf since he was a minor. The gift deed was registered on 28.02.1956. On that basis plaintiff was mutated in the record of Municipality of Dewas. Property tax was also determined. The suit house is not built on Government land. On 18.12.2014 the defendant issued notice to him and threatened to remove his possession from the suit house.

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

4. The defence of defendant was that Swayamvarlal Murai never paid any premium/rent to the State Government. No lease was granted by the State Government of the suit house or land in favour of plaintiff or Swayamvarlal Murai. Plaintiff is not the owner of the same. He has not acquired any rights on the basis of entries made in record of Municipal Corporation. The land on which the suit house is built belongs to Nazul department which is the owner of the house/land.



Swayamvarlal Murai or Vishambharlal had no right to gift the suit land in favour of plaintiff.

5. The Courts below have decreed the plaintiff's claim by recording a finding that he has proved that Swayamvarlal Murai was the erstwhile owner of the suit house upon whose death the same devolved upon his brother Vishambharlal, who legally executed gift deed on 27.10.1955 which was registered on 28.02.1956 in favour of plaintiff who has acquired title thereunder. Plaintiff has been in possession of the suit house for more than 70 years hence presumption of his title has to be drawn on that basis. The defendant has totally failed to prove that the land on which the suit house is constructed is Nazul land.

6. Learned counsel for defendant has submitted that the judgment and decree passed by the Courts below are illegal and contrary to law. No document as regards title of himself or his predecessor was produced by the plaintiff in absence of which the same could not have been upheld. Since plaintiff was claiming title it was imperative for him to have produced a clear document of title. The revenue receipts could not have been taken in aid of proof of title. Only on the basis of possession title could not have been upheld. The suit land belongs to the defendant and is Nazul land and was never allotted either to Swayamvarlal Murai, Vishambharlal or the plaintiff. The evidence available on record was wholly insufficient for upholding plaintiff's title. It is hence submitted that the judgment and decree passed by the Courts below be set aside.



7. I have considered the submissions of the learned counsel for defendant/appellant and have perused the record.

8. Ex.P/1 is the record of Municipality, Dewas Senior dated 21.11.1945 in which it is recorded that a pakka house No.17 is situated on khasra No.236 and Swayamvarlal Murai is recorded as its owner. Ex.P/2 issued by Municipal Council, Dewas shows house No.1984/2030 area 1413 recorded in the name of Vishambharlal. Ex.P/3 is the gift deed dated 15.02.1956 executed by Vishambharlal in favour of plaintiff. The same was accepted by plaintiff's father. Plaintiff was mutated over the suit house as is evident by Ex.P/4. Tax with respect to the suit house was assessed by the Municipality as evidenced by Ex.P/5. The tax assessment register with respect to the suit house is Ex.P/6. From these documents it is clear that in 1945 the suit house was recorded in name of Swayamvarlal Murai as its owner and after his death it was recorded in the name of his brother Vishambharlal, who executed gift deed in favour of plaintiff. There is hence continuity of documents to demonstrate title of plaintiff as well as his predecessors. These documents are of a period of 70 years ago and being records of the Municipal Corporation, Dewas itself deserve to be relied upon and from them it is evident that plaintiff has been able to prove his title as contended by him.

9. Though it was defence of defendant that the land on which the suit house is built is Nazul land but no document whatsoever in that regard was produced before the Courts below. There was not a single



document demonstrating that the suit house is built over Nazul land belonging either to defendant or Municipality, Dewas.

10. The documents produced by plaintiff are more than 60-70 years old hence presumption as regards their genuineness has rightly been drawn by the Courts below as per Section 90 of the Evidence Act. No rebuttal of the said presumption was made by the defendant. It hence cannot be said that the Courts below have not correctly relied upon the documents. The plaintiff and his predecessors have been in possession of the suit house at least since 1945 as owners. In absence of any rebuttal evidence such possession would be a presumptive proof of title. The Courts below have hence correctly upheld plaintiff's title.

11. Though in this appeal an application under Order 41 Rule 27 of the CPC has been preferred by the defendant for taking additional documents on record but those documents are also the khasra and other revenue documents. They are not proof of title and merely on their basis the documents of Municipality, Dewas as produced by plaintiff cannot be doubted. From these additional documents also it is not shown that the suit land is Nazul land. In any case these documents are of a period much prior to filing of the suit and were always available with the defendant to their knowledge but were not produced before the Courts below. The only reason for delay assigned in the application is that the officer-in-charge of the case did not produce the documents before the Courts below. Such a weak and flimsy explanation cannot be regarded to be a sufficient ground for admission of additional documents. The



defendant/State Government cannot distance itself from the acts of its OIC merely by such a casual statement. The additional documents even if are taken into consideration would not have the effect of disturbing the findings as recorded by the Courts below.

12. Thus in view of the aforesaid discussion, in my opinion, the Courts below have not committed any error in upholding plaintiff's title to the suit house. The judgment and decree passed by them are based upon the evidence available on record and application of relevant legal principles. No illegality or perversity in the same has been shown. No substantial question of law arises for determination in this appeal which is accordingly dismissed in *limine*.

**(PRANAY VERMA)**  
**JUDGE**

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