IN THE HIGH COURT OF MADHYA PRADESH AT INDORE

BEFORE

HON'BLE SHRI JUSTICE DEVNARAYAN MISHRA

ON THE 2nd OF FEBRUARY, 2024

SECOND APPEAL No. 3034 of 2018

BETWEEN:-

GOBARLAL S/O NANURAM DANGI, AGED ABOUT 52 YEARS, OCCUPATION: AGRICULTURE VILLAGE PIPLYA JODHA TEH. MALHARGARH (MADHYA PRADESH)

.....APPELLANT

(BY SHRI PADMNABH SAXENA- ADVOCATE FOR THE APPELLANT)

AND

1. **NARAYAN S/O RAMLAL DANGI, AGED ABOUT 42 YEARS, OCCUPATION: AGRICULTURE VILLAGE PIPLYA JODHA TEHSIL MALHARGARH (MADHYA PRADESH)**

2. **COLLECTOR THE STATE OF MADHYA PRADESH MANDSAUR (MADHYA PRADESH)**

3. **SUB DIVISIONAL MAGISTRATE THE STATE OF MADHYA PRADESH MALHARGARH, (MADHYA PRADESH)**

4. **TEHSILDAR THE STATE OF MADHYA PRADESH MALHARGARH (MADHYA PRADESH)**

.....RESPONDENTS

(MS VINITA DWIVEDI - PANEL LAWYER FOR THE RESPONDENTS NO. 2 to 4)

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

ORDER

The present second appeal has been filed being aggrieved with the judgment and decree passed by the Sixth Additional District Judge, Mandsaur

Signature Not Verified
Signed by: RASHMI PRASHANT
Signing time: 03-02-2024 17:57:37

dated 12.09.2018 passed in Regular Civil Appeal 979/2017 by which the judgment and decree passed by Civil Judge, Class-I, Narayangarh, District Mandsaur dated 14.06.2016 passed in Civil No. 43-A/2016 was affirmed by which the plaintiff's/appellant suit was dismissed.

2. In nutshell the appellant's case before the trial Court was that in village Piplya Jodha the appellants do have a pit, which was surrounded by wall from three sides ad-measuring 24 ft length and 24 ft. width and were gathering cow dung and household wastes in a pit for a last fifteen years. Respondent No.1 was interfering in the possession of that place by making false complaints as he had no right to interfere with and the respondent Nos. 2 to 4 have also no right to dispossess him without following the due process of law and, therefore, he after notice under Section 80 of the CPC, filed a suit before the trial Court.

3. Respondents No. 2 to 4 filed a written statement and denied the plaint averments and specifically pleaded that the plaintiff has encroached the Government land. A complaint was made before the defendant No.3. On that the plaintiff was heard and the order was passed on 04.09.2012 and Naib Tehsildar was directed to conduct an inquiry and on that the plaintiff has filed the suit. The encroached piece of land is a Government land and is of public use. Hence, the suit is not maintainable and be dismissed.

4. On the above pleadings, the trial Court framed the issues and after recording the evidence dismissed the suit.

5. Being aggrieved with the judgment the appellant/plaintiff has filed first appeal before the District Judge, Mandsaur. The first appellate Court after hearing the parties dismissed the appeal. Hence, this Second appeal.

6. Learned counsel for the appellant has submitted that the appellant was in possession of the pit which was surrounded by wall from three sides. The

Signature Not Verified
Signed by: RASHMI PRASHANT
Signing time: 03-02-2024 17:57:37

respondent State has taken the objection that plaintiff has encroached the Government land and the trial Court as well as appellate Court has misinterpreted the facts and the laws. Plaintiff's evidence was not appreciated in proper prospective. His possession was mentioned in Exhibit-P-1, but the trial as well as the appellate Court has wrongly interpreted the entry and wrongly denied the decree to preserve his possession.

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

8. Learned trial Court has elaborately discussed regarding possession and has concluded that there were no dispute regarding pit of the fertilizers and household wastes. The dispute started when the plaintiff has started constructing walls on three sides around the pit. Trial Court has also concluded that the disputed land is a part of Survey No. 317 i.e a Government land. No evidence has been produced through documents or otherwise to prove that possession has been wrongly done. Trial Court has also came to the conclusion that the plaintiff appellant do collaborated with the Revenue authorities for encroaching the Government land, hence the decree was denied.

9. The appellate Court has also discussed the legal provisions in paragraphs 14 and 15 of the impugned judgment and in paragraph 17 it is discussed that the disputed piece of land is a Government land and the appellate Court has also discussed regarding the possession in paragraph-19 of the impugned judgment and it was found from the record of 'Khasra Panchshala' from 2004 to 2012 that there is no entry regarding possession of the appellant on the suit land and the entry in Exhibit-P-3 differs from that of Exhibit-D-1 of 'Khasra Panchshala' of the same year, which has not been proved by the statement of the Patwari by order of which the authority he had entered the

Signature Not Verified
Signed by: RASHMI PRASHANT
Signing time: 03-02-2024 17:57:37

name of plaintiff in Column No. 12 of the 'Khasra Panchshala - Court has also not found settled possession of the appellant on the suit property on that basis the suit was dismissed.

10. After hearing the parties and on perusal of the record, no perversity is found in the appeal. No question of law, much less substantial question of law, arises for adjudication in the instant second appeal. Accordingly, the appeal is dismissed in limine.

11. A copy of this order along with record be sent back to the courts below for information and its compliance.

Certified copy as per rules.

(DEVNARAYAN MISHRA)
JUDGE

rashmi

Signature Not Verified
Signed by: RASHMI PRASHANT
Signing time: 03-02-2024 17:57:37