

Second Appeal No.627/2010**30.11.2011**

Shri Vishal Lashkari, Advocate for the appellant.

Shri Manoj Manav, Advocate for the respondents No.1 to 5 and 7 to 10.

None for other respondents though served.

Heard on the question of admission.

This is plaintiff's appeal against the judgment & decree dated 20th May, 2010 passed by the 4th Additional District Judge, Ratlam in Civil Regular Appeal No.26-A/2009, whereby the learned lower appellate Court affirmed the judgment & decree of the trial Court by which the suit of the plaintiff for permanent injunction has been dismissed.

Brief facts of the case are that Kailash Das, husband of the plaintiff was Pujari of Krishna temple situated at village Khedi. Vide registered sale deed (Ex.P/1) dated 3.3.67 the area of 1.17 hectares of Survey Nos. 16, 126, 140, 319 and 320 has been purchased in the name of temple. Later on name of Badri Prasad S/o Madhav Das, Pujari of the temple was added. After the death of Badri Prasad his son Shankarlal was appointed as Pujari and he is managing the temple. The suit was filed by the plaintiff that as per sale deed she is owner of the property in question and is in possession of the suit land and, therefore, the respondents be restrained from interfering with her possession and she cannot be evicted without following due procedure of law.

The defendants 1 to 7 & 9 to 10 filed their written statements and denied the averments made in the plaint. It is stated that the suit land is of Krishna temple and husband of the plaintiff was Pujari of the said temple and, therefore, she had not acquired any title nor was she in possession of the land on the date of filing of the suit.

PW1 Nagubai in paragraph 14 of her cross examination has stated that on the basis of complaint lodged by villagers her husband was removed as Pujari of the temple and later on

villagers took possession over the land of 8 Bighas, which was of Krishna temple. PW2 Madanlal in paragraph 5 of his cross examination has deposed that he is in possession of the land in question and cultivating the same on the basis of order of SDM. It is also admitted by him that due to dispute with the villagers, husband of the plaintiff was removed from the post of Pujari. Bhanwarsingh (PW3) in paragraph 4 of his cross examination has admitted that the suit land is of Krishna temple and is not owned by Leelabai prior to the date of filing of the suit. A proceeding under Section 145 Cr.P.C., was initiated before the SDM. The learned trial Court as well as the lower appellate Court on the basis of the above evidence came to the conclusion that on the date of filing of the suit the plaintiff was not in possession of the suit land.

Learned counsel for the appellant drew my attention to the paragraph 23 of the impugned judgment and submitted that though the lower appellate Court gave a finding that in a proceedings under Section 145 Cr.P.C. receiver was appointed and possession of the suit land was handed over to him. The plaintiff was not in possession of the land in question. This fact was disputed by the appellant and submitted that on the date (2.8.08) of filing of the suit the plaintiff was in possession, whereas proceeding before the SDM was initiated on 22.8.08, during pendency of the suit he was dispossessed by the order of the SDM and possession of the suit land was handed over to the receiver. From the above, it is not clear that on the date of filing of suit the plaintiff was in possession of the suit land.

Learned counsel for the appellant also drew my attention to the decision of the Apex Court in the matter of Ramegaura v/s M. Vardhappa Naidu **2004 (2) SC 25** and submitted that she cannot be dispossessed without following due process of law.

On perusal of the material available on record and in view of the admission made by the plaintiff and her two witnesses that land was purchased in the name of temple and later on the name

of the plaintiff was added, the trial Court has rightly refused to grant a decree of permanent injunction in favour of the appellant. In view of the concurrent finding recorded by the two Courts below no substantial question of law arises in this appeal.

The appeal has not merit and, is accordingly, dismissed in *limine*.

(P.K. Jaiswal, J.)

rCS*