

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

BEFORE

HON'BLE SHRI JUSTICE AMAR NATH (KESHARWANI)

FIRST APPEAL No. 346 of 2001

BETWEEN:-

**1. STATE OF MADHYA PRADESH THROUGH
THE COLLECTOR, CHHATARPUR (M.P.)**

.....APPELLANT

(BY SHRI RAMJI PANDEY- GOVERNMENT ADVOCATE)

AND

**1. SMT. URMILA W/O K.P. SHARMA, AGED
ABOUT 54 YEARS, R/O VILLAGE GAURGOAN,
TEHSIL AND DISTRICT CHHATARPUR (M.P.)
PERMANENTLY R/O AT SECTOR NO.-7,
PANCHKULA, DISTRICT AMBALA (HARYANA)**

**2. SHAKTI PAL S/O DR. K.P. SHARMA, AGED
ABOUT 24 YEARS, R/O VILLAGE GAURGOAN,
TEHSIL AND DISTRICT CHHATARPUR (M.P.)**

.....RESPONDENTS

(NONE)

HEARD ON : 14/03/2024

PASSED ON : 05/07/2024

This First appeal having been heard and reserved for judgment, coming on for pronouncement on this day, Justice Amar Nath (Kesharwani) passed the following:

J U D G M E N T

This first Appeal under Section 96 of the Code of Civil Procedure, 1908 has been filed by appellant/State being aggrieved by the impugned judgment and decree dated 05/03/2001 passed by Second Additional District Judge, Chhatarpur (M.P.) in Civil Suit No. 6-B/1999 (Smt. Urmila & Others Vs. State of M.P.), whereby, civil suit filed for compensation by the respondents/plaintiffs was partly allowed and defendant/appellant has been directed to pay Rs.80,500/-(Eighty Thousands Five Hundred) to plaintiffs/respondents as compensation with an interest @ 9% from the date of judgment till the recovery.

2. Brief facts of the case are that the respondents/plaintiffs are having agricultural land bearing Khasra Nos. 346, 347, 348 and 356 ad-measuring area 4.19 hectare situated at Village Gaurgoan (गोसांव), Tehsil and District Chhatarpur (M.P.), in their title and possession, which was initially barren, uneven and large number of big stones were lying on the aforementioned land. Therefore, the said land was not suitable for agricultural purpose. The plaintiffs wanted to make the said land cultivable and develop it as an agriculture land, for that reason the plaintiffs had to level the said land and since it was not possible to remove the big stones lying on the land without breaking them, therefore, the same was utilized for building the boundary wall around the said land, by converting the stones into squares of 1x1 ft each by spending money out of their pocket and cleared the said land and made it cultivable and in this process, they have spent Rs,1,00,000/-(Rupees One Lakh). After flattening the land, plaintiffs have sown wheat and grains seeds. Stones of the size of 1x1ft were 50,000 in number and 90 trolley boulders total amounting to Rs.1,86,000/-(One Lakh Eighty Six Thousands), were kept for construction of boundary wall. The above said stones and boulders were confiscated by Collector, Chhatarpur (M.P.) through Mines Inspector on false information given by

persons jealous of the plaintiffs behind their back and when the plaintiffs were in Panchkula, registered a false case under Section 247 of M.P.L.R. Code bearing registration No. 1/A-67/94-95 against the respondents/plaintiffs, however, no notice was sent to the respondents/plaintiffs regarding confiscation of above said stones nor any show cause notice was given to them before transportation of stones, and passed the order dated 17/11/1994 and directed the S.D.O., P.W.D., Chhatarpur (M.P.) for picking up the stones from the field of respondents/plaintiffs and use the same for Government Construction Work.

3. After getting the information from their employee about the same at Panchkula, on 23.11.1994, the respondents/plaintiffs appeared before the Collector, Chhatarpur and filed their reply stating that respondents/plaintiffs have not violated any law and prayed for not confiscating the stones lying on their land. Besides that, respondents/plaintiffs preferred a revision No. 91/A- 67/94-95 before Additional Commissioner (Revenue), Sagar Division, District Sagar (M.P.), wherein, Additional Commissioner (Revenue), vide order dated 07.01.1995, issued direction to the Collector, Chhatarpur (M.P.) for maintaining the status quo and not to pick up the stones from the fields of respondents/plaintiffs. Additional Commissioner (Revenue), Sagar also sent the information of this order to the Collector, Chhatarpur (M.P.), vide D.O. Letter No. 23-01-1995, but despite having knowledge of order dated 07.01.1995, the Collector, Chhatarpur (M.P.) without giving any opportunity of hearing and to lead evidence to the plaintiffs, passed final order dated 29.12.1994 (Ex.P-7C) for using the stones for the Government Construction Work.

4. Being aggrieved with the final order dated 29.12.1994, respondents/plaintiffs have preferred Appeal No.139-A/A-67/94-95 before

Additional Commissioner (Revenue), Sagar Division, District Sagar (M.P.). After hearing the parties, vide order dated 28.01.1995, Additional Commissioner (Revenue) stayed the order dated 29.12.1994 passed by the Collector, Chhatarpur (M.P.) and directed to maintain status quo. However, despite the stay order passed by Additional Commissioner in revision and appeal, the Collector, Chhatarpur (M.P.) in contemptuous manner had picked up all the stones from the field of respondents/plaintiffs between 03.02.1995 to 06.02.1995 and destroyed the standing crops in the field of plaintiffs/respondents. As a result of which, appellants/defendants have suffered loss of Rs.25,000/-(Twenty Five Thousands). Later on, appeal preferred by respondents/plaintiffs was allowed vide final order dated 12.07.1996, vide which an interim order dated 17.11.1994 and final order dated 29.12.1994 passed by the Collector, Chhatarpur (M.P.) were set aside and held that order passed by the Collector was illegal. In spite of that, the Collector neither returned the confiscated stones to the respondents/plaintiffs nor gave them any compensation for the same. Being aggrieved by the same, respondents/plaintiffs have filed a civil suit No.6-B/1999 before the trial Court for getting compensation of Rs.2,11,000/-(Two Lakhs Eleven Thousands).

5. Appellant/defendant in their written statement filed before the trial court denied all the averments mentioned in the plaint and averred that there are granite deposits under the field of the plaintiffs, which could not be extracted by respondents/plaintiffs without obtaining the permission as provided under the M.P. Mining Mineral Rules, 1996. It is also averred that without getting any prior permission from State, respondents/plaintiffs have extracted stones (granite), hence, Collector is having power to seize the extracted stones as provided under Section 247(8) of Madhya Pradesh Land Revenue Code, 1959. It is further averred that expenses of extraction of aforesaid stones comes to Rs.15,000/-(Fifteen Thousands) approx.;

whereas respondents/plaintiffs have shown the expenses as Rs.1,00,000/- (One Lakh) for the said work. It is also averred that the appellant/State has fully complied with order dated 07.01.1995 passed by Additional Commissioner (Revenue), Sagar and all the stones were transported from the field of respondents/plaintiffs prior to passing of the stay order dated 07.01.1995 and no crops have been damaged during transportation of aforesaid stones from the field of respondents/plaintiffs. Hence, appellant/defendant prays for dismissal of suit.

6. Learned trial Court after framing the issues and appreciating the evidence led by the parties, vide impugned judgment, partly decreed the suit in favour of respondents/plaintiffs and awarded compensation of Rs.80,500/-(Eighty Thousands Five Hundred) in favour of respondents/plaintiffs. Being aggrieved by impugned judgment and decree, appellant/State preferred this first appeal before this Court.

7. Learned Government Advocate submits that learned trial Court has erred in ignoring the fact that the stones mined by respondents/plaintiffs were minerals covered by provisions of M.P. Mining Minerals Rules, 1996, therefore, same could not be extracted without prior permission of appellant/State. It is also submitted that respondents/plaintiffs were not entitled for getting any relief. In fact, the Collector was right in passing the order of recovery, which State has incurred while transporting the extracted stones from the field of respondents/plaintiffs. It is also submitted that respondents/plaintiffs have no right to use the stones, which were extracted from the land without taking prior permission from appellant/State. Learned trial Court has also failed to consider the fact that as per the provisions of M.P.L.R.C., appellant/State is entitled to confiscate the property. Learned Government Advocate also submitted that plaintiffs should go for compliance of order passed by Additional Commissioner (Revenue) under Section 247 (7) and 247(8) of the

M.P.L.R.C. and that the civil suit is itself was not maintainable. Hence, learned Government Advocate prays for setting aside the impugned judgment and decree.

8. I have heard learned counsel for appellant/State and perused the impugned judgment and gone through the record. It reveals from the record of the trial Court that plaintiffs/respondents have examined Shakti Pal-plaintiff No.2 as P-W-1, Babulal Sharma (PW-2) and Ajab Singh (PW-3) and exhibited documentary evidence Ex. P/1C to P/7C. Appellant/State has examined Zamil Mohd. Patwari (D.W. 1), Ganga Prasad Soni- Mining Inspector (D.W. 2), Rameshwar Lodhi (D.W. 3), Babulal Kondhar (D.W. 4), Kamlesh Kumar Gupta- Revenue Inspector (D.W. 5) and exhibited documents D/1 to D/8.

9. It is undisputed in the case that the plaintiffs/respondents are the owners of land bearing Khasra Nos. 346, 347, 348 and 356 ad-measuring area 4.19 hectare situated at Village Gaurgoan (गोरगांव), Tehsil and District Chhatarpur (M.P.). Findings of trial court on issue Nos. 1(A) and 1(B) in paragraph 16 of the impugned judgment is based on oral and documentary evidence adduced in the case by the parties and after appreciating the evidence on record. Hence, findings of trial Court regarding issue Nos. 1(A) and 1(B) are hereby confirmed.

10. It is undisputed in the case that the Collector, Chhatarpur (M.P.) has registered case No. 1/A-67/94-95 under Section 247 of M.P. Land Revenue Code and passed an order dated 17.11.1994 (Ex.P-1C) and directed S.D.O., P.W.D., Chhatarpur (M.P.) for picking up the extracted stones from the field of respondents/plaintiffs and use the same for Government Constriction Work. It is also undisputed in the case that the stones, which were kept on the land for raising boundary wall surrounding their land were transported in compliance of the order passed by the Collector, Chhatarpur (M.P.). It is undisputed in the case that against the

order passed by the Collector, Chhatarpur (M.P.) in case No. 1/A-67/94-95 dated 17.11.1994 and 29.12.1994, respondents/plaintiffs have filed an appeal Appeal No.139-A/A-67/94-95 before Additional Commissioner (Revenue), Sagar Division, District Sagar (M.P.) and after hearing the parties, the Appellate Court i.e. Additional Commissioner (Revenue), Sagar Division, District Sagar (M.P.) passed an interim order dated 28.01.1995 and directed the Collector, Chhatarpur (M.P.) to maintain status-quo and passed final order dated 12.07.1996 (Ex.P-2) and set-aside the order dated 17.11.1994 and 29.12.1994 passed by Collector, Chhatarpur (M.P.) holding that the order passed by the Collector, Chhatarpur (M.P.) is not sustainable.

11. It is not the case of the appellant/State that order passed by Additional Commissioner (Revenue), Sagar Division, District Sagar (M.P.) was challenged before any competent Court and competent court has set-aside the order passed by Additional Commissioner (Revenue), Sagar Division, District Sagar (M.P.). It is also not the case of the appellant/State that after passing of order dated 12.07.1996 in Appeal No. 139-A/A-67/94-95, he has returned the stones to the plaintiffs/respondents, which were picked up from the field of respondents/plaintiffs or he has directed his sub-ordinates to return the stones to the respondents/plaintiffs.

12. Hence, as discussed above, in considered opinion of this court, the finding of the trial court on issues no.2A, 2B, and Issue no.5 are in accordance with law and based on the proper appreciation of evidence adduced in the case. Learned Trial Court has rightly quantified the compensation amount of Rs.80,500/-(Rupees Eighty Thousand Five Hundred) which is not liable to be interfered in the appeal.

13. It reveals from the record of trial court that Appellant/State has not raised any objection regarding maintainability of the suit before the Trial Court, hence, at the appellate stage it is not permissible to raise new

ground. Besides that, looking to the facts and circumstance of the case, civil suit filed for compensation is found maintainable and there is no ground to interfere with the finding of the trial court

14. In the case of ***Baburao Bagaji Karemore & Others Vs. Govind and Others, AIR 1974 SC 405***, the Hon'ble Apex Court has held that "Though the appellate Court is entitled to examine and appreciate the evidence in order to ascertain whether the finding of the trial Court is warranted, it will not interfere with it unless it is unsound, perverse or based on the grounds which are unsatisfactory by reason of material inconsistencies or inaccuracies. It should not lightly interfere with it merely because it takes a different view of the evidence." Para No. 29 of the judgment of ***Baburao Bagaji Karemore (Supra)*** is reproduced here as under :-

"29. This finding has been attacked by the learned Advocate for the appellants on the ground that the appreciation of evidence by the learned Judge of the High Court is not warranted. It is needless for us to reiterate what has over a long course been observed in numerous decisions that a finding arrived at on an appreciation of conflicting testimony by a trial Judge who had the opportunity of observing the demeanour of witnesses while giving evidence should not be lightly interfered with merely because an appellate court which had not the advantage of seeing and hearing the witnesses can take a different view. Before a finding of fact by a trial court can be set aside it must be established that the trial Judge's findings were clearly unsound, perverse or have been based on grounds which are unsatisfactory by reason of material inconsistencies or inaccuracies. This is not to say that a trial Judge can be treated as infallible in determining which side is indulging in falsehoods or exaggerations and consequently it does not preclude an appellate court from examining and appreciating the evidence in order to ascertain whether the finding arrived at by the trial Judge is warranted. If that is not warranted, it can, on its view of the evidence, arrive at a conclusion which is different from that arrived at by the trial court. This aspect was discussed in detail in *Laxminarayan v. Returning Officer, C.A.No.1014 of 1972, D/- 28-9-1973 = reported in AIR 1974 SC 66* to which we were parties."

(Emphasis supplied)

15. Co-ordinate Bench of this Court in the case of *Noor Mohammad Vs. Mohammad Jiauddin and Others, 1991 MPLJ 503* (Gwalior Bench), it was held that “Appellate Court not to interfere with finding on question of fact unless evidence of particular witness escaped notice or there is sufficient balance of improbability to displace opinion as to credibility.”

16. Similarly Co-ordinate Bench of this Court in the case of *Ram Charan Singh Vs. Brij Bhusan Pandey and Others, 1997(1) MPLJ 565* (Gwalior Bench) has held that “Trial Court having advantage of recording evidence and noticing the demeanour of witnesses. In such a situation the appellate Court should be slow to interfere with findings recorded by Trial Court.”

17. Hence, as discussed above, in the considered opinion of this court, the judgment and decree passed by learned trial Court is in accordance with law and material available on record as also there is no perversity, hence, no interference is required.

18. Accordingly, impugned judgment and decree dated 05.03.2001 passed by Second Additional District Judge, Chhatarpur (M.P.) in civil suit No. 6-B/1999 (Smt. Urmila & Others Vs. State of M.P.) is hereby affirmed. Consequently, the appeal is hereby dismissed. Cost of Civil Suit as well as the instant appeal will be borne by the appellant/defendant. Decree be drawn accordingly.

19. Let record of trial Court be sent back to the concerned court along with copy of this judgment.

(AMAR NATH (KESHARWANI))

skt

JUDGE