

**IN THE HIGH COURT OF MADHYA PRADESH**

**AT INDORE**

**BEFORE**

**HON'BLE SHRI JUSTICE HIRDESH**

**ON THE 16<sup>th</sup> OF JANUARY, 2024**

**SECOND APPEAL No. 2532 of 2023**

**BETWEEN:-**

1. HANSUBAI W/O LATE SHIVNARAYAN GOSAI, AGED ABOUT 70 YEARS, OCCUPATION: HOUSEWIFE R/O VILLAGE NEVARI TEHSIL HATPIPLIYA DISTT. DEWAS (MADHYA PRADESH)
2. LATE SHIVNARAYAN DECEASED THROUGH LRS SURESH PURI S/O LATE SHIVNARAYAN, AGED ABOUT 58 YEARS, OCCUPATION: AGRICULTURE VILLAGE NEVARI, TEH. HATPIPLIYA DIST. DEWAS (MADHYA PRADESH)
3. LATE SHIVNARAYAN DECEASED THROUGH LRS. DILEEP PURI S/O LATE SHIVNARAYAN GOSAI, AGED ABOUT 46 YEARS, OCCUPATION: AGRICULTURE R/O VILLAGE NEVARI, TEHSIL HATPIPLIYA, DIST. DEWAS (MADHYA PRADESH)
4. LATE SHIVNARAYAN DECEASED THROUGH LRS. PREMBAI D/O LATE SHIVNARAYAN GOSAI, AGED ABOUT 46 YEARS, OCCUPATION: AGRICULTURE R/O VILLAGE VILLAGE NEVARI, TEHSIL HATPIPLIYA, DISTRICT DEWAS (MADHYA PRADESH)
5. LATE SHIVNARAYAN DECEASED THROUGH LRS. REKHABAI D/O LATE SHIVNARAYAN GOSAI OCCUPATION: AGRICULTURE R/O VILLAGE VILLAGE MANASA, TEHSIL SONKATCH, DIST. DEWAS (MADHYA PRADESH)

**.....APPELLANTS**

***(SHRI GAGAN PARASHAR, LEARNED COUNSEL FOR THE APPELLANTS)***

**AND**

1. LATE GOPALPURI DECEASED THROUGH LRS. JITENDRA S/O LATE GOPALPURI, AGED ABOUT 38 YEARS, OCCUPATION: AGRICULTURE R/O VILLAGE NEVARI TEHSIL HATPIPLIYA DISTT. DEWAS (MADHYA PRADESH)
2. LATE GOPALPURI DECEASED THROUGH LRS. MANISHA PURI W/O SHANKAR PURI, AGED ABOUT 48 YEARS, OCCUPATION:

- AGRICULTURE R/O BADWAH, DIST. KHARGONE (MADHYA PRADESH)
3. LATE GOPALPURI DECEASED THROUGH LRS. SULOCHNA W/O RAKESH PURI, AGED ABOUT 42 YEARS, OCCUPATION: AGRICULTURE R/O DISTRICT DEWAS (MADHYA PRADESH)
  4. LATE GOPALPURI DECEASED THROUGH LRS. SAPNA W/O RAVINDRA GIREE, AGED ABOUT 27 YEARS, OCCUPATION: AGRICULTURE R/O SONKATCH, DISTRICT DEWAS (MADHYA PRADESH)
  5. LATE GOPALPURI DECEASED THROUGH LRS. NIRMALABAI W/O GOPALPURI, AGED ABOUT 61 YEARS, OCCUPATION: AGRICULTURE R/O VILLAGE NEVRI, TEHSIL HATPIPLIYA, DIST. DEWAS (MADHYA PRADESH)
  6. STATE OF MADHYA PRADESH THROUGH DISTRICT COLLECTOR DISTRICT DEWAS (MADHYA PRADESH)

.....RESPONDENTS

(SHRI SHYAMLAL PATIDAR, LEARNED COUNSEL FOR THE RESPONDENTS [CAVEAT])

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

**ORDER**

This second appeal under Section 100 of CPC is filed against the judgment and decree dated 04.10.2023 passed by Second District Judge, Bagli, District-Dewas in RCA No.9/2023 arising out of the judgment dated 29.05.2022 passed by I-Civil Judge, Junior Division, Bagli, District-Dewas in Civil Suit No.2-A/2017.

2. Brief facts of the case are that civil suit was filed by the original plaintiff-Late Gopal Puri who died during the pendency of the suit and his legal heirs have been brought on record. The suit was filed seeking relief of declaration of title, permanent injunction and possession of the agricultural land bearing survey No.1136/2 admeasuring 0.280 hectares situated in village-Rojdi, Tehsil-Hatpipliya, District Dewas.

3. The original plaintiff pleaded before the trial court that this disputed land was received by him in partition which was effected between the original plaintiff and original defendant and he was in the possession of said land. He further pleaded that he obtained K.C.C. loan on the said land on 16.09.2014 but, the original defendant illegally and in collusion with revenue authorities got partition of said land and further got a part of it mutated in his name in the year 2010. He further averred that when original plaintiff obtained certified copies of revenue records for renewal of loan, he came to know about the partition and mutation of the land in revenue records and when he confronted the original defendant, original defendant abused him. He further pleaded that on 16.12.2016, original defendant came to his land and forcibly took possession of the land, against this act a complaint with police was filed and a civil suit was also filed by the original plaintiff. The original defendant filed written statement and refuted the plaint allegations and pleaded that on 10.03.2009, original plaintiff entered into an agreement to sale of suit property (along with another land to the original defendant for which no suit has been filed) with the original defendant for a sale consideration of Rs.85,000/- per bigha in front of two witnesses and also handed over the possession and with the consent of original plaintiffs, partition was recorded in revenue records by the order of Tahsildar.

4. The trial court framed necessary issues and parties adduced evidence in favour of their respective case. Trial court decreed the suit by recording findings and original plaintiff was a recorded Bhuswami and hence, he is the owner of the suit property and suit property was illegally mutated in the name of original defendant without any conveyance deed.

5. Being aggrieved by the judgment and decree passed by the trial

court, defendant/appellant filed first appeal before the first appellate court which the first appellate court cursorily dismissed the appeal without appreciating the real controversy between the parties.

6. Being aggrieved by the judgment and decree passed by the Courts below, present second appeal has been filed by the appellants submitting that the judgments passed by the courts below are patently illegal and against the settled position of law, based on conjectures and surmises and therefore, deserves to be set aside. He further submits that courts below committed a grave error of law in not framing issue with respect to the allegation that possession was forcefully taken by the original defendant and further in not appreciating the evidence adduced by the parties in this regard. He further submits that original plaintiff entered into an agreement of sale on 10.03.2009 and original defendant gave some consideration to the original plaintiff so according to Section 53 A of Transfer of Property Act, possession must be protected so on the above grounds, learned counsel for the appellant submits that in this second appeal substantial question of law must be framed.

7. Heard the learned counsel for the parties and perused the record of the case.

8. Arguments of learned counsel for the appellants are solely based on the agreement of sale Ex.D-1 and he argued that according to Section 53A of The Transfer of Property Act, 1882 his possession must be protected. Section 53A of The Transfer of Property Act reads as under:-

**“53A. Part performance.— Where any person contracts to transfer for consideration any immoveable property by writing signed by him or on his behalf from which the terms necessary to constitute the transfer can be ascertained with**

reasonable certainty, and the transferee has, in part performance of the contract, taken possession of the property or any part thereof, or the transferee, being already in possession, continues in possession in part performance of the contract and has done some act in furtherance of the contract, and the transferee has performed or is willing to perform his part of the contract, then, notwithstanding that where there is an instrument of transfer, that the transfer has not been completed in the manner prescribed therefor by the law for the time being in force, the transferor or any person claiming under him shall be debarred from enforcing against the transferee and persons claiming under him any right in respect of the property of which the transferee has taken or continued in possession, other than a right expressly provided by the terms of the contract:

Provided that nothing in this section shall affect the rights of a transferee for consideration who has no notice of the contract or of the part performance thereof.

9. Learned counsel placed reliance upon the judgment delivered by the Apex Court in the case of **Shrimant Shamrao Suryavanshi and another Vs. Pralhad Bhairao Suryavanshi (Dead) By Lrs. And others, 2002 (3) SCC 676** in which Apex Court has held that when certain conditions are required to be fulfilled, if transferee wants to defend or protect his possession under Section 53A of Transfer of Property Act. **In Section 53-A** of the Act, necessary conditions are as under:-

- 1) there must be a contract to transfer for consideration any immovable property;
- 2) the contract must be in writing, signed by the transferor, or by someone on his behalf;
- 3) the writing must be in such words from which the terms necessary to construe the transfer can be

ascertained;

4) the transferee must in part performance of the contract take possession of the property, or of any part thereof;

5) the transferee must have done some act in furtherance of the contract; and

6) the transferee must have performed or be willing to perform his part of the contract.

10. The Apex Court has held that if the conditions enumerated above are complied with the law, the law of limitation does not come in the way of defendant taking plea under Section 53-A of the Act to protect his possession of the suit property even though a suit for specific performance of a contract is barred by limitation. So according to this verdict of the Apex Court, it is a duty of transferee that he must prove that he must have done some act in furtherance of contract and transferee must have performed or he will to perform his part of contract. But in the present case, appellants have not produced any substantial evidence or documents that he must have done some act in furtherance of the contract and he must have performed or be willing to perform his part of contract. It is well settled that first appellate court being a final court of fact and courts below have recorded its findings on appreciation of evidence and appellants/defendants have failed to prove that they are willing to perform their part of contract so they do not get any benefit of the agreement D-1 to protect his possession. So in the considered opinion of this Court, this second appeal does not involve any substantial question of law, consequently the present appeal is dismissed.

**(HIRDESH)  
JUDGE**

N.R.