

Mulchand Vs. the State of M.P.

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Court : Madhya Pradesh

Decided On : Jul-29-2013

Appellant : Mulchand

Respondent : The State of M.P.

Judgement :

Second Appeal No.551/1999 29.07.2013 Mr. Sanjay Patel, learned counsel with Mr. B.R. Koshta, Advocate for the appellant. Heard on I.A. No.1394/2013, an application under Order XLI Rule 27 of the Code of Civil Procedure . Learned counsel for the appellant submitted that since the appellant was in Government service, therefore, he could not produce the documents which are necessary for fair and complete adjudication of the controversy involved in the appeal.

2. I have considered the submission. From perusal of the documents annexed with the application, it is evident that the same are photo-copies. No satisfactory explanation has been offered by the appellant for not filing the same either before the trial Court or before the lower appellate Court. Therefore, the appellant cannot be permitted to file the documents at such belated stage. Accordingly, I.A. No.1394/2013 is dismissed. Heard on the question of admission.

3. This appeal has been preferred by the plaintiff, who has lost in both the Courts.

4. Facts giving rise to filing of the appeal briefly stated are that the plaintiff filed a suit inter-alia on the ground that the land admeasuring 4.40 acres was acquired by

the State Government in the year 1956 under the provision of Land Acquisition Act and an entry in revenue record was also made in this regard. However, the possession of the land in question was not taken from the plaintiff and the plaintiff continued to be in cultivating possession of the suit land. Sometime in the year 1991, Tahsildar issued a notice and declared the plaintiff as an encroacher. Thereafter the plaintiff filed a suit seeking relief of declaration and permanent injunction. The defendants were proceeded ex-parte. The trial Court dismissed the suit. The aforesaid decree was affirmed in appeal.

4. Learned counsel for the appellant submitted that the appellant has been in possession of land from 1956 till 1995 and therefore, has perfected his title by adverse possession.

5. I have considered the submission made by learned counsel for the appellant and have perused the record. Both the courts below on meticulous appreciation of evidence on record held that in the revenue records the name of State Government has been recorded as owner in respect of the suit lands. Only in Khasra of 1989-90 in column No.12, the possession of the plaintiff is recorded. In aforesaid document also the name of owner has been mentioned as the State Government. Both the Courts below have further found that the plaintiff has failed to prove the acquisition of title by adverse possession. The question of acquisition of title by adverse possession is mixed question of law and fact. Both the Courts below on meticulous appreciation of evidence on record have recorded a finding that the plaintiff has failed to prove the plea of adverse possession. It is well settled in law that this Court in exercise of power under Section 100 of the Code of Civil Procedure cannot re-appreciate the evidence even if another view is possible. The findings recorded by the Courts below by no stretch of imagination can either be said to be perverse or based on no evidence.

6. Even otherwise, the jurisdiction of this Court to interfere with the findings of fact is well defined by catena of decisions of Supreme Court. This Court in exercise of power under Section 100 of the Code of Civil Procedure can interfere with the finding of fact only if the same is shown to be perverse or based on no evidence. See. Narayanan Rajendran and another Vs. Lekshmy Sarojni and others (2009) 5

SCC 264.Hafazat Hussain Vs. Abdul Majeed and others (2011) 7 SCC 189.Union of India Vs. Ibrahim Uddin and another, (2012) 8 SCC 148.D.R. Rathna Murthy Vs. Ramappa (2011) 1 SCC 15.and Vishwanath Agrawal Vs. Sarla Vishnath Agrawa, (2012 7 SCC 288.

7. For the aforementioned reasons, no substantial question of law arises for consideration in this appeal. The appeal fails and is hereby dismissed. (Alok Aradhe) Judge RC

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