

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

BEFORE

HON'BLE SHRI JUSTICE GURPAL SINGH AHLUWALIA

ON THE 31st OF JANUARY, 2023

SECOND APPEAL No. 1987 of 2022

BETWEEN:-

1. **TEJLAL S/O SHRI BIHARI KUSHWAHA,
AGED ABOUT 40 YEARS, OCCUPATION:
AGRICULTURISTS VILLAGE
KHAAMDAAND P.S. AND TEHSIL BEOHARI
DISTRICT SHAHDOL (MADHYA PRADESH)**
2. **GENDLAL S/O SHRI BIHARI KUSHWAHA,
AGED ABOUT 44 YEARS, OCCUPATION:
WORKING AS AGRICULTURIST R/O
VILLAGE KHAAMDAAND, POLICE
STATION AND TEHSIL BEOHARI, DISTRICT
SHAHDOL (MADHYA PRADESH)**

.....APPELLANTS

(BY SHRI AKHIL SINGH - ADVOCATE)

AND

1. **PRAGYANAND S/O RAMSEWAK GUPTA,
AGED ABOUT 35 YEARS, WARD NO.9 NEAR
BLOCK OFFICE BEOHARI P.S. AND TEHSIL
BEOHARI DISTRICT SHAHDOL (MADHYA
PRADESH)**
2. **STATE OF MADHYA PRADESH THROUGH
COLLECTOR SHAHDOL (MADHYA
PRADESH)**

.....RESPONDENTS

***(BY SHRI RAKESH KUMAR KESHARWANI – ADVOCATE FOR RESPONDENT
NO.1)***

This appeal coming on for admission this day, the court passed the following:

JUDGMENT

This second appeal under Section 100 of CPC has been filed against the judgment and decree passed by the Additional District Judge, Beohari, District Shahdol to the Court of District Judge Beohari in RCA No.42/2019 arising out judgment and decree dated 29.11.2019 passed by the Civil Judge, Class-1, Beohari, District Shahdol in RCS No.36-A/2017.

2. The appellants are the defendants who have lost their case before the First Appellate Court.

3. Facts necessary for disposal of the present appeal in short, are that the plaintiff filed a suit on the ground that the plaintiff and defendants are the real brothers. Defendant No.2/appellant No.2 is a Sarpanch and has a protection of local politician and therefore, he is creating dispute. The plaintiff has purchased the land in dispute from the defendant No.1 by registered sale deed dated 30.12.2008 for a consideration of Rs.60,000/- and thereafter he constructed a boundary wall. He is in possession of the same from the date of execution of sale deed. The name of the plaintiff was also mutated accordingly. On 26.06.2017 when the plaintiff started raising construction on the said plot, then the defendant No.1 came on the spot and forcibly stopped the work. On the next day, the defendant No.1 claimed additional amount of Rs.1,00,000/- and also threatened that he would not allow the plaintiff to raise construction. An FIR was also lodged on the 28.06.2017 but no action was taken by the Police. On 14.07.2017, the

defendant No.2 alongwith his family damaged a part of the boundary wall and also took away two trolleys of gravel. FIR was lodged but no action was taken. In spite of the fact that defendant No.1 has alienated the property still he is challenging the title of the plaintiff and accordingly, the suit was filed for declaration of title and permanent injunction.

4. The defendants No. 1 and 2 filed their written statements and claimed that the Khasra No.623/1 is a Government land on which the ancestral house of defendant No.2 is situated. The plaintiff is raising construction over Khasra No.623/2/2 area 0.303 hectares. The defendant No.1 was the owner of Khasra No.623/8/2 area 0.304 hectares. Taking advantage of the illiteracy of the defendants wrong boundaries were mentioned in the sale deed. The defendants No.1 and 2 are in possession of their respective piece of land as per their mutual partition. The land, which was shown in the sale deed was never alienated by the defendant No.1. The plaintiff was never placed in possession of the same and accordingly it was prayed that the suit filed by the plaintiff be dismissed.

5. The trial Court after framing issues and recording evidence dismissed the suit.

6. Being aggrieved by the judgment and decree passed by the trial Court, respondent/plaintiff preferred an appeal, which has been allowed by the impugned judgment.

7. Challenging the judgment and decree passed by the First Appellate Court, it is submitted by the counsel for the appellant that the First Appellate Court lost sight of the fact that wrong boundaries were

mentioned in the sale deed and therefore, the plaintiff cannot take advantage of the same and accordingly proposed the following substantial questions of law:-

“(i) Whether the finding recorded by the learned Trial Court on the finding of fact could be disturbed by the First Appellate Court ?

(ii) Whether, the appellant/defendant could sell the land in question since the defendant/appellant was not in possession of land in question and how could he sell that portion of land?

(iii) Whether the disputed area of land in question is a government land as the defendant never sold that portion of land ?

(iv) Whether the boundary (Chauhaddi) i.e., land in question wrongly recorded in the sale deed Annexure A and whether the finding recorded by First Appellate Court is against the revenue record hence, illegal and perverse ?”

8. Heard the learned counsel for the appellants.

9. It is well established principle of law that when there is a discrepancy with regard to identity of the land, then the boundaries mentioned in the sale deed would prevail. If the defendants were of the view that wrong boundaries have been mentioned in the sale deed, then they should have executed a rectification deed. Admittedly, in the present case, no rectification deed has been executed.

10. The Supreme Court in the case of **Sheodhyan Singh v. Musammat Sanichara Kuer, (1962) 2 SCR 753 : AIR 1963 SC 1879** has held as under:-

“6. In the present appeal, the learned counsel for the respondents does not ask us to go beyond the sale

certificate and the final decree for sale; his contention is that there is a mere misdescription of the plot number in the two documents and that the identity of the plot sold is clear from the circumstances which we have already set out above. He relies on *Thakur Barmha v. Jiban Ram Marwari* [(1913) LR 41 IA 38] . In that case what had happened was that the judgment-debtor owned a mahal in which ten annas share was mortgaged while the remainder was free from encumbrances. A creditor of his attached and put up for sale six annas share out of the mortgaged share. The property attached was sold. When the auction purchasers applied for the sale certificate they alleged that a mistake had been made in the schedule of the property to be sold in that the word “not” had been omitted from the description of the six annas share and that the property should have been described as being six annas not mortgaged. This prayer of theirs was allowed by the executing court and the appeal to the High Court failed. On appeal to the Privy Council, it was held that in a judicial sale only the property attached can be sold and that property is conclusively described in and by the schedule to which the attachment refers, namely, the six annas share subject to an existing mortgage. The Privy Council therefore allowed the appeal and observed that a case of misdescription could be treated as a mere irregularity; but the case before them was a case of identity and not of misdescription. It was pointed out that a property fully identified in the schedule may be in some respects misdescribed, which would be a different case. Thus the effect of this decision is that where there is no doubt as to the identity and there is only misdescription that could be treated as a mere irregularity. Another case on which reliance has been placed on behalf of the respondents is *Gossain Das Kundu v. Mrittunjoy*

Agnan Sardar [(1913) 18 CLJ 541] . In that case the land sold was described by boundaries and area; but the area seems to have been incorrect. It was held to be a case of misdescription of the area and the boundaries were held to prevail.”

11. Thus, the appellants/defendants were of the view that the boundaries mentioned in the sale deed were wrong, then the only option available with the defendant was to get rectification deed executed, which was not done.

12. Accordingly, this Court is of the considered opinion that no substantial question of law arises in the present appeal.

13. *Ex-consequenti*, the judgment and decree dated 29.07.2022 passed by Additional District Judge, Beohari, District Shahdol to the Court of District Judge Beohari in RCA No.42/2019 as well as judgment and decree dated 29.11.2019 passed by the Civil Judge, Class-1, Beohari, District Shahdol in RCS No.36-A/2017 are hereby **affirmed**.

14. The appeal fails and is hereby **dismissed**.

(G.S. AHLUWALIA)
JUDGE

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