

**IN THE HIGH COURT OF MADHYA PRADESH
AT JABALPUR**

BEFORE

HON'BLE SHRI JUSTICE DWARKA DHISH BANSAL

ON THE 26th OF APRIL, 2024

SECOND APPEAL No. 253 of 2016

Between:-

1. **INDRAJEET SINGH S/O HAMEER SINGH MEENA, AGED ABOUT 31 YEARS, R/O GRAM MADNAI TEH. BAIRASIYA DISTT. BHOPAL (MADHYA PRADESH)**
2. **RITURAJ SINGH, S/O HAMEER SINGH MEENA, AGED ABOUT 32 YEARS, R/O GRAM MADNAI TEH. BAIRASIYA DISTT. BHOPAL (MADHYA PRADESH)**
3. **SMT. MINAKSHI SINGH, D/O HAMEER SINGH MEENA, AGED ABOUT 36 YEARS, R/O CHANDLAKHEDI TEHSIL GOHARGANJ DISTRICT RAISEN (MADHYA PRADESH)**

.....APPELLANTS

**(MS. SHOBHA MENON, SENIOR ADVOCATE WITH
MS. RITU JANJANI, ADVOCATE)**

AND

1. **SMT. KOMAL BAI, D/O LATE SHRI BHAWARLAL W/O SHRI NARAYAN SINGH MEENA, AGED ABOUT 56 YEARS, R/O NALKHEDA TEH. BAIRASIYA DISTT. BHOPAL (MADHYA PRADESH)**
2. **SMT. SEEMA DEVI, D/O LATE BHAWARLAL, WIFE OF SHRI HAMEER SINGH MEENA, AGED ABOUT 54 YEARS, R/O GRAM MADNAI TEH. BAIRASIYA DISTT. BHOPAL (MADHYA PRADESH)**
3. **SMT. REKHA DEVI, D/O LATE BHAWARLAL, WIFE OF KAMAL SINGH MEENA, AGED**

**ABOUT 51 YEARS, R/O GRAM TINONIYA, POST
CHARNAL, TEHSIL SHYAMPUR DIST. SEHORE
(MADHYA PRADESH)**

4. **SMT. GULAB BAI, D/O LATE BHAWARLAL,
WIFE OF SHRI VISHNU PRASAD MEENA, R/O
GRAM KHUKRIYA, TEHSIL BAIRASIYA
(MADHYA PRADESH)**
5. **STATE OF MADHYA PRADESH
THROUGH:COLLECTOR BHOPAL (M.P.)**
6. **DIGVIJAY SINGH S/O SHRI HAMEER SINGH
MEENA, AGED ABOUT 35 YEARS, R/O GRAM
MADNAI, TEH. BAIRASIYA, DISTT. BHOPAL
(MADHYA PRADESH)**

.....RESPONDENTS

**(BY SHRI VIVEK BADERIYA, ADVOCATE FOR
RESPONDENT 3)**

.....
*This appeal coming on for orders/admission this day, Court passed
the following:*

ORDER

This second appeal has been preferred by the appellants/plaintiffs challenging the judgment & decree dtd. 19.12.2015 passed by 13th Additional District Judge, Bhopal, Link Court Bairasiya, District Bhopal in Regular Civil Appeal No.19/2015 affirming the judgment and decree dtd. 27.09.2014 passed by Additional Civil Judge Class-I, Bairasiya, District Bhopal in Civil Suit No. 24A/2014 whereby Courts below have dismissed suit for specific performance of contract of sale and permanent injunction.

2. Learned counsel for the appellants/plaintiffs submits that owner/bhumiswami of land in question was Bhanwarlal, who was survived by four daughters i.e. defendants 1 to 4 and the plaintiffs are

sons and daughter of defendant 2-Smt. Seema Devi. Learned counsel submits that Bhanwarlal (who died on 31.05.2006) executed two agreements of sale dtd. 23.07.1990 (Ex.P/1) & 08.07.1991 (Ex.P/2) in favour of plaintiffs after receipt of entire consideration of Rs.1,82,560/- in two parts, but due to some mistake in Bhu-adhikar and Rin-pustika, the sale deed could not be executed. Learned counsel submits that although after death of Bhanwarlal, names of defendants 1-4 were mutated in the revenue record on 15.07.2008, but the same could not come in knowledge of the plaintiffs and when the defendants filed application for partition, then only the plaintiffs came to know and filed objection in the partition proceedings and upon denial to execute sale deed by defendants, the plaintiffs instituted the suit on 10.07.2012, which in the light of provision contained in Article 54 of the Limitation Act, cannot be said to be barred by limitation. She submits that although Will propounded by defendant(s) has been disbelieved by Courts below but findings recorded against the plaintiffs having impressed with the factum of execution of Will, are not sustainable. Learned counsel also submits that the plaintiffs being in possession of the land, are entitled for decree of permanent injunction in the light of findings recorded by trial Court on issue no. 4 to the effect that the plaintiffs are in illegal possession. In support of her submissions learned counsel placed reliance on the decisions of Hon'ble Supreme Court in the case of Gunwantbhai Mulchand Shah and others vs. Anton Elis Farel and others **(2006) 3 SCC 634** (para 7 & 8); Alok Bose vs. Parmatma Devi and others **(2009) 2 SCC 582** (para 17 & 21); Ram Suresh Singh vs. Prabhat Singh and another **(2009) 6 SCC 681** (para 9); Life Insurance Corporation of India and another vs. Ram Pal Singh Bisen **(2010) 4 SCC 491** (para 31); & Nandkishore Lalbhai Mehta vs. New Era

Fabrics Pvt. Ltd. and others (2015) 9 SCC 755. With these submissions, she prays for admission of the second appeal.

3. Learned counsel for the respondent 3 supports the judgment & decree passed by Courts below and prays for dismissal of the second appeal.

4. Heard learned counsel for the parties and perused the record.

5. Alleged agreements of sale dtd. 23.07.1990 (Ex.P/1) and 08.07.1991 (Ex.P/2) appear to have been executed by Bhanwarlal in favour of plaintiffs during their minority through their mother-Smt. Seema Devi (defendant 2) and half consideration i.e. an amount of Rs.91,280/- was paid at the time of execution of first agreement dtd.23.07.1990 (Ex.P/1) and half amount i.e. Rs.91,280/- was paid at the time of execution of agreement dtd. 08.07.1991 (Ex.P/2), hence in total Rs.1,82,560/- was paid by plaintiffs to deceased-Bhanwarlal. Agreements also recite that possession is handed over to the plaintiffs. As such, nothing was required to be done in pursuance of the agreements, except execution of sale deed.

6. Regarding non execution of sale deed, explanation has been given that there were some mistakes in Bhu-adhikar and Rin-pustika, therefore, sale deed was not executed timely and as no time for execution of sale deed was fixed in the agreements, therefore, the suit filed on 10.07.2012 could not have been dismissed on the ground of limitation. However, the plaintiffs have failed to establish the factum of any mistake in Bhu-adhikar and Rin-pustika

7. Fact remains that Bhanwarlal died on 31.05.2006 and names of defendants 1-4 were also mutated on 15.07.2008. In view of the fact that agreements of sale were executed through mother of the plaintiffs namely

Smt. Seema Devi (defendant 2), then why the plaintiffs did not object at the time of mutation of the name of defendants and why the defendant 2 herself got her name mutated and why on the basis of agreements, objections were not filed timely by the plaintiffs, is not clear on record, which makes the agreements doubtful. It is not the case of plaintiffs that they were not aware about death of Bhanwarlal, which took place on 31.05.2006 and as names of defendants (including name of plaintiffs' mother) were mutated on 15.07.2008, therefore, it also cannot be said that the plaintiffs were not aware about mutation of defendants.

8. In view of the aforesaid facts, it can very well be said that plaintiffs were well aware about intention of defendants to not to execute sale deed in pursuance of the aforesaid agreements, therefore, in my considered opinion, Courts below have not committed any illegality in holding the suit to be barred by limitation, which was filed on 10.07.2012.

9. It is also well settled that in the suit for specific performance of contract of sale when Courts below have exercised discretion against the plaintiffs refusing to pass decree, then the same cannot be interfered in the limited scope of second appeal under section 100 of CPC.

10. So far as the alleged finding of possession in favour of plaintiffs, is concerned, trial Court while deciding issue no. 4, has held that the plaintiffs are not in possession of the suit property and this finding has been affirmed by first appellate Court. It is also well settled that the finding of possession recorded by Courts below is binding in the second appeal.

11. Upon careful perusal of the decisions relied upon by learned counsel for the appellants, they all are distinguishable on facts and are not applicable to the present case.

12. Resultantly, in absence of any substantial question of law, interference in the judgment and decree passed by courts below, is declined and this second appeal is hereby **dismissed**.

13. However, no order as to the costs.

14. Pending application(s), if any, shall stand disposed off.

(DWARKA DHISH BANSAL)

JUDGE

Pallavi