

MOHAN KUMAR

v.

STATE OF MADHYA PRADESH & ORS.

(Civil Appeal No. 1412 of 2008)

MARCH 07, 2017

[R. K. AGRAWAL AND ABHAY MANOHAR SAPRE, JJ.]

Code of Civil Procedure, 1908:

Or. 41, r. 23A; Or. 27, r. 5B – Construction on the land owned by the appellant, by the State Authorities – Collector passed order to remove the trespass and thereafter suggested the authorities to allot another land in lieu of appellant's land – Authorities assessed the land of the appellant at the rate of Rs. 150/- per sq. meter. and assessed the land proposed to be given to the appellant at the rate of Rs. 800/- per sq. meter – On challenge to action of the authorities, High Court directed the appellant to institute civil suit – Suit partly decreed by trial court directing the authorities to acquire the land and to pay market value of the land to the appellant – However, rejected the claim of appellant to allot alternate land – Appeal by appellant – High Court dismissed the appeal holding that decree was not sustainable as the appellant had failed to examine the vendor of the land to prove his title – On appeal, held: High Court wrongly dismissed the appeal by not affording opportunity to the appellant-plaintiff to adduce proper evidence in support of his case – High Court should have remanded the case to trial court taking recourse to power u/Or. 41, r. 23A, for retrial of the suit – Matter remanded to trial court for retrial – Since the case is against the State and local bodies, court should endeavour to assist the parties in settling the case in view of provisions u/Or. 27, r. 5B.

Allowing the appeal and remanding the case to trial court, the Court

HELD: 1.1 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. Even assuming that the High Court was right in its view, it should

A 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. This, the High Court could
 do by taking recourse to powers under Order 41 Rule 23A of the
 B CPC. [Paras 19 - 21] [893-G-H; 894-A, D]

1.2 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
 C the order in respondents' (defendants) favour in appellant's appeal.
 [Para 20] [894-B]

1.3 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
 D accordance with law uninfluenced by any of the observations in
 the present judgment and of the High Court. [Para 24] [894-F]

2. Since the case 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
 E matter of the suit, in view of the provisions of Or. 27 r. 5B of CPC
 and, if for any reason, settlement is not arrived at, then proceed
 to decide the suit on merits, in accordance with law. [Para 27]
 [895-D]

F CIVIL APPELLATE JURISDICTION: Civil Appeal No. 1412 of
 2008.

From the Judgment and Order dated 24.01.2005 of the High Court
 of Judicature at Madhya Pradesh in First Appeal No. 3 of 1998.

G C. L. Sahu, Ms. Hema Sahu, Rajendra Sahu, Rishabh Sahu, Advs.
 for the Appellant.

Harshvardhan Jha, Ms. Yugandharan Jha, Adarsh Upadhyay,
 Purushaindra Kaurav, Mishra Saurabh, Ankit Kr. Lal, B. S. Banthia,
 Advs. for the Respondent.

H The Judgment of the Court was delivered

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. A

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

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". C D

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 use 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. E

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. F

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. G

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. H

A 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.

B 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
C 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
D 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
E '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
F 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 Bazaar, Lashkar, Gwalior, out of which this appeal arises. The respondents, i.e., State of Madhya Pradesh and Municipal Corporation,
G 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
H 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. A
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 B
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 C
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 D
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 E
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 F
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 G
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 H

A 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.

C 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.

D 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.

E 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.

F 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.

G 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.

H 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.