

IN THE HIGH COURT OF MADHYA PRADESH
AT GWALIOR
BEFORE
HON'BLE SHRI JUSTICE RAJENDRA KUMAR-IV
ON THE 3rd OF JANUARY, 2024
SECOND APPEAL NO.205 OF 2019

BETWEEN:-

RAM SINGH, S/O SHRI KAMTAPRASAD, CAST-THAKUR, AGED 58 YEARS, R/O NEAR BUS STAND, SHADHAURA, DISTRICT ASHOKNAGAR (MADHYA PRADESH).

.....APPELLANT

(BY SHRI RISHIKESH BOHARE – ADVOCATE)

AND

- 1. MANDIR SHRI GANESHJI BANKE SITUATED IN VILLAGE SHADHAURA, DISTRICT ASHOKNAGAR (MADHYA PRADESH), THROUGH ITS' PRIEST SHRI ASHOK DISXIT, S/O SHRI BHALCHAND RAO DIXIT, CAST BRAHAMMIN, AGED 52 YEARS, R/O NEAR BUS STAND, SHADHAURA, DISTRICT ASHOKNAGAR (MADHYA PRADESH)**
- 2. STATE OF M.P. THROUGH THE COLLECTOR DISTRICT ASHOKNAGAR**

.....RESPONDENTS

(SHRI UPENDRA YADAV – ADVOCATE FOR RESPONDENT NO.1
SHRI G.K. AGRAWAL – GOVERNMENT ADVOCATE FOR RESPONDENT NO.2/STATE)

This appeal coming on for admission this day, the Court passed the following:

JUDGMENT

This second appeal under Section 100 of CPC has been filed against the judgment and decree dated 14/8/2018 passed by Second Additional Judge to the Court of First Additional District Judge, Ashoknagar in Regular Civil Appeal No.08-A/2018 thereby affirming the judgment and decree dated 20/1/2017 passed by Second Civil Judge Class-II, Ashoknagar in Civil Suit No.60-A/2014, by which suit was decreed in favour of the plaintiff.

2. The property in question in the suit is a room attached with the boundary of Ganesh Mandir Shadora, District Ashoknagar. Plaintiff, by way of filing suit, contended that the suit property was under ownership and possession of Shri Ganesh Mandir Shadora. Plaintiff is Pujari of the temple. As such, the suit property is also of his ownership and possession. The plaintiff further pleaded that the suit property was given on rent to defendant no.1 for an amount of Rs.150/- per month with the condition that the rent shall be paid by 15th of every month and that the rent shall be enhanced by Rs.50/- per year. The said facts were also written in the daily register of the temple, which was also signed by defendant no.1. Rent was paid by the defendant no.1 till 14/3/2013, however, thereafter from April, 2013 rent has not been paid by the defendant no.1. It was further pleaded in the plaint that there is some agricultural land of Mandir Shri Ganesh Ji and, therefore, the suit property is required by the plaintiff for keeping agricultural produce/foodgrains and other articles of the temple. The tenancy was terminated w.e.f.14/11/2013. However, as the suit property was neither vacated nor arrears of rent was paid by the defendant no.1/Appellant, therefore, the suit was filed seeking vacant possession of the suit

property as well as for payment of arrears of rent.

3. The defendant no.1 filed his written statement and denied the plaint averments. It is submitted that plaintiff is not the Pujari of the temple. The suit property is not the property of temple. Defendant no.1 denying the landlord-tenant relationship, averred in the written statement that the disputed room was constructed by him and it is in continuous, uninterrupted possession of defendant no.1 for a long period. However, it was pleaded by the defendant no.1 that the suit property was constructed over the government land. With the aforesaid pleadings, defendant no.1 prayed that the suit be dismissed.

4. The Trial Court after framing the issues and recording the evidence of the parties, allowed the suit by judgment and decree dated 20/1/2017 passed in Civil Suit No.60-A/2014. Being aggrieved by the judgment and decree passed by the Trial Court, the appellant/defendant no.1 preferred an appeal which has suffered dismissal by judgment and decree dated 14/8/2018 passed by Second Additional Judge to the Court of First Additional District Judge, Ashoknagar in Civil Appeal No.08-A/2018.

5. Challenging the judgments and decrees passed by the Courts below, instant second appeal has been filed by the defendant no.1 on the following proposed substantial questions of law:-

- (i) Whether, in the facts and circumstances of the case the impugned judgment and decree passed by the learned Courts below is illegal, without jurisdiction and contrary to law?
- (ii) Whether, the learned first Appellate Court has erred in law in over-looking the relevant and material

pieces of evidence on record?

- (iii) Whether, learned appellate Court below has erred in holding the respondent/plaintiff landlord of the suit premises and determining the relationship of landlord and tenant between the parties?
- (iv) Whether, learned Courts below have erred in law in relying on the alleged rent note (Ex.P-2C) while it is not a valid rent note in the eye of law nor it is duly proved on record to be executed between the parties?
- (viii) Whether, the impugned judgment passed by the learned first appellate court is not a reasoned and speaking judgment in the eye of the law?
- (x) Whether, the finding in the impugned judgment passed by the learned first appellate court are perverse and bad in law?

6. Challenging the judgments and decrees passed by the Courts below, it is submitted by the counsel for the appellant that the Courts below have not appreciated the evidence in its proper perspective.

7. Heard the learned counsel for the parties and perused the record.

8. The basic submission made by the counsel for the appellant is that the ocular and documentary evidence led by the parties have not been appreciated properly. Except the above-mentioned submissions, no other perversity has been pointed out by the counsel for the appellant.

9. It is well established principle of law that the findings of facts cannot be interfered with unless and until they are perverse and *de horse* the record. Even an erroneous finding of fact cannot be interfered by the High Court while exercising powers under Section 100 of CPC.

Both the Courts below, by appreciating the evidence in detail, have come to a conclusion in favour of the plaintiff and decreed the suit accordingly.

10. Having gone through the impugned judgments and material on record, this Court is of the view that the courts below have recorded concurrent findings of facts based on impeccable appreciation of evidence on record. The entire gamut of the matter is in the realm of facts. No question of law much less substantial question of law arises in this appeal warranting interference under Section 100 of CPC. No perversity could be pointed out by the counsel for the appellant in the impugned judgments and decrees passed by learned Courts below.

11. Accordingly, this Court is of the considered opinion that no substantial question of law arises in the present appeal. As a consequence thereof, the judgment and decree dated 14/8/2018 passed by Second Additional Judge to the Court of First Additional District Judge, Ashoknagar in Civil Appeal No.8A/2018 and the judgment and decree dated 20/1/2017 passed by Second Civil Judge Class-II, Ashoknagar in Civil Suit No.60-A/2014 are hereby affirmed.

12. The appeal fails and is hereby **dismissed**.

(RAJENDRA KUMAR-IV)
JUDGE

Arun*