Mohan Kumar vs State Of M.P. & Ors on 7 March, 2017

Equivalent citations: AIR 2017 SC (SUPP) 450, 2017 (4) SCC 92, (2017) 1 RENCR 279, (2017) 2 ALL RENTCAS 324, (2017) 4 MAD LW 601, (2017) 4 MAH LJ 817, (2017) 3 MPLJ 299, (2017) 3 SCALE 379, (2017) 173 ALLINDCAS 262 (SC), (2017) 1 CLR 826 (SC), (2017) 2 CGLJ 70, (2017) 1 WLC(SC)CVL 528, (2017) 135 REVDEC 380, (2017) 122 ALL LR 504, (2017) 2 CAL HN 85, (2017) 2 ICC 340

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Bench: Abhay Manohar Sapre, R.K. Agrawal

Reportable

IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICTION

CIVIL APPEAL No.1412 OF 2008

Mohan Kumar ….Appellant(s)

VERSUS

State of Madhya Pradesh & Ors. …Respondent(s)

J U D G M E N T

Abhay Manohar Sapre, J.

1) This appeal is filed by plaintiff No.1 against the judgment and final order dated 24.01.2005 passed by the High Court of Judicature at Madhya Pradesh, Jabalpur Bench at Gwalior in First Appeal No. 3 of 1998 whereby the High Court dismissed the appeal and, in consequence, dismissed the plaintiff's suit which was partly decreed by the Trial Court.

2) We herein set out the facts, in brief, to appreciate the issues involved in this appeal.

3) The appellant is plaintiff No.1 whereas the respondents are the defendants in a suit out of which this appeal arises.

4) The case of the appellant is that the land bearing Survey No. 899 measuring 18 Biswas situated at Apaganj Mama Ka Bazar Lashker Gawlior, M.P. was purchased by him along with his mother from its previous owner Jaswant Kumar through registered sale deed dated 15.09.1941. The physical possession thereof was delivered to the appellant and his mother by their vendor and their names were also mutated in the revenue record as the "owners of the land".

5) Three temples and two Darghas were alleged to have been constructed on the land in dispute while latrines and bathrooms as well as septic tanks were also alleged to have been constructed by the Municipal Corporation of Gwalior (respondent No.2) for the public user and sewer lines and pipe lines were also laid by the Public Health Engineering Department (respondent No.3) on a part of the said land.

6) The appellant, accordingly, approached the Collector, Gwalior for removing the trespass committed on their land. The Collector passed an order to remove the said trespass by dispossessing them therefrom under Section 4(2) of the Madhya Pradesh Public Premises and Devasthanam (Regulation) Act.

7) The Collector then reconsidered the appellant's request and suggested respondent No.2-Municipal Corporation of Gawlior to allot 352.65 sq.meter of land near Surya Narain Temple situated in Daulatganj to the appellant in lieu of the appellant's land in question.

8) The Municipal Corporation of Gwalior expressed their agreement to the proposal made by the Collector and accordingly deputed an Engineer to evaluate the cost of the land owned by the appellant and his mother and of the proposed land situated near Surya Narain Temple. A report was, accordingly, received assessing the value of the land of the appellant at the rate of Rs.150/- per sq. meter. So far as the land situated near Surya Narain temple was concerned, it was assessed as Rs.800/- per sq. meter. Letters were also addressed by the Collector and Legal Aid in this regard.

9) Dissatisfied with the action of the respondents, the appellant and her mother filed a petition being W.P.(MP No. 290/1989 before the High Court. It was disposed of by the High Court on 22.06.1989 directing the Municipal Corporation to remove latrines, sewer lines, septic tank constructed on the land shown in Appendix 'A'. As no action was taken, the second Misc. Pet. No. 859 of 1989 was filed by the appellant which was also disposed of by the High Court by order dated 16.03.1992 directing the appellant to institute a civil suit for getting the dispute adjudicated. Aggrieved by the said order of the High Court, the appellant filed a petition being S.L.P.(c) No. 11815 of 1992 before this Court. This Court affirmed the order of the High Court vide its order dated 08.04.1994.

10) The respondents, in the meantime, started construction of the temple/mosque on the land area being 40x6 sq.ft. owned by the appellant and his mother. One Pump House was also being constructed by digging bored in the land by respondent No.3 on the land shown in Appendix 'A'. The appellant, therefore, served notice on the Municipal Corporation on 04.08.1994 raising objections to the authorities but no action towards exchange of the land shown in Appendix 'B' in respect of the land in dispute was taken and nor the activities were discontinued.

11) The appellant and his mother, therefore, filed a civil suit bearing Civil Suit No. 78A of 1994 before the VIII Addl. District Judge, Gwalior against the respondents for a declaration of the title, permanent injunction and for the recovery of the possession in respect of the disputed land Survey No. 899, area being 18 Biswas situated in Appaganj, Mama Ka Baazar, Lashkar, Gwalior, out of which this appeal arises. The respondents, i.e., State of Madhya Pradesh and Municipal Corporation, Gwalior contested the suit and filed written statements.

12) The Trial Court framed nine issues. Parties adduced evidence.

13) Vide judgment dated 29.11.1997, the Trial Court partly decreed the suit filed by the appellant. It was held that the appellant-plaintiffs are the owners of the land in dispute, on which trespass was committed by constructing temple, Dargah, latrines and others by the respondents. It was held that the appellant is entitled to get the encroachments removed from the land in suit. It was also held that the Government should acquire the land and pay the market value of the land to the appellant because the land was being used for public purpose.

14) Against that part of the judgment of the Trial Court which resulted in rejection of the claim of the appellant to allot him any alternate land in lieu of his land on which the encroachment was made, the appellant felt aggrieved and filed an appeal being F.A. No.3 of 1998 before the High Court. So far as the defendants are concerned, they were satisfied with the part of the decree passed by the Trial Court against them.

15) By impugned judgment dated 24.01.2005, the High Court not only dismissed the appeal of the plaintiff but proceeded to dismiss the entire suit including the finding of the Trial Court regarding ownership of the appellant over the suit land.

16) Against the said judgment, the appellant has filed this appeal by way of special leave petition before this Court.

17) Heard Mr. C.L. Sahu, learned counsel for the appellant and Mr. Harshvardhan Jha, learned counsel for the State.

18) Having heard learned counsel for the parties and on perusal of the record of the case, we are inclined to allow the appeal and while setting aside of the impugned order restore the suit to its file and remand the case to the Trial Court for deciding the suit afresh on merits.

19) The need to remand the case is called for because we find that the High Court while dismissing the appellant's first appeal recorded a finding that since the appellant (plaintiff) failed to prove his ownership over the suit land inasmuch as the plaintiff did not examine his vendor to prove his sale deed, the Trial Court was not justified in decreeing the appellant’s suit and granting declaration of ownership in his favour in relation to the suit land. In other words, the High Court was of the view that it was obligatory upon the appellant (plaintiff) to prove his title by examining his vendor and since it was not done, the decree passed by the Trial Court in plaintiff's favour was not legally sustainable. This finding of the High Court, as mentioned above, resulted in dismissal of the appeal

and the suit as well.

20) In our considered opinion, assuming that the High Court was right in its view, it should have given an opportunity to the appellant to prove his title by allowing him to adduce proper evidence in support of his case and for that, the High Court should have remanded the case to the Trial Court for retrial of the suit. It was more so because we find that the appellant suffered more damage to his case in prosecuting his own appeal. In the absence of any challenge laid by the defendants to the part of the decree passed in plaintiff's favour by the Trial Court, the appellate Court virtually passed the order in respondents' (defendants) favour in appellant's appeal.

21) In other words, the High Court having held that the plaintiff was not able to prove his title to the land in the suit due to non-examination of his vendor, all that the High Court, in such circumstances, should have done was to remand the case to the Trial Court by affording an opportunity to the appellant to prove his case (title to the land) and adduce proper evidence in addition to what he had already adduced. This, the High Court could do by taking recourse to powers under Order 41 Rule 23A of the CPC.

22) Since we are inclined to remand the case by taking recourse to the powers available under Order 41 Rule 23A CPC, it is not considered necessary to examine any other question arising in the case.

23) We are, therefore, of the considered opinion that instead of now remanding the case to the first Appellate Court, it would be just and proper to remand the case to the Trial Court to retry the suit on merits by affording an opportunity to the parties to adduce additional evidence in support of their case.

24) The parties (plaintiff and defendants) are accordingly granted liberty to amend their pleadings and adduce additional evidence. The Trial Court shall then pass a judgment in accordance with law uninfluenced by any of our observations and of the High Court.

25) Parties to appear before the concerned Trial Court on 27.03.2017 to enable the Court to conclude the proceedings preferably within six months from the date of party's appearance.

26) Before parting with the case, we consider it apposite to bring to the notice of Trial Court the provisions of Order 27 Rule 5B of the Code of Civil Procedure which reads as under.

| | | |"5B. Duty of court in suits against the government or a public| | |officer to assist in arriving at a settlement.- (1) In every | | |suit or proceeding to which the government, or a public | | |officer acting in his official capacity, is a party, it shall| | |be the duty of the court to make, in the first instance, every| | |endeavour, where it is possible to do so consistently with the| | |nature and circumstances of the case, to assist the parties in| | |arriving at a settlement in respect of the subject matter of | | |the suit. | | | | |(2) If, in any such suit or proceedings, at any stage, it | | |appears to the court that there is a reasonable possibility of| | |a settlement between the parties, the court may adjourn the | | |proceeding for such period as it thinks fit, to enable | | |attempts to be made to effect such a settlement. | | |(3) The power conferred under sub-rule (2) is in addition to | | |any other

power of the court to adjourn proceedings." | |

27) Since we find that the case at hand is against the State Government and local bodies, it is the duty of the Court to make, in the first instance, every endeavor to assist the parties to settle in respect of subject matter of the suit and, if for any reason, settlement is not arrived at then proceed to decide the suit on merits in accordance with law.

28) The appeal thus succeeds and is allowed. Impugned judgment as also the judgment and decree of the Trial Court are set aside. The Trial Court is directed to decide the suit keeping in view the observations made above.

.....J. [R.K. AGRAWAL] .....J. [ABHAY MANOHAR SAPRE] New Delhi;

March 07, 2017
