

**IN THE HIGH COURT OF MADHYA PRADESH**

**AT JABALPUR**

**BEFORE**

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

**SECOND APPEAL NO.80 OF 2003**

**Between:-**

- 1 SMT. FATIMA BI (DEAD)**
- 2. USMAN KHAN, AGED ABOUT 45 YEARS,  
S/O INAYAT KHAN.**
- 3. YUNIS KHAN, AGED ABOUT 42 YEARS,  
S/O INAYAT KHAN.**
- 4. IMRAN KHAN (DEAD) THROUGH LRS:**
  - 4A. SMT. FARIDA KHAN WD/O IMRAN  
KHAN, AGED 45 YEARS,**
  - 4B. ISAN KHAN, AGED ABOUT 15 YEARS  
S/O LATE IMRAN KHAN**
  - 4C. FAIZAN KHAN, AGED ABOUT 12  
YEARS S/O LATE IMRAN KHAN**

**RESPONDENTS 4B AND 4C ARE MINORS  
THROUGH THEIR GUARDIAN MOTHER  
SMT. FARIDA KHAN. ALL R/O VILLAGE  
AND POST MATKULI, TAHSIL PIPARIYA  
DISTRICT HOSHANGABAD (M.P.)**

**.....APPELLANTS**

***(BY SHRI AMIT KHATRI - ADVOCATE)***

**AND**

1. **KU. NAJNIN, AGED ABOUT 35 YEARS,  
DAUGHTER OF SHAMSUDDIN**
2. **RIYAZUDDIN, AGED ABOUT 34 YEARS  
S/O SHAMSUDDIN,**
3. **AJAJ (DEAD) THROUGH LRS:**  
  
**3A. SMT. AYSA BEE, AGED ABOUT 70  
YEARS, WIDOW OF SAMSUDDIN  
(MOTHER OF LATE AJAJ RESIDENT NO.3)  
R/O WARD NO.13, BEHIND BUMBAI WALE,  
SEONI MALWA, DISTRICT  
HOSHANGABAD (M.P.)**
4. **KU. NASRIN, AGED ABOUT 2 YEARS,  
D/O SHAMSUDDIN.**  
  
**R/O GADARI MOHALLA, SEONI MALVA  
DISTRICT HOSHANGABAD (M.P.)**
5. **THE STATE OF M.P. THROUGH THE  
COLLECTOR, HOSHANGABAD (M.P.)**

.....RESPONDENTS

**(BY SHRI IMTIYAZ HUSSAIN – SENIOR ADVOCATE ASSISTED  
BY SHRI SAZID KHAN - ADVOCATE)**

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Reserved on : 09.11.2022

Pronounced on : 23.11.2022

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*This second appeal has been heard and reserved for judgment, coming on for pronouncement this day, the court delivered the following:*

### **J U D G M E N T**

This second appeal has been filed by the defendants challenging the judgment and decree dated 29.10.2002 passed by 3<sup>rd</sup> Additional

District Judge, Hoshangabad, Link Court Sohagpur in regular civil appeal no.24-A/02 confirming the judgment and decree dated 19.11.2001 passed by Civil Judge Class-I, Piparia, District Hoshangabad in civil suit no.118-A/96 whereby, learned trial Court decreed the suit of the respondents for declaration of title and permanent injunction with regard to land Khasra no.54/1 area 26.67 acre, situated in Village Mehandikheda, Tahsil Piparia, District Hoshangabad.

2. In short the facts are that, the plaintiffs/respondents instituted a suit claiming themselves to be successors of Zahiruddin, who was born out of wedlock of second wife of Shamsuddin, whereas the plaintiffs are the children from first wife Aysa Bi. It is alleged that on 23.10.1972, father of plaintiffs, Shamsuddin purchased the suit land in the name of minor son Zahiruddin for consideration of Rs.1,000/- from the original owner Smt. A.G. Granvile, but due to ailment, Shamsuddin instructed Aziz Mohd. to get the sale deed executed in the name of Zahiruddin and he being minor, name of Aziz Mohd. was shown in the sale deed as guardian. As trees of Sagwaan and Satkate were standing on the land, therefore, no agriculture was done. In the month of July 1992, when the plaintiffs made contact to the Patwari for getting their name mutated, then they came to know that there is no land in the name of Zahiruddin in the village. Thereupon, the plaintiffs applied for certified copies of the Khasra entries, as well as of the sale deeds and came to know that the land area 53.38 acre is recorded

in the name of Edit William, Adaginvil widow of H.S. Greenvil and Aziz Mohd. Habibullah and in the Khasra of the year 1991-92, name of defendants is recorded as bhoomiswami. Zahiruddin was born on 15.09.1967 and attained majority on 15.09.1985 and died on 28.02.1989 whereas Aziz Mohd. had died in the year 1987 itself. On what basis name of Aziz Mohd. was recorded in the revenue record, is not clear but he had no right to get the land recorded in his name in the minority of Zahiruddin, which does not confer any right on Aziz Mohd. On the aforesaid and on inter alia allegations the suit was filed.

3. The defendants appeared and filed written statement denying the plaint allegations. Taking several objections, the defendants contended that they received the disputed land in succession through Aziz Mohd., regarding which the original owners raised objections which were overruled by Tahsildar and declared that the land of Khasra no.54/1 is of Mohd. Aziz. The previous owners A.G. Huge and Smt. William sold 1/3 share of the land in question to Mohd Aziz vide registered sale deed dated 29.02.1960, later upon raising objection by Greenvil, Aziz Mohd. got executed the sale deed in the name of Zahiruddin who was residing with Aziz Mohd. and the amount of consideration of Rs.1000/- was not paid by Shamsuddin, who was driver and had no sufficient means. The plaintiffs without having any right want to grab the suit land, which has been in possession of Aziz Mohd. since prior to the year 1960. The

defendants claiming themselves to be in possession of the land with effect from the year 1960, also claimed themselves to be owner, on the basis of adverse possession. On inter alia contentions, the suit was prayed to be dismissed.

4. On the basis of pleadings, learned trial Court framed as many as 7 issues and recorded evidence of the parties and after consideration of the same decreed the suit vide judgement and decree dtd. 19.11.2001 holding the plaintiffs to be owner and in possession of the land Khasra no.54/1 area 26.67 acre situated in Village Mehandikheda, Tahsil Piparia and passed decree of permanent injunction against the defendants from making any interference in possession of the plaintiffs.

5. Civil appeal filed by the defendants, was dismissed by learned first appellate Court vide its judgment and decree dated 29.10.2002 confirming the judgment and decree of trial Court.

6. Upon filing second appeal by the defendants, this Court vide order dated 28.10.2014 admitted the same on the following substantial questions of law:-

“(1) Whether despite earlier registered sale deed, Ex.D-7, dated 29-2-1960 of Khasra No.54/1, area 17.79 acres in favour of Aziz Mohammad (Predecessor of Defendants), Ex.D-4 dated 18-11-1972, sale deed in favour of Chhotelal, the vendors

could pass legal and valid title in favour of Zahiruddin (Predecessor of Plaintiffs) by Ex.P-1, 26.67 acres ?

(2) Whether the Courts below have properly construed and interpreted sale deed, Ex.D-7, dated 29-2-1960 in favour of defendants, Will Ex.D-6, dated 9-6-1986, sale deed, Ex.D-4, dated 18-11-1972 in favour of Chhotelal and Ex.P-1, sale deed, dated 18-11-1972 in favour of plaintiffs ?

(3) Whether the Courts below have properly construed and interpreted defendants' documents Ex.D-1, dated 12-8-1968, order of Naib Tahsildar, Sohagpur, Ex.D-2 Khasra Panchsala, Ex.D-3, Kist Bandi, Ex.D-5, dated 15-7-1967, order of Tahsildar ?

(4) Whether the findings recorded by the Courts below are perverse ?”

7. Learned counsel for the appellants/defendants submits that even if the plea of benami and adverse possession taken by the defendants, is discarded or not considered, the defendants being owner and in possession of the land Khasra no.54/1 area 17.79 acre covered by registered sale deed dated 29.02.1960 (Ex.D-7), are entitled to protect their title and possession over the land and no decree could have been passed in favour of the plaintiffs, because the sale deed dated 29.02.1960 (Ex.D-7) being of the period in prior point of time, will prevail over the sale deed dated 18.11.1972 (Ex.P-1c) and in the light of findings recorded by learned Courts below, the plaintiffs should have filed the suit against

Chhotelal in whose favour there is sale deed dated 18.11.1972 (Ex.D-4). He submits that in any case, there is no adverse effect on the sale deed dated 29.02.1960, it being executed in prior point of time by the original owners. He submits that learned Courts below have not considered the provision contained in Section 48 of the Transfer of Property Act, 1882 and has not recorded any finding in that regard, which in the light of execution of three sale deeds, was necessary.

8. Learned Senior counsel for the respondents submits that the defendants have come with the different and self destructive pleas, which have rightly been discarded by learned Courts below. He submits that learned Courts below have rightly held the plaintiffs to be owner/bhumiswami and in possession of the suit land and there is no adverse effect of the sale deed dated 29.02.1960 (Ex.D-7) over the sale deed dtd. 18.11.1972 (Ex.P-1c) executed in favour of the plaintiffs/ Zahinruddin. He submits that the defendants can claim their property from Chhotelal. With these contentions, he prays for dismissal of the appeal.

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

10. From the aforesaid it is clear that there are three sale deeds, which were executed by original owners/bhumiswami of the land :-

- i. Sale deed dtd. 29.2.1960 (Ex.D-7) in favour of defendants' ascendant Aziz Mohd;
- ii. Sale deed dtd. 18.11.1972 (Ex.P-1c) in favour of plaintiffs' ascendant Zahiruddin;
- iii. Sale deed dated 18-11-1972 (Ex.D-4) in favour of Chhotelal.

**11.** Section 48 of the Transfer of Property Act may be relevant in the facts and circumstances of this case which reads as under :

**48. Priority of rights created by transfer.**

Where a person purports to create by transfer at different times rights in or over the same immoveable property, and such rights cannot all exist or be exercised to their full extent together, each later created right shall, in the absence of a special contract or reservation binding the earlier transferees, be subject to the rights previously created

**12.** In the light of provision of section 48 of the T.P. Act, learned Senior counsel for the respondents, submits that although the sale deeds (Ex.P-1c) and (Ex.D-4) were executed on same date 18.11.1972 but sale deed executed in favour of Zahiruddin i.e. the sale deed dtd. 18.11.1972 (Ex.P-1c) is in prior point of time and the sale deed dated 18.11.1972 (Ex.D-4) executed in favour of Chhotelal is subsequent to sale deed (Ex.P-1c). I minutely perused both the sale deeds and upon perusal of second paragraph of both the sale deeds dtd. 18.11.1972, the submission of the learned senior counsel appears to be correct. As such, the only dispute to be decided by learned Courts below, was only amongst the

plaintiffs and Chhotelal or his successors but for want of their impleadment, learned Courts below have not given any finding with regard to the sale deed (Ex.D-4) executed in favour of Chhotelal.

13. Undisputedly and as per findings recorded by learned Courts below, previous owners of the land survey no. 54/1 executed registered sale deed dated 29.02.1960 (Ex.D-7) in favour of Aziz Mohd and the defendants are his descendants. As per provision contained in Section 48 of the Transfer of Property Act, 1882 and in the light of decisions of the Supreme Court in the case of *Atla Sidda Reddy Vs. Busi Subba Reddy and others* 2010 (4) MPLJ 304 (SC) = (2010) 6 SCC 666 and of this Court in the case of *Mohd. Ashraf and another Vs. M.P. Housing Board and others* 2011(1) MPLJ 444; and *Sunil Kumar Vs. Dr. Omprakash Garg and others* 2010 RN 315, in case of two or more sale deeds of same land, the previous sale deed(s) will prevail over later sale deed(s).

14. As such, in my considered opinion, in presence of sale deed dated 29.02.1960 (Ex.D-7), the defendants being owners of the suit property at least to the extent of 17.79 acre, are entitled to protect their title and possession against the plaintiffs as well as against Chhotelal. Certainly the learned Courts below have not taken care of the rights of the defendants conferred upon them by way of the sale deed dated

29.02.1960 executed in favour of Aziz Mohd. and on the basis of weakness of the case of defendants and due to different pleas taken by defendants, the learned Courts below have decreed the suit with regard to the entire area of the land covered by the sale deed (Ex.P-1c).

**15.** Apparently the order of Naib Tahsildar, Sohagpur dated 12-8-1968 (Ex.D-1), Khasra Panchsala (Ex.D-2), Kist Bandi (Ex.D-3), Order of Tahsildar dated 15-7-1967 (Ex.D-5) are nothing but are the order of mutation and entries made in the revenue record based on order of mutation, which neither confer title nor extinguish title of the real owner. As such in the light of aforesaid findings recorded by this Court on the question of title, the orders of mutation and revenue entries based thereon, are liable to be ignored.

**16.** As such in my considered opinion, the sale deed dtd.29.2.1960 (Ex.D-7) will prevail over the sale deed dtd. 18.11.1972 (Ex.P-1c). Similarly the sale deed 18.11.1972 (Ex.P-1c) will prevail over the sale deed dtd. 18.11.1972 (Ex.D-4). Meaning thereby, the area purchased by the sale deed dtd. 29.2.1960 will be reserved firstly and thereafter the area of sale deed dtd. 18.11.1972 (Ex.P-1c) is liable to be reserved and lastly the sale deed dtd.18.11.1972 (Ex.D-4) will be considered valid only to the remaining area out of total area 53.38 acres. With these findings, this

second appeal succeeds and judgement and decree passed by learned Courts below are modified.

17. The substantial questions of law 1 to 4 are decided accordingly. However, no order as to costs.

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

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