IN THE HIGH COURT OF MADHYA PRADESH
AT JABALPUR

BEFORE
HON'BLE SHRI JUSTICE ARUN KUMAR SHARMA

SECOND APPEAL No. 1735 of 2017

BETWEEN:-

1. **SMT. SHAKUNTALA W/O. LATE SHRI BALKISHAN MUNDA, AGED ABOUT 52 YEARS.**

2. **VIKRAM S/O. LATE SHIR BALKISHAN MUNDA, AGED ABOUT 28 YEARS,**
BOTH ARE RESIDENT OF VILLAGE CHAUPRAKHURD, JABALPUR NAKA, DISTRICT DAMOH (MADHYA PRADESH)

.....APPELLANTS

(BY SHRI ABHIJEET AWASTHI - ADVOCATE)

AND

1. **SMT. KAMARJAHAN W/O. ASGAR ALI KHAN (DEAD), THROUGH LRs:-**
(A) KASIM KHAN S/O. ASGAR ALI

(B) AZAM KAHN S/O. ASGAR ALI

(C) ASLAM KHAN S/O. ASGAR ALI

(D) NAGMA D/O. ASGAR ALI

ALL ARE RESIDENT OF VILLAGE – AAM CHAUPRA, DISTRICT DAMOH (MADHYA PRADESH)

2. **THE STAE OF MADHYA PRADESH, THROUGH THE COLLECTOR DAMOH (MADHYA PRADESH)**

.....RESPONDENTS

(NONE FOR THE RESPONDENTS)

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Reserved on : 17-07-2023

Pronounced on : 25 -07-2023

This appeal having been heard and reserved for order, coming on for pronouncement this day, the court pronounced the following :

JUDGMENT

The appellants as plaintiffs have preferred present Second Appeal under Section 100 of C.P.C. being aggrieved and dissatisfied by the judgment and decree dated 21.8.2017 passed by Second Additional District Judge, Damoh (MP) in Civil Appeal No. 114/17, whereby the judgment and decree passed by the trial court has been affirmed.

2. The relevant facts leading to the filing of this appeal as emerging from the case made out by the appellants are narrated in a nutshell for a better understanding and determination of the disputes between the parties are that the plaintiffs as appellants presented the suit for permanent injunction to restrain the respondents/defendants from interfering with the peaceful possession of them over Khasra No. 62/7 situated at Village Choupara Khurd, Tahsil and District Damoh. The facts which are undisputed between the parties are that the consolidated Khasra No. 62/5 (hereinafter to be referred as 'suit property') was owned by late Mohan Munda, who was survived by his two sons namely Karelal and Balkishan. Subsequently upon death of Mohan Munda, the land bearing Khasra No. 62/5 was recorded jointly in the name of Karelal, Balkishan and their mother Smt. Puttri Bai. Although during the lifetime of Putri Bai and Balkishan, they executed a sale deed to transfer 2/3 rd of their share in favour of

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Karella. Subsequently, Karelal sold 4.60 acres of the land in his possession to Balkishan, which led to creation of Khasra No. 62/6; whereas Khasra No. 62/5 remained in the name of Karelal. So far as Khasra No. 62/7 is concerned, the same was jointly recorded in the name of Karelal and Balishan. After the death of Balkishan, the name of appellant/plaintiff was recorded as legal heir of Balkishan. So far as Khasra Nos. 62/5 and 62/6 are concerned, there is no dispute between the parties. However, the parties are at logger heads with respect to Khasra No. 62/7 admeasuring 2.79 acres. The portion of the land, which was in possession of Karelal has already been sold out by him. However, in order to create controversy in relation to the portion owned and occupied by the plaintiff, there is controversy as Karelal in collussion with Revenue Officers proceeded to include the portion of Khasra No.62/7 into Khasra No. 62/5 in order to facilitate the transfer of property adverse to the plaintiff. Karelal executed sale deed in the name of Sardar Darshan Singh for transferring portion of Khasra No. 62/5; whereas the entire Khasra No. 62/5 was already sold by Karelal and it is portion belonging to plaintiff, which was being transferred. Due to execution of sale deed in favour of Sardar Darshan Singh, the revenue authorities created Khasra No. 62/160. Accordingly, the plaintiffs went up to the Board of Revenue to get this order set aside. Such application of the plaintiff was allowed by Board of Revenue; vide order dated 23/04/1993. (Ex. P/1). Despite of such order, the Revenue Authorities did not correct the record, which resulted into execution of sale deed for Khasra No. 62/160 in favour of respondents /defendants. Thereafter, the defendants tried to take forceful possession of the land occupied by the plaintiffs. Accordingly, a suit for permanent injunction as filed due to cause of action which arose on 04/10/2011.

3. The original defendant Smt. Kamarjahan filed her written statement denying the plaint allegations and stated that Mohan Munda in his life time had sold some part of his land Khasra No. 62/5 Rakba 13.69 acre and on this land

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only the house of Karelal, Balkishan and others were constructed and road is also constructed on this land and Khasra No. 62/7 Rakba 2.79 acre is also made out from Khasra No. 62/5 and presently there is no open land is available. The respondent /defendant No.1 produced DW/7 Mohd. Saleem, who claimed that he was revenue inspector in the year 1981 to 1985 and thereafter 1987 to 1990 at Damoh and he had done the demarcation of the land copies were given to Karelal, Balkishan and one copy has submitted in the Tahsil Court. He has further stated that there is no land remains in Khara No. 62/7 because Mohan Munda earlier sold so many lands to different persons. However, during cross-examination, he admitted that there is no record of demarcation is available in Tahsil and the demarcation Panchnama also does not contain the signature of Balkishan and Putti Bai as well as Karelal. He has also not produced any sale deed executed by Mohan Munda. He has also admitted that he has already retired long back.

4. Learned trial court having heard learned counsel for the parties and on the strength of the material and evidence on record has dismissed the suit filed by the plaintiffs vide judgment and decree dated 22.12.2016. Being aggrieved, the appellants preferred first appeal before the lower appellate court which was also dismissed.

5. Learned counsel for the appellants has argued before this Court that learned both the courts have committed an error by not appreciating that the revenue records categorically reflects that Khasra No. 62/7 Rakba 2.79 acre and order of SDO for merger the Khasra No. 62/7 into 62/5 was also set aside by learned Revenue Board on 24/03/1993. Learned both the courts below have erroneously given the findings that there is no land remains in Khara No. 62/7 on the basis of evidence of DW/7 Mohd. Saleem, Retired Revenue Inspector, who admitted in the cross-examination that he did not bring any records and the report of demarcation also not contain the signature of appellants father

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Balkishan and Karelal. He has also not produced any document in order to substantiate his statement that Mohan Munda sold this land to so many persons. Learned lower courts have committed an error by not appreciating the facts that the Board of Revenue set-aside the order of SDO and given the finding that the mutation of Sardar Darshan Singh is also illegal and the learned Board also diluted the new created Khasra No. 62/160. Learned lower courts have committed error by not appreciating that Karelal had sold the land to the respondent No.1-Smt. Kamar Jahan from the Khasra No. 62/5 and he is trying to interfere in the peaceful possession of Khasra No. 62/7, which belongs to appellant and respondent No.1 has no relation on the land bearing Khasra No. 62/7. Learned lower courts ought to have considered that the respondent No.1 has executed the sale deed from Sardar Darshan Singh of Khasra No. 62/160, the mutation of Sardar Darshan Singh in Khasra No. 62/5 and existence of Khasra No. 62/160 was set aside or diluted by learned Board of Revenue by order dated 23/04/2023 and the same was not challenged by any party, it attains finality so there is no prima facie right of respondent No.1 to interfere in the peaceful possession of appellant on her Khasra No. 62/7. Hence, prayed that the present appeal be allowed by setting the impugned judgments and decree passed by learned both the courts below.

6. None appeared on behalf of the respondents.

7. I have bestowed my anxious consideration on contentions raised by learned counsel for the appellants and perused the record and the judgments of both the courts below.

8. This Second appeal has been admitted vide order of this court dated 13.12.2017 on the following Substantial Question of law : -

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

9. Learned trial Court has framed issues no. 1 and 2 relating to Khasra no. 62/7 having new number 62/7 to the effect that whether defendant no. 1 is in illegal possession of the land of the plaintiffs of this Khasra number. The trial court has not found the issues proved and accordingly disproved. Learned lower appellate Court in its paragraphs no. 19 and 21 of the judgment has discussed this and has affirmed the finding of the trial Court. Learned lower appellate court has discussed the evidence of plaintiff Shakuntala and has held that plaintiff Shakuntala could not establish by her evidence that at the time of filing of the suit for permanent injunction how much land remained in Khasra no. 62/7. Learned lower appellate court further in para 21 while discussing the evidence of Smt. Neelam Yadav (PW-2) has held that she too has failed to establish whether plaintiff Shakuntala was in possession of the suit land bearing Khasra no. 62/7. She also could not throw any light how much land of Khasra no. 62/7 remained. Per contra, the defendants in their evidence have established that they had purchased the land from Khasra no. 62/5 not from Khasra no. 62/7 and after purchasing the land from Khasra no. 62/5 new number 62/160 (ka) came into existence. The finding given by both the courts below are finding of fact. The courts below by elaborate evidence have given their findings that the plaintiffs have failed to establish what was the total area of Khasra no. 62/7 remained at the time of filing of the suit and whom the land was sold. It is settled law that the concurrent finding given by the courts below cannot be interfered with by this Court under Section 100 of CPC. The question of law is not a substantial question of law because the finding given by the Revenue Board, is not binding on the Civil Court even otherwise the finding given by any other Court is to be seen on the basis of the evidence led in that case. The

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finding given by one court cannot operate and bind on other Court. The finding given by the Revenue Court/ Board cannot bind the Civil Court. Therefore, no substantial question of law is made out in this case.

10. In **(1999) 3 SCC 722 titled Kondiba Dagadu Kadam Vs. Savitribai Sopan Gujar and others**, Hon'ble Supreme Court held that it is not within the domain of the High Court to investigate the grounds on which the findings were arrived at by the last Court of fact being the first appellate Court. In a case where from a given set of circumstances two inferences are possible, one drawn by the lower appellate court is binding on the High Court in second appeal, unless it is found that the conclusions drawn by the lower appellate court were erroneous being contrary to the mandatory provisions of applicable law or contrary to the law as pronounced by the apex court or was based upon inadmissible evidence or arrived at without evidence. The above was reiterated in **(2019) 6 SCC 46 titled S. Subramanian vs. S. Ramasamy and others**, wherein it was inter-alia held that High court is not required to re-appreciate the entire evidence on record and to come to its own finding when the findings recorded by the Courts below, more particularly the first appellate court are on appreciation of evidence. Similar view has also been adopted in **2012 (2) Shim. LC 869, titled Maro (dead) through L.R. Paramjeet Kaur (Smt.) wife of Shri Om Prakash vs. Khillo wife of Tirath Ram**.

11. From perusal of the record, it is found that there are concurrent findings of the Courts below against the appellants. This Court would not examine correctness of findings of facts in exercise of appellate Power in Second Appeal. Since this Court does not find any the impugned decisions are not being contrary to law or that decision having failed to determine some material issue of law. Further that this Court does not find any substantial error or defect in procedure provided by the Court or any other law for the time being in force,

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which may possibly have produced error or defect in the decision of the case upon the merit.

12. In respect of exercise of jurisdiction under Section 100 of Code of Civil Procedure, Hon'ble Apex Court in **Gurnam Singh vs. Lehna Singh, reported in (2019) 7 SCC 641** held as under :-

> "13.1. The existence of a substantial question of law is a sine qua non for the exercise of the jurisdiction under Section 100 of the CPC. As observed and held by this Court in the case of Kondiba Dagadu Kadam (Supra), in a second appeal under Section 100 of the CPC, the High Court cannot substitute its own opinion for that of the First Appellate Court, unless it finds that the conclusions drawn by the lower Court were erroneous being: (i) Contrary to the mandatory provisions of the applicable law; OR (ii) Contrary to the law as pronounced by the Apex Court; OR (iii) Based on inadmissible evidence or no evidence. It is further observed by this Court in the aforesaid decision that if First Appellate Court has exercised its discretion in a judicial manner, its decision cannot be recorded as suffering from an error either of law or of procedure requiring interference in second appeal. It is further observed that the Trial Court could have decided differently is not a question of law justifying interference in second appeal.

13. From perusal of the record, I find that the judgments and decree passed by the Courts below are well reasoned and passed after due appreciation of oral as well as documentary evidence on record. The learned counsel for the appellants has failed to show that how the findings of facts recorded by the

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Courts below are illegal, perverse and based on no evidence. Learned both the courts below have legally and rightly dealt with the issue involved in the matter with regard to the property in dispute.

14. It is not out of place to mention here that the appellants having lost in both the courts below have filed the present second appeal. The Supreme Court taking into consideration the principles of law in the cases of **Thiagarajan v. Sri Venugopalaswamy B. Koil [(2004) 5 SCC 762], Commissioner, Hindu Religious & Charitable Endowments v. P. Shanmugama [(2005) 9 SCC 232], State of Kerala v. Mohd. Kunhi [(2005) 10 SCC 139] and Madhavan Nair v. Bhaskar Pillai [(2005) 10 SCC 553],** has observed that the High Court has no jurisdiction in second appeal to interfere with the findings of fact. Recently, in another judgment reported as **State of Rajasthan vs. Shiv Dayal (2019) 8 SCC 637**, it has been held that a concurrent finding of the fact is binding, unless it is pointed out that it was recorded de-hors the pleadings or it was based on no evidence or based on misreading of the material on records and documents.

15. For the reasons aforesaid, I find no merit in the instant second appeal. Concurrent finding recorded by the courts below is fully justified by the evidence on record. Accordingly, the appeal is dismissed. Consequently, interim order, if any passed earlier, stands vacated. Decree be drawn accordingly. Parties shall bear their own costs.

16. A copy of this order along with record be sent back to the courts below for information and its compliance.

(ARUN KUMAR SHARMA)
JUDGE

JP/-

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