

Peer Mohammad Saeed and ors. Vs. State of M.P. and ors.

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Court : Madhya Pradesh

Decided On : Apr-16-2009

Reported in : 2010(1)MPHT195

Judge : P.K. Jaiswal, J.

Appellant : Peer Mohammad Saeed and ors.

Respondent : State of M.P. and ors.

Disposition : Appeal dismissed

Judgement :

P.K. Jaiswal, J.

1. The appellants had instituted a suit for perpetual injunction on the ground that they are the owner of an area 4.28 acre of Survey No. 1248 situated near Bridge Paatra, Galla Mandi Road, Muttasil Jhirya Shifa Shah, Bhopal. This land was granted by His Highness late Nawab Haji Hamesdullah Khan, the then ruler of Bhopal State along with other land of Khasra No. 8006/1, area 0.34 acre Jahangirabad, Bhopal to Janab Hazrat Shah Mohd. Yaqoob Sahib, son of Peer Abu Ahmad Sahib. The grant is by Inayatnama (Sanad) duly signed and certified by Secretary, Govt. of Bhopal dated 5th June, 1939. The land of Khasra No. 1248 measuring 4.28 acre is bounded as under:

East: Land of Khasra No. 1279 and Pastra river.

West: Land of Khasra No. 1249 and slaughter house.

North: Road from Pul Bobda to Bharat Talkies.

South: Nala.

2. After partition, land of Khasra No. 1248 devolved and divided between the appellants and their mother Batul Begum. After the death of Smt. Batul Begum, her share devolved upon the plaintiffs in pursuance to the order passed by Tehsildar on 1-11-1972. It is contended that on 27-8-1990 when plaintiff No. 1 visited the spot then he came to know that in the land of plaintiffs approximately about 20' inside the land, trenches of size about 4' x 5' along with the land of them are being made. The wall was broken. The said trenches are made by the men of Public Works Department, Municipal Corporation and M.P. Electricity Board for erection of roads. The said authorities without any acquisition started the said work. The appellants/plaintiffs prayed to grant a decree for perpetual injunction restraining the respondents/defendants, its agents and servants to cause any sort of damage to the plaintiffs' property and land and to refrain from interfering with the plaintiffs' enjoyment of peaceful possession thereof. By way of amendment, the appellants/plaintiffs also claimed damages worth Rs. 15,000/- and compensation with a decree for future compensation @ Rs. 1,000/- per month w.e.f. 22-8-1994 to the date of restoration of actual possession of the suit land.

3. Respondent Nos. 1, 2 and 4 have not filed any written statement before the Trial Court. Respondent No. 3/defendant No. 3 (Municipal Corporation, Bhopal) filed its written statement and denied the averments made in the plaint. In the written statement it is specifically stated that no encroachment has been made and the work is going on over the Government land towards North side of Khasra No. 1248 by the Public Works Department. It is also contended that plaintiffs and other persons had encroached the Government land and just to remove the said encroachment filed the present suit. It is also contended that value of the suit land is more than Rupees ten lacs but no Court fee has been paid. With the above pleadings respondent No. 3 prayed for dismissal of the suit.

4. Mohd. Shahid (P.W. 1) in Para 7 of his statement has very categorically admitted that Government road is towards the North side of the land of plaintiff. This witness has admitted that he has no knowledge about the khasra number of Government road. This witness also admitted that there is 'Nala' in the mid of the land of plaintiffs. 'Nala' is on Government land. This witness has no knowledge about the width of the Government road. In Para 8, this witness has further admitted that when he applied for grant of permission for construction of house, respondent No. 3-Municipal Corporation granted permission subject to condition that toward North side the appellants will not make any construction and keep open the land of 24 ft. This witness also admitted that map (Exh. P-5) was sanctioned after leaving 50 ft. land for shed well. He also admitted that he constructed the house after 22-24 ft. from the 'Nala' and he has not constructed the house as per the sanction granted by the Municipal Corporation nor he left any open land as per the terms and conditions of the sanction. This witness in Para 8 further admitted that width of the road is around 40 ft. and when the map was sanctioned vide Exh. P-5, the width of the road was 20 ft. In Para 9, this witness has deposed that suit land was demarcated by him and Exh. P-15 is the map issued by Revenue Authority. In Para 11 he has further pleaded his ignorance as to whether the road is in City Survey No. 14615 of North side.

5. Learned Trial Court after appreciating the oral and documentary evidence of the parties and on the basis of the admission made by Mohd. Shahid (P.W. 1) in his cross-examination has held that no encroachment has been made by the respondents/defendants and it is the appellants who have encroached the area of Government land. It has also been held by Trial Court that construction of road is going on over the part of the land which is Government land and on Survey No. 1248. The appellants by oral and documentary evidence failed to prove that defendants encroached an area of 20 ft. The construction of road is going over the Government land for the public interest, therefore, it has been held that no case for grant of perpetual injunction, as prayed by the appellants, is made out nor the appellants are entitled for any damages. With the above, the Trial Court by the impugned judgment and decree dismissed the suit of the appellants/plaintiffs.

6. Learned Counsel for the appellants drew my attention to the report regarding demarcation between 24-10-2001 to 29-10-2001 filed along with application for taking the additional documents on record and has submitted that learned Trial Court should have got identity of property established by issuing survey commission which has not been done in the present case and, therefore, the demarcation report along with Panchnama, field book and map be taken on record and the matter be remanded to the Trial Court for its adjudication afresh. The appellants were given sufficient opportunities before the Trial Court to apply for demarcation with regard to the identity of the land in dispute and whether the land in dispute is the part of survey No. 1248 owned by the appellants/plaintiffs or not. On perusal of demarcation report dated 24-10-2001 to 29-10-2001, I find that the demarcation has not been made by installing permanent pillar and this report has been obtained by the appellants/plaintiffs just to fill up the lacuna of the case.

7. Under Order 41, Rule 27, CPC the appellants have to establish that notwithstanding the exercise of due diligence, such evidence was not within his knowledge or could not, after the exercise of due diligence, be produced by them during pendency of the proceedings before the Trial Court. Though they had sufficient opportunities to call for the report, the application has been filed only on the ground that demarcation report is subsequent to the date of judgment and, therefore, the same be taken on record. From the said demarcation report it cannot be said that appellants/plaintiffs are the owner of the disputed land over which encroachment has been made by the respondents. The respondents constructed the road over the Government land. The said documents will not help in any way to the appellants. None of the conditions of Rule 27 of Order 41 of CPC has been satisfied by the appellants. The application filed by the appellants has no merit. Accordingly, I.A. No. 368/2004 is dismissed.

8. I.A. No. 367/2004 has been filed by appellants for amending the plaint on the ground that Nazool Officer in presence of respondents demarcated the whole land and prepared the demarcation report, Panchnama, demarcation map, field book and established the boundaries on the spot. From the report it does not show that the respondents have encroached the area in question and, therefore, the proposed amendment to the effect that the electric poll fixed by respondent No. 4

be directed to be removed, cannot be allowed because when in pursuance of a sanctioned scheme the State Electricity Board by virtue of Section 42 of Electricity (Supply) Act, 1948 exercises the powers under Part III, Telegraph Act it becomes subject to the obligation to pay full compensation to all persons interested for all damages sustained by them as provided in proviso (d) to Section 10 of the Telegraph Act and in case of dispute as to the sufficiency of compensation the obligation is to pay such compensation as may be determined by the District Judge under Section 16(3) of the Indian Telegraph Act. Thus, in case, if it is found that the land of the appellants have been encroached by respondent No. 4-Electricity Board they are entitled for compensation under Section 10 of the Indian Telegraph Act and if they dissatisfied with the amount of compensation, they can file application under Section 16(3) of the Indian Telegraph Act for determination of compensation before the District Judge who is the Competent Authority to entertain the application and decide it in accordance with law. The proposed amendment will change the nature of the case and will make out a new case and the said amendment is not necessary for the purpose of determining the real controversy between the parties. The application (I.A. No. 367/2004) for amendment filed by the appellants has no merit and is hereby rejected.

9. On consideration of evidence on record and in view of the admission made by Mohd. Shahid (P.W. 1) in his cross-examination, the Trial Court dismissed the suit. In the present case, there is no dispute with regard to the identity of the land. The Court below dismissed the suit of appellants/plaintiffs on the basis of oral and documentary evidence and on the basis of the admission made by the plaintiffs' witness it has been held that the suit land has not been encroached by the respondents nor the suit land was found part of Survey No. 1248. Mohd. Shahid (P.W. 1) in his statement has very categorically stated that area was demarcated by the Revenue Authorities and on the basis of the demarcation report, Map (Exh. P-15) was filed. Since there was no dispute with regard to the area and boundaries of the land in question nor there is any dispute with regard to identify, the decision cited by learned Counsel for the appellants in the case of Shreepat v. Rajendra Prasad and Ors. 2000 (6) Supreme 389, is not applicable in the present facts and circumstances of the case. The appellants failed to establish that suit land is not a Government land and the trenches situated over the land are owned

by the appellants/plaintiffs. It is a Government land and part of the Government road. On perusal of the material available on record and for the above mentioned reasons, I am of the considered view that the Trial Court has not committed any legal error in dismissing the suit of the appellants/plaintiffs.

10. The appeal filed by the appellants is hereby dismissed with costs throughout. Counsel fee Rs. 3,000/- if pre-certified.

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