

**IN THE HIGH COURT OF MADHYA PRADESH
AT GWALIOR
BEFORE
HON'BLE SHRI JUSTICE ASHISH SHROTI**

SECOND APPEAL No. 848 of 2004

CNR No.: MPHC030164882004

GRAM PANCHAYAT, VEERPUR

Versus

HARISHANKAR AND ORS.

Appearance:

Shri H.K.Dixit- Senior Advocate assisted by Shri Nimish Hardeniya-learned counsel for the appellant.

Shri Ankur Maheshwari and Shri F.A.Qureshi- learned counsel for respondents no. 1 and 2.

RESERVED ON: 12/10/2026

ORDER PASSED ON: 23/10/2026

J U D G M E N T

Appellants have filed this appeal under Section 100 of CPC challenging the judgment and decree dated 3/9/2004 passed by Second Additional District Judge (Fast Track Court), Sabalgarh, District Morena in Civil Appeal No.20-A/2004, whereby, the judgment and decree dated 6/2/1995 passed by Civil Judge, Class I, Sabalgarh, in Civil Suit No.251-A/1986 has been affirmed and the suit for declaration and permanent injunction filed by respondent no.1 & 2 has been decreed.

2. For the purpose of convenience, respondent no.1 & 2 shall be referred to as

‘plaintiffs’ while appellant and respondent no.3 to 5 shall be referred to as ‘defendants’ in this order as per their respective status in the civil suit. Further the suit property in this order would mean a plot ad-measuring 22x18 sq. ft. of Survey No.686 situated at Mauja and Kasba Veerpur, Tehsil Sabalgarh, District Morena.

3. Plaintiffs filed the present suit *inter-alia* on the ground that the suit plot was purchased by their grandfather Shri Ramratan from Zamindar Murli Singh on 14/12/1937 for a sale consideration of Rs.70/- by delivery of possession. It is their case that from the date of purchase, their grandfather and after him plaintiffs are owner-in-possession of the suit plot continuously. They have constructed two shops and a Ghumati (small hutment) over the land. Plaintiffs averred that the Gram Panchayat Veerpur earlier instituted a case against plaintiffs in respect of the suit plot before Naib Tehsildar, Veerpur, which was subject matter of Case No.106/83-A/68. Naib Tehsildar dismissed the case vide order dated 3/8/1983. The revision filed against the order of Naib Tehsildar was also dismissed by Additional Collector vide order dated 21/8/1985 in Revision No.16/84-85.

4. Plaintiffs also averred that Naib Tehsildar, Veerpur had registered a case under Section 248 of MPLRC, which is subject matter of Case No.875/84-85/A/68 and the same was stated to be pending. Yet another case under Section 145 of Cr.P.C. was instituted before the Sub-Divisional Magistrate, Veerpur having Case No.72/1985. The SDM vide order dated 28/6/1985 found plaintiffs in possession and held that they are entitled to continue in possession so long as they are dispossessed by the order of any competent authority. It is their case that no order has been passed for their dispossession by any competent authority.

5. Plaintiffs in para 5 of the plaint also pleaded acquisition of title by adverse possession as an alternate submission.

6. Plaintiffs further averred that the Public Works Department started illegally claiming to be the owner of the property and thus denied the plaintiffs' title over the suit plot. Plaintiffs averred that the PWD was not even in existence when their grandfather purchased the suit plot in year 1937. It was alleged that on 20/8/1986, defendant no.2 & 3 denied their title and orally asked for removal of plaintiffs shops and Ghumati from the suit land. Plaintiffs explained their title to the defendants however, they threatened to demolish their constructions.

7. With the aforesaid pleadings, the plaintiffs filed the present suit on 21/8/1986 seeking decree of declaration that they are owner of the suit land and are in possession since year 1937 and the defendants are not entitled to interfere with their possession. They also sought for a decree of permanent injunction restraining defendants from interfering with their possession over the suit land.

8. Defendant no.1 & 2 filed their written statement denying the plaint averments. In substance, it was their case that the land bearing Survey No.686/2 having area of 2 biswa belongs to PWD and is thus a Govt. land. It is their case the plaintiffs encroached upon the 20x20 sq. ft. plot without having any right in the year 1984 and constructed a Ghumati and also constructed boundary wall. The case of encroachment under Section 248 of MPLRC was pending against the plaintiffs, however, on 20/8/1986, the SDO and Tehsildar have already removed the encroachment and thus, the defendants averred that the plaintiffs are no more in possession of the suit land.

9. Defendants contended that the sale deed dated 14/12/1937 produced by plaintiffs is forged and fabricated. They further averred that the Panchayat had instituted a case against plaintiffs showing a club-house existed on the suit plot, which was rejected and therefore, Panchayat is not having any right. Plaintiffs'

continuous possession and title over the suit plot was thus denied by the defendants and they asserted that the title of plot vested in PWD and its name is correctly recorded in revenue records.

10. Defendant no.4- Gram Panchayat, Veerpur filed its separate written statement denying the plaint averments. As per its case, a club-house was constructed over the suit land in year 1942. It was let out to one Badri Prasad Rayaju 1/5/1957 by the Panchayat. After the club-house was vacated by Badri Prasad, a public notice was issued by Panchayat on 23/11/1959 for purposes of giving the club-house on rent. It was given on rent at Rs. 21/- per month to one Bankelal.

11. Defendant no.4 further averred that in the year 1978, the club-house collapsed. Its material was thus sold by Panchayat pursuant to resolution no.5 dated 30/11/1978. It is the case of Panchayat that plaintiff no.1- Harishankar was elected Punch in Panchayat at that time and has consented to the resolution no.5 dated 30/11/1978. Defendant no.4 further averred that the Panchayat obtained loan from State Govt. of Rs.2,000/- for constructing two shops. The tenders were invited and the tender submitted by one Munnalal, brother of plaintiff no.1, since lowest, was accepted. It is averred that Munnalal has been jointly residing with plaintiff no.1. Munnalal laid foundation for construction of two shops, however, than left the work incomplete. Notice to complete the work was given by Panchayat, which he refused to accept.

12. It is the case of Panchayat that plaintiff no.1 was Punch in the Gram Panchayat and in the year 1981, he illegally constructed a wooden Ghumati on the land. Notice to remove the Ghumati was given to him by Panchayat on 15/3/1981 and 24/8/1981. Plaintiff refused to accept notices. It is further averred by

defendant no.4 that on 7/3/1985, which was a court holiday, plaintiff tried to raise construction, which was stopped by Panchayat with the help of Administration.

13. Defendant no.4 further averred that the plaintiffs have no concern with the suit plot and their grandfather did not purchase the same. However, in collusion with Patwari, plaintiffs got the wrong number recorded in encroachment report as a result of which, the case under Section 248 of MPLRC was rejected.

14. The Panchayat also denied the title of PWD over the suit land and asserted that the Panchayat is the actual owner of the land.

15. After taking oral and documentary evidence of both the sides, learned Trial Court decreed the suit vide judgment and decree dated 6/2/1995. After appreciating the statement of Radhacharan (PW/2), Harishankar (PW/3), Prabhudayal (PW/4) and Chimanlal (PW/6), the Court held that the plaintiffs have successfully established their title over the suit plot since year 1937. Radhacharan is the son of attesting witness of sale deed, who has duly identified signature of his father over sale deed dated 14/12/1937. Learned Trial Court in para 9 of its judgment recorded a finding that Zamindar Murli Singh was the earlier owner of the suit land who sold the suit plot to Ramratan in year 1937 by delivery of possession. Plaintiffs and their grandfather's possession was upheld since the date of purchase.

16. Learned Trial Court further held that the sale deed dated 14/12/1937 (Ex. P/1) is a 30 years old document, which has been produced from legal custody and is therefore, acceptable in evidence under Section 90 of the Evidence Act. Learned Trial Court also held that the defendants failed to prove that the suit land does not belong to Zamindar. The record submitted by defendant no.4 also could not establish that there was any club-house on the suit land. Relying upon the

documents marked as Ex. P/2 to P/4, learned Trial Court upheld the plaintiffs' possession for a long period of time over the suit plot.

17. Trial Court also accepted the plaintiffs alternate claim of acquisition of title by adverse possession in para 17 of its judgment against the defendant no.1 & 2.

18. Learned Trial Court further appreciated the provisions of Section 5(a) & (b) of Zamindari Abolition Act, 1951 to hold that the plaintiffs otherwise also acquired title over the suit plot.

19. Defendant no.1 & 2 accepted the judgment passed by Trial Court and did not challenge the same. The judgment and decree passed of Trial Court was however, challenged by the defendant no.4- Gram Panchayat, Veerpur by filing an appeal, which has been dismissed vide impugned judgment and decree dated 3/9/2004. Learned First Appellate Court upheld the findings recorded by Trial Court. In addition, it also held that the Panchayats have been constituted in year 1950, whereas, the plaintiffs' title relates back to the year 1937. Panchayat also failed to establish by documentary evidence as to how it acquired title over the suit plot.

20. This appeal was admitted by this Court vide order dated 10/03/2006 on the following substantial questions of law:-

“(1) Whether, the suit filed by the respondent no. 1 and 2 based on unregistered sale deed Ex. P-1 can be decreed while it is not proved that the possession was delivered at the time of execution of the deed ?

(2) Whether, the suit filed by respondent no. 1 and 2 could be decreed when the respondents no. 1 and 2 failed to prove the title of the predecessor in title from whom the property was purchased by them ?”

21. Learned senior counsel for the appellant/defendant submitted that even

though the sale consideration of suit plot was less than Rs.70/-, however, since the plaintiffs relied upon the sale deed dated 14/12/1937 (Ex. P/1), under Section 54 of the Act, same was compulsorily registrable. It is his submission that, once the plaintiffs rely upon a written sale deed, they cannot assert acquisition of title by delivery of possession. In support of his submissions, he placed reliance upon the Coordinate Bench decision of this court in S.A. No.1941/2023 (***Smt. Yashoda Chaudhary & ors. vs. Lallu Prasad Chaudhary & ors.***).

22. Learned senior counsel further argued that the possession of plaintiffs is also not established and the Courts below grossly erred in holding that plaintiffs are in possession. It is his submission that the appellant- Gram Panchayat has established by way of documentary evidence that the club-house was existing on the suit plot and the same was let out by the Gram Panchayat to the tenants. In the year 1978, the club-house collapsed and thereafter, the Panchayat constructed two shops, which are now being claimed by the plaintiffs. Learned counsel thus submitted that the judgment and decree passed by both the courts are illegal and based upon misreading of the evidence available on record and therefore, deserves to be set aside.

23. He further argued that the plaintiffs have also failed to establish the title of their predecessors i.e. Murli Singh and therefore, even if the sale deed dated 14/12/1937 is accepted, the same does not convey any title in plaintiffs' favour.

24. On the other hand, learned counsel appearing for respondent no.1 & 2/plaintiffs supported the impugned judgment and decree. As per his submission, plaintiffs have pleaded sale of suit land by delivery of possession. Delivery of possession on 14/12/1937 has been duly established after the concurrent findings of both the Courts below. It is his submission that even if the plaintiffs have relied

upon the unregistered sale deed dated 14/12/1937, plaintiffs have independently established the delivery of possession of suit plot and therefore, since the sale consideration was less than Rs.100/-, the title of suit plot was conveyed in plaintiffs favour. Learned counsel also referred to the statement of plaintiffs' witnesses as also the statement of defendant's witness Badri Prasad, who accepted during his cross-examination that the land initially belongs to Zamindar Murli Singh. He thus, submitted that no ground is made out for interference in the concurrent findings of both the Courts. The appeal, therefore, deserves to be dismissed.

25. Considered the submissions and perused the record.

26. Both the Courts have upheld the plaintiffs' possession over the suit plot after appreciating the oral evidence of plaintiffs' witnesses as also the orders passed by revenue courts, which are marked as Ex. P/2 to P/4. These are the thus concurrent findings of fact recorded by both the Courts and are binding on this court. Even otherwise, no substantial question of law has been framed in this appeal on this issue of plaintiffs' possession over suit land. Therefore, this Court has to proceed accepting the plaintiffs' possession over the suit plot.

27. The first question of law framed is regarding validity of sale in favour of plaintiffs' grandfather- Ramratan based upon sale deed dated 14/12/1937. Learned senior counsel submitted that the sale of immovable property of value less than Rs.100/- is permissible by delivery of possession, however, if the transaction is reduced in writing, then the same is required to be registered compulsorily. It is his submission that since the plaintiffs have relied upon the unregistered sale deed dated 14/12/1937, same do not confer any title on the plaintiffs. Therefore, very basis of plaintiffs' claim over the suit plot is not acceptable and therefore, the

judgment and decree passed by both the Courts below deserve to be set aside.

28. On the other hand, learned counsel for the plaintiffs submitted that the plaintiffs have pleaded the sale by delivery of possession only and have not referred to the unregistered sale deed dated 14/12/1937 in plaint, though it is produced in evidence. It is his submission that independent of unregistered sale deed, if the plaintiffs succeeded in establishing the sale by delivery of possession, mere execution of the document would not frustrate their claim over the suit plot.

29 In order to appreciate the rival submissions made by learned counsel for the parties, provisions of Section 54 of Transfer of Property Act, need to be considered. Section 54 of the Transfer of Property Act provides as under:-

“54. “Sale” defined.—“Sale” is a transfer of ownership in exchange for a price paid or promised or part-paid and part-promised.

Sale how made.—Such transfer, in the case of tangible immoveable property of the value of one hundred rupees and upwards, or in the case of a reversion or other intangible thing, can be made only by a registered instrument.

In the case of tangible immoveable property of a value less than one hundred rupees, such transfer may be made either by a registered instrument or by delivery of the property.

Delivery of tangible immoveable property takes place when the seller places the buyer, or such person as he directs, in possession of the property.

Contract for sale.—A contract for the sale of immoveable property is a contract that a sale of such property shall take place on terms settled between the parties.

It does not, of itself, create any interest in or charge on such property.”

30. It is thus seen that the sale of immovable property worth less than Rs.100/- is permissible either by delivery of possession of property or by way of registered instrument. The provisions of Section 54 were considered by Apex Court in the case of **Brijvasilal v. Abdul Haji** reported in (2001)9 SCC 367, wherein, the Court held in para 5 as under:-

“5. On a plain reading in the case of tangible immoveable property of a value less than one hundred rupees, transfer may be made either by a registered document or by delivery of possession. But it has been further said in the said section that the delivery of tangible immoveable property takes place when the seller places the buyer, or such person as he directs in possession of the property. The appellant in the plaint has not stated anywhere as to when he came in possession of the land which is the subject-matter of dispute. In view of Section 54 of the Act till the purchaser is put in possession in respect of any immoveable property of a value less than one hundred rupees the sale does not take place. There is no dispute that in the year 1957 by the aforesaid registered sale deed dated 26-4-1957 the same land was transferred in favour of the respondent. According to us, the High Court was justified in coming to the conclusion that the respondent had acquired valid title on the basis of the aforesaid registered sale deed.”

31. Thus, reading Section 54 and the law laid down by Apex Court, it is evident that the sale of immovable property of less than Rs.100/- is permissible by way of delivery of possession also. The delivery of possession however has to be actual physical possession.

32. Learned senior counsel for the appellant/defendant relied upon this Court decision in the case of **Smt. Yashoda Chaudhary (supra)** to say that if there is a document executed, then the party cannot rely upon the sale by delivery of

possession. This Court held in this case as under:

“12. It is pertinent to mention here that originally the suit property was joint property of the plaintiff and defendants and their fathers namely Rameshwar and Chhotelal were in joint possession of the land which remained undivided up to the alleged transaction of sale. Nothing is available on record to assume partition of joint holding prior to alleged sale, as such no question arises for delivery of possession by Rameshwar to Chhotelal. The defendants have examined Surajdeen (DW-3) to prove delivery of possession, but he has also not said anything about actual delivery of possession on land in pursuance of transaction of sale and he merely stated about possession of the defendants on the land in question. As such, the recital made in an unregistered and inadmissible document of sale dtd. 15.01.1970 (Ex.D/15), cannot be considered as gospel truth about delivery of possession in pursuance of sale.”

33. In the case of **Smt. Yashoda (supra)**, the Coordinate Bench of this Court relied upon another decision of this Court in the case of **Gopal Das Chaubey vs. Hari Prasad Chaubey** (S.A. No.351/2001). In this case also, the Court held as under:

“20. When the case of the plaintiff was solely based on the sale deed dated 12.12.1954 then there should have been specific pleading. Thus, this Court is of the considered opinion that in view of Section 54 of the Transfer of Property Act, the petitioner has failed to prove that the possession of the open space situated in front of the house was ever delivered to him after the execution of the unregistered sale deed dated 12.12.1954. However, in case if the instrument is reduced in writing, then it is required to be registered irrespective of value of the property.

21. In the present case, undisputedly the sale deed Ex. P-2(c) is an

unregistered document. Thus, none of the condition as required under Section 54 of the Transfer of Property Act for transfer of an intangible immovable property of value of less than Rs.100/- has been satisfied. Accordingly, the substantial questions of law are answered in favour of the appellant.”

34. It is thus seen that in both the cases i.e. in ***Smt. Yashoda*** and ***Gopal Das Chaubey (supra)***, the cases were based upon written unregistered instrument and delivery of possession was not established. In the context of facts of these cases, this Court held that the registration of sale deed was compulsory. The ratio of the cases cannot be disputed. However, these cases do not deal with the situation where, apart from written instrument, the party successfully demonstrates delivery of possession of property also.

35. Section 54 of TP Act, prescribes two mode of acquiring title of immovable property worth less than Rs.100/-. It can be either by delivery of possession or by unregistered instrument. However, it nowhere prescribe that if the sale is reduced in writing, the party is precluded from establishing sale by delivery of possession. In the considered opinion of this Court, if a party claims sale of property of less than Rs.100/- only on the basis of written document without establishing delivery of possession, then sale is complete only when the document is registered. However, in a case where independent of unregistered document, a party also establishes sale by delivery of possession of property, than in such case, the title cannot be denied to such a party based upon delivery of possession only because the document was not registered.

36. Thus, the submission of learned senior counsel that if there is a document of sale executed, the party cannot rely upon the sale by delivery of possession is actually not the ratio of ***Smt. Yashoda Chaudhary & Gopal Das Chaubey***

(surpa).

37. Learned counsel for the plaintiffs relied upon the decision of Allahabad High Court in the case of **Raj Bahadur v. Babu Lal, 2011 SCC OnLine All 2189 (=AIR 2011 All 48)**. In the aforesaid case, Allahabad High Court dealt with similar issue and held as under:-

“9. ‘Sale’ is one of the modes of transfer of tangible immoveable property under the Transfer of Property Act and has been defined under Section 54 of the Act. The aforesaid provision also provides the manner of making a sale of tangible immoveable property. It provides that sale of tangible immoveable property of value Rs. 100/- and above can only be made by registered instrument. The aforesaid requirement of registration is independent of the provisions of the Indian Registration Act. Therefore, in every case where the value of the immoveable property happens to be Rs. 100/- and above its sale has to be affected by a registered instrument and not in any other way.

10. The aforesaid Section 54 of the Transfer of Property Act further provides that in the case of immoveable property of value of less than Rs. 100/-, sale can be made in two ways, namely:

(i) by registered instrument; or

(ii) by delivery of the property.

11. A simple reading of the aforesaid provision reveals that two modes are prescribed for transfer by sale of immoveable property of value of less than Rs. 100/-. The first mode is by executing a registered instrument and the second mode is by delivering the property. The use of word ‘or’ in the aforesaid provision demonstrates that the transfer of such property of less than Rs. 100/- in value can either by by registered instrument or by establishing the delivery of the property. In such a situation transfer by sale of immoveable property of the value of less than

Rs. 100/- would be complete as soon as an instrument of sale is executed and registered or in the alternative if it is established that the property so sought to be transferred has been delivered by the vendor to the vendee irrespective of any sale deed. In the second mode of transfer execution of sale deed is not necessary and, as such, there is no requirement of any registration of the same.

12. His Lordship of the Madras High Court in the case of Swaminatha Udayar v. Mottaya Padayachi, AIR 1957 Madras 209, clearly ruled that in case of tangible immoveable property of less than Rs. 100/- existence of an unregistered instrument does not prevent property from being passed provided the delivery of the property has taken place.

13. In the case of Shesh Mal v. Harak Chand, AIR 1983 Rajasthan 109, the Court dealing with an instrument of sale of immoveable property of the value less than Rs. 100/- held that sale of immoveable property of the value of less than Rs. 100/- is not required to be affected by a registered sale deed. There can be an oral sale of such property coupled with delivery of possession of the property and where the purchaser is already in possession then by making an overt declaration of delivery of possession.

14. A Division Bench of the Orissa High Court in, AIR 1954 Orissa 31, Parikhith Thapa v. Nidhi Thapa, while considering the provisions of Section 54 of the Transfer of Property Act and dealing with a sale of property of less than Rs. 100/- in value laid down that sale can be effected either by registered instrument or by delivery of property itself and that sale would be complete by delivery of possession. An unregistered document of sale in this connection was not necessary but the factum of delivery of possession could be proved by such a document.

15. In other words, it means that in case of sale of a tangible immoveable property of Rs. 100/- and less in value the transaction of sale would be complete if delivery of possession of the property

is proved and for proving the same the vendee may fall back upon an unregistered instrument which could to be used for a limited purpose of proving delivery of possession.

16. A similar question came up for consideration before a Division Bench of the Hyderabad High Court in the case Nagayya Baliah v. Sayanna Baliah, AIR 1951 Hyderabad 42. In the said case also the sale was in respect of an immoveable property of Rs. 75/- and the contention was that the parties having reduced the contract of sale into writing, the sale deed ought to be registered. The Court held that a sale of property of less than Rs. 100/- is complete by delivery of property inspite of an unregistered deed of sale which can be looked into for the limited purpose of formation of opinion about delivery of possession of the property.

17. His Lordship of the Allahabad High Court much earlier to all the above decisions in the year 1923 in the case of Daya Ram v. Sita Ram reported in AIR 1925 Allahabad 206(1) laid down that sale of property worth less than Rs. 100/- is complete with the delivery of possession and even if an unregistered sale deed is executed at the relevant time it does not destroy the sale transaction but can be used to prove the nature of possession.

18. It may be noteworthy that provisions contained in paragraphs 2 and 3 of Section 54 of the Transfer of Property Act are to be read as supplemental to the Indian Registration Act. Section 17 of the Indian Registration Act which provides for the documents which are compulsorily required to be registered does not envisage that a sale deed of immoveable property of less than Rs. 100/- in value is required to be registered. Therefore, neither of the two Acts mandates for the registration of sale deed transferring immovable property worth Rs. 100/- or less.

19. At the same time, Section 49 of the Indian Registration Act only lays down that a document, namely unregistered sale deed in respect of immovable property cannot be received in evidence

except for collateral purposes to prove something not required to be effected by registered instrument. Therefore, there appears to be no specific provision in law requiring a sale deed executed in respect of tangible property of Rs. 100/- and less to be registered.

22. Thus, following the Division Bench of Hyderabad and Orissa High Court and the view expressed by the single Judges of the Allahabad, Rajasthan and Madras High Court I hold that a sale deed transferring immoveable property of less than Rs. 100/- in value is not required to be registered and the sale of such a property would be complete as soon as delivery of possession is proved either on the basis of an unregistered instrument of sale or otherwise and that where delivery of possession is established, the unregistered instrument of sale though executed would not be material.”

38. This Court is in complete agreement with the aforesaid view of Allahabad High Court. It is thus held that if a party successfully establishes delivery of possession, independent of execution of an instrument, it cannot be said that the party is not entitled to claim sale by delivery of possession only because of existence of an unregistered document of sale. Thus, the first substantial question of law is answered holding that the suit has rightly been decreed by both the Courts by accepting sale by delivery of possession.

39. Even otherwise, in the case in hand, learned Trial Court has also upheld plaintiffs’ title over the suit plot by virtue of Section 5(a) and (b) of Madhya Bharat Zamindari Abolition, Samvat 2008 (Act 13 of 1951). Section 5 (a) & (b) reads as under:-

“5. Private wells, trees, buildings, house sites, and enclosures.

(a) All open enclosures used for agricultural or domestic purposes

and in continuous possession (which includes possession of a former proprietor) for twelve years immediately before the 1st of January, 1951. all open house sites purchased for consideration, all buildings, places of worship, wells, situated in and trees standing on lands included in such enclosures of house-sites or land appertaining to such buildings or places of worships within the limits of a village-site belonging to or held by the outgoing proprietor or any other person shall continue to belong to or be held by such proprietor or other person as the case may be, and the land thereof, with the areas appurtenant thereto shall be settled with him by the Government on such terms and conditions as it may determine.

(b) All private wells and buildings on occupied land belonging to or held by the outgoing proprietor or any other person shall continue to belong to or be held by such proprietor or other person.”

40. It has been concurrently held by both the Courts that Zamindar Murli Singh had sold the land to plaintiffs' grandfather- Ramratan. He was thus in possession of the suit land since 1937 and if that be so, upon abolition of Zamindari by virtue of Section 5(a) & (b) of the Act, Ramratan becomes the holder of the land.

41. Aforesaid findings of learned Trial Court have not been challenged by the appellant. No substantial question of law is framed on this aspect. Consequently, even if the sale of 14/12/1937 is not established, plaintiffs' grandfather acquired title by virtue of his possession for more than 12 years under Section 5(a) & (b) of Madhya Bharat Zamindari Abolition Act, 1951.

42. So far as the second substantial question of law is concerned, the same does not need much deliberation. It has been held concurrently by both the courts, after appreciating the oral and documentary evidence that the land initially belongs to Zamindar- Murli Singh, who sold it to the plaintiffs' grandfather- Ramratan. The substantial question of law framed by this Court presupposes that the title of Murli Singh is not established, which is in fact not borne out from record. The title of Murli Singh has been held established by Courts below on the basis of oral statement of defendant witness himself.

43. Both the courts have held that the appellant- Gram Panchayat has failed to bring on record any evidence showing acquisition of its title. Plaintiffs' title relates back to year 1937, whereas, as per defendant witness Badriprasad, the Panchayats were constituted after year 1950. Therefore, it was incumbent upon the appellant- Gram Panchayat to have given source of its title over the suit plot. Further, the Panchayat has already lost its case before Tehsildar and the same has been upheld upto Board of Revenue, as is evident from documents marked as Ex. P/2 to P/4.

44. Thus, weighing the evidence led by plaintiffs and appellant- Gram Panchayat, the evidence led by plaintiffs have been found trustworthy and both the Courts have therefore, rightly accepted the plaintiffs' title over the suit land.

45. Consequently, second substantial question of law is answered holding that Murli Singh was the title holder of the land and was competent to sale the suit plot to plaintiffs' grandfather.

46. Consequently, the judgment and decree passed by both the Courts are found to be just and proper based upon proper appreciation of evidence led by both the parties. Same are accordingly upheld.

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

(ASHISH SHROTI)
JUDGE

jps/-