

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

**BEFORE**

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

**SECOND APPEAL NO.912/1998**

**BETWEEN**

**VINAY KUMAR, S/O SHRI SINGHAI  
DHANNALAL, AGED ABOUT 50 YEARS,  
OCCUPATION- CULTIVATOR, R/O  
NANAK WARD, KHURAI, DISTRICT  
SAGAR (M.P)**

**.....APPELLANT**

***(BY SHRI RAVISH AGRAWAL SENIOR ADVOCATE ALONG WITH  
SHRI JASPREET GULATEE - ADVOCATE)***

**AND**

- 1. YASEEN MOHAMMAD THROUGH  
HER LRS.**
- 1A. FIROZ, D/O YASEEN MOHAMMAD,  
AGED ABOUT 50 YEARS, R/O  
PRATAP WARD, KHURAI DISTRICT  
SAGAR (M.P)**
- 1B. AFROZ, D/O YASEEN MOHAMMAD,  
AGED ABOUT 48 YEARS, R/O  
PRATAP WARD, KHURAI DISTRICT  
SAGAR (M.P)**
- 1C. JUBBA D/O YASEEN MOHAMMAD,  
AGED ABOUT 46 YEARS, R/O  
PRATAP WARD, KHURAI DISTRICT  
SAGAR (M.P)**

**1D. MUBIN, S/O YASEEN MOHAMMAD,  
AGED ABOUT 45 YEARS, R/O  
PRATAP WARD, KHURAI DISTRICT  
SAGAR (M.P)**

**....RESPONDENTS**

***(BY SHRI SAKET AGRAWAL - ADVOCATE)***

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Reserved on	18/10/2023
Delivered on	25/10/2023

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*This appeal having been heard and reserved for judgment, coming on for pronouncement this day, the Court pronounced the following:*

**JUDGMENT**

This second appeal has been preferred by the plaintiff/appellant challenging the judgment and decree dated 11.04.1997 passed by Additional District Judge, Khurai, District Sagar in Civil Appeal No.14-A/1991 affirming the judgment and decree dated 26.03.1991 passed by 3<sup>rd</sup> Civil Judge Class-II, Khurai in Civil Suit No.15-A/1990, whereby appellant/plaintiff's suit for declaration of title and recovery of possession has been dismissed.

2. Short facts of the case are that the plaintiff, claiming himself to be Bhoomiswami/owner of land Khasra No.412/3-Ka area 0.46 acre situated at Khurai, District Sagar, instituted a suit for declaration of title and recovery of possession with the averments that the defendant has, who is owner of adjacent land Khasra No.412/3-Ja, encroached upon the

plaintiff's land over an area 50'x 70' shown from red color and marked in the plaint as A-B-C-D, regarding which a compromise decree was also passed on 07.08.1965 (decree drawn on 01.09.1965) in Civil Suit No.14-A/1965 whereby the plaintiff was held to be owner of the suit land. By way of amendment it is alleged in the plaint that after passing of the compromise decree on 07.08.1965 the plaintiff was put in possession of the suit land, but in the month of October'1977 the defendant took possession again. With these averments the suit was filed on 19.06.1980.

3. Upon service of summons, the defendant appeared and filed written statement denying the plaint allegations and also denied the fact of encroachment with the submissions that he is in possession of the land Khasra No.412/3-Ja, which he purchased from Mst. Pyari Bahu, and is in possession since then and also claimed title on the basis of adverse possession.

4. On the basis of pleadings of the parties, learned trial Court framed issues and recorded evidence of the parties and upon due consideration of the entire material available on record, dismissed the suit vide judgment and decree dated 26.03.1991 and upon filing civil appeal by the plaintiff, learned first appellate Court affirmed the judgment and decree of trial Court vide impugned judgment and decree dated 11.04.1997. Against

which the instant second appeal has been filed by the plaintiff, which was admitted for final hearing on 01.11.1999 on the following substantial questions of law:-

- “1. Whether the finding of the trial Court and the first appellate Court that the land in dispute marked as A, B, C, D in the plaint map is not a part of the land which was allotted to the plaintiff as part of Khasra No.412/3-ka by the compromise decree in Civil Suit No.13-A/1965, is perverse ?
2. Whether the finding that the defendant has perfected his title to the land in dispute by adverse possession is also perverse?”

During the course of hearing final arguments on 20.09.2023, this Court formulated two more following substantial questions of law :-

- “3. Whether after passing of compromise decree of restoration of possession in favour of the appellant/plaintiff on 01.09.1965 (07.08.1965) (Ex.P/5), the plaintiff could file the fresh suit for possession for the same property on 16.06.1980 and whether it was maintainable ?
4. Whether in light of decision of Supreme Court in the case of Janki Vashdeo Bhojwani vs. Indusind Bank (2005) 2 SCC 217 testimony of Kundanlal was admissible in evidence ?”
5. Learned Senior counsel for the appellant submits that title of the plaintiff over the land in question is an admitted fact which was affirmed even by passing compromise decree dated 07.08.1965 (Ex.P/5). Learned counsel further submits that because the plaintiff is owner of the suit property, therefore, it is for the defendant to plead and prove adverse possession and as defendant has not perfected title on the basis of adverse

possession, the suit filed for possession based on title ought to have been decreed. He further submits that in pursuance of the compromise decree dated 07.08.1965 the plaintiff was put in possession of the suit property and upon his dispossession by the defendant in the month of October 1977, the suit was filed in the year 1980, which is within time and ought to have been decreed. In support of his submissions he placed reliance on the decisions in the case of Ajit Chopra vs. Sadhu Ram and Others (2000) 1 SCC 114 & Laxman Kumer alias Chuttan vs. Gyarasibai 1972 MPLJ SN 86.

6. Learned counsel appearing for the defendant (dead) now LRs/respondents submits that the plaintiff did not come in the witness box to prove the averments of the plaint, therefore, only on this ground the suit deserved to be dismissed. He further submits that after passing of compromise decree dated 07.08.1965, the plaintiff was required to file execution application within 12 years, but for the reasons best known to him he did not file execution application and now after expiry of limitation period prescribed for filing execution application and just with an intention to execute the decree of possession, instant second suit has been filed, which has rightly been dismissed by learned Courts below.

7. Learned counsel submits that in pursuance of compromise decree dated 07.08.1965 the plaintiff was not put in possession and the learned

Courts below have concurrently found that the plea of handing over possession by the defendant voluntarily, taken by the plaintiff is also not established. Learned counsel submits that learned Courts have rightly found that defendant is owner on the basis of sale deed and he is in possession of the land for more than 12 years. In support of his submissions he placed reliance on the decisions in the case of Mal Singh and others vs. Mohinder Singh AIR 1970 P&H 509=ILR (1971) 1 P&H 485; Gordhan Singh vs. Abdulji Alamji and Co. 2005 (2) JLJ 135; & Mohd. Mansur Ali Khan vs. Saifia Education Society, Bhopal and others 2006 (4) MPLJ 428.

8. Heard learned counsel for the parties and perused the record.

Substantial questions of law No.1 & 2:

9. Perusal of judgment and decree passed by learned Courts below shows that while deciding the issue no. 1 to 6, learned Courts below have held that the plaintiff has failed to prove involvement of disputed land in previous suit and the defendant is in possession of the suit land for more than 12 years on basis of sale deed executed in his favour by its predecessor-in-title. However at the same time, while deciding issue no. 6-B, learned Courts have held that the disputed land marked as A-B-C-D was in dispute in previous suit no. 14-A/65 and while deciding the issue no. 6-A, the Court held that in pursuance of compromise decree the

plaintiff was not put in possession of the land in dispute and that the defendant did not dispossess the plaintiff in the year 1977.

**10.** From perusal of substantial questions of law no. 1 & 2 it appears that in view of the aforesaid background these questions were formulated by this Court, but in the present case the plaintiff has come with a clear case that the disputed land is the same property regarding which compromise decree (Ex.P/5) was passed in his favour, therefore, the SQL no. 1 & 2 lose their importance, and this Court deems fit to decide the SQL no. 3 & 4 first.

Substantial questions of law No.3 & 4:

**11.** In the present case a compromise decree was passed in favour of the plaintiff on 07.08.1965 (Ex.P/5). As per Article 136 of the Limitation Act, 1963 limitation to execute a decree of possession is 12 years and it is well settled that a compromise decree is as good as a decree passed on merits. At the same time there is no quarrel between the parties about executability of the compromise decree.

**12.** The plaintiff has come with the case that in pursuance of the compromise decree dated 07.08.1965 he was put in possession but upon deciding issue No. 6-A framed in that regard, learned Courts below have vide (paragraph 28 of appellate Court and 12 to 17 of trial Court) their judgment and decree recorded finding that the plaintiff has failed to

establish the factum of delivery of possession by the defendant voluntarily to the plaintiff.

**13.** Upon perusal of the entire record, findings recorded in the judgment and decree passed by learned Courts below neither appear to be perverse or illegal nor any substantial question of law in that regard has been formulated by this Court. As such, it cannot be said that in pursuance of the compromise decree, the plaintiff was put in possession by the defendant voluntarily i.e. without process of the Court.

**14.** In the case of Mal Singh and others (**supra**), a coordinate Bench of Punjab and Haryana High Court, has held as under:-

**“(5) Under sub-section (1) of section 47 of the Code of Civil Procedure:—**

“All questions arising between the parties to the suit in which the decree was passed, or their representatives, and relating to the execution, discharge or satisfaction of the decree, shall be determined by the Court executing the decree and not by a separate suit.”

In a Bench decision of the Allahabad High Court of Sulaiman, J., (later Chief Justice Sulaiman) and Gokul Prasad, J., in Ramanand and others v. Jai Ram and others (1), the plaintiffs had obtained a decree in a suit for pre-emption conditional on their paying Rs. 1,000 within three months from the date of the decree. The money was paid, but for one reason or another, the plaintiffs did not get possession of the property either by process in execution, or by private arrangement. Eventually, a suit was brought by the plaintiffs on 25th April, 1917, for possession of the property awarded to them by the decree of 1905. The Bench found that the suit was barred by time under the principle of section 47 of the Code of Civil Procedure. It was argued before the Allahabad Bench, on basis of an earlier decision of that Court, that it was always open to a decree-holder to bring a suit on the decree at any time within twelve years, notwithstanding that the decree had become



incapable of execution by lapse of time. This dictum, in the view of that Bench deciding the case of Ramanand (1), “would mean that suit after suit could be brought upon barred decrees. If this is correct law, it is a very alarming situation”. If the nature of the decree requires that it should be executed, a decree-holder cannot, after allowing the limitation period to lapse without issuing process of execution, seek by a fresh suit on the decree to obtain that which he should have sought for by execution. Towards the end, the Bench in the Allahabad case observed thus :—

“We have given our best consideration to the question before us and we are of opinion that, both on authority and on a correct interpretation of section 47 of the Code of Civil Procedure, the present suit was not maintainable. Stripped of all unnecessary details, the relief claimed by the plaintiffs, in substance, amounts to asking for the fruits of a decree which they are unable to execute owing to lapse of time. The suit, in effect, does raise a question ‘relating to the execution, discharge or satisfaction’ of the former decree and cannot be determined by a separate suit.”

The analytical reasoning of the Bench, if I may respectfully say so, is unanswerable and is equally applicable to the facts of the present case. Though not in a pre-emption case, the same principle was set out by a Division Bench of Leslie Jones and Dundas, JJ., in *Harchand Singh v. Narain Singh and others* (2). Here, a mortgagee had obtained a decree for possession and it was held that no further suit for possession could be maintained unless it is shown that possession had been taken under the decree and the judgment-creditor had been subsequently dispossessed.”

**15.** Taking into consideration other decisions as well the aforesaid decision in the case of *Mal Singh and others* (**supra**), the Supreme Court in the case of *Ajit Chopra* (**supra**), has observed as under:

“25. This point is crucial to the case. Now, if a suit for possession is decreed and the decree-holder gets possession and thereafter there is a fresh dispossession, there is no difficulty in holding that a fresh suit is maintainable for ejectment, because the fresh trespass creates a fresh cause of action. This principle is stated in *Dhanraj Singh v. Mt. Lakrani Kuar*, AIR 1916 All 183, referred to by the learned single Judge in the judgment under appeal. But that is not the only situation in which, it can be said there will be a fresh cause of action. There can be other situations where a fresh cause of action arises.

26. Where an earlier decree based on title for ejectment is not executed in time but a fresh suit is however filed on the same basis against the same defendant for ejectment relying on the earlier judgment, it has been held that a second suit does not lie. This is

based on the principle that no second suit lies merely on the basis of the earlier judgment if the time for execution of the earlier decree has become barred. The cases relied up by the High Court in Ramanand v. Jai Ram, AIR 1921 All 369; Sovani Jena v. Bhima Ray, AIR 1922 Pat 407; Mal Singh Bika Singh v. Mohinder Singh Mehar Singh, AIR 1970 Punj & Har 509, belong to this category. But, in the present case, they are distinguishable. The plaint before us is not based on the decree obtained in the first eviction case filed under the Rent Control law. We may add that Chhagan Lal v. The Indian Iron and Steel Co., AIR 1979 Cal 160 also belongs to this category.”

**16.** In the case of Gian Singh v. State of Punjab and another (2010) 15 SCC 118, the Supreme Court has held that the things which cannot be done directly in law, cannot be done indirectly. Relevant para 7 is quoted as under :

7. We are of the opinion that the above three decisions require to be re-considered as, in our opinion, something which cannot be done directly cannot be done indirectly. In our, prima facie, opinion, non-compoundable offences cannot be permitted to be compounded by the Court, whether directly or indirectly. Hence, the above three decisions do not appear to us to be correctly decided.”

**17.** Undisputedly, in the present case compromise decree of possession/ejectment was not passed in the suit under the Rent Control Act, therefore, the decisions in the case of Ajit Chopra (**supra**) and Laxman Kumer alias Chuttan (**supra**) cited on behalf of the appellant are distinguishable on facts and are not applicable to the case in hand.

**18.** As such, in presence of the available period of 12 years for executing the decree of possession (Ex.P/5), if the plaintiff did/could not execute the decree, then after expiry of period available for execution of such decree, he cannot be permitted to file civil suit for restoration of possession of the same property taking false plea of delivery of possession by the defendant voluntarily.

**19.** It is well settled that a power of attorney holder cannot depose in place of the principle i.e. the plaintiff or defendant. In the present case on the basis of power of attorney dated 24.10.1964 (Ex.P/1), the power of attorney holder namely -Kundanlal (PW/1) gave evidence whereas the factum of delivery of actual possession voluntarily by the defendant to the plaintiff, could not have been proved by the power of attorney holder and it was for the plaintiff himself to depose in support of his case. However, this witness Kundanlal has also not deposed that the plaintiff was put in possession of the land in pursuance of the compromise decree (Ex.P/5). Evidently, learned Courts below have discussed evidence of Kundanlal (PW-1) in detail and have recorded the said finding, which is a pure finding of fact.

**20.** As such, in the light of decision of Supreme Court in the case of Janki Vashdeo Bhojwani and another vs. Indusind Bank Ltd. **(2005) 2 SCC 217** evidence of power of attorney holder - Kundanlal (PW-1) cannot be considered in place of the plaintiff.

**21.** Resultantly, in the light of decision of SQL no. 3 & 4, the SQL no. 1 & 2 do not arise in the present case. Accordingly, all the four substantial questions of law are decided against the plaintiff.

**22.** As such, in my considered opinion, learned Courts below have not committed any illegality in dismissing the suit.

**23.** As a result of the aforesaid, this second appeal fails and is hereby **dismissed.**

**24.** Pending application(s), if any, shall stand dismissed.

**(DWARKA DHISH BANSAL)**  
**JUDGE**

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