

**IN THE HIGH COURT OF MADHYA PRADESH**

**AT INDORE**

**BEFORE**

**HON'BLE SHRI JUSTICE ANIL VERMA**

**ON THE 15<sup>th</sup> OF JULY, 2024**

**SECOND APPEAL No. 1840 of 2022**

**MANGU AND OTHERS**

*Versus*

**KHUMCHAND AND OTHERS**

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**Appearance:**

***SHRI A.S. PATIDAR, LEARNED COUNSEL FOR THE APPELLANTS.***

***NONE FOR THE RESPONDENTS***

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**JUDGMENT**

1/ Heard learned counsel for the appellant on the question of admission.

2/ Appellant/plaintiffs have filed present Second Appeal under section 100 of Code of Civil Procedure, 1908 (hereinafter referred to "CPC") being aggrieved by impugned judgment & decree dated 06/05/2022 passed in Civil Appeal No. 04/2020 by Iind Additional District Judge, Jhabua, District Jhabua, whereby affirming the judgment and decree dated 19/03/2020 pissed in Civil Suit No. 44-A/2017 by Additional Judge, to Civil Judge Class-II, Thandla, District - Jhabua, whereby the appellants/plaintiffs' suit for declaration of title, possession and cancellation of registerd sale deed has been dismissed.

3/ Appellants / plaintiffs filed a suit for declaration of title, possession and permanent injunction and for cancellation of sale deed dated 24/02/1998 by stating that Survey no. 757, Village = Umarda has been found registered in the name of grand father of appellants nos. 1 to 3 Manji. Pangla was doing agriculture work over the entire suit land and after the death of Manji, name of his sons Pangla, Mangu, Basu and mother Mansabai were recorded in revenue record. In the year 2016, when the appellants went to cultivate their field, at that time respondent no. 1 started quarrel and tried to take forceful possession of the land and claiming that he had already constructed house over the suit land and Pangla has executed registered sale deed of 0.08 hectores land in favour of respondent no.1, but the sale deed was not signed by Pangla and other family members and not binding upon them. Hence the appellants/plaintiffs preferred civil suit.

4/ Defendant / respondent no. 1 denied all the plaint avernments by submitting in their written statements that Pangla is the son of Manji. He has sold out his share only in accordance with law. The suit has been filed after lapse of 20 years, which is time barred and hence deserve to be dismissed.

5/ On the basis of the aforesaid pleadings, the trial Court framed issues and directed both the parties to lead their evidence. After recording and appreciating evidence, the trial Court dismissed the suit filed by the plaintiffs. Thereafter, appellants/ plaintiffs preferred first appeal before First Appellate Court against the impugned judgment and decree, but upon re-appreciating entire evidence available on record, the same has

also been dismissed by First Appellate Court. Being aggrieved by the same, appellants/plaintiffs have preferred present Second Appeal before this Court.

6 Learned counsel for the appellants contended that impugned judgment and decree passed by the trial Court is against the facts and evidence available on record. The trial Court has not considered oral as well as documentary evidence given by the appellant in support of his case. The findings of both the Courts below are perverse and against the evidence available on record. No partition has been taken place between the parties at the time of execution of disputed sale deed. Thus in view of the aforesaid, he prays that present second appeal deserves to be allowed on the substantial questions of law as proposed by the appellants.

7/ Heard learned counsel for the appellant and perused the entire record with due care.

8/ It is contended by learned counsel for the appellant that Pangla was an illiterate person. He never use to sign, but affix thumb impression, therefore, registered sale deed Ex.-D/1 which contains signature of Pangla, is a forged document, but appellant/plaintiff Mangu (PW-1) in para 14 of his cross-examination admits that he does not know that sale deed Ex.-D/1 ( P/s5) was signed by Pangla. Waziya (PW-2) also deposed that he does not know that Pangla has executed any sale deed in favour of Khumchand (DW-1). Maliys (PW-3) also deposed in the same manner. On the contrary, respondent/defendant Khumchand has categorically stated in his statement that sale

deed Ex-D/1 has been duly signed by Pangla. His statement is well supported by Kalusingh (DW-2) and Ashok (DW-4). Maliya (PW-3) who is the attesting witness of sale deed Ex-D/1 (Ex.-P/5) did not deny his thumb impression on the aforesaid sale deed, therefore, there is no reason to disbelieve registered sale deed Ex.-D/1 (Ex-P/5).

9/ From perusal of mutation (Ex-3), it appears that in the year 2013, after the death of Pangla, name of his LRs has been mutated. At that time, the appellants did not raise any objection, even they have signed or put thumb impression upon it. It is sufficient to show that before the death of Pangla, partition was taken place between Pangla and his brothers. Mutation has been taken place on the basis of registered sale deed Ex.-D/1 in the year 2013, which is duly proved by mutation register Ex.-D/4, but at the time of execution of D/4, the appellants did not raise any objection about it, therefore, adverse influence can be drawn against them. In view of the aforesaid evidence, the appellants/plaintiffs have failed to prove that the suit land was an ancestral property and no partition took place between coparcener. On the contrary, it is proved that partition has been taken place and Pangla has executed sale deed of his share in ancestral property.

10/ In light of the aforesaid discussions, it appears that the trial Court as well as Appellate Court have rightly appreciated all the facts and evidence. This Court is of the considered opinion that the judgment and decree passed by both the Courts below are well reasoned and based upon due appreciation of oral as well as

documentary evidence available on record. The finding recorded by both the Courts below are concurrent finding of the fact. On perusal of impugned judgment and decree passed by both the Courts below, argument advanced by the appellant is found to be devoid of any substance.

11 Learned counsel for the appellant has failed to show that how the finding of fact recorded by the Courts below are illegal, perverse or based upon no evidence. Thus, no substantial question of law arises for consideration in the present second appeal. The Supreme court in number of cases has held that in exercise of powers under section 100 of the CPC the Court can interfere with the finding of fact only if the same is shown to be perverse and based upon no evidence. Some of these judgments are *Hafazat Hussan Vs. Abdul Majeed and others* , 2011(7) SCC 189, *Union of India Vs. Ibrahim Uddin*, 2012(8) SCC 148 and *Vishwanath Agrawal Vs. Sarla Vishwanath Agralwal* 2912(7) SCC 288.

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

Certified copy, as per Rules.

(ANIL VERMA)  
JUDGE