

(SUPREME COURT OF INDIA)

Prabhakar Adsule

Vs

State of Madhya Pradesh and Another

HON'BLE JUSTICE S. R. BABU AND HON'BLE JUSTICE G. P. MATHUR

06/05/2004

Appeal (Civil) 6145 of 2002

JUDGMENT

G. P. MATHUR J

Hon'ble

Justice

G.P.

MATHUR

1. This appeal by special leave has been preferred against the judgment and decree dated 9.7.2001 of a Division bench of High Court of Madhya Pradesh at Indore, by which the Letters Patent Appeal preferred by State of Madhya Pradesh was allowed and the suit filed by the respondent, Prabhakar Adsule was dismissed.

2. The property in dispute is a plot measuring 8.70 acres situate in Residency Area in Indore. The respondent herein Prabhakar Adsule filed a suit for declaration that he is the sole owner in possession of the plot in dispute and also for injunction restraining the defendants from interfering with his possession over the said plot in any manner. Sometime after filing of the suit, an amendment application was moved and relief for possession was also claimed in the alternative. The case of the plaintiff, in brief, was that Somaji son of Girdhari was owner of the disputed plot which was coming in his possession since 1918; that he executed a will bequeathing the plot in favour of his daughter-in-law Sajjan Bai on 12.2.1954; that Sajjan Bai executed a sale deed of the disputed plot in favour of the plaintiff on 24.12.1966 for a consideration of Rs.40, 000/-; that since the date of the execution of the sale deed, the plaintiff was continuing in possession over the same; that

proceedings under Section 248 M.P. Revenue Code were initiated against him on 24.12.1966 which were decided against him by the SDO but finally the matter was remanded from the Court of the Commissioner to the Court of SDO for a fresh decision, who again decided against the plaintiff on 1.9.1979, which gave the cause of action for filing the suit. Initially, the suit was contested by the State of Madhya Pradesh on the ground, inter alia, that neither Somaji was owner of the disputed land nor he was in possession over the same; that Sajjan Bai did not become the owner of the property on the basis of any will executed in her favour; that Sajjan Bai or Somaji were never in possession of the disputed plot; that no title passed to the plaintiff on account of the sale deed executed in his favour and he was not in possession over the same. It was further pleaded that the disputed land was situate in Residency Area which vested with the State of Madhya Bharat and thereafter in the State of Madhya Pradesh and the plaintiff had no cause of action to file the suit. M.P. Housing Board, which was subsequently impleaded as defendant no.2 in the suit, also filed a written statement taking the same pleas and specifically denied the right, title or possession of Somaji and also of the plaintiff. It was further pleaded that the land in dispute was Nazul land, which was transferred by Madhya Pradesh Government to M.P. Housing Board which thereafter came in possession over the same. The genuineness of the will executed by Somaji in favour of Sajjan Bai on 12.2.1954 was also disputed.

3. The learned XIIth Additional District Judge, Indore, after appraising the oral and documentary evidence adduced by the parties, dismissed the suit on 2.5.1992. The appeal preferred by the plaintiff was allowed by a learned Single Judge of the High Court on 15.11.1998 and the suit was decreed declaring the plaintiff to be owner in possession of the land. It was further directed that if the defendant no.2 (M.P. Housing Board) has got possession over the disputed land, the same should be formally handed over to the plaintiff. Feeling aggrieved by the judgment and decree of the learned Single Judge, the State of Madhya Pradesh and M.P. Housing Board preferred separate Letters Patent Appeals before a Division Bench of the High Court. The Letters Patent Appeal preferred by the State of Madhya Pradesh was allowed with costs and the suit was dismissed affirming the judgment and decree of the trial Court. However, the appeal preferred by M.P. Housing Board was dismissed.

4. Shri S.K. Gambhir, learned senior counsel appearing for the plaintiff appellant, has submitted that the Division Bench of the High Court has erred in not correctly appreciating the oral and documentary evidence adduced by the appellant which conclusively established his case. He has also submitted that the evidence adduced by the defendant no.1, namely State of Madhya Pradesh, was wholly discrepant and in such circumstances, the learned Single Judge of the High Court had rightly decreed the suit of the plaintiff and the Division Bench has erred in reversing the decree passed by him. Shri Anoop G. Chaudhary, learned senior counsel for the State of Madhya Pradesh, has submitted that the evidence adduced by the appellant was not only untrustworthy, but was even otherwise too flimsy to establish his title. He has further submitted that certain features pointed out by the trial Court, which cast serious doubt about the authenticity of the documents produced by the plaintiff, were completely ignored by the learned Single Judge and the Division Bench rightly discarded the said evidence. Shri Chaudhary has also submitted that in fact there was hardly any evidence on record to establish the title of the plaintiff over such a large chunk of area in the city of Indore, which was a very valuable property.

5. In the plaint the source of Somaji's title was not disclosed and it was merely stated that he was owner of the disputed land and the same was coming in his possession since 1918. In his statement in Court, the plaintiff came out with a case that the land had been given by way of grant. However,

the plaintiff did not lead any kind of evidence to prove the factum of grant. No document was produced to show that the land had been given by way of grant either to Somaji or to his ancestors. In order to establish the appellant's case, reliance has been placed basically on three documents. Exh.P5 is a document dated 17.11.1953 executed by the Sarpanch of Gram Panchayat Pipal Yahana, which is a 'Sifarish Patra' (Recommendatory Letter) and it merely recites that the Panchayat had no objection in Somaji making construction according to the plan submitted by him. There is no mention of the disputed land in this document nor it can be connected with the same in any manner. Therefore, this document is of no assistance to the plaintiff. Exh.P8 and Exh.P9 are copies of letters dated 20.2.1946 and 3.8.1946 sent by Residency Authority, Indore to Somaji. By the first letter permission was granted for making a boundary wall and by the second letter permission was granted for sale of the land. It is noteworthy that copies of these documents have been issued by the Superintendent of Public Works of Municipal Corporation, Indore. Both these documents make reference to the letters sent by Somaji seeking permission from the Residency Authority, Indore. The defendants produced the relevant file bearing no.114/1912 of Residency Area Authority. However, this file does not show that any permission was given to Somaji for either construction of a boundary wall or for sale of the plot. **The trial Court gave good reasons for doubting the genuineness of these documents, which were ignored by the learned Single Judge. The Division Bench, in our opinion, has rightly held that the documents were suspicious in nature and could not have been relied upon. Even otherwise, a document granting permission to construct a boundary wall cannot establish title to the property as even a lessee or a tenant can seek permission for making such kind of construction.** # The plaintiff has admitted in his cross-examination that he was Mayor of Municipal Corporation, Indore, in 1959-60, and was a Corporator till 1964. He was in a position to exercise his influence in obtaining some kind of documents from the Public Works Department of the Municipal Corporation.

6. The defendants have filed a copy of the lease deed which shows that a lease for a period of 10 years was granted by Residency Area Authority, Indore, in favour of General Secretary, United Church of Canada Mission, Indore on 31.7.1947 for 5.11 acres of land and the boundary of the leased out area more or less tallies with the boundary of the land in dispute. This document belies the case set up by the plaintiff that Somaji was owner in possession of the land in dispute.

7. The Division Bench of the High Court has, after appraisal of the evidence on record, come to a finding that the plaintiff has miserably failed to prove his title to the property. **This is not the function of this Court, in a special leave petition under Article 136 of the Constitution, to reappraise the evidence unless the findings are shown to be perverse or they are vitiated by any error of law resulting in miscarriage of justice.** # Learned counsel for the appellant has not been able to point out anything which may impel us to interfere with the findings recorded by the High Court in the impugned judgment.

8. The appeal is totally devoid of merit and is hereby dismissed with costs.