

**Ashok Kumar Vs. the State of Madhya Pradesh**

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**Court :** Madhya Pradesh

**Decided On :** Jan-23-2013

**Appellant :** Ashok Kumar

**Respondent :** The State of Madhya Pradesh

**Judgement :**

Second Appeal No.1082/08 ( Ashok Kumar ...Vs..The State of M.P.& Another ) 23-01-2013 Heard Shri Sanjay Patel, learned counsel appearing for the appellant/plaintiff on the question of admission.

Appellant has filed this appeal being aggrieved by the judgment and decree dated 28.6.2008 passed by the FiRs.Additional District Judge, Khurai, District Sagar in C.A.No.34-A/07, and the judgment and decree dated 25.8.07 passed by the Civil Judge Class I, Bina District Sagar, in C.S.No.138-A/04 dismissing the suit for declaration and recovery of possession filed by the appellant/plaintiff in respect of two shops alleged to have been constructed by the appellant on khaSr.No.405, situated at Bina Itawa, District Sagar.

It is submitted by the learned counsel for the appellant that he had purchased a land of khaSr.No.405/3 area 540 sq feet from one Bhagirath on 20.5.86 and since thereafter the appellant is in possession of the same.

It is stated that appellant had constructed two shops on the said land but the respondent/authorities took illegal possession of the said shops on 30.3.92 in an

anti- encroachment drive conducted by them.

It is stated that the act of the respondent/authorities is illegal and therefore, the appellant/plaintiff was entitled to a declaration and possession of the shops in question for which he had filed a suit which has wrongly been dismissed by the Trial Court as well as Appellate Court without taking into consideration the fact that the authorities concerned have admitted the ownership and possession of the appellant/plaintiff on KhaSr.No.405/3.

It is submitted that as both the Courts below have ignored the aforesaid fact, the judgment and decree passed by them suffer from perversity which deserves to be corrected.

Having learned counsel for the appellant and having perused the record of the case, it is apparent that the Trial Court with a view to resolve the controversies had called for a Commissioner's report in which Revenue Inspector, Patwari and others were appointed and a demarcation report was prepared in presence of the appellant which has been brought on record as ExC-1 to ExC-4.

From the perusal of the report it is clear that the shops in respect of which the appellant had filed the suit have been constructed and are situated on KhaSr.No.404 which is recorded in the name of the Public Works Department and is infact a nazul road.

The report also indicates that the appellant is in possession of part of KhaSr.No.405 on which he has constructed a house as well as shops.

The courts below on examining the report as well as the witnesses in support thereof, recorded a finding against the appellant which is based on proper appreciation of evidence and does not suffer from any perversity.

The aforesaid finding recorded by the Courts below is a concurrent finding and nothing has been pointed out to indicate any perversity in the same.

In view of the aforesaid submissions of the appellant that the authorities have admitted his possession on part of KhaSr.No.405 has no material bearing on the

result or the conclusion arrived at by the learned Trial Court.

Consequently, I am of the considered opinion that no substantial question of law arises for adjudication in the present appeal not the judgment of the Trial Court as well as of the Appellate Court warranting interference.

In the circumstances, the appeal being meritless, and is accordingly dismissed.

(R.S.Jha) Judge a

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