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KESAR BAI

v.

GENDA LAL & ANR.

(Civil Appeal No. 7129 of 2022)

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OCTOBER 14, 2022

**[M. R. SHAH AND KRISHNA MURARI JJ.]**

*Suit – Suit for declaration of ownership and permanent injunction – On the basis of registered sale deed and also on basis of adverse possession – Trial Court dismissed the suit – The First Appellate held that the plaintiffs-respondent did not get any right on basis of the sale deed – However, the First Appellate Court decreed the suit for title on basis of adverse possession and restrained the defendant-appellant from interfering with possession of the plaintiffs-respondent – Second appeal before High Court which framed substantial question of law on adverse possession and decided the same in favour of appellant, however, thereafter did not interfere with the judgment passed by the First Appellate Court – Held: All the Courts below negated the claim of original plaintiffs of ownership on basis of registered Sale Deed – Therefore, the only claim on behalf of plaintiffs was the plea of adverse possession – So far as plea of adverse possession was concerned, the High Court had specifically framed a substantial question of law and as such held the same in favour of appellant-defendant – High Court specifically observed and held that the plea of ownership based on sale deed and plea of adverse possession, both, were contrary to each other and the plaintiffs could not be permitted to take both the pleas at the same time – Therefore, even as per the High Court, the claim of plaintiffs on basis of the adverse possession was not tenable – In that view of the matter and once the substantial question of law on adverse possession was held in favour of appellant- defendant and the title/ownership claimed on basis of Sale Deed was negated by all the Courts below, thereafter the possession/alleged possession of plaintiffs could not have been protected by passing a decree of permanent injunction in favour of the plaintiffs – Under the circumstances, the High Court materially erred in confirming the judgment passed by the First Appellate Court.*

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Allowing the appeal, the Court

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**HELD:** The High Court has specifically observed and held that the plea of ownership based on sale deed and plea of adverse possession, both, are contrary to each other and the plaintiffs cannot be permitted to take both the pleas at the same time. Therefore, even as per the High Court, the claim of the plaintiffs on the basis of the adverse possession was not tenable. In that view of the matter and once the substantial question of law on adverse possession was held in favour of the appellant – original defendant No.1 and the title/ownership claimed on the basis of the Sale Deed dated 31.08.1967 (Ex.P.1) was negated by all the Courts below, thereafter the possession/alleged possession of the plaintiffs could not have been protected by passing a decree of permanent injunction in favour of the plaintiffs. Under the circumstances, the High Court has materially erred in dismissing the appeal and confirming the judgment and order passed by the First Appellate Court. [Para 5][567-H; 568-A-C]

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CIVIL APPELLATE JURISDICTION: Civil Appeal No. 7129 of 2022.

From the Judgment and Orders dated 02.03.2022 of the High Court of Madhya Pradesh at Jabalpur in Second Appeal No. 8 of 1999.

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Arjun Garg, Shobhit Jain, Aakash Nandolia, Ms. Sagun Srivastava, Advs. for the Appellant.

Ms. Swarupama Chaturvedi, AAG, Sunny Choudhary, Manoj Kumar, Advs. for the Respondents.

The Judgment of the Court was delivered by

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**M. R. SHAH, J.**

1. Feeling aggrieved and dissatisfied with the impugned judgment and order passed by the High Court of Madhya Pradesh Principal Seat at Jabalpur in Second Appeal No. 8 of 1999, the original defendant has preferred the present appeal.

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2. The facts leading to the present appeal in nutshell are as under:-

2.1 That the respondent No.1 herein – original plaintiff filed a suit seeking declaration of ownership and permanent injunction against the defendant with regard to the suit property. The original plaintiffs claimed

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A the title/ownership on the basis of the registered Sale Deed executed on 31.08.1967 in favour of their father and husband Dariyab Singh. The plaintiffs also claimed the title on the basis of the adverse possession. The learned Trial Court dismissed the suit.

2.2 The original plaintiffs preferred the appeal before the First Appellate Court. The learned First Appellate Court though held that the plaintiffs shall not get any right on the basis of the Sale Deed dated 31.08.1967 (Ex.P.1), decreed the suit for permanent injunction observing that the plaintiffs are in possession of the suit land. The First Appellate Court also held that therefore, the plaintiffs have perfected their title by way of adverse possession. The First Appellate Court decreed the suit for title on adverse possession and issued the decree of permanent injunction restraining the defendant No.1 – appellant herein from interfering with the possession of the plaintiffs. The appellant herein – original defendant No.1 filed the second appeal before the High Court. The High Court framed the following substantial question of law:-

D “Whether the First Appellate Court has erred in holding that the plaintiff has perfected his title on the disputed land by adverse possession?”

2.3 Though the High Court answered the aforesaid substantial question of law in favour of the appellant, however, thereafter did not interfere with the judgment and order passed by the First Appellate Court by observing that the First Appellate Court has specifically given the finding that the plaintiffs are in possession of the suit land since after execution of the Sale Deed dated 31.08.1967. Consequently, the High Court has dismissed the said second appeal. The impugned judgment and order passed by the High Court dismissing the second appeal is the subject matter of present appeal.

3. Learned counsel appearing on behalf of the appellant – original defendant No.1 has vehemently submitted that as such the plaintiffs filed the suit for declaration claiming ownership/title on the basis of the registered Sale Deed dated 31.08.1967 (Ex.P.1.) and also claimed the ownership by adverse possession. It is submitted that all the Courts below had negated the claim of the original plaintiffs on the basis of the registered sale deed. It is submitted that thereafter the only question on behalf of the plaintiffs was the claim on the basis of the adverse possession. It is submitted that in the impugned judgment and order, the High Court has

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though held the substantial question of law on adverse possession in favour of the appellant by observing that the plea of ownership based on sale deed and plea of adverse possession, both, are contrary to each other and plaintiffs cannot be permitted to take the same plea at the same time, thereafter the High Court has dismissed the appeal and confirmed the judgment and order passed by the First Appellate Court decreeing the suit for title and also passed the decree for permanent injunction.

3.1 It is vehemently submitted by the counsel on behalf of the appellant that once the original plaintiffs failed to get the decree for title/declaration on the basis of the Sale Deed executed on 31.08.1967 (Ex.P.1) and the substantial question of law with respect to the adverse possession was held in favour of the appellant by the High Court, thereafter the original plaintiffs shall not be entitled to the decree of permanent injunction.

3.2 It is further submitted that the High Court has failed to appreciate that once the plaintiffs are not found to be the owner, they cannot claim their title by way of adverse possession. Their possession over the land in question can only be in the nature of an encroacher. It is submitted that therefore both, the First Appellate Court as well as the High Court have seriously erred in granting the permanent injunction in favour of the plaintiffs and against the defendants.

4. Ms. Swarupama Chaturvedi, learned AAG appearing on behalf of the respondent No.2 – State has submitted that she is appearing for a proforma respondent and therefore, has nothing to add.

5. Having gone through the impugned judgment and order passed by the High Court as well as the First Appellate Court and even that of the learned Trial Court, it appears that the original plaintiffs prayed for a declaration and claimed the title/ownership on the basis of the Sale Deed dated 31.08.1967 (Ex.P.1). Simultaneously, the plaintiffs also claimed the title by adverse possession. All the Courts below have negated the claim of the original plaintiffs of ownership on the basis of the registered Sale Deed dated 31.08.1967 (Ex.P.1.) Therefore, the only claim on behalf of the plaintiffs was the plea of adverse possession. So far as the plea of adverse possession is concerned, the High Court has specifically framed a substantial question of law (reproduced hereinabove) and as such has held the same in favour of the appellant – original defendant No. 1. The High Court has specifically observed and held that the plea of ownership

- A based on sale deed and plea of adverse possession, both, are contrary to each other and the plaintiffs cannot be permitted to take both the pleas at the same time. Therefore, even as per the High Court, the claim of the plaintiffs on the basis of the adverse possession was not tenable. In that view of the matter and once the substantial question of law on adverse possession was held in favour of the appellant – original defendant No.1 and the title/ownership claimed on the basis of the Sale Deed dated 31.08.1967 (Ex.P.1) was negated by all the Courts below, thereafter the possession/alleged possession of the plaintiffs could not have been protected by passing a decree of permanent injunction in favour of the plaintiffs. Under the circumstances, the High Court has materially erred in dismissing the appeal and confirming the judgment and order passed by the First Appellate Court.
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6. In view of the above and for the reasons stated above, present appeal succeeds. The impugned judgment and order passed by the High Court passed in Second Appeal No. 8 of 1999 and the judgment and order passed by the First Appellate Court are hereby quashed and set aside and the judgment and decree passed by the learned Trial Court dismissing the suit is hereby restored.
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Present appeal is accordingly allowed. However, in the facts and circumstances of the case, there shall be no order as to costs.

Bibhuti Bhushan Bose  
(Assisted by : Preetam Bharti, LCRA)

Appeal allowed.