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SA-895-2019

IN THE HIGH COURT OF MADHYA PRADESH  
AT GWALIOR

BEFORE

HON'BLE SHRI JUSTICE G. S. AHLUWALIA

ON THE 27<sup>th</sup> OF JANUARY, 2026SECOND APPEAL No. 895 of 2019*LALPATI AND OTHERS**Versus**OMPRAKASH*

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Appearance:

Shri Santosh Agrawal - Advocate for the appellants.

Shri Sanjay Kumar Sharma- Advocate for the respondent.

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ORDER

This second appeal under Section 100 of CPC has been filed against judgment and decree dated 20/12/2018 passed by First Additional District Judge, Sabalgarh, District, Morena in Regular Civil Appeal No.680/2016, by which judgment and decree dated 08/09/2016 passed by Additional Judge to the Court of Civil Judge, Class-I, Sabalgarh, District, Morena in Civil Suit No.57-A/2014 has been reversed, and the suit filed by respondent/plaintiff has been partially decreed.

2. Facts necessary for disposal of present appeal, in short, are that plaintiff/respondent filed a suit for permanent injunction. It was his case that he is the owner and in possession of Survey No.125, area 5 Bigha 15 Biswa situated in village Katghar, Tehsil Sabalgarh, District, Morena, and the said property was described as disputed property. It was further claimed that the property in dispute is recorded in his name in the revenue record also.



Earlier, the predecessors of defendants/appellants, namely Ratanlal etc. had filed a civil suit No.49-A/2003 against plaintiff on 25/07/1997, which was dismissed by judgment and decree dated 25/11/2004. The judgment passed by trial Court was challenged by the predecessors of appellants by filing Civil Appeal No.23-A/2004, which too was dismissed by judgment and decree dated 29/01/2009. The judgment passed by Appellate Court was also assailed by the predecessors of appellants by filing Second Appeal No.366/2009, which too was dismissed by order dated 17/06/2014, and accordingly, it was claimed that the ownership and possession of plaintiff was upheld. It was claimed that the predecessors of appellants were not found to be in possession or having any title. The defendants/appellants are not happy with judgment passed in a suit instituted by their predecessors, therefore, they are trying to harass the plaintiff and are trying to dispossess him, whereas defendants/appellants have no right or title in the property in dispute. It was further pleaded that on four Bighas of land, the crop of mustard is standing, whereas one Bigha and fifteen Biswa of land, which is on the eastern side, is lying vacant. On 25/11/2014, when plaintiff was looking after his standing crop, then defendants/appellants came on the suit land and started abusing the plaintiff by using abusive language. When, it was objected by plaintiff, then defendants/appellants challenged that they would not allow plaintiff to carry out the cultivation work, and they would dispossess him. When, plaintiff objected to the acts of defendants/appellants, then defendants started digging foundation over 20 x 40 sq.ft. of land. When, it was objected by plaintiff, then the defendants stopped digging the



foundation, but they extended a threat that they would construct a hut. Again on 26/11/2014, defendants/appellants came on disputed land and started digging foundation over 20 ft. wide land. When it was objected by plaintiff, then defendants did not stop and they started digging the foundation. Defendants belongs to a reserved category and on earlier occasion also, they had got a forged and false case registered against plaintiff under Scheduled Caste and Scheduled Tribe (Prevention of Atrocities) Act as well as under Section 376 of IPC. By hook and crook defendant/appellants want to dispossess the plaintiff and without any order by the Court, they are not ready to listen to plaintiff, and accordingly, the suit was filed for permanent injunction to the effect that defendants/appellants be restrained from dispossessing the plaintiff from Survey No.125 as well as from raising construction or digging foundation over the suit land.

3. The defendants filed their written statement and claimed that the ownership of plaintiff is wrongly recorded in the revenue records. However, the institution of civil suit by the predecessors of defendants and dismissal of the said suit was also admitted in the written statement. It was also admitted that since the predecessors of defendants had failed to prove their title, therefore, the civil suit was dismissed. It was claimed that defendants as well as their predecessors are in cultivating possession of the land in dispute for the last 35 years and after judgment was passed by High Court, plaintiff took possession of four Bigha of land and has sown the crop of mustard. The remaining one Bigha and fifteen Biswa of land was not lying vacant and the huts of defendants are standing for the last 35 years. Since residences of



defendants were existing, therefore, they were never dispossessed from one Bigha and fifteen Biswa of land. The plaintiff has suppressed the material facts and has not approached the Court with clean hands. The defendants are residing on one Bigha and fifteen Biswa of land by constructing their huts, and they are landless persons. In fact, plaintiff had threatened that he would dispossess defendants from their huts, therefore, he had also approached Tahsildar, and when an inquiry was got done by Tahsildar from Patwari, then he found that defendants were residing on the disputed land after constructing huts, and accordingly, no action was taken by Tahsildar. For the protection of their huts, defendants had raised boundary wall up to the height of 4 - 5 feet, and it was claimed that defendants are in possession of one Bigha and fifteen Biswa of land for the last 35 years. Thus, it was prayed that the suit filed by plaintiff be dismissed.

4. The Trial Court after framing the issues, dismissed the suit filed by plaintiff.

5. Being aggrieved by judgment and decree passed by Trial Court, respondent preferred an appeal, which has been allowed, and defendants have been permanently restrained from raising construction or digging foundation over five Bigha fifteen Biswa of land falling part of Survey No.125 situated in village Katghar, Tehsil Sabalgarh, District Morena.

6. By order dated 21/11/2023, second appeal was admitted on the substantial question of law:-

"Whether, the appellate Court has committed serious error of law in granting decree in part for injunction, for not raising construction, despite of fact that defendants are in possession and



such decree is not sustainable in law ?"

7. Challenging the judgment and decree passed by Court below, it is submitted by counsel for appellants that it is true that predecessors of appellants had admitted the title of father of plaintiff but since the defendants were not confronted with such admission as required under Section 145 of the Evidence Act, therefore, the said admission cannot be considered in the present suit and thus, when the title of plaintiff is under cloud, then suit, simpliciter for permanent injunction, was not maintainable. It is further submitted that since appellants are in continuous possession of the property in dispute, therefore, Appellate Court has committed a material illegality by granting a decree of permanent injunction, thereby restraining appellants from digging foundation or from raising any construction over five Bigha and fifteen Biswa of land of Khasra No.125 situated in village Katghar, Tehsil Sabalgarh, District Morena.

8 . *Per contra*, counsel for respondent has supported the findings recorded by Appellate Court.

**Whether, the title of respondent is under cloud in the present suit or not?**

9. Undisputedly, the suit was filed simpliciter for permanent injunction. A suit for permanent injunction is maintainable when the title of plaintiff, is not in dispute.

10. The Supreme Court in the case of **T.V.Ramakrishna Reddy Vs. M. Mallappa and Another** reported in (2021) 13 SCC 135 has held as under:-

"14. The issue is no more res integra. The position has been crystallised by this Court in *Anathula Sudhakar v. P. Buchi*



*Reddy* [*Anathula Sudhakar v. P. Buchi Reddy*, (2008) 4 SCC 594]

in para 21, which read thus : (SCC pp. 607-608)

“21. To summarise, the position in regard to suits for prohibitory injunction relating to immovable property, is as under:

(a) Where a cloud is raised over the plaintiff's title and he does not have possession, a suit for declaration and possession, with or without a consequential injunction, is the remedy. Where the plaintiff's title is not in dispute or under a cloud, but he is out of possession, he has to sue for possession with a consequential injunction. Where there is merely an interference with the plaintiff's lawful possession or threat of dispossession, it is sufficient to sue for an injunction simpliciter.

(b) As a suit for injunction simpliciter is concerned only with possession, normally the issue of title will not be directly and substantially in issue. The prayer for injunction will be decided with reference to the finding on possession. But in cases where de jure possession has to be established on the basis of title to the property, as in the case of vacant sites, the issue of title may directly and substantially arise for consideration, as without a finding thereon, it will not be possible to decide the issue of possession.

(c) But a finding on title cannot be recorded in a suit for injunction, unless there are necessary pleadings and appropriate issue regarding title (either specific, or implied as noticed in *Annaimuthu Thevar* [*Annaimuthu*



*Thevar v. Alagammal*, (2005) 6 SCC 202] ). Where the averments regarding title are absent in a plaint and where there is no issue relating to title, the court will not investigate or examine or render a finding on a question of title, in a suit for injunction. Even where there are necessary pleadings and issue, if the matter involves complicated questions of fact and law relating to title, the court will relegate the parties to the remedy by way of comprehensive suit for declaration of title, instead of deciding the issue in a suit for mere injunction.

(d) Where there are necessary pleadings regarding title, and appropriate issue relating to title on which parties lead evidence, if the matter involved is simple and straightforward, the court may decide upon the issue regarding title, even in a suit for injunction. But such cases, are the exception to the normal rule that question of title will not be decided in suits for injunction. But persons having clear title and possession suing for injunction, should not be driven to the costlier and more cumbersome remedy of a suit for declaration, merely because some meddler vexatiously or wrongfully makes a claim or tries to encroach upon his property. The court should use its discretion carefully to identify cases where it will enquire into title and cases where it will refer to the plaintiff to a more comprehensive declaratory suit, depending upon the facts of the case.”



15. It could thus be seen that this Court in unequivocal terms has held that where the plaintiff's title is not in dispute or under a cloud, a suit for injunction could be decided with reference to the finding on possession. It has been clearly held that if the matter involves complicated questions of fact and law relating to title, the court will relegate the parties to the remedy by way of comprehensive suit for declaration of title, instead of deciding the issue in a suit for mere injunction.

16. No doubt, this Court has held that where there are necessary pleadings regarding title and appropriate issue relating to title on which parties lead evidence, if the matter involved is simple and straightforward, the court may decide upon the issue regarding title, even in a suit for injunction. However, it has been held that such cases are the exception to the normal rule that question of title will not be decided in suits for injunction."

11. The Supreme Court in the case of **Anathula Sudhakar Vs. P. Buchi Reddy (dead) by LRs and Others** reported in (2008) 4 SCC 594 has held as under:-

"13. The general principles as to when a mere suit for permanent injunction will lie, and when it is necessary to file a suit for declaration and/or possession with injunction as a consequential relief, are well settled. We may refer to them briefly.

13.1. Where a plaintiff is in lawful or peaceful possession of a property and such possession is interfered or threatened by the defendant, a suit for an injunction simpliciter will lie. A person has a right to protect his possession against any person who does not prove a better title by seeking a prohibitory injunction. But a person in wrongful possession is not entitled to an injunction against the rightful owner.

13.2. Where the title of the plaintiff is not disputed, but he is not in possession, his remedy is to file a suit for possession and seek in



addition, if necessary, an injunction. A person out of possession, cannot seek the relief of injunction simpliciter, without claiming the relief of possession.

13.3. Where the plaintiff is in possession, but his title to the property is in dispute, or under a cloud, or where the defendant asserts title thereto and there is also a threat of dispossession from the defendant, the plaintiff will have to sue for declaration of title and the consequential relief of injunction. Where the title of the plaintiff is under a cloud or in dispute and he is not in possession or not able to establish possession, necessarily the plaintiff will have to file a suit for declaration, possession and injunction.

14. We may, however, clarify that a prayer for declaration will be necessary only if the denial of title by the defendant or challenge to the plaintiff's title raises a cloud on the title of the plaintiff to the property. A cloud is said to raise over a person's title, when some apparent defect in his title to a property, or when some prima facie right of a third party over it, is made out or shown. An action for declaration, is the remedy to remove the cloud on the title to the property. On the other hand, where the plaintiff has clear title supported by documents, if a trespasser without any claim to title or an interloper without any apparent title, merely denies the plaintiff's title, it does not amount to raising a cloud over the title of the plaintiff and it will not be necessary for the plaintiff to sue for declaration and a suit for injunction may be sufficient. Where the plaintiff, believing that the defendant is only a trespasser or a wrongful claimant without title, files a mere suit for injunction, and in such a suit, the defendant discloses in his defence the details of the right or title claimed by him, which raise a serious dispute or cloud over the plaintiff's title, then there is a need for the plaintiff, to amend the plaint and convert the suit into one for declaration. Alternatively, he may withdraw the suit for bare injunction, with permission of the court to file a comprehensive suit for declaration and injunction. He may file the



suit for declaration with consequential relief, even after the suit for injunction is dismissed, where the suit raised only the issue of possession and not any issue of title.

15. In a suit for permanent injunction to restrain the defendant from interfering with the plaintiff's possession, the plaintiff will have to establish that as on the date of the suit he was in lawful possession of the suit property and the defendant tried to interfere or disturb such lawful possession. Where the property is a building or building with appurtenant land, there may not be much difficulty in establishing possession. The plaintiff may prove physical or lawful possession, either of himself or by him through his family members or agents or lessees/licensees. Even in respect of a land without structures, as for example an agricultural land, possession may be established with reference to the actual use and cultivation. The question of title is not in issue in such a suit, though it may arise incidentally or collaterally.

16. But what if the property is a vacant site, which is not physically possessed, used or enjoyed? In such cases the principle is that possession follows title. If two persons claim to be in possession of a vacant site, one who is able to establish title thereto will be considered to be in possession, as against the person who is not able to establish title. This means that even though a suit relating to a vacant site is for a mere injunction and the issue is one of possession, it will be necessary to examine and determine the title as a prelude for deciding the de jure possession. In such a situation, where the title is clear and simple, the court may venture a decision on the issue of title, so as to decide the question of de jure possession even though the suit is for a mere injunction. But where the issue of title involves complicated or complex questions of fact and law, or where court feels that parties had not proceeded on the basis that title was at issue, the court should not decide the issue of title in a suit for injunction. The proper course is to relegate the plaintiff to the remedy of a full-fledged suit for



declaration and consequential reliefs."

12. Thus, where the title of plaintiff is not in dispute, then he is not required to pray for a declaration of his title, but where the title of plaintiff is in dispute, then a suit simpliciter for permanent injunction will not be maintainable, and it will be obligatory on the part of plaintiff to pray for a declaration of his title. Now, the only question for consideration is as to whether the title of plaintiff is actually in dispute or not?

13. Plaintiff has relied upon judgment passed by a Co-ordinate Bench of this Court in Second Appeal No.366/2009 (Ex.P-1), which had arisen out of judgment and decree dated 25/11/2004 passed by Civil Judge Class-I, Sabalgarh in Civil Suit No.49-A/2003 and judgment and decree dated 29/01/2009 passed by Second Additional District Judge (Fast Track Court) Sabalgarh, District Morena in Civil Appeal No.23-A/2004. The said civil suit was filed by Ratanlal, Dauji, Maniram, Billu, Bharosi as well as Ramlal who expired and his legal representatives namely, Smt. Savitri, Naresh, Meharwan, Ms. Dulari Bai and Ms. Maheshwari were brought on record.

14. In the previous suit appellant No.3 Maniram was also party, therefore, it is clear that the previous suit was not only filed by the predecessors of some of the defendants, but it was also filed by one of defendant namely, Maniram. As it is evident from the facts mentioned in the judgment passed by Co-ordinate Bench of this Court in Second Appeal No.366/2009 (Ex.P-1), the previous suit was filed on the ground that father of plaintiff is the owner of property, and he had permitted father of Buddha, father of Dauji and Maniram namely, Tunda and father of Billu and Bharosi



namely, Gupte to plough the suit land on annual rent of Rs.70/-. It was claimed that since the defendants of the case {plaintiff/appellants of Second Appeal No.366/2009 (Ex.P-1)} are in cultivating continuous possession, therefore, as per Section 168 of MPLR Code, they have acquired the *Bhumiswami* right under Section 190 of MPLR Code. It was also claimed that since the predecessors of defendants/appellants are in possession for the last 35 year, therefore, they had perfected their title by way of adverse possession. The suit filed by the predecessors of appellants/defendants and appellant No.3 that they have acquired the *Bhumiswami* rights, or they are in continuous in possession of the land in dispute was dismissed.

15. Counsel for appellants has relied upon a judgment passed by Gauhati High Court in the case of **Samsul Haque Vs. Jamiran Nessa Wife and Others** reported in 2019 Supreme (Gau) 796 and submitted that the burden is on the plaintiff to prove their title by necessary pleadings and evidence and the dismissal of a previous suit of defendants does not automatically prove title of plaintiff unless the decree is specifically passed declaring title in favour of the defendants.

16. This Court is of considered opinion that the law laid down in the aforesaid case is not applicable to the facts and circumstances of the case in hand. In the case of **Samsul Haque (supra)** the question of admission by defendants regarding title of plaintiff was not involved. Therefore, this case has to be considered under the facts and circumstances of this case and not in the light of the judgment passed by Gauhati High Court in the case of **Samsul Haque (supra)**. Whenever, an admission is made, then it is the best



evidence, and the issues are always framed to adjudicate the contested/triable issues. When the title of the father of plaintiff was not in issue, as it was specifically admitted and appellant No. 3 as well as the predecessors of the remaining appellants had also based their case on the basis of so-called oral permission granted by the father of plaintiff, then the contention of counsel for appellants that mere dismissal of suit filed by the predecessors of some of the appellants as well as appellant No.3 will not prove the title of father of plaintiff is misconceived.

17. So far as the contention made by counsel for appellants that unless and until the admission made in previous suit is confronted in the light of Section 145 of the Evidence Act, any admission made by parties in previously instituted suit, cannot be relied upon is concerned, the same is misconceived. Although, this Court had requested counsel for appellants to cite any judgment in support of his contention, but in spite of repeated request, no judgment was cited.

18. Be that whatever it may be.

19. At the cost of repetition, it is once again pointed out that the question of title of plaintiff or his father was not in dispute in the suit instituted by the predecessors of some of appellants as well as appellant No. 3. On the contrary, they had specifically pleaded that the father of plaintiff is the owner and by virtue of oral permission granted by him, they are in cultivating possession, thereby acquiring *Bhumiswami* right as provided under Section 190 of MPLR Code.

20. Section 11 of CPC reads as under:-

**"11. Res judicata .-**

No Court shall try any suit or issue in which the matter directly and substantially in issue has been directly and substantially in issue in a former suit between the same parties, or between parties under whom they or any of them claim, litigating under the same title, in a Court competent to try such subsequent suit or the suit in which such issue has been subsequently raised, and has been heard and finally decided by such Court.

Explanation I .-The expression "former suit" shall denote a suit which has been decided prior to the suit in question whether or not it was instituted prior thereto.

Explanation II .-For the purposes of this section, the competence of a Court shall be determined irrespective of any provisions as to a right of appeal from the decision of such Court.

Explanation III .-The matter above referred to must in the former suit have been alleged by one party and either denied or admitted, expressly or impliedly, by the other.

Explanation IV.-Any matter which might and ought to have been made ground of defence or attack in such former suit shall be deemed to have been a matter directly and substantially in issue in such suit.

Explanation V.-Any relief claimed in the plaint, which is not expressly granted by the decree, shall, for the purposes of this section, be deemed to have been refused.

Explanation VI .-Where persons litigate bona fide in respect of a public right or of a private right claimed in common for themselves and others, all persons interested in such right shall, for the purposes of this section, be deemed to claim under the persons so litigating.

[ Explanation VII .-The provisions of this section shall apply to a proceeding for the execution of a decree and references in this section to any suit, issue or former suit shall be construed as references, respectively, to a proceeding for the execution of the



decree, question arising in such proceeding and a former proceeding for the execution of that decree.

Explanation VIII .-An issue heard and finally decided by a Court of limited jurisdiction, competent to decide such issue, shall operate as *res judicata* in a subsequent suit, notwithstanding that such Court of limited jurisdiction was not competent to try such subsequent suit or the suit in which such issue has been subsequently raised.]"

21. Therefore, the question of title of father of plaintiff was very much involved in the suit previously instituted by some of the predecessors of appellants as well as appellant No.3. As already pointed out that since the title of father of plaintiff was categorically admitted and predecessors of some of appellants as well as appellant No.3 had also based their claim on the basis of oral permission granted by father of plaintiff, therefore, appellants cannot be permitted to raise the question of title of plaintiff again and again on one pretext or the other. Furthermore, the institution of suit by predecessors of some of defendants/appellants as well as appellant No.3 was categorically admitted by the defendants in paragraph 3 of their written statement. Once they have admitted that the suit filed by predecessors of appellants as well as appellant No.3 was dismissed, then all the reasons for filing that suit were also directly or indirectly admitted by defendants in their written statement. Furthermore, neither in the written statement nor in their evidence, the defence witnesses have claimed that the father of plaintiff was never the owner of the property in dispute. Therefore, an attempt to challenge the title of the plaintiff is hit by principle of *res judicata*.

22. Under these circumstances, this Court is of considered opinion that



since the title of plaintiff was never in dispute, therefore, he was not required to seek a declaration of his title, and the suit simpliciter for permanent injunction was maintainable.

**Whether plaintiff is in possession of suit land or not?**

23. It is next contended by counsel for appellants that since respondent is not in possession of the property in dispute, i.e. one Bigha and fifteen Biswa of Survey No.125 situated in Village Katghar, Tehsil Sabalgarh, District, Morena, therefore, the suit simpliciter for permanent injunction without seeking relief for possession was not maintainable in the light of Section 34 of the Specific Relief Act. It is submitted by counsel for appellants that respondent himself had filed an application under Order 6 Rule 17 CPC seeking a relief for possession, but the said application was rejected by Trial Court by order dated 26/08/2016, therefore, it has to be presumed that the case of respondent himself is that he is not in possession of one Bigha and fifteen Biswa of land.

24. Considered the submissions made by counsel for appellants.

25. Admittedly, the application filed under Order 6 Rule 17 CPC seeking a decree for possession was rejected. Accordingly, counsel for appellants was directed to address this Court as to whether any averment made in an application filed under Order 6 Rule 17 CPC, which was not allowed by Trial Court, can be treated as a pleading on the part of plaintiff or not? It was rightly contended by counsel for appellants that any averment made in such an application cannot be treated as a pleading, but submitted that since that application is a matter of record, therefore, this Court should



look into that aspect.

26. There is no procedure under the Civil Court Rules to destroy an application which was not allowed, and that application will always remain in the record. Therefore, merely because the application filed under Order 6 Rule 17 CPC is a part of record would not empower this Court to look into the averments made in a rejected application filed under Order 6 Rule 17 CPC. Thus, the contention of counsel for appellants that although, the application filed under Order 6 Rule 17 CPC might have been rejected, but still, this Court should look into the averments by treating to be a part of the pleading, cannot be accepted. It is held that once an application is rejected, then for any purpose, it cannot be looked into, unless and until the order of rejection is also challenged.

27. Furthermore, the question for consideration is as to whether defendants/appellants are in continuous possession of the land in dispute, i.e. one Bigha and fifteen Biswa situated in village Katghar, Tehsil Sabalgarh, District Morena or not? Apart from judgment and decree passed by this Court in Second Appeal No. 366/2009, there are certain vital admissions by defendants themselves in their evidence.

28. Before considering those vital admission, this Court would like to comment that the written statement filed by appellants also runs just contrary to what they have stated in their evidence. In the written statement, they have claimed that they are in continuous and uninterrupted possession for the last 35 years. However, the same cannot be accepted for the simple reason that the said contention has already been negatived by the Courts up to the level



of High Court, and in view of Section 11 of CPC, the same cannot be reagitated.

29. It is the case of defendants that the huts which are standing on the land are in existence from the lifetime of their predecessor, but in paragraph 6 of the cross-examination, Mehndra (D.W.-1) has specifically stated that for construction of foundation he had purchased eight to ten trolleys of stones about four to five years back. The evidence of this witness was recorded on 05/06/2016. He denied that the stones were purchased about one -one and half years back, but after having admitted that he had purchased stones and had also paid royalty, defendants did not file the copy of the receipt of royalty or the receipts of purchase of stones. He further stated in paragraph eight of his cross-examination that had the plaintiff not filed the present civil suit, they would have raised further constructions. He claimed that plaintiff was dispossessed from one Bigha and fifteen Biswa of land about five to six years back. He admitted that from Tehsil office, an order was passed for removing the construction. He admitted that he has not filed any document to show that the application filed by plaintiff before Tahsildar for removal of the construction was rejected.

30. Bundi Lal (D.W.-2) has gone a step further, and he has stated that at the time when the earlier suit was decided, a compromise was arrived at between the plaintiff and the defendants, and it was agreed that four Bigha of land will be given to plaintiff and one Bigha and fifteen Biswa of land will be given to the defendants. No such compromise document has been placed on record. Even there is no such averment to that effect in the written



statement. It is also accepted by Bundi Lal (D.W.-2) that no compromise document was ever executed thereby, giving four Bigha of land to the plaintiff and giving one Bigha and fifteen Biswa of land to defendants. He claimed that foundation was laid down about 40 to 45 years back, and he was also not in a position to narrate how many huts have been constructed. He further claimed that a boundary wall of 4-5 feet is in existence for the last 40 to 45 years.

31. So far as the evidence led by Mahendra (D.W.-1) and Bundi Lal (D.W.-2) with regard to continuous possession is concerned, that cannot be reconsidered and reopened in the light of judgment and decree passed in the earlier round of litigation, which was instituted by the predecessors of some of the appellants as well as appellant No.3.

32. In view of specific admission made by Mahendra (D.W.-1) that he had purchased stones for construction of foundation after making payment of royalty of Rs.1,000/- about 4-5 years back, it is clear that the claim of defendants that they are in possession of the property in dispute for the last 35 years, is false. The title of the predecessors of defendants/appellants as well as appellant No.3 has already been denied by the Courts in the previously instituted suit. Therefore, if the defendants/appellants have constructed the foundation and huts over them, then the suit for mandatory injunction for removal of construction was maintainable.

33. MCC No.3483/2024 has also been filed by plaintiff/respondent alleging that the appellants have raised additional construction after the temporary injunction order was passed by this Court on 21/11/2023. Certain



photographs have been filed by appellants themselves in the said MCC.

34. Accordingly, a specific question was asked to Shri Santosh Agrawal, Advocate as to whether this Court should take cognizance of the photographs filed by appellants themselves in MCC No.3483/2024 or not, then it was submitted by Shri Agrawal that the Court may take cognizance of the same. Therefore, in absence of any objection, this Court is not adhering to the question as to whether the photographs filed by appellants themselves in MCC No.3483/2024 can be looked into this case or not. Appellants themselves have filed some photographs, from which it is clear that the house has been constructed over a foundation made by stones.

35. In view of specific admission made by Mahendra (D.W.-1), he had purchased stones about 4-5 years back for construction of a foundation, it is clear that the contention of appellants that they are in possession of one Bigha and fifteen Biswa of land for the last 35 years after constructing their house is false.

36. At this stage, it is submitted by counsel for appellants that in fact he had not argued that suit is barred in view of Section 34 of the Specific Relief Act, but he had argued that in fact the injunction cannot be granted in the light of Sections 41 and 42 of the Specific Relief Act.

37. Accordingly, counsel for appellants was directed to read out Sections 41 and 42 of the Specific Relief Act to support his contention. After going through the provisions of Section 41 of the Specific Relief Act, counsel for appellants initially tried to submit that the case in hand would be covered by Section 41(e) of the Specific Relief Act. When he was directed to



explain that what type of contract is involved in the present case, then he submitted that Section 41(g) of the Specific Relief Act would apply. Accordingly, counsel for appellants was directed to elaborate his submission to show that the provisions of Section 41(g) of the Specific Relief Act would apply.

38. Counsel for appellants could not point out any pleading or admission or evidence of any of the party to show that plaintiff had acquiesced anything. Unless and until, it is pleaded and proved that plaintiff has acquiesced certain acts on the part of defendants, the provisions of Section 41(g) of the Specific Relief Act would not apply. Then it was requested to counsel for appellants to point out that which sub-section of Section 41 of the Specific Relief Act would apply. No answer was given by counsel for appellants. Thus, it is clear that the interruption by counsel for appellants during the dictation which was being given on the Board "that in fact he had argued that in view of Section 41 of the Specific Relief Act, no permanent injunction can be granted" was nothing but an in-adventurous during the course of dictation. Furthermore, counsel for appellants was directed to point out from Section 42 of the Specific Relief Act to show that permanent injunction cannot be granted under the said Section.

39. Counsel for appellants was directed to read out the provisions of Section 42 of the Specific Relief Act and to point out that what negative agreement was alleged by parties requiring the application of Section 42 of the Specific Relief Act.

40. It is submitted by counsel for appellants that since, plaintiff is not



in possession of land in dispute, therefore, it is a negative agreement inviting the application of Section 42 of the Specific Relief Act.

41. The submission made by counsel for appellants was shocking. This Court had already held that the suit cannot be said to be not maintainable in view of Section 34 of the Specific Relief Act, but for the reasons best known to counsel for appellants, he disowned that argument. In the considered opinion of the Court, if a person is not in possession and filed the suit without seeking delivery of possession, then the said suit would be not maintainable in the light of Section 34 of the Specific Relief Act.

42. Be that whatever it may be.

43. During the course of arguments, the entire intention of counsel for appellants was not only to interrupt the dictation, but to somehow show that this Court is going on wrong track. Although, this Court was intending not to pass any stricture against the counsel for appellants regarding his discourteous manner of argument, but counsel for appellants has compelled this Court to observe that the behaviour of Shri Santosh Agrawal, Advocate during his entire arguments was not such which is expected from a responsible lawyer.

44. Be that whatever it may be.

45. Under these circumstances, no substantial question of law is answered in negative, and it is held that Appellate Court has rightly granted a perpetual injunction against defendants/appellants, thereby restraining them from raising any construction over the property in dispute, i.e. five Bigha and fifteen Biswa of land.



46. As a result thereof, the appeal fails and is hereby **dismissed**.

**(G. S. AHLUWALIA)**  
**JUDGE**

PjS/-