

**IN THE HIGH COURT OF MADHYA
PRADESH
AT JABALPUR
BEFORE
HON'BLE SHRI JUSTICE DWARKA DHISH BANSAL
REVIEW PETITION No. 800 of 2023**

SMT. SHAKUNTALA AND OTHERS

Versus

***SMT. KAMARJAHAN DEAD THROUGH LRS KASIM KHAN AND
OTHERS***

Appearance:

Shri Amit Dave - Advocate for the petitioners.

Shri Anshuman Singh & Shri Anil Kumar Dhagat - Advocate for the respondents.

Shri Anupam Chaturvedi - Panel Lawyer for the State.

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Reserved on :: 20.11.2024
Pronounced on :: 02.12.2024
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ORDER

This review petition has been preferred by the petitioners/plaintiffs seeking review of the judgment dated 25.07.2023 passed by a coordinate Bench of this Court in Second Appeal no.1735/2017 whereby plaintiffs/petitioners' second appeal has been dismissed affirming the judgment and decree passed by Courts below dismissing the suit filed simplicitor for permanent injunction.

2. Facts in short are that a suit for permanent injunction was filed by plaintiffs/petitioners with the allegations that land survey no.62/5 admeasuring 13.69 acres situated in Village Chaupra Khurd, Tahsil and District Damoh was owned and possessed by Mohan Munda, who died in the year 1969. Mohan Munda was survived by his wife Putra Bai and sons Karelal and Balkishan. The petitioners are wife and son of

Balkishan. The land survey no.62/5 was divided in to two numbers i.e. 62/5 and 62/7. Land survey no.62/5 was having an area 10.90 acres and land survey no.62/7 was having an area 2.79 acres. It is undisputed fact on record that land survey no.62/7 area 2.79 acres remained joint and was kept for storage of water and bricks formation and land survey no.62/5 area 10.90 acres was divided amongst three sharers and each of them was given 3.63 acres of land. As Putra Bai and Balkishan sold their shares to Karelal, therefore, Karelal became exclusive owner of land survey no.62/5 area 10.90 acres. It is also undisputed fact on record that Karelal vide registered sale deed dated 16.09.1970 transferred an area 4.60 acres to Balkishan out of an area 10.90 acres. As such, area purchased by Balkishan was renumbered as survey no.62/6. In the year about 1985, Balkishan died and his legal heirs i.e. the plaintiffs/petitioners succeeded his property.

3. It is also undisputed fact on record that previously on the application of Karelal, the land survey no.62/5 area 6.30 acres and 62/7 area 2.79 acres were merged vide order dt. 24.12.1987 and this order was set aside by Board of Revenue vide order dated 23.04.1993 (Ex.P/10), which attained finality due to no challenge made to it by the respondents or their predecessor(s). It is also undisputed fact on record that out of total area of survey no.62/5 an area 0.405 hectare (1.40 acre) was sold by Karelal to Sardar Darshan Singh on 28.01.1988 showing it to be of survey no.62/160, however, later on mutation of Darshan Singh was set aside vide order dated 23.04.1993 (Ex.P/11). It is also an undisputed fact on record that Darshan Singh later on sold an area 0.007 hectare to Kamarjahan on 04.10.2011, whose legal heirs are Kasim Khan and others (respondents herein). By way of filing civil suit, the plaintiffs contended that the defendants showing their land in the land of survey no.62/7, are

trying to make encroachment and want to dispossess the plaintiffs, hence suit was filed for permanent injunction.

4. After trial suit was dismissed by trial Court vide judgment and decree dated 22.12.2016. Upon filing first appeal, the same was dismissed on 21.08.2017. Second Appeal was filed by the plaintiffs, which was admitted on 13.12.2017 for final hearing on the following substantial question of law:-

"Whether both the Courts below are justified in giving the findings contrary to the revenue record which has also been affirmed by the Board of Revenue?"

5. Thereafter, the second appeal came in hearing and was dismissed vide judgment and decree dated 25.07.2023, which is under review.

6. Learned counsel for the petitioners/plaintiffs submits that ownership of plaintiffs over the land survey no.62/7 is not in dispute and the defendants are claiming themselves to be in possession of the land survey no.62/5. He submits that till now, the land has not been partitioned. By placing reliance on decision of Hon'ble Supreme Court in the case of Kichha Sugar Company Limited vs. Roofrite Private Limited, **(2009)16 SCC 280**, he submits that once substantial question of law has been framed by High Court, then High Court is obliged to decide the substantial question of law framed at the time of admission and at the time of final hearing it cannot be said that formulated substantial question of law is not the substantial question of law. By emphasizing on para 28 of the judgment and decree dated 14.08.2015 (Ex.P/16), he submits that it has already been decided that the land purchased by Darshan Singh is of Khasra no. 62/7 and is not of Khasra no.62/5 and till now this judgment and decree has not been set aside by any Court, which has not been taken into consideration by Courts below including the High Court. Criticizing the findings recorded by this Court in para 9, he submits that

the order passed by Board of Revenue was very well binding on the parties, but High Court has erred in ignoring the order of Board of Revenue by saying that the finding given by Revenue Board is not binding on the Civil Court, whereas in respect of correction of revenue record exclusive jurisdiction is with the revenue Courts. He further submits that in view of existing pleadings of the parties, it is a clear case of demarcation of boundaries of survey numbers because the plaintiffs are alleging the suit land to be of survey no.62/7 and the defendants are alleging the suit land belonging to survey no.62/5. He submits that in such circumstances, the dispute involved in the case could not have been decided without appointment of Commissioner, especially in the circumstances where the defendants being stranger purchasers to the land, can claim themselves to be in possession only after getting their land partitioned by filing appropriate application before the revenue Court under Section 178 of the M.P. Land Revenue Code, 1959 (in short 'the Code'). With these submissions he prays for recalling of the judgment passed by this Court in second appeal by granting review.

7. Learned counsel for the respondents submits that upon due consideration of the oral as well as documentary evidence, the suit simplicitor for permanent injunction was rightly dismissed by Courts below and High Court has also dealt with the oral and documentary evidence in detail and affirmed the judgment and decree passed by Courts below. In such circumstances there are concurrent findings of three Courts dismissing the plaintiffs' suit for permanent injunction. By placing reliance on the decisions of Hon'ble Supreme Court in the case of Haridas Das vs. Usha Rani Banik & others, **(2006) 4 SCC 78**; S. Bagirathi Ammal vs. Palani Roman Catholic Mission, **(2009) 10 SCC 464**; Shanti Conductors Private Limited vs. Assam State Electricity Board and others, **(2020) 2 SCC 677**; and Arun Dev Upadhyaya vs. Integrated Sales

Service Limited, **(2023) 8 SCC 11**; he submits that scope of review is very limited and by way of review petition the plaintiffs cannot be permitted to argue the appeal again. At the same time, counsel for the respondents by placing reliance on paragraphs 5, 6 and 16 of the review petition submits that the petitioners cannot be permitted to argue beyond the grounds taken in the review petition. He also placed reliance on the oral testimony of plaintiff- Smt. Shakuntala (PW-1) made in para 15, 16, 18 and 24 and submits that in the light of admissions made by plaintiff-Shakuntala, the lands of the plaintiffs and defendants are separate and different and there is no dispute of boundaries. With these submissions, he prays for dismissal of the review petition.

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

9. If undisputed pleadings of the parties are taken into consideration, then it is clear that survey no.62/7 area 2.79 acres is still joint property of legal heirs of Mohan Munda i.e. of the petitioners and respondents' predecessor-in-title Karelal. Undisputedly survey no.62/5 area 6.30 acres belonged to Karelal, out of which, he sold an area 0.405 hectare (1.40 acre) to Sardar Darshan Singh, of which new number was shown to be formed as 62/160 and later on Darshan Singh vide registered sale deed dated 04.10.2011 sold an area 0.007 hectare to Kamarjahan. It is clear from the record that plaintiffs are not claiming any right on the land survey no.62/5.

10. Although no application was filed for demarcation by any of the parties to the litigation, but in the light of decision of Hon'ble Supreme Court in the case of Shreepat vs. Rajendra Prasad, **2000(6) Supreme 389 = JT 2000 (7) SC 379** as well as in the light of decision of a coordinate Bench of this Court in the case of Jaswant vs. Deen Dayal, **2011 (2) MPLJ 576**, it was duty of the Court to resolve the dispute of boundaries/location of the suit land, especially in the light of findings

recorded by competent civil Court in para 28 of the judgment and decree dtd.14.08.2015 (Ex.P/16).

11. It is pertinent to mention here that the second appeal filed by Karelal against the judgment and decree dtd.14.08.2015 (Ex.P/16) has already been dismissed on 06.07.2023, although for want of prosecution, but no application for restoration of second appeal, has been filed so far. It is also pertinent to mention here that this second appeal was admitted for final hearing on 11.01.2016 on the following substantial questions of law :

“(i) Whether the first appellate Court has erred in reversing the well reasoned judgment and decree passed by the trial Court ?

(ii) Whether the finding of lower appellate Court that the suit land has been in existence by discarding or without discussing the Commissioner report appointed under Order 26 Rule 9 of the CPC that suit land has been part of the original khasra No. 62/5 area 13.69 is wholly illegal under the law ?”

12. From field map (Ex.P/9), it is clear that survey nos.62/5 and 62/7 are adjacent to each other. In the present case, from the aforesaid discussion, it is clear that there is clear dispute of boundaries as to whether the land purchased by Sardar Darshan Singh and Kamarjahan fall in survey no.62/7 or in 62/5. For the reasons best known to the parties and Courts below, no demarcation has been done. Bare reading of provision of Order XXVI Rule 9 of CPC, shows that for appointment of commissioner, parties are not required to file application necessarily.

13. In the case of Shreepat (**supra**), Hon’ble Supreme Court has held as under :-

“**3.** The principal contention raised by learned Counsel for the Appellant is that though there was a serious dispute with regard to the identity of the land in dispute, whether the land in dispute formed part of Khasra No. 257/3 or Khasra No. 257/1, the courts below did not get the identity established and decreed the suit of the Respondent only on the basis of oral evidence which was not sufficient for the

purpose of establishing the identity of the land in dispute at the spot.

4. In our opinion, this contention is correct. Since there was a serious dispute with regard to the area and boundaries of the land in question, especially with regard to its identity, the courts below, before decreeing the suit should have got the identity established by issuing a survey commission to locate the plot in dispute and find out whether it formed part of Khasra No. 257/3 or Khasra No. 257/ 1. This having not been done has resulted in serious miscarriage of justice. We consequently allow the appeal, set aside the order passed by the courts below as affirmed by the High Court and remand the case to the trial court to dispose of the suit afresh in the light of the observations made above and in accordance with law.”

14. At the cost of repetition, it is observed that in paragraph 9 of the judgment under review, it has been mentioned that the finding recorded by Revenue Board is not binding on the civil Court, but apparently the order dtd.23.04.1993 (Ex.P/10) passed by Board of Revenue was in respect of correction of revenue record, whereby the order of merger was set aside. As such, the order passed by Board of Revenue was binding between the parties and while making such observation, aforesaid legal position has escaped from consideration of this Court.

15. Further, in the light of decision of Hon’ble Supreme Court in the case of Shreepat (**supra**), the dispute of boundaries or location of suit land cannot be decided without survey commission, only on the basis of oral evidence of the parties.

16. In the case of S. Bagirathi Ammal vs. Palani Roman Catholic Mission (2009) 10 SCC 464, it has been held by Hon’ble Supreme Court that if the judgment/order is vitiated by an apparent error or it is a palpable wrong and if the error is self evident, review is permissible and in such case the Court can exercise the review jurisdiction.

17. Similarly in the case of Board of Control For Cricket, India and another vs. Netaji Cricket Club and others (2005) 4 SCC 741, Hon’ble Supreme Court has held as under :-

“90. Thus, a mistake on the part of the court which would include a mistake in the nature of the undertaking may also call for a review of the order. An application for

review would also be maintainable if there exists sufficient reason therefor. What would constitute sufficient reason would depend on the facts and circumstances of the case. The words 'sufficient reason' in Order 47, Rule 1 of the Code is wide enough to include a misconception of fact or law by a court or even an Advocate. An application for review may be necessitated by way of invoking the doctrine "actus curiae neminem gravabit".

18. A Division Bench of this Court also in the case of *Madhyanchal Gramin Bank v. Laxman Lal Ojha*, **2014 Supreme (MP) 99 = 2014 (1) MPWN 80**, has held as under :-

“**10.** In AIR 1981 AP 232 (Y. Venkannachowdary v. The Special Deputy Collector, Land Acquisition (General), Hyderabad District and others), the High Court opined that if certain provision was not brought to the notice of the Court when appeal was argued, owing to the mistake of counsel, it may amount to error apparent on the face of the record. The apex Court in (2005) 13 SCC 289 (Rajender Singh v. Lt. Governor, Andaman & Nicobar Islands and others) opined that the scope of review is very wide. **11.** In view of aforesaid judgments, it is clear that review can be entertained even if the point is not argued before the Court provided it amounts to error apparent on the face of the record. In view of Promotion Rules, it is necessary to examine the contention of the employer/petitioner whether the direction of writ Court is in consonance with the Promotion Rules.”

19. In such circumstances, in my considered opinion, it is a fit case for exercising review jurisdiction. As such, by granting review, the judgment dated 25.07.2023 is recalled and the review petition is **allowed** with the direction to the Registry to restore the Second Appeal no.1735/2017 to its original number **for hearing afresh**.

20. Misc. application(s), pending if any, shall stand closed.

(DWARKA DHISH BANSAL)
JUDGE