



IN THE HIGH COURT OF MADHYA PRADESH
AT GWALIOR

BEFORE

HON'BLE SHRI JUSTICE ASHISH SHROTI

ON THE 25th OF SEPTEMBER, 2026

SECOND APPEAL No. 37 of 2019

VINOD AND ANOTHER

Versus

KAILASHNARAYAN AND OTHERS

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Appearance:

Shri Rajeev Shrivastava - Advocate for the appellants.

Shri Anand Raghuvanshi- Advocate for respondent no. 1.

Shri Yogesh Parashar- GA for respondent no. 2/State.

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JUDGMENT

Appellants/defendants are aggrieved by judgment and decree dated 2/11/2018 passed by First Additional District Judge, Sabalgarh, District Morena in Civil Appeal No.47-A/2013, whereby, the judgment and decree dated 24/12/2011 passed by Civil Judge, Class I, Sabalgarh, District Morena in Civil Suit No.47-A/2008 has been affirmed and the suit for permanent injunction and for restoration of possession, filed by respondent no.1/plaintiff has been decreed.

2. It is not in dispute that plaintiff- Kailash Narayan and defendants- Vinod and Deendayal are real brothers being sons of Shiv Narayan Sharma. It is also not in dispute that the land bearing Survey No.532, 507 & 528 ad-measuring 5 bigha 18 biswa are recorded in the plaintiff's name and same was purchased vide registered sale deed dated 20/8/1998 in the name of



plaintiff.

3. Plaintiff filed present suit for restoration of possession based upon his title on the strength of sale deed dated 20/8/1998 in respect of the aforesaid land.

4. Defendants refuted the plaintiff's claim alleging that though the sale deed is executed in the name of plaintiff, the land was purchased out of the family fund, and therefore, it belongs to the joint family.

5. Learned Trial Court as also the First Appellate Court have decreed the suit concurrently holding that defendants have failed to prove nucleus of family fund in order to show that the property is a joint family property. Challenging the same, present appeal is filed.

6. Learned counsel for the appellants/defendants submitted that father Shiv Narayan Sharma had 6-7 bighas of land and from the proceeds of this land, suit land was purchased. Since, the plaintiff was elder son, the sale deed was got executed in his name. Referring to statement of plaintiff, learned counsel for the defendants argued that the land was cultivated by the father- Shiv Narayan Sharma, is admitted by the plaintiff. Referring to para 1 & 2 of the plaint, learned counsel argued that the plaintiff himself admitted the existence of the joint family and joint family property, and therefore, the Courts below erred in not accepting the contentions made by the defendants.

7. On the other hand, counsel for respondent no.1/plaintiff supported the impugned judgment and decree. He referred to the findings recorded by the Trial Court in para 21 of its judgment to say that defendants failed to prove the nucleus constituting family fund.



8. Considered the submissions and perused the record.

9. In view of the admitted fact that the sale deed by which the suit land was purchased on 20/8/1998 in the name of plaintiff, there is a presumption in favour of plaintiff that the property belongs to him. It was the burden of the defendants to prove the joint family and joint family fund to succeed in the case.

10. Existence of joint family is not a proof of existence of joint family fund. Same is required to be proved as any other fact by the defendants. Except showing that there was 6-7 bighas of land with the father, defendants could not show the existence of family fund, out of which, the suit land was purchased. Merely because father was having some land is not sufficient to prove that there was sufficient income from the land out of which the suit property was purchased in the name of plaintiff. On the other hand, plaintiff has pleaded and proved that he was in employment and out of the earnings from the employment and also by borrowing certain amount, he purchased the land. Both the Courts have recorded concurrent findings with regard to non-existence of the family fund.

11. Consequently, factual findings recorded by both the Courts do not warrant any interference by this Court in exercise of powers under Section 100 of CPC. The judgment and decree passed by both the Courts are accordingly, upheld. Finding no substantial question of law involved in this appeal, appeal fails and is hereby **dismissed**.

(ASHISH SHROTI)



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SA-37-2019

JUDGE

JPS/-