

NAGAR PALIKA PARISHAD MIHONA AND ANR. A

v.

RAMNATH AND ANR.

(Civil Appeal No. 4454 of 2014)

APRIL 9, 2014

[SUDHANSU JYOTI MUKHOPADHAYA AND B
V. GOPALA GOWDA, JJ.]

MADHYA PRADESH MUNICIPALITIES ACT, 1961: C

s. 319 - Bar of suit in absence of notice - Suit for declaration of title and permanent injunction - No notice u/s 319 issued by plaintiff to Nagar Palika Parishad - Held: In view of bar of suit for declaration of title in absence of notice u/s 319, the suit was not maintainable -- Courts below wrongly held that the suit was for perpetual injunction - Plaintiff having claimed title, the suit cannot be termed to be suit for perpetual injunction alone - Judgments of all the three courts below, set aside - It will be open to Nagar Palika Parishad to proceed in accordance with law. D

The instant appeal arose out of the order of the High Court dismissing the second appeal filed by the appellant- Nagar Palika Parishad against the judgment and decree of the trial court and the first appellate court decreeing the suit for declaration and permanent injunction filed by respondent no. 1 against the appellant-defendant Nagar Palika Parishad. The stand of the appellant -Parishad was that respondent no. 1 had encroached upon the suit land which was a public road and did not comply with the notices issued to him in this regard. E F G

It was submitted by the appellant that before the High Court it had specifically raised one of the substantial

A questions of law as to whether the suit filed by respondent no. 1-plaintiff was maintainable for non-compliance of statutory requirement of notice as contemplated by s. 319 of the Madhya Pradesh Municipalities Act, 1961.

B Allowing the appeal, the Court

C HELD: 1.1 Respondent No.1-plaintiff filed the suit for declaration of title and permanent injunction. In view of bar of suit for declaration of title in absence of notice u/s 319 of the Madhya Pradesh Municipalities Act, 1961, the suit was not maintainable. The courts below wrongly held that the suit was perpetual injunction. Respondent No.1 having claimed title, the suit cannot be termed to be suit for perpetual injunction alone. The High Court also has overlooked the valuable interest and right of public at large, to use the suit land which is a part of public street. [Para 8-10] [815-D-E; 816-D-F]

E 1.2 Respondent No.1- plaintiff cannot derive advantage of sub s. (3) of s. 319 which stipulates non-application of s. 319 when the suit was instituted u/s 54 of the Specific Relief Act, 1877 (old provision) equivalent to s. 38 of the Specific Relief Act, 1963. Further, in absence of challenge to the notice of eviction issued by the appellant, it was not open to the trial court to decide the title merely because permanent injunction coupled with declaration of title was also sought for. The impugned judgment passed by the High Court in second appeal as also the judgment and decree passed by the first appellate court and the trial court are set aside. It will be open to the appellant to proceed in accordance with law. [Para 9-11] [815-E-F; 816-F-G]

H CIVIL APPELLATE JURISDICTION : Civil Appeal No. 4454 of 2014.

From the Judgment and Order dated 11.04.2012 of the High Court of M.P. at Gwalior in SA No. 568 of 2009. A

S.K. Dubey, Sumit Kumar Sharma, Niraj Sharma for the Appellants.

D.S. Parmar, Susheel Tomar, Ankit R., Abha R. Sharma for the Respondents. B

The Judgment of the Court was delivered by

SUDHANSU JYOTI MUKHOPADHAYA, J. 1. Leave granted. C

2. This appeal has been preferred by the appellants-Nagar Palika Parishad, Mihona (hereinafter referred to as "Nagar Palika") against the judgment dated 11th April, 2012 passed by the High Court of Madhya Pradesh Bench at Gwalior in Second Appeal No.568 of 2009. By the impugned judgment the High Court dismissed the Second Appeal and affirmed the judgments passed by the first appellate court and the trial court. D

3. The case of the appellant-Nagar Palika is that on finding that respondent No.1 - plaintiff has made encroachment on a public road, namely, Khitoli Road, a notice under Section 187 of the M.P. Municipalities Act, 1961 (hereinafter referred to as "Act, 1961") dated 26th November, 1982 was issued to respondent No.1-plaintiff calling upon him to remove the encroachment from Khitoli Road at Mihona, District Bhind, M.P. (hereinafter referred to as "suit land"). As respondent No.1 - plaintiff refused to comply with the aforesaid notice and also failed to show any title over the encroached land, another notice was issued on 23rd December, 1982, intimating respondent No.1-plaintiff that if the encroachment is not removed by him it shall be removed by the appellant, in exercise of power conferred under Section 109 read with Section 223 of the Act, 1961. E F G

4. Instead of complying with the aforesaid notices, respondent No.1 - plaintiff filed Civil Suit No.79/90 in the Court H

A of 1st Civil Judge, Class-I, Lahar, District Bhind for declaration
of his title and permanent injunction for restraining the
appellants from interfering in his possession over the suit land
contending that the suit land was his ancestral property. The
aforesaid suit was contested by the appellant by filing written
B statement contending, inter alia, that the suit land is a public
road which the appellants intend to make a Pakka (Road) in
consonance with the public policy and public interest due to
which the action for removal of encroachment has been taken
and that the suit was not maintainable for want of notice under
C Section 319 of the Act, 1961.

5. The trial court on hearing the parties by its judgment and
decree dated 20th August, 2008 decreed the suit in favour of
respondent No.1-plaintiff. The trial court held that no notice
under Section 319 of the Act, 1961 is required to be issued
D before filing a suit for permanent injunction. The aforesaid
judgment was upheld by the first appellate court by the judgment
and decree dated 31st August, 2009 in C.A. No. 20/09.

6. The second appeal preferred by the appellant was
E dismissed by the High Court though the appellant raised one
of the following substantial questions of law:

- Whether the suit filed by respondent No.1 - plaintiff was
maintainable for non-compliance of statutory requirement
of notice as contemplated by Section 319 of the Act, 1961.

F 7. Section 319 of the Act, 1961 bars suits in absence of
notice and reads as follows:

G "Section 319-Bar of suit in absence of notice.-(1) No suit
shall be instituted against any Council or any Councilor,
officer or servant thereof or any person acting under the
direction of any such Council, Councilor, officer or servant
for anything done or purporting to be done under this Act,
until the expiration of two months next after a notice, in
writing, stating the cause of action, the name and place of
H abode of the intending plaintiff and the relief which he

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claims, has been, in the case of a Council delivered or left
at its office, and, in the case of any such member, officer,
servant or person as aforesaid, delivered to him or left at
his office or usual place of abode; and the plaint shall
contain a statement that such notice has been delivered
or left.

(2)Every suit shall be dismissed unless it is instituted within
eight months from the date of the accrual of the alleged
cause of action.

(3)Nothing in this section shall be deemed to apply to any
suit instituted under Section 54 of the Specific Relief Act,
1877 (I of 1877)."

8. Respondent No.1-plaintiff filed the suit for declaration
of title and permanent injunction. In view of bar of suit for
declaration of title in absence of notice under Section 319 the
suit was not maintainable. The Courts below wrongly held that
the suit was perpetual injunction though the respondent No.1-
plaintiff filed the suit for declaration of title and for permanent
injunction.

9. Respondent No.1-plaintiff cannot derive advantage of
sub Section (3) of Section 319 which stipulates non-application
of the Section 319 when the suit was instituted under Section
54 of the Specific Relief Act, 1877 (old provision) equivalent
to Section 38 of the Specific Relief Act, 1963 and reads as
follows:

"Section 38.Perpetual injunction when granted.-

(1)Subject to the other provisions contained in or referred
to by this Chapter, a perpetual injunction may be granted
to the plaintiff to prevent the breach of an obligation
existing in his favour, whether expressly or by implication.

(2)When any such obligation arises from contract, the
Court shall be guided by the rules and provisions contained
in Chapter-II.

A (3)When the defendant invades or threatens to invade the plaintiff's right to, or enjoyment of, property, the Court may grant a perpetual injunction in the following cases, namely:

B (a)where the defendant is trustee of the property for the plaintiff;

(b)where there exists no standard for ascertaining the actual damage caused, or likely to be causes, by the invasion;

C (c)where the invasion in such , that compensation in money would not afford adequate relief;

(d) where the injunction is necessary to prevent a multiplicity of judicial proceedings."

D The benefit aforesaid cannot derive by Respondent No.1-plaintiff as the suit was filed for declaration of title coupled with permanent injunction. Respondent No.1 having claimed title, the suit cannot be termed to be suit for perpetual injunction alone.

E 10. Along with the trial court and the appellate court, the High Court also failed to appreciate the aforesaid fact and also overlooked the valuable interest and right of public at large, to use the suit land which is a part of public street. Further, in absence of challenge to the notice of eviction issued by the appellant, it was not open to the trial court to decide the title merely because permanent injunction coupled with declaration of title was also sought for.

G 11. In view of our finding, we set aside the impugned judgment dated 11th April, 2012 passed by the High Court in second appeal as also the judgment and decree passed by the first appellate court and the trial court. It will be open to the appellant to proceed in accordance with law. The appeal is allowed with aforesaid observations.

H R.P.

Appeal allowed.