



1

S.A. No.1182/2023

IN THE HIGH COURT OF MADHYA PRADESH

AT INDORE

BEFORE

HON'BLE SHRI JUSTICE JAI KUMAR PILLAI

SECOND APPEAL No. 1182 of 2023

GULAB AND OTHERS

Versus

RADHESHAYAM AND OTHERS

Appearance:

***Shri Abhinav Malhotra - Advocate with Shri Vikas Singh
Parihar - Advocate for the appellants/defendants.***

***Shri Rishiraj Trivedi - Advocate for the respondent
No.1/plaintiff.***

Reserved on : 28/08/2025

Delivered on : 02/09/2025



Heard on the question of admission.

J U D G M E N T

The appellants/defendants/Gulab and others have filed this Second Appeal against the judgment and decree dated 10/02/2023 passed in RCA No.73-A/2018 by the Vth District Judge, Dr. Ambedkar Nagar, Mhow, District-Indore whereby the learned first appellate Court has dismissed the appeal, challenging the judgment and decree dated 19/11/2018 passed by Vth Civil Judge, Class-II, Dr. Ambedkar Nagar, Mhow, District-Indore in Civil Suit No.26-A/2015 whereby the learned trial Court decreed the suit filed by the respondent No.1/plaintiff/Radheyshyam.

Facts of the case, in short are as under :-

2. The plaintiff/respondent No.1 filed a suit for possession, declaration, injunction and *mesne profit* with respect to suit property i.e. agricultural land bearing survey No.119/1, 119/2, 119/3 having total area of 1.16 Acre i.e. 0.470 hectare, situated at Village-Awalipura, Tehsil-Mhow, District - Indore (M.P.)
3. It is admitted fact in the present case that the suit land has been recorded in the name of appellant No. 1 to 3 after the demise of their father Shri Thawar Singh. It is also admitted fact that plaintiff moved an application before Nayab Tehsildar on 10-11-2006 for correction of entries in revenue record, which was



dismissed and thereafter an application on 08-01-2013 was also preferred regarding interference by defendants in the possession of plaintiff at suit land, which was also dismissed, against which an appeal was preferred by plaintiff before learned Sub Divisional Officer, Mhow which was registered as Case No.52/Appeal/2013-14 and the same was also dismissed vide order dated 26-06-2014. Thereafter suit land has been parted amongst appellant No.1 to 3 by the Revenue Officer and their name is mutated on their respective share and they are in the actual possession of the suit land.

4. The plaintiff pleaded in his plaint that, suit land is the ancestral land of plaintiff. The name of his father is Babulal and the name of his grandfather is Nanuram Sharma. Suit land was recorded in the name of his grandfather in the revenue record of the year 1958-59 to 1963-64. Thereafter, without any right, name of Thawar S/o Somu Bheel is mutated in the revenue record. Father and grandfather of plaintiff has died and he was not aware about the revenue records and therefore he never obtained the copies of revenue record from the department. Plaintiffs forefathers were having possession over the suit property. In the year 2006, when a high-way was taking shape near the suit land, then he obtained the revenue record and found that the name of Thawar is recorded against the suit land in the revenue record. It is alleged by the plaintiff that during the proceedings before learned revenue courts,



defendants took the possession over suit land by force, illegally in the year 2013. Therefore, it was essential to file the present suit before learned trial Court. Plaintiff also alleged that defendants are eager to sale the suit land to other purchaser.

5. Appellants/Defendants filed their written statement and contested the suit. Defendants denied the pleadings of plaintiff in toto and further pleaded that plaintiff has himself pleaded before revenue authorities that suit land was donated by his grandfather Nanuram on 15/07/1953 and he does not have any document to show that such donation was ever revoked. The defendant further pleaded that suit land was given to Thawar under Bhu Daan Yagna Act, 1968 as he was landless person and thereafter his name was mutated in revenue records. It is further pleaded by the defendant that merely name of Nanuram recorded in revenue records till 1966 i.e. even after donation of such land in the year 1953, does not create any right in favour of plaintiff or Nanuram. Suit land is in the exclusive possession and ownership of Thawar since 1953. Suit has been filed on frivolous grounds by the plaintiff. Suit land is purchased by Thawar and at the relevant point of time they were illiterate and were not having any knowledge of law, so no document was executed but his name was mutated in the revenue record as owner and possessor.

6. It was further contended by the appellants/defendants that



admittedly the name of Thawar is recorded in revenue record without any hindrance since 1966 and thus as per Section 117 of M.P. Land Revenue Code, 1959 the possession of Thawar and defendants can only be presumed over suit land and no evidence in contradiction has been lead by plaintiff thereof. Father or grandfather of plaintiff have never initiated any proceedings against defendants. Whereas, Father of plaintiff Babulal has himself admitted the possession of defendants on suit land, since long in his statement before revenue authorities in the year 2006-07 and in such case, the story of snatching of possession in 2013 by defendants from plaintiff itself is proved to be false, which shows that plaintiff has not came with clean hands and the suit filed by plaintiff is barred by limitation and in alternate the defendant has acquired the title by the virtue of adverse possession.

7. It has been further contended that the plaintiff could not plead or establish that why mutation of his father was not carried after the death of his grandfather and who all are the legal heirs of his grandfather or father, which also attracts the bar of non-joinder of parties. The plaintiff has sought possession of the suit land but he has not valued his suit as per the market value of the land and thereby he has under valued the suit and has not paid proper Court-fees thereof. The suit of plaintiff could not be decreed by the learned trial Court on account of principle of estoppel as well as



adverse possession. Plaintiff has to prove his own case and he has not rendered just and proper explanation of being silent since 1966 to 2013. In spite of the fact that possession of defendants was in the knowledge of plaintiff and his father too, and the name of defendants were recorded in revenue record as Bhumiswami since 1966.

8. It has been further contended that the plaintiff admits that suit land was given in donation by his grandfather in the year 1953 and most probably he died in the year 1954, and he does not have any knowledge that when and how suit land came back in their possession or ownership and he do not have any evidence in support thereof. Plaintiff also admits that he is ignorant of the fact that whether the land once donated can be revoked or not. Whereas it is a settled principle of law that once the donation is done then the donor cannot revoke it. As the price of suit land has been inflated so plaintiff has filed the present suit against defendants due to greediness.

9. Thereafter, 8 (eight) issues were framed by the learned trial Court, which are as follows :-

क्र.	वाद-प्रश्न	निष्कर्ष
01	क्या वादी पैतृक विवादित भूमि सर्वे नं. 119 रकबा 1.16 एकड़ अर्थात 0.470 हे. का एकमात्र भूमिस्वामी है?	"साबित"
02.	क्या वादी, प्रतिवादी क्र. 1 लगायत 4 से विवादित भूमि का आधिपत्य प्राप्त करने का पात्र है?	"हाँ"



03.	क्या वादी, प्रतिवादीगण से 100 रुपये प्रतिदिन की दर से अंतवर्ती लाभ प्राप्त करने का पात्र है?	"साबित नहीं"
04.	क्या प्रतिवादी क्र. 1 लगायत 4 वादी के स्वामित्व व आधिपत्य की विवादित भूमि को विक्रय व अंतरण करने के लिये प्रयासरत् है?	"हाँ"
05.	क्या वाद मियाद अवधि में प्रस्तुरत किया गया है?	"हाँ"
06.	क्या वादी ने वाद का उचित मूल्यांकन कर पर्याप्त न्यायालय शुल्क अदा किया है?	"हाँ"
07.	क्या वाद इस न्यायालय के सुनवाई के क्षेत्राधिकार का है?	"हाँ"
08.	सहायता एवं व्यय?	निर्णय ई च (0) 27 अनुमाद दावा आतप्त ।

10. Thus, the evidence was led by both the parties. Plaintiff examined himself (PW/1) and Banshidhar (PW/2) in support of plaint, whereas defendants has examined himself Gulab (DW/1), Radheshyam (DW/2) and Ghudiya (DW/3) as witnesses in support of his defence, before the learned trial Court. Thereafter hearing both the parties learned trial Court has decreed the suit filed by the plaintiff/respondent No.1. Being aggrieved by the aforesaid judgment and decree Civil Regular Appeal was preferred by the appellants/defendants, before learned first appellate Court which was registered as Civil Regular Appeal No.73-A/2018 and the same has been dismissed, by the learned Vth District Judge, Dr. Ambedkar Nagar, Mhow, Dist. Indore vide impugned judgment and decree dated 10-02-2023. Being aggrieved by which, the present appellants/defendants preferred the present appeal on the



following substantial questions of law :-

“1. Whether the learned first appellate Court was justified in affirming the decree passed by the learned trial Court which had allowed the suit filed by the respondent/plaintiff for possession, declaration and injunction ? |

2. Whether the learned trial Court and first appellate Court were justified in not considering that as the possession of defendants has been admitted by father of plaintiff as well as his witnesses then no any decree can be passed in his favour ?

3. Whether the learned trial Court and first appellate Court were justified in not considering that pleadings and evidence contrary to the admission done by him and his father in revenue proceedings barred by virtue of principle of estoppel ?

4. Whether the learned trial Court and first appellate Court were justified in not considering that plaintiff exclaimed suit land as his ancestral property and he has not pleaded about the legal heirs of his forefathers and thereby no any decree can be passed in his favour ?

5. Whether the learned trial Court and first appellate Court were justified in not considering that plaintiff has pleaded and admitted that the suit land was donated by his father under Bhu Dan Yagna Act, 1968 and thus once the land is donated then the same cannot be revoked ?

6. Whether the learned trial Court and first appellate Court were justified in not considering that the



defendants has occupied suit land since 1953 and in the year 1966 they have declared themselves as Bhumiswami to the plaintiff as well as world by getting their name mutated in the revenue record and hence they have acquired the title over suit land by virtue of adverse possession ?

7. Whether the learned trial Court and first appellate Court were justified in not considering that when the plaintiff is not in the possession of the suit land then no any injunction can be granted in his favour ?

8. Whether the learned trial Court and first appellate Court were justified in not considering that the plaintiff has neither came with the clean hands before the court nor the best available evidence has been adduced by him?

9. Whether the judgment and decree passed by both the Courts suffer from infirmity and perversity on account of mis-appreciation and non-appreciation of material pieces of evidence, thus liable to be set-aside ?”

11. Learned counsel for the appellants argued that the learned first appellate Court and trial Court have erred in not considering the legal and factual position of the case and further erred in decreeing the suit filed by the plaintiff. The learned first appellate Court and trial Court have erred in not considering the fact that plaintiff has himself pleaded before revenue authorities that suit land was donated by his grandfather - Nanuram on 15/07/1953 and he does not have any document to show that such donation was



ever revoked. It is further argued by learned counsel for the appellants that the learned first appellate Court and trial Court have erred in not considering the fact that defendant further pleaded that suit land was given to Thawar under Bhu Daan Yagna Act, 1968 as he was a landless person and thereafter his name was mutated in revenue records.

12. Counsel appearing on behalf of the appellants contended that the learned first appellate Court and trial Court have erred in not considering the fact that defendants has proved his possession on the suit land since immemorable time.

13. It has been argued by learned counsel for the appellants that as per Section 19 of Madhya Pradesh Bhudan Yagna Act, 1953, the donation granted to the appellants i.e. Bhudhan(Gift) is irrevocable. It has also been argued by learned counsel for the appellants that view of Section 33 of Madhya Pradesh Bhoodan Yagna Adhiniyam, 1968 (as amended) conferred Bhumiswami rights to the appellant's predecessors after continuation of possession of more than 10 years since 1953 and thus no case is made out in favour of the respondent No.1/plaintiff.

14. The learned first appellate Court and trial Court has erred in not considering the fact that plaintiff has to prove its own case and he cannot take advantage of weakness of defendant. Whereas, plaintiff has not proved vital facts alleged by him in his plaint.



Contrary to that the defendants have proved the existence of his possession prior to 2013. That both the Courts below have erred in not considering the fact that merely name of Nanuram in revenue record till 1966 i.e. even after donation of such land in the year 1953, does not create any right in favour of plaintiff or Nanuram. The Courts below have erred in not considering the fact that the burden of proof levied over plaintiff cannot be shifted over defendant, even then both the learned Courts have done the same inspite of the fact that plaintiff has not discharged his burden of proof. Suit land is in the exclusive possession and ownership of Thawar since 1953. Suit has been filed on frivolous grounds by the plaintiff. Plaintiff could not plead or establish that why mutation of his father was not carried after the death of his grandfather and who all are the legal heirs of his grandfather or father, which also attracts the bar of non-joinder of parties.

15. It is submitted by learned counsel for the appellants that the judgment and decree passed by the learned first appellate Court and trial Court suffer from infirmity and perversity on account of mis-appreciation and non-appreciation of material pieces of evidence, thus liable to be set-aside, which are contrary to law and facts available on record and the suit filed by the respondent No.1/plaintiff be dismissed.



16. On the other hand, learned counsel for the respondent No.1/plaintiff has supported the impugned judgment and decree passed by both the Courts below, hence, the said finding of facts has attained finality.

17. It is, thus prayed by the respondent No.1/plaintiff that in the facts and circumstances of the case, in hand and the fact that respondent No.1/plaintiff has sufficiently and successfully proved his case and therefore, no question of substantial question of law arises in the present appeal for determination, hence, deserves to be dismissed *in limine*.

18. Heard learned counsel for both the parties at length and perused the entire record.

19. It is settled law that the scope of interference by the High Court under Section 100 of the CPC in Second Appeal is very limited. Both the Courts below have concurrently recorded the findings in favour of the respondent No.1/plaintiff and decreed the suit in his favour (Radheyshyam). Hon'ble the Apex Court in the catena of judgments has decided the scope of interference by the High Court in Second Appeal with the concurrent findings recorded by both the Courts below.

20. In order to consider the arguments advanced by the learned counsel for the appellants, so far as application of Section 19 of the Madhya Pradesh Bhudan Yagna Act, 1953 is concerned, the same



cannot be considered in isolation as application of Section 19 of the Madhya Pradesh Bhudan Yagna Act, 1953, the compliance of Section 17 and 18 of the said Act, 1953 has to be appreciated first.

21. To appreciate the assertions of the appellants/defendants it would be relevant to consider Section 17, 18 and 19 of Madhya Pradesh Bhudan Yagna Adhiniyam, 1953 which reads as follows:-

17. Procedure for making donation of land.

(1) Any person owning a transferable interest in land and desiring to make a gift thereof to the Board may submit [a declaration making the offer] *[Substituted for the words 'and application' by Madhya Pradesh Act 21 of 1954, Section 10(i).]* in the prescribed form to the Board.

(2) The Board shall, if it considers the gift acceptable, forward the [declaration] *[Substituted for the word 'application, by Madhya Pradesh Act 21 of 1954, Section 10(ii).]* to the Revenue Officer having jurisdictions in the tahsil or taluka where the land is situate.

(3) On receipt of the [declaration] *[Substituted for the word 'application, by Madhya Pradesh Act 21 of 1954, Section 10(ii).]* mentioned in sub-section (1), the Revenue Officer shall, if satisfied, after such summary inquiry as he thinks necessary, that the donor is competent to make the gift and has valid title in the land, issue a notice in the prescribed form to all such persons as he may consider interested in the property calling upon them, before a



date specified in the notice, to show cause why the gift should not be accepted.

(4) The Revenue Officer shall also affix a copy of the notice referred to in sub-section (3) on the notice-board of his court and shall cause it to be published by beat of drum in the village where the land is situate.

(5) Any person interested in the property may, before the date specified in the notice, file an objection before the Revenue Officer showing cause why the gift should not be accepted.

(6) All such objections shall be inquired into and decided by the Revenue Officer.

(7) If no objection is filed before the specified date, or if all the objections filed have been rejected by the Revenue Officer, he shall pass an order accepting the gift on behalf of the Board.

(8) On the acceptance of the gift, all title and interest of the donor in the land shall be extinguished and the land shall, subject to the provisions of section 18, vest in the Board in the same rights in which it was held by the donor.

(9) The order made under sub-section (7) shall be got registered under the xvi of Indian Registration Act, 1908, by the Revenue Officer in such manner as may be prescribed and it shall then take effect from the date of the order, as if it were a deed of gift.

(10) No fee for registration of the order shall be chargeable.



(11) The Revenue Officer may at any stage of the proceedings reject the [offer] *[Substituted for the word 'application' by Madhya Pradesh Act 21 of 1954, Section 10(iii)(a).]* of the donor on any of the following grounds, namely :-

- (i) that the donor is incompetent to make the gift ;
- (ii) that the title of the donor is defective ;
- (iii) that there are encumbrances on the land ;
- (iv) [* * *] *[Item (iv) was omitted, by Madhya Pradesh Act 21 of 1954, Section 10(iii)(b).]*
- (v) such other grounds as may be prescribed.

18. Order of Revenue Officer subject of civil suit.

The order of the Revenue Officer, rejecting an objection passed under sub-section (7) of section 17, shall not be subject to appeal or revision but any party aggrieved by the order or any other person interested in the land who had no notice of the proceedings under section 17 may, within six months from the date of such order, institute a suit in the Civil Court having jurisdiction to have the order set aside and the decision of such Court shall be binding on the Board, and subject to the result of such suit, if any, the order of the Revenue Officer shall be conclusive.

19. Gifts to be irrevocable.

Every gift of land in respect of which an order has been passed under section 17 shall, after the date of the order,



be irrevocable.

Thus a plain reading of Section 17 and 18 on co-joint reading would manifest that only if there is compliance of Section 17 and 18, Section 19 would come into play and thus the argument of the appellant/defendant that as per Section 19 of the Adhiniyam of 1953, the alleged Bhoodan by the grandfather of the respondent/plaintiff in 1953, is irrevocable is misconceived and misplaced as in the case in hand in absence of compliance of Section 17 & 18 of the Adhiniyam of 1953, the alleged Bhoodan in favour of the appellants/defendants is a nullity and even otherwise the appellants/defendants could not prove the same in both the Courts below the alleged Bhoodan is not in accordance with the requirements spelt out under Section 17 & 18 of the Adhiniyam 1953.

22. So far as second arguments of learned counsel for the appellants is concerned, it is relevant to quote Section 33 of Madhya Pradesh Bhoodan Yagna Adhiniyam, 1968 (as amended), which reads as under :-

“Section 33 – Bhoodan holders to acquire Bhoomiswami rights.

Any person holding land as a Bhoodan holder for ten years continuously in accordance with the provisions of this Act shall, at the expiry of the said period, acquire the rights of Bhoomiswami under the Madhya Pradesh Land Revenue Code, 1959 (No.20 of 1959) and the title and interest of the Board in the said land shall cease.”



23. So far as effect of Section 33 of the Madhya Pradesh Bhoodan Yagna Adhiniyam, 1968 (as amended) is concerned, in view of non-compliance of Section 17 and 18 of the Madhya Pradesh Bhudan Yagna Act, 1953, the effect of Section 33 of Madhya Pradesh Bhoodan Yagna Adhiniyam, 1968 (as amended) is ineffective and cannot be considered in isolation.

24. That in the case in hand the other ground raised by the appellants/defendants was that the said land in dispute has been purchased by his grandfather from the grandfather of the respondent/plaintiff. In order to appreciate the said assertions it would be relevant to consider :-

Section 54 of Transfer of Property Act, 1882 reads as under:-

“54. “Sale” defined.—“Sale” is a transfer of ownership in exchange for a price paid or promised or part-paid and part-promised.

Sale how made.—Such transfer, in the case of tangible immoveable property of the value of one hundred rupees and upwards, or in the case of a reversion or other intangible thing, can be made only by a registered instrument.

In the case of tangible immoveable property of a value less than one hundred rupees, such transfer may be made either by a registered instrument or by delivery of the property.

Delivery of tangible immoveable property takes place when the seller places the buyer, or such person as



he directs, in possession of the property.

Contract for sale.—A contract for the sale of immoveable property is a contract that a sale of such property shall take place on terms settled between the parties.

It does not, of itself, create any interest in or charge on such property.”

25. On appreciating the said assertion it has been examined that both the Courts below has found that the appellant/defendants has failed to prove the said assertion to prove the sale and even otherwise the said assertion is not in line with the requirements spelt out under Section 54 of the Transfer of Property Act, 1882.

26. It was further the case of the appellants/defendants that in alternate the land in dispute has vested in them by virtue of adverse possession. The said fact and assertion of the appellants/defendants is also misplaced as he has not proved the same by qualifying the necessary ingredients of principles of “adverse possession”.

27. In the matter of **B. Leelavathi vs. Honnamma and another (2005) 11 SCC 115** wherein it has been held that adverse possession is a question of fact, which has to be specifically pleaded and proved. Also in the case of **Krishnamurthy S. Setlur (dead) by L.Rs. vs. O.V. Narasimha Setty and others 2007 (3) MPLJ 15** wherein it has been held that adverse possession is a question whether possession is adverse or not is a mixed question



of law and fact.

28. In Second Appeal this Court cannot re-appreciate the evidence and interference with the finding of fact of the First Appellate Court, where the First Appellate Court have exercised the discretion judiciously. This Court cannot substantiate its own opinion unless the finding of the First Appellate Court are manifestly perverse and contrary to the evidence on record. The interference with the findings of First Appellate Court by this Court under Section 100 of CPC cannot be made unless warranted by compelling reasons. Even assuming that another view is possible on re-appreciation of the same evidence, that should not have been done by this Court as it cannot be said that the view taken by the First Appellate Court based on no material evidence and the First Appellate Court set aside the judgment of trial Court based on the sound reasons and allowed the appeal.

29. Thus, the findings of fact cannot be interfered in the second appeal. The finding of fact recorded by First Appellate Court while allowing the appeal are not perverse and in fact based on the pleadings and evaluation of evidence on record, the judgment under the appeal does not call for any interference of this Court under Section 100 CPC.

30. In these circumstances upon consideration of the decree and judgment of the First Appellate Court, this Court is satisfied that



the there is no substantial question of law requiring consideration and to interfere with the findings recorded by First Appellate Court, therefore, this Second Appeal must necessarily fail.

31. In view of the above discussion, this Court finds no ground to interfere with the findings fact recorded by the First Appellate Court and there is absolutely no perversity or illegality in the findings of First Appellate Court warranting interference.

32. Resultantly, the admission of this appeal is declined and is liable to be dismissed and accordingly **dismissed**, consequently, the decree and judgment of the First Appellate Court dated 10/02/2023 stand **confirmed**.

33. All the pending applications, if any, stand disposed off.

(Jai Kumar Pillai)
Judge

Aiyer*