

Sukhdev Vs. Rajendra and anr.

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Court : Madhya Pradesh

Decided On : Aug-21-2003

Reported in : 2004(1)MPHT215

Judge : A.M. Sapre, J.

Acts : [Code of Civil Procedure \(CPC\) , 1908](#) - Sections 9 and 100

Appeal No. : Second Appeal No. 177/2000

Appellant : Sukhdev

Respondent : Rajendra and anr.

Advocate for Pet/Ap. : R.K. Tiwari, Adv.

Disposition : Appeal dismissed

Judgement :

1. Two Courts have dismissed plaintiffs suit for declaration of his title over the suit land giving rise to filing of second appeal under Section 100 of CPC against the judgment/decree, dated 29-2-2000, passed by learned IIInd Additional District Judge, Ujjain in C.A. No. 35-A of 1997, decided by IIIrd Civil Judge, Class II, Ujjain in Civil Suit No. 195-A of 1995, on 21-4-1997. The question that arises for consideration in this appeal is, whether appeal involves any substantial question of law within the meaning of Section 100 ibid ?

2. Heard Shri R.K. Tiwari, learned Counsel for the appellant on the question of admission.
3. Having heard learned Counsel for the parties and having perused record of the case, I am of the view that the appeal does not involve any substantial question of law within the meaning of Section 100 ibid and hence, the appeal deserves to be dismissed in limine.
4. The dispute is between the two brothers in relation to land in suit. It is not in dispute that in Revenue Records, the name of defendant is recorded and shown as owner of the suit land and is also shown to be in possession. The case of plaintiff is that though in Revenue Records, the name of defendant is recorded, yet plaintiff claims to be the owner of the suit land on the strength of one agreement (Ex. P-3). He also set up a title by adverse possession. The defence was that of denial. Both Trial Court and First Appellate Court dismissed the suit holding that so-called agreement (Ex. P-3) is not a genuine document, that defendant is the recorded owner of suit land and hence, no declaration of title in plaintiffs favour can be granted.
5. I find no case to take any other view than the one taken by two Courts below when concurrently, both the Courts held that plaintiff has failed to prove his exclusive title. I in fact concur with this finding which is based on proper appreciation of evidence.
6. Firstly, no document of title was relied on by the plaintiff to claim exclusive ownership in his favour. Secondly, the so-called agreement can not partake, nor create any right, title and interest in anybody's favour - it being only an agreement and not reregistered title deed. Thirdly, in this case, even this agreement was held to be not a genuine document and hence, rightly not relied on for any purpose. Fourthly, the Revenue Records shows the name of defendant as Bhumiswami of the suit land and not that of plaintiff. What more was needed to non suit the plaintiff than the aforementioned four facts.
7. Appeal, thus, fails and is dismissed in limine.

Second Appeal dismissed.

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