

**The High Court Of Madhya Pradesh****First Appeal No.696/2017***SHRI ARVIND KUMAR SHARMA & ANOTHER**Vs.**ISHWAR PRASAD SHARMA***Present: Hon'ble Shri Justice Vijay Kumar Shukla, Judge.**

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Shri Neeraj Ashar, learned counsel for the appellants.

Shri Vinod Kumar Dubey, learned counsel for the respondent.

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**J U D G M E N T****( 29.6.2019 )**

On the mention memo, the case was directed to be listed for final hearing before the Special Bench constituted on Saturdays. Thus, the present appeal has come up on the Board.

Both the parties argued the appeal finally.

2. This is an appeal filed under Section 96 of the Code of Civil Procedure, 1908 challenging the judgment and decree dated 30.8.2017 passed by 2<sup>nd</sup> Additional District Judge, Jabalpur in Civil Suit No.168A/2015, whereby the suit filed by the respondent/

plaintiff for possession and permanent injunction has been decreed.

3. The brief facts of the case are that the appellant/ defendant No.1 is real son of respondent/ plaintiff and appellant/ defendant No.2 is his daughter-in-law. The respondent/ plaintiff filed a suit for possession and permanent injunction against the appellants/ defendants. The case of the respondent/ plaintiff was that the property involved in the suit is his self acquired property. He purchased a land situated at Village Bilpura, Patwari Halka No.16, Bandobast Number 53, R.I. Circle Maharajpur, Tahsil and District Jabalpur and constructed a house in the year 1993. He was an employee of Vehicle Factory, Jabalpur. For construction of the house he had obtained home loan from the employer. In the year 2007 the appellants/ defendants came to reside in Jabalpur and being son and daughter-in-law, they were permitted to stay by the respondent/ plaintiff. On 10.10.2007, the appellants/ defendants forcibly dispossessed the respondent/ plaintiff from the house. Therefore, the respondent/ plaintiff filed the suit for possession and permanent injunction.

4. The appellants/defendants filed written statement and submitted that the property in question is an ancestral property

and not the self acquired property of the respondent/plaintiff. It is further submitted that the appellants/ defendants had contributed money for the construction of the said house and the other son Manoj Kumar Sharma had also contributed.

5. The trial Court had framed the issues and found that the documents filed by the respondent/plaintiff establishes that the property was purchased by the respondent/ plaintiff of his own income and all the documents relating to the house are recorded in his name. There was no evidence or material produced to prove that the property was purchased out of any ancestral fund. Admittedly, the plaintiff was an employee of the Ordinance Factory, Jabalpur. He has filed Exhibit P/2 which is Form No.7 dated 27.1.1995, which is document of housing loan of Rs.70,500/- and he has also filed Exhibit P/5 which is pay slip which is evident of the deduction of the house loan.

6. The appellants/defendants filed Exhibit D/1 to D/4 from which it is evident that the Date of Birth of the appellant No.1 Arvind Kumar Sharma is 4.9.1976 and the land was purchased in the year 1993. Thus, at the time of purchase of the land, the defendant No.1 was about 17 years. He could not establish that at the said age what was his source of income.

7. Thus, I do not find any force in the contention of the appellants/ defendants that the property in question was an ancestral property in absence of any oral or documentary evidence in this regard. The other argument of the learned counsel for the appellants/ defendants was that the defendants have perfected their title by way of adverse possession can also not be accepted. Admittedly, the appellants/ defendants are the son and daughter-in-law of the respondent/plaintiff and the house was owned by the respondent/ plaintiff and when they came to Jabalpur, they were permitted to stay with the respondent/plaintiff. Thus, the entry of the appellants/ defendants in the suit property or house and their possession cannot be said to be adverse possession. Thus, the defendants could not prove all the ingredients of claim of adverse possession.

8. Further, the suit filed by the respondent/plaintiff is in respect of possession and permanent injunction. There was no counter suit by the appellants/ defendants for partition or claiming any title on the ancestral property. The Trial Court has rightly not accepted the contention of the appellants/ defendants that the property in question was ancestral property in absence of specific pleading and evidence. On the contrary, the respondent/ plaintiff

has established that he was an employee of Ordinance Factory and he had taken loan from the employer and the house was constructed out of the said amount.

9. In view of the aforesaid assimilation of facts and evidence of the present case, I do not find any illegality in the impugned judgment and decree warranting any interference in the appeal.

10. Accordingly, the appeal is **dismissed**. No order as to costs.

**(VIJAY KUMAR SHUKLA)**  
**J U D G E**

Mrs.mishra



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