

**IN THE HIGH COURT OF MADHYA PRADESH**

**AT INDORE**

**BEFORE**

**HON'BLE SHRI JUSTICE ANIL VERMA**

**ON THE 20TH OF JULY, 2024**

**MISC. APPEAL No. 1813 of 2022**

( Suresh

Vs

Ramesh and others)

**Appearance:**

(Shri Ravindra Upadhyay advocate for appellant)

(None for respondents)

**JUDGMENT**

Despite service of notice on respondents, nobody appeared on their behalf, therefore, matter is heard exparte against them.

2/ The appellant has preferred this Misc. Appeal under Section 104 read with Order 43 Rule 1 of Code of Civil Procedure (in short CPC) being aggrieved by the impugned order dated 25.2.2022 passed by 24<sup>th</sup> District Judge Indore in civil suit No.937-A/2019 whereby an application filed by appellant under Order 39 Rules 1 and 2 CPC has been rejected.

3/ Learned counsel for appellant contended that he purchased disputed

plot admeasuring 600 sq.ft. at Babu Murai Colony Indore and constructed a house in the year 2010 and since then he is residing in the said house with his family. He purchased the suit premises in the year 2010 from Rajesh after paying sufficient consideration, but respondent no. 1 filed civil suit No. 26A/2013 before 18<sup>th</sup> ADJ Indore against respondents no. 2 to 6 in which appellant was not made a party. The area and description of land in earlier suit was different but respondents taking undue advantage of the judgment and decree passed in the earlier suit, tried to dispossess him from the suit premises. He has preferred an application under Order 39 Rules 1 and 2 CPC before the trial court but the same has been rejected by the impugned order dated 25.2.2022. Hence he prays that the impugned order be set aside.

4/ Respondent no. 1 opposes the prayer by submitting reply that appellant is not owner of the suit premises, he did not get any title over the suit premises on the basis of unregistered document which is only a fake notary. On the contrary, the suit of respondent no. 1 has been allowed by trial court which has been affirmed by the High court, no prima facie case, balance of convenience and irreparable loss is found in favour of appellant. Therefore, he is not entitled for any relief.

5/ Learned counsel for appellant heard at length and perused the documents.

6/ The appellant/plaintiff is claiming his title over the suit land but the said document (notary) does not create any title in favour of the appellant under Section 54 of Transfer of Property Act. It is an unregistered document.

7/ The Coordinate Bench of this court in case of **Komal Bai (Smt.)**

**and another Vs. Jasoda and others reported in 2014(I) MPWN 54** has held that in a suit for declaration of title and permanent injunction, the unregistered document of agreement to sell does not create any title in favour of plaintiff. This citation is completely applicable in the instant case.

8/ On the contrary, respondent No.1 Ramesh has filed a civil suit against respondents no. 2 to 6 which has been decreed in his favour and affirmed by the High court. Respondent No. 2 Manju Bai, wife of appellant Suresh, was impleaded as defendant no. 1 in earlier civil suit No. 26A/2013. Therefore, it cannot be presumed that appellant has no knowledge about the earlier litigation.

9 On the basis of aforesaid, the trial court has rightly considered that prima facie case, balance of convenience and point of irreparable loss is not found in favour of appellant and has rightly rejected his application under Order 39 Rules 1 and 2 CPC.

10/ In view of the aforesaid, this court is of the considered opinion that the impugned order dated 25.2.2022 passed by the trial court is perfectly legal and based upon material available on record. No infirmity can be found in the same. As a consequence, this Misc. appeal is found to be devoid of any merit and substance and is hereby dismissed.

**(ANIL VERMA)**  
**JUDGE**

***BDJ***