

**IN THE HIGH COURT OF MADHYA PRADESH
AT JABALPUR**

**BEFORE
HON'BLE SHRI JUSTICE DWARKA DHISH BANSAL**

ON THE 2nd OF NOVEMBER, 2022

FIRST APPEAL No. 409 of 1997

Between:-

- 1. THE STATE OF M.P. THR. SECRETARY,
REVENUE DEPTT. GOVT. OF M.P., VALLABH
BHAWAN, BHOPAL (MADHYA PRADESH)**
- 2. THE NAIB TAHSILDAR (NAZUL), BHOPAL,
M.P.**

.....PETITIONER

(BY SHRI MUKUND AGRAWAL-GOVERNMENT ADVOCATE)

AND

- 1. PREMKUMAR WADHWANI, AGED ABOUT 29
YEARS, S/O MOHANLAL WADHWANI, R/O 53-
A, IDGAH HILLS, BHOPAL, M.P.**
- 2. MANOJ KUMAR WADHWANI, AGED ABOUT 27
YEARS, S/O MOHANLAL WADHWANI, R/O 38-
A, IDGAH HILLS, BHOPAL, M.P.**
- 3. RAJVEER SINGH AHLUWALIA, AGED ABOUT
40 YEARS, S/O. PRATAP SINGH AHLUWALIA,
R/O. SHALIMAR LAKE, RIDGE ROAD, IDGAH
HILLS, BHOPAL, M.P.**

4. **SALIM PARVEJ, AGED ABOUT 35 YEARS, S/O AHMAD, R/O. 7-CLASSIC APARTMENT RIDGE ROAD, BHOPAL, M.P.**
5. **MUNICIPAL CORPORATION, THR. COMMISSIONER, BHOPAL, M.P.**

.....RESPONDENTS

(NONE FOR THE RESPONDENTS)

This appeal coming on for final hearing this day, the court passed the following:

JUDGMENT

This first appeal has been preferred by the appellants/defendants 1-2/State Government challenging the judgment and decree dated 07.04.1997 passed by 1st Additional District Judge, Bhopal in Civil Suit no.10-A/1996, whereby suit filed by the respondents 1-4/plaintiffs has been decreed holding the notice dated 02.04.1996 to be illegal and that the defendants have no right to make any interference in the construction activities being carried out by the plaintiffs. Accordingly, permanent injunction has also been granted against the defendants.

2. In short the facts are that the plaintiffs claimed themselves to be owner and in possession of the disputed land total area 15700 sq.ft. bearing in khasra no.26, opposite Neelkanth Colony, ward no.9, Idgah Hills, Bhopal allegedly purchased by them from one Gulshan-E-Gandhi Housing Co-operative Society, Bhopal through four registered sale deeds. It is alleged in the plaint that Nazul Officer, Bhopal also granted no objection certificate in respect of the aforesaid

land and before granting NOC, the Nazul Officer made all the legal enquiry as to whether the land belonged to the Government or not and ultimately the Nazul Officer, Bhopal issued NOC declaring that the land does not belong to the Government and it is a private property. It is also alleged that after purchase of the land, all the plaintiffs sought permission of raising construction from the defendant 3-Municipal Corporation, which was duly granted by it and after getting the permission, the plaintiffs raised construction of boundary wall around the plot. Thereafter, without any authority, a notice dated 02.04.1996 was issued and Nazul Inspector threatened the plaintiffs to stop the construction work, which constrained the plaintiffs to file the suit for declaration and permanent injunction.

3. The defendants 1-2 appeared and filed written statement denying the plaint allegations. In para 1 of the written statement, ownership of the plaintiffs as well as of their predecessor-in-title, was specifically denied. It is contended that the permission of raising construction granted by the defendant 3, does not confer any title on the plaintiffs. It is also contended that the land in question was acquired on 12.11.1955 and it is Government land. On inter alia contentions the suit was prayed to be dismissed.

4. Respondent 3-Municipal Corporation also filed written statement admitting the factum of granting permission of raising construction, but contended that due to raising of objection by the State Government, the permission has been stayed and no construction is being done on the land in question. On inter alia contentions the suit was prayed to be dismissed.

5. On the basis of pleadings learned trial court framed seven issues and recorded evidence of the parties and after consideration of the negative evidence, decreed the suit to the effect that the notice issued by defendants 1-2

is illegal and the defendants have no right to make any interference in raising of the construction over the land in question by the plaintiffs.

6. Learned counsel for the appellants/State submits that the judgment and decree passed by learned trial court are not sustainable because despite there being clear dispute about title, the plaintiffs neither sought any declaration of title nor have chosen to prove the title. He submits that no document showing the title of their predecessor, has been produced on record and the NOC granted by Nazul Officer or the permission of construction granted by the defendant 3-Municipal Corporation, does not confer any title to the plaintiffs. He further submits that in view of the fact that the land was acquired in the year 1955, the suit itself was not maintainable. With these submissions, he prayed for allowing the appeal.

7. In the instant first appeal, despite service of notice on the respondents and despite issuance of SPC vide order dated 08.12.2021, none has appeared on behalf of the respondents.

8. In the instant first appeal following points for determination arise for consideration of this Court:-

- i. Whether in absence of relief of declaration of title, the suit was maintainable ?
- ii. Whether the NOC (Ex.P/5 and P/6) allegedly issued by Nazul Officer or the permission of construction (Ex.P/7 and P/8) granted by the defendant 3 confer any title on the plaintiffs ?
- iii. Whether in absence of any document showing title of predecessors of the plaintiffs, learned trial Court was justified in declaring the

notice dtd. 2.4.96 to be void mainly on the basis of Panchnama (Ex.D/1) ?

- iv. Whether the plaintiff can succeed on the weakness of the case of defendant ?

9. Learned trial court has while deciding issue no. 1-6 together, held that the land in question belonged to Gulshan-E-Gandhi Housing Co-operative Society, Bhopal and the plaintiffs have purchased the suit land from the society vide registered sale deeds (Ex. P/1 to P/4). While deciding the issue no.3, learned court below has held that defendants 1-2 by issuing NOC admitted title of predecessor of the plaintiffs and because the defendant 3 has sanctioned the plan/map, therefore, the plaintiffs are entitled for raising construction over the disputed land and in the aforesaid backdrop the learned court declared the notice dated 02.04.1996 to be illegal.

10. From bare perusal of the documentary evidence available on record, it is clear that the title of the plaintiffs has been in dispute since beginning and despite knowledge of dispute about their title, the plaintiffs did not care to seek any declaration with regard to their title, which in the present facts and circumstances of the case, was necessary.

11. The Supreme Court has in the case of **ANATHULA SUDHAKAR V/s. P. BUCHI REDDY (DEAD) BY LRS & ORS. (2008) 4 SCC 594** held as under:-

“13. The general principles as to when a mere suit for permanent injunction will lie, and when it is necessary to file a suit for declaration and/or possession with injunction as a consequential relief, are well settled. We may refer to them briefly.

13.1. Where a plaintiff is in lawful or peaceful possession of a property and such possession is interfered or threatened by the defendant, a suit for an injunction simpliciter will lie. A person has a right to protect his possession

against any person who does not prove a better title by seeking a prohibitory injunction. But a person in wrongful possession is not entitled to an injunction against the rightful owner.

13.2. Where the title of the plaintiff is not disputed, but he is not in possession, his remedy is to file a suit for possession and seek in addition, if necessary, an injunction. A person out of possession, cannot seek the relief of injunction simpliciter, without claiming the relief of possession.

13.3. Where the plaintiff is in possession, but his title to the property is in dispute, or under a cloud, or where the defendant asserts title thereto and there is also a threat of dispossession from defendant, the plaintiff will have to sue for declaration of title and the consequential relief of injunction. Where the title of plaintiff is under a cloud or in dispute and he is not in possession or not able to establish possession, necessarily the plaintiff will have to file a suit for declaration, possession and injunction.

14. We may however clarify that a prayer for declaration will be necessary only if the denial of title by the defendant or challenge to plaintiff's title raises a cloud on the title of plaintiff to the property. A cloud is said to raise over a person's title, when some apparent defect in his title to a property, or when some prima facie right of a third party over it, is made out or shown. An action for declaration, is the remedy to remove the cloud on the title to the property. On the other hand, where the plaintiff has clear title supported by documents, if a trespasser without any claim to title or an interloper without any apparent title, merely denies the plaintiff's title, it does not amount to raising a cloud over the title of the plaintiff and it will not be necessary for the plaintiff to sue for declaration and a suit for injunction may be sufficient. Where the plaintiff, believing that defendant is only a trespasser or a wrongful claimant without title, files a mere suit for injunction, and in such a suit, the defendant discloses in his defence the details of the right or title claimed by him, which raises a serious dispute or cloud over plaintiff's title, then there is a need for the plaintiff, to amend the plaint and convert the suit into one for declaration. Alternatively, he may withdraw the suit for bare injunction, with permission of the court to file a comprehensive suit for declaration and injunction. He may file the suit for declaration with consequential relief, even after the suit for injunction is dismissed, where the suit raised only the issue of possession and not any issue of title."

12. In the light of aforesaid decision of Supreme Court in the case of **Anathula Sudhakar** (supra) it is clear that there being clear dispute of title, in absence of relief of declaration of title, the suit itself was not maintainable.

13. It is well settled that who alleges has to prove, but from bare perusal of the impugned judgement, it is clear that the learned trial Court has placed entire burden of proof on the shoulders of defendants 1-2 and has decreed the suit on the basis of weaknesses of the case of the defendants, just contrary to the settled law that the plaintiff has to succeed or fail on the strength of his case and cannot be given any benefit of any of the weaknesses of the case of defendant. The Supreme Court has in the case **City Municipal Council Bhalki, By Its Chief Officer Vs. Gurappa (D) By LRs and Anr. (2016) 2 SCC 200** held as under :-

“31. It is a settled position of law that in a suit for declaration of title and possession, the onus is upon the plaintiff to prove his title. Further, not only is the onus on the plaintiff, he must prove his title independently, and a decree in his favour cannot be awarded for the only reason that the defendant has not been able to prove his title, as held by this Court in the case of **Brahma Nand Puri v. Neki Puri** [AIR 1965 SC 1506] as under:

“.....the plaintiff's suit being one for ejectment he has to succeed or fail on the file that he establishes and if he cannot succeed on the strength of his title his suit must fail notwithstanding that the defendant in possession has no title to the property.....”

The same view has been reiterated by this Court in the more recent case of **R.V.E Venkatachala Gounder v. Arulmigu Viswesaraswami & V.P. Temple & Anr. [(2003) 8 SCC 752]** as under:

“In a suit for recovery of possession based on title it is for the plaintiff to prove his title and satisfy the Court that he, in law, is entitled to dispossess the defendant from his possession over the suit property and for the possession to be restored with him.In our opinion, in a suit for possession based on title once the plaintiff has been able to create a high degree of probability so as to shift the onus on the defendant it is for the defendant to discharge his onus and in the absence thereof the burden of

proof lying on the plaintiff shall be held to have been discharged so as to amount to proof of the plaintiffs title.”

14. Although, learned trial court has while deciding issue no.1 held that the suit land belonged to Mohd. Asgar and Gulshan-E-Gandhi Housing Co-operative Society, Bhopal, but no document is available on record to infer/presume ownership of Mohd. Asgar and Gulshan-E-Gandhi Housing Co-operative Society, Bhopal. It is well settled that in a suit for declaration of title and permanent injunction, the plaintiff is required not only to prove his title, but also to prove the title of his predecessor, and in absence of proof of title of his predecessor, the plaintiffs cannot be granted decree of declaration of their title, which in the present case has not even been sought by the plaintiffs.

15. While considering evidence in para 11 of the impugned judgment, learned trial court has observed that the land in question belonged to Mohd. Asgar. However, there is no document available on record to show as to how the land came in the ownership of Gulshan-E-Gandhi Housing Co-operative Society, Bhopal from Mohd. Asgar. It is apparent that learned trial court has on the basis of surmises and conjectures, held the plaintiffs to be owner and in possession of the suit land on the basis of inadmissible documentary evidence like NOC, permission of construction, demarcation proceeding and panchnama. In any case, these documents cannot be said to relevant for proving title over the disputed land, identity of which is also in dispute.

16. In view of the material available on record, the findings recorded by learned trial court with regard to ownership of the plaintiffs especially of their predecessor-in-title i.e. of Mohd. Asgar and Gulshan-E-Gandhi Housing Co-operative Society, Bhopal are clearly perverse and contrary to law and are not sustainable.

17. In my considered opinion, as the plaintiffs have completely failed to prove their title over the land in question, therefore, they are not entitled to seek any relief to get the notice dated 02.04.1996 declared null and void or to seek permanent injunction restraining the defendants 1-2 from making interference in title and possession of the appellants.

18. In view of the aforesaid discussion, the first appeal deserves to be and is hereby allowed and the impugned judgment and decree passed by learned trial court, are set aside and the suit filed by the plaintiffs/respondents 1-4 stands dismissed. However, no order as to costs.

(DWARKA DHISH BANSAL)
JUDGE

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