IN THE HIGH COURT OF MADHYA PRADESH

AT JABALPUR

BEFORE

HON'BLE SHRI JUSTICE ACHAL KUMAR PALIWAL

ON THE 16th OF JANUARY, 2024

SECOND APPEAL No. 1244 OF 2011

BETWEEN:-

RAM AASRE TELI S/O LATE SURAJDEEN TELI VILL. SONVERSHA TAH.RAGHURAJNAGAR (MADHYA PRADESH)

MOHAN TELI S/O LATE SURAJDEEN TELI VILLAGE SONVERSHA, TEHSIL RAGHURAJNAGAR (MADHYA PRADESH)

RAMBAHOR TELI S/O LATE SURAJDEEN TELI VILLAGE SONVERSHA, TEHSIL RAGHURAJNAGAR (MADHYA PRADESH)

SAVITA DEVI D/O SHIVBALAK, AGED ABOUT 38 YEARS, VILLAGE GHUMA POST- KATRA PS.- GARH TEH- TEONTHAR (MADHYA PRADESH)

RAMBIHARI TELI S/O LATE SURAJDEEN TELI VILLAGE SONVERSHA, TEHSIL RAGHURAJNAGAR (MADHYA PRADESH)

.....APPELLANTS

(BY *SHRI A.K.PANDEY - ADVOCATE)*

AND

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JODA TELI [D] THR.LRS. MUS. DURPATIYA W/O LATE SHRI JODA, AGED ABOUT 70 YEARS, VILL. SONVERSHA TAH.RAGHURAJNAGAR (MADHYA PRADESH)

SHRI RANMAT S/O LATE SHRI JODA, AGED ABOUT 55 YEARS, VILLAGE SONVERSHA, TEHSIL RAGHURAJNAGAR (MADHYA PRADESH)

SHRI GANPAT S/O LATE SHRI JODA, AGED ABOUT 50 YEARS, VILLAGE SONVERSHA, TEHSIL RAGHURAJNAGAR (MADHYA PRADESH)

SHRI RAMPHAL S/O LATE SHRI JODA, AGED ABOUT 45 YEARS, VILLAGE SONVERSHA, TEHSIL RAGHURAJNAGAR (MADHYA PRADESH)

SHRI LALMAN S/O LATE SHRI JODA, AGED ABOUT 40 YEARS, VILLAGE SONVERSHA, TEHSIL RAGHURAJNAGAR (MADHYA PRADESH)

SMT. SHYAMSAKHI D/O LATE JODA, AGED ABOUT 42 YEARS, PANAS KHAMHARIYA, TEHSIL NAGOD (MADHYA PRADESH)

SMT. RAMPATI D/O LATE SHRI JODA, AGED ABOUT 38 YEARS, MOUHARI, TEHSIL RAGHURAJNAGAR (MADHYA PRADESH)

MISTRI TELI S/O LATE BAJURIYA @ JHURIYA TELI VILLAGE SONVERSHA, TEHSIL RAGHURAJNAGAR (MADHYA PRADESH)

RAMVISHVAS TELI S/O LATE BAJURIYA @ JHURIYA TELI VILLAGE SONVERSHA, TEHSIL RAGHURAJNAGAR (MADHYA PRADESH)

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NIVAS @ RAMNIVAS S/O LATE BAJURIYA @ JHURIYA TELI VILLAGE SONVERSHA, TEHSIL RAGHURAJNAGAR (MADHYA PRADESH)

RAMSWAROOP S/O LATE BAJURIYA @ JHURIYA TELI VILLAGE SONVERSHA, TEHSIL RAGHURAJNAGAR (MADHYA PRADESH)

SMT. LEELA D/O LATE BAJURIYA @ JHURIYA TELI UMRI, TEHSIL RAGHURAJNAGAR (MADHYA PRADESH)

SMT. KUSMA D/O LATE BAJURIYA @ JHURIYA TELI LOHROURA, TESHIL UCHEHARA (MADHYA PRADESH)

MUS. KALLI W/O CHHANGA TELI VILLAGE SONVERSHA, TEHSIL RAGHURAJNAGAR (MADHYA PRADESH)

MIRCHAIYA TELI S/O CHHANGA TELI VILLAGE SONVERSHA, TEHSIL RAGHURAJNAGAR (MADHYA PRADESH)

CHHOTAIYA TELI S/O CHHANGA TELI VILLAGE SONVERSHA, TEHSIL RAGHURAJNAGAR (MADHYA PRADESH)

PANNALAL (DEAD) S/O SUDARSHAN TELI VILLAGE SONVERSHA, TEHSIL RAGHURAJNAGAR (MADHYA PRADESH)

GIRDHARI S/O SUDARSHAN TELI VILLAGE SONVERSHA, TEHSIL RAGHURAJNAGAR (MADHYA PRADESH)

.....RESPONDENTS

(BY SHRI VITTHAL RAO - ADVOCATE WITH SHRI PANKAJ VISHWAKARMA - ADVOCATE)

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

O R D E R

This second appeal has been filed under Order 41 Rule 1 of Code of Civil Procedure, 1908, against the judgment and decree dated 5.9.2011 passed by Additional District Judge, Satna, District Rewa (MP) in regular Civil Appeal RCA No.9-A/2010, affirming the judgment and decree dated 22.01.2010 passed in Civil Suit No.54-A/2009.

2. Brief facts of the case are that appellants/plaintiffs filed a suit for declaration of title and permanent injunction on the ground that they belong to/are of the family of Mudhiya. In this connection, pedigree has also been mentioned in para-2 of plaint to show the connection of appellants/plaintiffs with Mudhiya.

3. Learned trial Court vide judgment dated 22.1.2010 passed in RCS No.54-A/2009 dismissed the suit and appeal filed against the above judgment by appellant/plaintiff was partly allowed vide judgment dated 5.09.2011 passed in RCA No.9-A/2010 whereby injunction was issued in favour of appellant/plaintiff but appeal was dismissed with respect to title.

4. Learned counsel for the appellants/plaintiffs submits that Mudhiya was original owner of suit property. After referring to depositions of PW-4, DW-6 and para-30 of Appellate Court judgment, it is urged that plaintiff/appellants

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belong to the family to Mudhiya. It is also submitted that from evidence on record, pedigree of Mudhiya/plaintiff, as mentioned in plaint, is clearly proved. It is also proved that appellants/plaintiffs are legal heirs of Mudhiya and Mudhiya has died issue less.

5. In view of above, appellants are entitled to inherit Mudhiya's property. Learned Courts below have wrongly held that appellants/plaintiffs are not legal heirs of Mudhiya and have wrongly dismissed appellant's suit with respect to declaration of title. On above grounds, it is urged that in the instant appeal substantial question of law as mentioned in the appeal memo arises. Therefore, appeal be admitted for final hearing.

6. I have heard learned counsel for the parties and have perused the records of Courts below.

7. Therefore, question arises as to when this Court can interfere with the findings of facts arrived at by the Courts below. In this connection, I would like to refer to the law laid down by the Hon'ble Apex Court in the case of ***Chandrabhan (Deceased) through Lrs. And Others vs. Saraswati and Others reported in AIR 2022 SC 4601,*** wherein Hon'ble Apex Court in para 33(iii) has held as under:-

> "**33 (iii)** The general rule is that the High Court will not interfere with findings of facts arrived at by the courts below. But it is not an absolute rule. Some of

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> the well - recognized exceptions are where (i) the courts below have ignored material evidence or acted on no evidence; (ii) the courts have drawn wrong inferences from proved facts by applying the law erroneously; or (iii) the courts have wrongly cast the burden of proof. When we refer to "decision" based on no evidence", it not only refers to cases where there is a total dearth of evidence, but also refers to any case, where the evidence, taken as a whole, is not reasonably capable of supporting the finding".

8. Similarly in the case of ***Gurnam Singh (Dead) by legal representatives and Others vs. Lehna Singh (Dead) by legal representatives,*** Hon'ble Apex Court has held as under:-

> *""13.1.....However, in Second Appeal under Section 100 of the CPC, the High Court, by impugned judgment and order has interfered with the Judgment and Decree passed by the First Appellate Court. While interfering with the judgment and order passed by the first Appellate Court, it appears that while upsetting the judgment and decree passed by the First Appellate Court, the High Court has again appreciated the entire evidence on record, which in exercise of powers under Section 100 CPC is not permissible. While passing the impugned judgment and order, it appears that High Court has not at all appreciated the fact that the High Court was deciding the Second Appeal under Section 100 of the CPC and not first appeal under Section 96 of the CPC. As per the law laid down by this Court in a catena of decisions, the jurisdiction of High Court to entertain second appeal under Section 100 CPC after the 1976 Amendment, is confined only when the second appeal involves a substantial question of law. The existence of 'a substantial question of law' is a sine qua non for the exercise of the jurisdiction under Section 100 of the CPC. As observed and held by this*

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> *Court in the case of Kondiba Dagadu Kadam (Supra), in a second appeal under Section 100 of the CPC, the High Court cannot substitute its own opinion for that of the First Appellate Court, unless it finds that the conclusions drawn by the lower Court were erroneous being:*
>
> *(i) Contrary to the mandatory provisions of the applicable law; OR*
>
> *(ii) Contrary to the law as pronounced by the Apex Court; OR*
>
> *(iii) Based on inadmissible evidence or no evidence*
>
> It is further observed by this Court in the aforesaid decision that if First Appellate Court has exercised its discretion in a judicial manner, its decision cannot be recorded as suffering from an error either of law or of procedure requiring interference in second appeal. It is further observed that the Trial Court could have decided differently is not a question of law justifying interference in second appeal".

9. In this connection, ***Ishwar Dass Jain (Dead) through Lrs vs. Sohan Lal (Dead) by LRs*** reported in (2000) 1 Supreme Court Cases 434 may also be referred to. Paras 11 and 12 of the said judgment is relevant and is under:-

> "11. There are two situations in which interference with findings of fact is permissible. The first one is when material or relevant evidence is not considered which, if considered would have led to an opposite conclusion. This principle has been laid down in a series of judgments of this Court in relation to section 100 CPC after the 1976 amendment. In Dilbagrai Punjabi vs. Sharad Chandra [1988 Supple. SCC 710], while dealing with a Second Appeal of 1978 decided by the Madhya Pradesh High Court on 20.8.81,

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L.M.Sharma, J.(as he then was) observed that "The Court (the first appellate Court) is under a duty to examine the entire relevant evidence on record and if it refuses to consider important evidence having direct bearing on the disputed issue and the error which arises as of a magnitude that it gives birth to a substantial question of law, the High Court is fully authorised to set aside the finding. This is the situation in the present case."

In that case, an admission by the defendant-tenant in the reply notice in regard to the plaintiff's title and the description of the plaintiff as `owner' of the property signed by the defendant were not considered by the first appellate Court while holding that the plaintiff had not proved his title. The High Court interfered with the finding on the ground of non-consideration of vital evidence and this Court affirmed the said decision. That was upheld. In Jagdish Singh vs. Nathu Singh [1992 (1) SCC 647], with reference to a Second Appeal of 1978 disposed of on 5.4.1991. Venkatachaliah, J. (as he then was) held:

"where the findings by the Court of facts is vitiated by non-consideration of relevant evidence or by an essentially erroneous approach to the matter, the High Court is not precluded from recording proper findings."

Again in Sundra Naicka Vadiyar vs. Ramaswami Ayyar [1995 Suppl. (4) SCC 534], it was held that where certain vital documents for deciding the question of possession were ignored - such as a compromise, an order of the revenue Court – reliance on oral evidence was unjustified. In yet another case in Mehrunissa vs. Visham Kumari [1998 (2) SCC 295] arising out of Second appeal of 1988 decided on 15.1.1996, it was held by Venkataswami, J. that a finding arrived at by ignoring the second notice issued by the landlady and without noticing that the suit was not based on

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> earlier notices, was vitiated finding. This was in Second Appeal of 1988 decided on 15.1.1996.
>
> 12. The second situation in which interference with findings of fact is permissible is where a finding has been arrived at by the appellate Court by placing reliance on inadmissible evidence which if it was omitted, an opposite conclusion was possible. In Sri Chand Gupta vs. Gulzar Singh [1992 (1) SCC 143], it was held that the High Court was right in interfering in Second Appeal where the lower appellate Court relied upon an admission of a third party treating it as binding on the defendant. The admission was inadmissible as against the defendant. This was also a Second Appeal of 1981 disposed of on 24.9.1985".

10. Perusal of the case file reveals that admittedly Mudhiya was original owner and in possession of suit property and presently appellants/plaintiffs have been found in possession of suit property vide First Appellate Court judgment and accordingly permanent injunction has been issued in favour of appellants/plaintiffs. So far as ownership of suit property is concerned, it is correct that PW-4 and PW-6 have admitted that appellants are of Mudhiya's family but they have not specifically stated appellant's relationship with Mudhiya.

11. Perusal of Para Nos. 22 and 23 of appellate court judgment reveals that learned First Appellate Court has discussed evidence on record and has also examined the findings recorded by the trial court and has concurred with the findings recorded by trial court that Mudhiya belongs to defendant's family and not plaintiff's family and pedigree of defendant and Mudhiya is same. This concur-

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rent findings of facts recorded by courts below is as per evidence on record. In this connection, I have also independently gone through the evidence on record and have assessed and examined the same.

12 Hence, if pleadings of the parties and evidence adduced by the parties and the impugned judgments passed by the Courts below are considered, in light of the above legal principles/legal provisions reiterated in aforesaid judgments, then, in this Court's considered opinion, the findings of facts concurrently recorded by the Courts below are not liable to be interfered with in the instant case and it cannot be said that Courts below have ignored any material evidence or has acted on no evidence or Courts have drawn wrong inferences from the proved facts etc. Further, it cannot be said that evidence taken as a whole, is not reasonably capable of supporting the findings. It can also be not said that the findings of Courts below are based on inadmissible evidence.

13. A perusal of the impugned judgments and decree passed by the Courts below reveals that they are well reasoned and have been passed after due consideration of oral as well as documentary evidence on record. Learned counsel for the appellant/plaintiff has failed to show that how the findings of facts recorded by the Courts below are illegal, perverse and based on no evidence etc. The learned Courts below have legally and rightly dealt with the issues involved in the matter and have recorded correct findings of fact.

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14. For the reasons aforesaid, I find no merit in the instant second appeal. Concurrent findings recorded by the Courts below are fully justified by the evidence on record. Concurrent findings recorded by the Courts below are not based on misreading or mis-appreciation of evidence nor it is shown to be illegal or perverse in any manner so as to call for interference in second appeal. No question of law, much less substantial question of law, arises for adjudication in the instant peal is dismissed in *limine.*

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

(ACHAL KUMAR PALIWAL)
JUDGE

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