

IN THE HIGH COURT OF MADHYA PRADESH**AT JABALPUR****BEFORE****HON'BLE SMT. JUSTICE ANJULI PALO****ON THE 19th OF MAY, 2022****SECOND APPEAL No. 1976 of 2019****Between:-**

**SHYAMLAL S/O JAMUNA PRASAD JAISWAL,
AGED ABOUT 60 YEARS, OCCUPATION: SERVICE,
R/O VILLAGE GAGHARA,
TEHSIL HUZUR, DISTT. REWA (M.P.)
(MADHYA PRADESH)**

.....APPELLANT**(BY SHRI D.D. BHAVE, ADVOCATE)****AND**

- 1. BHAGWAT PRASAD, S/O VISHWANATH PRASAD,
AGED ABOUT 55 YEARS, OCCUPATION: CULTIVATION
R/O GRAM SEMARIYA, DISTT. REWA
(MADHYA PRADESH)**
- 2. GEETA PRASAD S/O VISHWANATH PRASAD,
AGED ABOUT 50 YEARS,
OCCUPATION: CULTIVATION**
- 3. UDAY PRASAD S/O VISHWANATH PRASAD,
AGED ABOUT 45 YEARS, OCCUPATION: CULTIVATION**
- 4. SUDAMA PRASAD, S/O VISHWANATH PRASAD,
AGED ABOUT 43 YEARS,
OCCUPATION: CULTIVATION**
- 5. GYANCHAND S/O VISHWANATH PRASAD,
AGED ABOUT 35 YEARS,
OCCUPATION: CULTIVATION**

**ALL RESIDENTS OF VILLAGE GAGHARA,
P.S. SAGRA, TEHSIL HUZUR,
DISTT. REWA (M.P.) (MADHYA PRADESH)**

- 6. STATE OF MADHYA PRADESH
THROUGH
COLLECTOR DISTT. REWA
(MADHYA PRADESH)**
- 7.**
**BHAIYALAL AGED 65 YEARS,
OCCUPATION – PENSIONER, (DEAD)
THROUGH LEGAL REPRESENTATIVES:**
- A. SMT. GOMTI JAISWAL
W/O LATE BHAIYALAL ,
AGED ABOUT 65 YEARS, OCCUPATION: HOUSEWIFE**
- B. AJAY KUMAR S/O LATE BHAIYALAL JAISWAL
AGED ABOUT 45 YEARS,
R/O VILLAGE GAGHARA,
TEHSIL HUZUR, DISTT. REWA
(MADHYA PRADESH)**
- ANIL KUMAR S/O LATE BHAIYALAL JAISWAL,**
**C. AGED ABOUT 43 YEARS,
OCCUPATION: BUSINESS
R/O VILLAGE GAGHARA, TEHSIL HUZUR,
DISTT. REWA (MADHYA PRADESH)**
- D. REENA JAISWAL S/O LATE BHAIYALAL JAISWAL,
AGED ABOUT 41 YEARS, OCCUPATION: HOUSEWIFE
R/O VILLAGE GAGHARA, TEHSIL HUZUR,
DISTT. REWA (MADHYA PRADESH)**
- E. SMT. MEENA JAISWAL D/O LATE BHAIYALAL JAISWAL,
AGED ABOUT 38 YEARS, OCCUPATION: HOUSEWIFE
R/O VILLAGE GAGHARA, TEHSIL HUZUR,
DISTT. REWA (MADHYA PRADESH)**
- F. SMT. GEETA JAISWAL D/O LATE BHAIYALAL JAISWAL,
AGED ABOUT 35 YEARS, OCCUPATION: HOUSEWIFE
R/O VILLAGE GAGHARA,
TEHSIL HUZUR, DISTT. REWA
(MADHYA PRADESH)**
- 8. VIJAY KUMAR S/O JAMUNA PRASAD JAISWAL,
AGED ABOUT 50 YEARS, OCCUPATION: SERVICE
R/O VILLAGE GAGHARA, TEHSIL HUZUR,**

DISTT. REWA (MADHYA PRADESH)**.....RESPONDENTS**

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

JUDGMENT

In this second appeal preferred under Section 100 of the Code of Civil Procedure, the appellant/plaintiff has challenged the impugned judgment and decree dated 20.06.2019 passed in regular Civil Appeal No.101/2017 passed by learned 4th Additional District Judge, district – Rewa whereby the judgment and decree dated 22.04.2017 passed by the trial Court in Civil Suit No.A-3600171/2014 has been affirmed.

2. The facts, in a nutshell, are that the plaintiffs instituted the suit for declaration of title and permanent injunction against the defendants in respect of the suit lands. The suit lands i.e. land bearing khasra number 774 admeasuring 0.63 acre; kh. no.275 admeasuring 0.37 acre and kh. no.276 admeasuring 0.18 acre situated at village- Ganghara, tahsil – Huzur, district – Rewa (old khasra number 302 admeasuring 7.02 acre). The said land earlier belonged to Gangjali Kayasth who had given the suit land to the grandfather-Bhola Prasad for residential purposes. After the death of Bhola Prasad in the year 1965, his son Jamuna Prasad enjoyed the possession and ownership of the said land. He also got a well dug in the said land and planted trees thereon. It was also claimed that after death of their father Jamuna Prasad in the year 1970, the plaintiffs are in continuous possession of the said land.

3. However, it is further claimed, that without intimation to the plaintiffs/appellant, the father of defendants 1 to 5 Vishwanath Prasad got his name mutated his name in respect of the disputed land with the collusion of revenue authorities. The plaintiffs claimed that they are in peaceful and uninterrupted possession of the suit lands for more than thirty years. Hence, they also claimed title by adverse possession. Another ground taken by the plaintiffs was that the plaintiffs were in peaceful possession of the suit lands during the existence of Rewa State Land Revenue and Tenancy Act and they were also in possession of the same during enactment of M.P. Land Revenue Code, 1959 and hence, in view of Section 158 (D-2), they became owners of the suit lands.

4. In the written statement filed by the defendants, they denied the averments put forth by the plaintiffs. It is stated by the defendants that in the year 1971-72 the name of their father – Vishwanath Prasad was recorded as owner and in possession of the suit lands. The said fact was very well in the knowledge of the plaintiffs.

5. The trial Court vide judgment and decree dated 22.04.2017 dismissed the suit filed by the plaintiffs holding that the plaintiffs failed to prove that their grandfather Bhola Prasad received the suit lands from Gangajal and they also failed to prove that they are in peaceful adverse possession of the suit lands for more than thirty years. The aforesaid judgment and decree have been affirmed by the lower appellate Court vide impugned judgment and decree.

6. In this appeal, the appellant has proposed the following substantial questions of law:

“A. Whether the entire oral as well as the documentary evidence available on record has been misread and/or misappreciated by the Courts below in holding that plaintiffs have not proved that the suit lands were given by the estwhile Bhumiswami Gangajali Kayastha in favour of their grandfather Bhola Prasad followed by delivery of possession which conferred valid title upon him ?

B. Whether the suit lands having been given to plaintiff's grandfather Bhola Prasad by Gangajali Kayastha putting him in possession thereof, he became its Bhumiswami by virtue of provisions of Vindhya Pradesh Land Revenue and Tenancy Act, 1953 and Section 158 of MP Land Revenue Code, 1959 ?

C. Whether from the material available on record it is evident that plaintiffs are in possession of the suit lands and the house constructed thereupon ever since the time of their grandfather whereas the Courts below have illegally held that it is the defendants who are in possession thereof ?”

7. Learned counsel for the appellant has vehemently urged that the Courts below have not properly appreciated the evidence

on record whereas the plaintiffs have categorically proved that the suit lands were given to their grandfather Bhola Prasad. It is further contended that as the plaintiffs were in possession by virtue of Section 158 of the MP Land Revenue Code, they became owner of the suit lands.

8. Heard learned counsel for the appellant on the question of admission and perused the record.

9. The Courts below found that the plaintiffs/appellant failed to prove that the disputed lands were given by Gangajali to their grandfather – Bhola Prasad. Whereas, on the other hand, defendants produced revenue documents of the years 2001-05 and 2007-12 (Exhibits D-2 and D-3) in which defendant No.2 Geeta Prasad has been recorded as owner (Bhumiswami) of the disputed lands of khasra numbers 274 and 275. The defendants also produced lease dated 05.12.1962 wherein Vishwanath has been described as lease holder. In the revenue documents of the year 1998-99 (Exhibit D-6) also the name of the defendant No.2 Geeta Prasad has been mentioned as possession holder.

10. Hon'ble the Supreme Court in the case of ***Ravi Setia v. Madan Lal and Others, (2019) 9 SCC 381*** has held that interference and reappraisal of the evidence in an appeal under Section 100 of the Code of Civil Procedure is permissible only where findings are perverse i.e. based on complete misappreciation or erroneous

consideration of evidence or where there is failure to consider relevant evidence, as the same becomes question of law. [See also: ***Damodar Lal v. Sohan Devi and Others***, (2016) 3 SCC 78]

11. In this context it is apt to refer to the decision rendered in the case of ***Naresh and Others v. Hemant and Others***, 2019 SCC Online SC 1490 wherein it has been observed by Hon'ble the Supreme Court as follows:

“81. Despite repeated declarations of law by the judgments of this Court and the Privy Council for over a century, still the scope of Section 100 has not been correctly appreciated and applied by the High Courts in a large number of cases. In the facts and circumstances of this case, the High Court interfered with the pure findings of fact even after the amendment of Section 100 CPC in 1976. The High Court would not have been justified in interfering with the concurrent findings of fact in this case even prior to the amendment of Section 100 CPC. The judgment of the High Court is clearly against the provisions of Section 100 and in no uncertain terms clearly violates the legislative intention.”

12. In this context, it is appropriate to refer to the decision in the case of *Nazir Mohamed v. J. Kamala and Others*, 2020 SCC OnLine SC 676 wherein Hon'ble the Supreme Court in paragraph 32 has held as follows:

“32. To be “substantial”, a question of law must be debatable, not previously settled by the law of the land or any binding precedent, and must have a material bearing on the decision of the case and/or the rights of the parties before it, if answered either way.”

13. On meticulous appreciation of oral and documentary evidence, the Courts below found that the plaintiffs were not in possession of the suit lands hence, contention of the appellant that by virtue of Section 158 of the MP Land Revenue Code, the appellant has acquired title does not have substance. From perusal of the judgments passed by the trial Court as well as Lower Appellate Court, it is apparently clear that no substantial question of law arises for consideration in this appeal.

14. The findings recorded by the Courts below are based on proper appreciation of the evidence available on record. The same cannot be termed as perverse or illegal warranting interference by this Court in exercise of power under Section 100 of the Code of Civil Procedure.

15. Hence, no substantial question of law arises for consideration in this appeal. Accordingly, the same being devoid of merits, stands **dismissed**.

(SMT. ANJULI PALO)
JUDGE

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