

Maniram Vs. Ramkali

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Court : Madhya Pradesh

Decided On : Jul-30-2013

Appellant : Maniram

Respondent : Ramkali

Judgement :

HIGH COURT OF JUDICATURE MADHYA PRADESH, JABAPLUR Single Bench:
Hon'ble Shri Justice N.K.Gupta,J SECOND APPEAL NO.970 OF 201.Maniram &
others. Vs. Ramkali & others.

----- Shri
R.B.Singh, Advocate for the appellants.

ORDER

(Passed on the 30th day of July, 2013) The Civil Judge Class-II, Jaisingh Nagar District Shahdol vide judgment and decree dated 25.6.2008 partly allowed the civil suit of the respondents No.1 to 11 and declared their title over the land bearing Survey No.669/832 area 0.825 hectare situated at Village Masiyari Patwari Halka Chitraon Tahsil Jaisingh-Nagar District Shahdol, whereas in appeal the learned Additional District Judge Beohari District Shahdol vide judgment and decree dated 27.7.2011 accepted the appeal and declared the title of the respondents No.1 to 11 on that land having area of 0.825 hectare and also granted a decree of mandatory injunction that in 0.105 portion of that land on which the house was erected by the appellants be removed and a vacant possession of that land be

given to the respondents No.1 to 11. A perpetual injunction was also granted that the 2 SA No.970/2011 appellants shall not interfere in the possession of the respondents on the suit property. Being aggrieved with the aforesaid decree and judgments, the appellants/defendants have preferred the present second appeal.

2. The case of the respondents No.1 to 11/plaintiffs before the trial Court was that the entire land was ancestral land of the plaintiffs. Initially one Jagole Kachhi had the title and possession of the land and thereafter Hiralal Kachhi son of Jagole Kachhi continued with the title and possession of the property. Thereafter the plaintiffs got the land in succession. On 22.6.2001 the appellants/defendants No.1 and 2 forcefully took the possession of some portion of the land, and therefore a proceeding under Section 250 of the MP Land Revenue Code was initiated. The Tahsildar vide order dated 29.6.2002 gave a possession of area 0.720 hectare of the land to the plaintiffs, but possession of the remaining portion was not given to the plaintiffs, because it was not in the jurisdiction of the Tahsildar. During the pendency of such proceeding, the defendants No.1 and 2 had erected a small kachcha house on the remaining portion of the land. Under such circumstances, the plaintiffs have instituted a civil suit for declaration of mandatory injunction and perpetual injunction to get the vacant possession of the property and to get the perpetual injunction that the 3 SA No.970/2011 defendants No.1 and 2 may be prohibited to interfere in their possession in future.

3. The appellants/defendants No.1 and 2 in their reply denied their claim. They took a plea that the land bearing Survey No.538 and 541 area 0.31 hectare and 0.26 hectare respectively were of one Munda Pav, maternal grand father of the defendants No.1 and 2. The land in dispute was exchanged by Jagole Kachhi, and therefore due to an exchange, the defendants were in possession of the suit property. They were the owners of the property on the basis of the exchange. Hiralal Kachhi initiated illegal proceedings of demarcation of the land and thereafter their dispossession was done. Under such circumstances, it is prayed that the suit filed by the plaintiffs be dismissed and the counter claim as claimed by the defendants No.1 and 2 for declaration of the suit land be decreed in favour of the defendants No.1 and 2.

4. The learned Civil Judge after framing the issues collected the evidence from the parties and thereafter it is found that the defendants could not prove the fact of exchange. It was found proved that the plaintiffs were the owner of the suit land and it was their ancestral property. Also they were in possession of the property. It was found that the plaintiffs could not prove the possession and 4 SA No.970/2011 construction of a house done by the defendants No.1 and 2 over the area 0.105 hectare of the land, and therefore decree of declaration only was granted. In appeal, the learned Additional District Judge accepted the suit of the plaintiffs in toto and a perpetual injunction as well as relief of mandatory injunction was granted by the appellate Court.

5. I have heard the learned counsel for the appellants at length.

6. It was established before both the Courts below that the suit property was of one Jagole Kachhi and thereafter it was received by the plaintiffs in inheritance. The appellants have accepted the fact that initially the suit land was of Jagole Kachhi, but it was pleaded that the appellants received the land in exchange. Once it is accepted that originally the suit land was of Jagole Kachhi, then it was for the appellants to prove that they had received the land due to an exchange. Both the Courts below have found that the appellants could not prove the fact of exchange. If an exchange took place in the property of Jagole Kachhi, then it should have been recorded in the revenue record. For the sake of arguments, if it is considered that no proceeding of mutation was initiated on the basis of the exchange, then still the possession of the respondents or their maternal grand father must be 5 SA No.970/2011 recorded in the revenue papers in yearly survey done by the Patwari or Revenue Inspector. The entry of possession could be proved by filing copies of various khasra entries of different years to show that the maternal grand father of the appellants was in possession of the suit property since long when Jagole Kachhi was alive. Unfortunately the appellants could not file a single paper of revenue record to show the possession of their maternal grand father on the suit land for a single day. Under such circumstances, both the courts below have rightly found that the appellants could not establish their title by the fact of exchange, and therefore they did not have any title over the suit land.

7. It was admitted position of the fact that the Tahsildar passed an order in favour of the respondents that the appellants be dispossessed from the major portion of the suit land, but the portion on which a Kachcha house was constructed, he could not pass any order of dispossession, because after construction of a house, the Tahsildar had no jurisdiction to pass such any order. Such orders were produced by the appellants from the side of the defence, and therefore it was admitted position that on the little portion of the land possession of the appellants was there and they constructed a Kachcha house on the land. The learned Civil Judge could not appreciate such an admitted 6 SA No.970/2011 position, and therefore no decree of mandatory injunction was granted by the trial Court. However, the Appellate Court did not commit any mistake in granting such a decree of mandatory injunction.

8. When it was established that entire land was of the respondents No.1 to 11 and the appellants had encroached on some portion of the land and constructed a Kachcha house, they did not take any plea of adverse possession, then it was for the Civil Court to provide a vacant possession of the property to the plaintiffs, and therefore if a decree of mandatory injunction is granted by the First Appellate Court, then no mistake has been committed in such a grant.

9. Similarly, it is apparent that the appellants encroached upon the suit land of the plaintiffs, and therefore it was also necessary for the Appellate Court to issue a perpetual injunction so that such an act of encroachment may not be repeated. The appellants could not establish any reason so that any interference can be done in the judgment and decree passed by the Appellate Court. It is the case where the judgment passed by the trial Court was not reversed by the Appellate Court, but it is a case in which the Appellate Court enhanced the relief granted to the plaintiffs. Under such circumstances, there is 7 SA No.970/2011 no basis by which the concurrent findings of both the courts below relating to the title and possession of the property may be disturbed. Hence no substantial question of law is involved in the present second appeal which is to be decided. Therefore, the second appeal filed by the appellants cannot be accepted. Consequently, it is hereby dismissed with cost at motion stage.

10. Copy of this order and appellate decree (if any) be sent to both the Courts below along with their records for information. (N.K.Gupta) Judge 30/07/2013
Ansari

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