Madhya Pradesh High Court
Kamlesh Kushwaha vs Vibha Kuma R on 9 May, 2022
Author: Arun Kumar Sharma

1

IN THE HIGH COURT OF MADHYA PRADESH
AT JABALPUR
BEFORE
HON'BLE SHRI JUSTICE ARUN KUMAR SHARMA
ON THE 9th OF MAY, 2022
SECOND APPEAL No. 1342 of 2018

Between:-

KAMLESH KUSHWAHA W/O SHRI VISHNU KUSHWAHA, AGED ABOUT 38 YEARS, R/O PLOT NO. 13, VILLAGE SEMRA KALAN, SHANKAR GARDEN, TEHSIL HUZUR, DIST. BHOPAL (MADHYA PRADESH)

.....APPELLANT

(BY SHRI SACHIN KUMAR VERMA, ADVOCATE)

AND

VIBHA KUMAR D/O LATE SHRI DR. M. KUMAR W/O SHRI SANTOSH MAHALAHA, AGED ABOUT 65 YEARS, R/O E-1/22, PRESENTLY R/O. C-3, E GANDHINAGAR, ARERA COLONY, GWALIOR (MADHYA PRADESH)

.....RESPONDENT

(BY SHRI PIYUSH BHATNAGAR, ADVOCATE)

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

JUDGMENT

(09-05-2022) This appeal under Section 100 of the Code of Civil Procedure has been preferred by the appellant - defendant calling in question the judgment and decree dated 24-04-2018 passed by the Xth Additional District Judge, Bhopal (MP) in Regular Civil Appeal No.93/2016 reversing the judgment and decree dated 25-02-2016 passed by VIth Civil Judge Class-I, Bhopal (MP) in Civil Suit No.712-A/2011.

2. The facts of the case, succinctly stated are that the respondent - plaintiff through her power of attorney holder filed a suit for declaration of title and permanent injunction and also for getting vacant possession by demolishing the construction made over the disputed plot against the appellant - defendant inter-alia contending that the respondent - plaintiff was the owner and title holder of the suit property bearing khasra no.236/268/236, area 1800 Sq. ft. situated at Plot no.13,

in village Semra Kalan, Ashoka Garden, Bhopal. She purchased the said plot from one Manohar Lal Babbar through registered sale deed dated 30.11.1968 and she had transferred all her rights with regard to disputed plot to one Purshottam Raghuwanshi, through power of attorney dated 8.12.2011 and a copy whereof was attached with the plaint. It was also averred in the plaint that the husband of the appellant - defendant is in police service having great influence in the area and therefore, the local administration is not having courage to initiate any action against him. The husband of the appellant - defendant had put the building material on the subjective plot on 20.12.2011. The power of attorney holder tried to talk with the appellant -

defendant then only she learnt that the appellant is having a spurious registered sale deed whereas Firoz Badami is not having any title of the subjective plot and therefore, the registered sale deed is not having any force. It was further the case of the respondent - plaintiff that the appellant-defendant had started construction of wall in between the pillars from 21.12.2011, sought relief of declaration and permanent injunction and also sought temporary injunction during the pendency of the civil suit. It was further the case of the respondent - plaintiff that the cause of action arose on 21.12.2011 when the appellant - defendant tried to encroach upon the plot of the respondent - plaintiff. Valued the suit as per rules and paid the proper court fees and thereafter, the suit was filed.

3. The appellant - defendant filed written statement denying the averments made by the respondent - plaintiff in the plaint and also filed reply to the application under Order 39 Rule 1 and 2 of CPC filed by the respondent - plaintiff and stated that she had acquired the suit property in the year 1998 and actual construction was started in the year 2007. It was also averred that the respondent - plaintiff had not challenged the sale deed executed in favour of the appellant - defendant on dated 5.12.2001 and no relief was sought for declaration of sale deed as null and void not binding upon the respondent - plaintiff, and prayed for dismissal of the suit.

4. The trial Court after framing the issues recorded the evidence of the parties and thereafter the suit was dismissed. Being aggrieved, the respondent - plaintiff challenged the judgment and decree passed by the trial Court by filing an appeal and the First Appellate Court after considering the submissions of the parties, reversed the judgment and decree passed by the trial Court and allowed the first appeal filed by the respondent - plaintiff. Against the judgment of lower appellate Court, the present appeal was admitted on 14.6.2018 on following substantial question of law :-

> "Whether the First Appellate Court has erred in reversing the judgment and decree passed by the trial Court ?"

5. Learned counsel for the appellant-defendant submits that the learned lower appellate court has erred in reversing the judgment and decree passed by the trial court because merely on the basis of the pleadings or the documents placed on record, no decree could have been passed unless the such documents and the pleadings are proved by reliable evidence by examining the relevant witnesses. As per the procedure, the pleadings are only the intimation to the Court and other side regarding their dispute but it has no sanctity of the admissible proof without ocular or oral evidence of principal and material witnesses by whom the material contents, pleadings and the documents

ought to be proved by adducing the said witnesses in witness box and opportunity to other party to defend their case by cross-examination. Further submits that the documents and other papers are not admissible unless the same is proved by the concerning witnesses as per provision of the Evidence Act. Learned first appellate court has committed a gross error in setting aside the well reasoned judgment and decree passed by the learned 6th Civil Judge Class-1, Bhopal in regular civil suit no.712A/11 and also committed a gross error of law in decreeing the civil suit in favour of the respondent - plaintiff namely Ms. Vibha Kumar. Further contends that learned first appellate court has not appreciated the evidence in right perspective and the documents relied upon for decreeing the civil suit have not been proved by the relevant material witnesses by the oral evidence and also invited the attention of this court that merely by exhibiting the documents, the contents thereof cannot be proved until and unless there is oral and reliable evidence of the concerned witnesses.

6. Learned counsel for the appellant - defendant further submits that the evidence of power of attorney holder which has been relied upon by the learned first appellate court is not credible and reliable and in fact, the power of attorney holder was not authorized to depose the evidence in place of principal. The power of attorney holder cannot depose for the principal in respect of a matter regarding which only principal can have personal knowledge and incurs the liability to be cross examined. He can only give formal evidence about the validity of the power of attorney and about filing of the suit. The respondent / plaintiff herself had not entered into the witness box even the plaint and the verification along with the affidavit is signed by the Power of Attorney Holder not by the respondent - plaintiff. The power of attorney holder namely Purushottam Raghuwanshi (PW-1) has deposed in respect of the acts done by the principal plaintiff in her personal capacity prior to the execution of the alleged power of attorney which is barred under the law. Further contended that the alleged power of attorney holder of the respondent - plaintiff namely Purushottam Raghuwanshi (PW-1) during his cross- examination in para 15 has admitted that the present value of the suit property / plot is Rs.22-25 lakhs and as such, the suit was not properly valued and proper court fees was also not paid and in absence of proper valuation and payment of the ad-valorem court fees, the present suit suffers from the inheritance defects and therefore, the the suit was liable to be dismissed on this count alone. The finding of learned both the courts below regarding issues no. 4 and 5 are perverse and thus, the same are liable to be interfered with. Further the learned first appellate court has failed to consider that due to non-joinder of necessary party, the plaint was not liable to be decreed. Further submitted that the respondent

- plaintiff had not challenged the legality and validity of the registered sale deed dated 5.12.2001 executed in favour of the appellant - defendant and the respondent - plaintiff has not prayed in the plaint that the sale deed dated 5.12.2001 executed in favour of the appellant - defendant is null and void and the same is not binding on her and even in the prayer clause, no prayer is made for cancellation of registered sale deed dated 5.12.2001. Under these circumstances, prayer is made to allow the second appeal by setting aside the impugned judgment and decree dated 24.4.2018 passed by the first appellate court.

7. Learned counsel for the respondent-plaintiff argued in support of the impugned judgment and decree passed by the learned first appellate court and contended that learned first appellate court has not committed any illegality or perversity in the impugned judgment and decree and the same is

based on proper appreciation of pleadings and documents and evidence available on record and submitted that the appellant - defendant has failed to prove her case by cogent and reliable evidence and even she has not produced any evidence about her sale deed dated 5.12.2001. Heavy reliance has been placed in Iqbal Basith and others vs. N. subbalakshmi and others reported in (2021) 2 SCC 718, in which, it has been held that the documents in question could not be rejected without any valid reason. Relevant para 14 is reproduced herein below :-

14. "This Court in Lakhi Baruah vs. Padma Kanta Kalita, (1996) 8 SCC 357, with regard to admissibility in evidence of thirty years old documents produced from proper custody observed as follows : "14. It will be appropriate to refer to Section 90 of the Evidence Act, 1872 which is set out hereunder:

> "90. Presumption as to documents thirty years old.-- Where any document, purporting or proved to be thirty years old, is produced from any custody which the Court in the particular case considers proper, the Court may presume that the signature and every other part of such document, which purports to be in the handwriting of any particular person, is in that person's handwriting, and, in the case of a document executed or attested, that it was duly executed and attested by the persons by whom it purports to be executed and attested."
>
> 15. Section 90 of the Evidence Act, 1872 is founded on necessity and convenience because it is extremely difficult and sometimes not possible to lead evidence to prove handwriting, signature or execution of old documents after lapse of thirty years. In order to obviate such difficulties or improbabilities to prove execution of an old document, Section 90 has been incorporated in the Evidence Act, 1872 which does away with the strict rule of proof of private documents. Presumption of genuineness may be raised if the documents in question is produced from proper custody. It is, however, the discretion of the court to accept the presumption flowing from Section 90. There is, however, no manner of doubt that judicial discretion under Section 90 should not be exercised arbitrarily and not being informed by reasons."

8. I have heard learned counsel for the appellant and the respondent and perused the record as well as the judgment passed by both the Courts below.

9. It is settled position of law that in the absence of the pleadings, no evidence can be looked into and also vice versa in the absence of any proof or evidence on record mere on the basis of the pleadings and documents of the parties as placed on record, no inference can be drawn to adjudicate the matter. The provision of Order 6, Rule 2 of the Code of Civil Procedure is very specific on this point that evidence cannot be looked into beyond the pleadings as per various interpretations of the different Courts. It shows that pleadings cannot take the place of proof until it is not proved by reliable evidence by examining the witnesses.

10. The documents produced by the plaintiff as sale deed and other papers are not the public documents. So without proper proof on record, they could not have been relied upon by the Courts

below.

11. Beside this, the parties are also bound to prove those facts which they know. According to the pleadings of the plaint, the respondent-plaintiff had knowledge about the dispute as pleaded by her and she herself has not entered in witness box to prove such facts in support of her pleadings as such she have not discharged her burden to prove her case as per provision of sections 101 and 102 of the Evidence Act. In that absence of it there are sufficient circumstances to draw an adverse inference against the respondent. My aforesaid view is fully fortified on a decided case in the matter of Martand Pundharinath Chaudhari v. Budhabai Krishnarao Deshmukh reported in AIR 1931 Bombay 97 in which it is held as under:--

> "It is the bounden duty of a party personally knowing the facts and circumstances to give evidence in his own behalf and to submit to cross-examination and his non-appearance as a witness would be the strongest possible circumstances which will go to discredit the truth of his case AIR 1927 P.C 230, Rel on." (Placitinum).

12. The aforesaid question was answered by this Court also in the matter of Gulla Kharagit Carpenter v. Harsingh Nandkishore Rawat reported in 1970 MPLJ 586 : AIR 1970 M.P 225 in which it was held as under:--

> "When a material fact is within the knowledge of a party and he does not go into the witness box without any plausible reason, an adverse inference must be drawn against him. A presumption must be drawn against a party who having knowledge of the fact in dispute does not go into the witness box, particularly when a prima facie case has been made out against him."

13. In view of the aforesaid principle, on examining the case at hand, non-entrance of the respondent-plaintiff in witness box to prove her case as per pleadings are sufficient circumstances to draw an adverse inference against her that she has no case against the appellant- defendant but by ignoring this principle the case was considered by the first appellate court on pleadings of the plaint and formal evidence of power of attorney holder namely Purushottam Raghuwanshi (PW-1) which is not sustainable under the law as such in the absence of evidence of principal plaintiff, the suit should have been decreed.

14. Although, the evidence of Purushottam Raghuwanshi (PW-

1) has been adduced as power of attorney holder of principal plaintiff namely Ms. Vibha Kumar and on his evidence, the documents vide Ex.P/1 to Ex.P/13 have been exhibited. On perusal of evidence of Purushottam Raghuwanshi (PW-1) recorded under Order 18 Rule 4 C.P.C., he has stated in para 2 that plot bearing khasra no. 236/268/236, area 1800 Sq. ft. situated at Plot no.13, in village Semra Kalan, Ashoka Garden, Bhopal was of the ownership of Manohar Lal Babbar and by registered sale deed dated 30.11.1968 the plot was purchased as per registered sale deed Ex.P/1 and he has stated in para 4 that only and only on 8.12.2011 the plaintiff - respondent appointed him as power of attorney holder which was renewed from time to time and admitted that in the aforesaid khasra, name of

earlier owner namely Manohar Lal Babbar is recorded vide Ex.P/3. In context of this evidence, his para 11 may be seen. But in para 13 of his cross examination he stated that it is incorrect to say that the signature of principal plaintiff Ms. Vibha Kumar is not in the plaint and even he himself stated that signature made in the plaint is of Ms. Vibha Kumar. On perusal of aforesaid paragraphs, most important facts are that he admitted that prior to the year 2011 no any kind of power has been given to him or executed any power of attorney by Ms. Vibha Kumar and in para 20 he stated that he does not know in which year Ms. Vibha Kuamr had gone to America and stated that on 6.11.2011 she came back and for the first time, he met her on the very said date. He also stated that he does not know where she is residing at present and in para 21 he stated that the principal plaintiff had never disclosed about the disputed property, however, her husband namely Santosh Maharaj stated in this regard in the year 2000 but the said fact was not mentioned in the plaint as well as in Ex.P/1 to P/3. In para 23 he admitted that the plaint which was filed before JMFC was rejected prior to its registration and the said document was not filed in the case and again he admitted that prior to November, 2011 he had no knowledge about Ms. Vibha Kumar. Surprisingly, Aslam Khan and Iftekhar Khan who were the attesting witnesses of the power of attorney (Ex.P/1) vide dated 8.12.2011 have not been examined by the plaintiff to prove that the power of attorney in respect of the disputed property was valid and the same was executed in the presence of independent witnesses and therefore, no doubt can be raised on the power of attorney vide Ex.P/1 and thus, the power of attorney holder had a right to file the plaint and give evidence in respect of the acts or transaction of the principal plaintiff occurred much prior to execution of this document of the year 2011 which is in respect of the registered sale deed executed in the year 1968. No any other evidence except the evidence of power of attorney holder namely Purushottam Raghuwanshi (PW-1) has been adduced in the court by the plaintiff.

15. The Apex Court in the case of S. Kesari Hanuman Goud vs. Anjum Jehan and others (2013) 12 SCC 64 in para 23 has held that "It is a settled legal proposition that the power of attorney holder cannot depose in place of the principal. Provisions of Order III, Rules 1 and 2 CPC empower the holder of the power of attorney to "act" on behalf of the principal. The word "acts" employed therein is confined only to "acts" done by the power-of- attorney holder, in exercise of the power granted to him by virtue of the instrument. The term "acts", would not include deposing in place and instead of the principal. In other words, if the power-of- attorney holder has preferred any "acts" in pursuance of the power of attorney, he may depose for the principal in respect of such acts, but he cannot depose for the principal for acts done by the principal, and not by him. Similarly, he cannot depose for the principal in respect of a matter, as regards which, only the principal can have personal knowledge and in respect of which, the principal is entitled to be cross-examined. (See: Vidhyadhar v. Manikrao & Anr., AIR 1999 SC 1441; Janki Vashdeo Bhojwani v. Indusind Bank Ltd., (2005) 2 SCC 217; M/S Shankar Finance and Investment v. State of A.P & Ors., AIR 2009 SC 422; and Man Kaur v. Hartar Singh Sangha, (2010) 10 SCC 512).

16. In Man Kaur (dead) by Lrs vs. Hartar Singh Sangha (2010) 10 SCC 512 the Hon'ble Apex Court has held the legal position as to who should give evidence in regard to matters involving personal knowledge can be summarized as follows :-

(a) An attorney holder who has signed the plaint and instituted the suit, but has no personal knowledge of the transaction can only give formal evidence about the validity of the power of attorney and the filing of the suit.

(b) If the attorney holder has done any act or handled any transactions, in pursuance of the power of attorney granted by the principal, he may be examined as a witness to prove those acts or transactions. If the attorney holder alone has personal knowledge of such acts and transactions and not the principal, the attorney holder shall be examined, if those acts and transactions have to be proved.

(c) The attorney holder cannot depose or give evidence in place of his principal for the acts done by the principal or transactions or dealings of the principal, of which principal alone has personal knowledge.

(d) Where the principal at no point of time had personally handled or dealt with or participated in the transaction and has no personal knowledge of the transaction, and where the entire transaction has been handled by an attorney holder, necessarily the attorney holder alone can give evidence in regard to the transaction. This frequently happens in case of principals carrying on business through authorized managers/attorney holders or persons residing abroad managing their affairs through their attorney holders.

(e) Where the entire transaction has been conducted through a particular attorney holder, the principal has to examine that attorney holder to prove the transaction, and not a different or subsequent attorney holder.

(f) Where different attorney holders had dealt with the matter at different stages of the transaction, if evidence has to be led as to what transpired at those different stages, all the attorney holders will have to be examined.

(g) Where the law requires or contemplated the plaintiff or other party to a proceeding, to establish or prove something with reference to his `state of mind' or `conduct', normally the person concerned alone has to give evidence and not an attorney holder. A landlord who seeks eviction of his tenant, on the ground of his `bona fide' need and a purchaser seeking specific performance who has to show his `readiness and willingness' fall under this category. There is however a recognized exception to this requirement. Where all the affairs of a party are completely managed, transacted and looked after by an attorney (who may happen to be a close family member), it may be possible to accept the evidence of such attorney even with reference to bona fides or `readiness and willingness'. Examples of such attorney holders are a husband/wife exclusively managing the affairs of his/her spouse, a son/daughter exclusively managing the affairs of an old and infirm parent, a father/mother exclusively managing the affairs of a son/daughter living abroad.

17. In Janki Vashdeo Bhojwani and another vs. Indus Ind Bank Ltd and others (2005) 2 SCC 217 the same view is also expressed in the following manner :-

> 12. In the context of the directions given by this Court, shifting the burden of proving on the appellants that they have a share in the property, it was obligatory on the appellants to have entered the box and discharged the burden by themselves. The question whether the appellants have any independent source of income and have contributed towards the purchase of the property from their own independent income can be only answered by the appellants themselves and not by a mere holder of power of attorney from them. The power of attorney holder does not have the personal knowledge of the matter of the appellants and therefore he can neither depose on his personal knowledge nor can he be cross-examined on those facts which are to the personal knowledge of the principal.

13. Order 3 Rules 1 and 2 CPC, empowers the holder of power of attorney to "act" on behalf of the principal. In our view the word "acts" employed in Order III, Rules 1 and 2 CPC, confines only in respect of "acts" done by the power of attorney holder in exercise of power granted by the instrument. The term "acts" would not include deposing in place and instead of the principal. In other words, if the power of attorney holder has rendered some "acts" in pursuance to power of attorney, he may depose for the principal in respect of such acts, but he cannot depose for the principal for the acts done by the principal and not by him.

Similarly, he cannot depose for the principal in respect of the matter which only the principal can have a personal knowledge and in respect of which the principal is entitled to be cross-

examined.

14. Having regard to the directions in the order of remand by which this Court placed the burden of proving on the appellants that they have a share in the property, it was obligatory on the part of the appellants to have entered the box and discharged the burden. Instead, they allowed Mr. Bhojwani to represent them and the Tribunal erred in allowing the power of attorney holder to enter the box and depose instead of the appellants. Thus, the appellants have failed to establish that they have any independent source of income and they had contributed for the purchase of the property from their own independent income. We accordingly hold that the Tribunal has erred in holding that they have a share and are co-owners of the property in question. The finding recorded by the Tribunal in this respect is set aside.

15. Apart from what has been stated, this Court in the case of Vidhyadhar vs. Manikrao and Another, (1999) 3 SCC 573 observed at page 583 SCC that "where a party to the suit does not appear in the witness-box and states his own case on oath and does not offer himself to be cross-examined by the other side, a presumption would arise that the case set up by him is not correct".

16. In civil dispute the conduct of the parties is material. The appellants have not approached the Court with clean hands. From the conduct of the parties it is apparent that it was a ploy to salvage the property from sale in the execution of Decree.

17. On the question of power of attorney, the High Courts have divergent views. In the case of Shambhu Dutt Shastri Vs. State of Rajasthan, 1986 2WLL 713 it was held that a general power of attorney holder can appear, plead and act on behalf of the party but he cannot become a witness on behalf of the party. He can only appear in his own capacity. No one can delegate the power to appear in witness box on behalf of himself. To appear in a witness box is altogether a different act. A general power of attorney holder cannot be allowed to appear as a witness on behalf of the plaintiff in the capacity of the plaintiff.

18. The aforesaid judgment was quoted with the approval in the case of Ram Prasad Vs. Hari Narain & Ors. AIR 1998 Raj. 185. It was held that the word "acts" used in Rule 2 of Order III of the CPC does not include the act of power of attorney holder to appear as a witness on behalf of a party. Power of attorney holder of a party can appear only as a witness in his personal capacity and whatever knowledge he has about the case he can state on oath but be cannot appear as a witness on behalf of the party in the capacity of that party. If the plaintiff is unable to appear in the court, a commission for recording his evidence may be issued under the relevant provisions of the CPC.

19. In the case of Dr. Pradeep Mohanbay Vs. Minguel Carlos Dias reported in 2000 Vol.102 (1) Bom.L.R.908, the Goa Bench of the Bombay High Court held that a power of attorney can file a complaint under Section 138 but cannot depose on behalf of the complainant. He can only appear as a witness.

18. In view of the aforesaid evidence of Purushottam Raghuwanshi (PW-1) and the principle laid down by the Apex court in the aforesaid case laws, this court finds that Purushottam Raghuwanshi (PW-1) who is power-of-attorney holder cannot depose in place of principal plaintiff. The provisions of Order 3 Rules 1 and 2 CPC empower the holder of the power of attorney to "act" on behalf of the principal. The word "acts" employed therein is confined to acts done by power of attorney holder in exercise of power granted by virtue of relevant instrument, in does not include deposing in place and instead of principal. Similarly PoA holder cannot depose for the principal in respect of a matter regarding which only principal can have personal knowledge and incurs the liability to be cross-examined.

19. In the present case, admittedly, the principal plaintiff has not been examined in respect of her basic foundation of plaint that she had purchased the disputed plot in the year 1968 by the registered sale deed vide Ex.P/4 from one Manohar Lal Babbar and from his evidence, it is not established that he had personal knowledge about Ms. Vibha Kumar regarding execution of the registered sale deed and purchasing of plot or about the personal knowledge of principal plaintiff that she had purchased the said plot from Manohar Lal Babbar. The cause of action arose according to para 8 of the plaint is 21.12.2011 and not then that. Ex.P/1 has not been executed on 8.12.2011 and on reading of this document, it can be gathered that the power of attorney holder had no personal knowledge of principal plaintiff prior to execution of this documents and prior to purchasing of plot by Ms. Vibha Kumar by registered sale deed in the year 1968 and also the knowledge of source of information that she had purchased the said plot from Manohar Lal Babbar. Another material witness Manohar Lal Babbar has also not been adduced though he was alive, is quite evident from the evidence of PW-1 and the report of Police Station Ashoka Garden vide Ex.P/7

dated 25.2.2013. The plaintiff by adducing her evidence can be proved her right and title based on very important and material document Ex.P/4 but she failed to do so. Therefore, according to opinion of this court, the impugned judgment and decree based on the evidence of Purushottam Raghuwanshi (PW-1) is not sustainable and the same is liable to be quashed.

20. On perusal of the plaint it is crystal clear that in para 6 of the plaint, the registered sale deed dated 5.12.2001 executed by the appellant / defendant has been questioned but surprisingly, in the prayer clause the sale deed of the appellant / defendant vide dated 5.12.2001 has not been challenged and no any kind of relief has been claimed in the plaint. The law is very settled that the court cannot constitute the case in favour of the plaintiff / respondent by its own way without the pleadings and issue framed on it. There are sufficient evidence to draw adverse inference against the respondent / plaintiff that the plaintiff has no case against the appellant / defendant.

21. On perusal of the plaint, documents and evidence available on record, it is evident that there is an admission that the power-of- attorney holder had no knowledge about any kind of acts or transaction or execution of the documents prior to the year 2011. The admission would be best evidence and thus, in view of the aforesaid admission, the other party is not required to adduce and prove the case because the plaintiff is bound on her own admission and presumption can be drawn against the plaintiff. In Awadh Bihari Asati and others v. Shyam Bihari Asati and others 2004 (1) MPLJ 225 it has been held that it is well settled that admission made by the opposite party is the best evidence on which other party can rely upon. Similar view has also been taken by Hon'ble the Apex court in Ahmedsaheb v. Sayed Ismail, AIR 2012 SC 3320 in which it has been observed that it is needless to emphasize that admission of a party in the proceedings either in the pleadings or oral is the best evidence and the same does not need any further corroboration.

22. In Moolchand vs. Radha Sharan and another, 2006 (2) MPLJ 600 on the basis of the principles enumerated in paragraphs 9 to 12 and on the basis of the principle laid down in the case of Gulla Kharagit Carpenter Vs. Harsingh Nandkishore Rawat, 1970 MPLJ 586 = AIR 1970 MP 225 and in Martand Pundharinath Chaudhari vs. Budhabai Krishnarac Deshmukh AIR 1931 Bombay 97, in which it has been held that non-entrance of the respondent - plaintiff in witness box to prove their case as per pleadings are sufficient circumstances to draw an adverse inference against them that they have no case against the appellant but by ignoring this principle the case was considered on merits only on pleadings of parties which is not sustainable under the law as such in the absence of evidence the suit should have been decreed.

23. The principle laid down in the aforesaid case laws is fully applicable in the present case and in absence of non-entrance of principal plaintiff in the witness box to prove her case as per plaint and the documents executed much prior to the year 2011; in which, in absence of evidence of principal, the opportunity to cross examine her has not been given to the appellant / defendant and the appellant-defendant is raising objection right from the beginning that the power-of-attorney holder has no right to file civil suit and depose the evidence on behalf of the principal plaintiff in respect of the fact and knowledge which was not within the knowledge of the power-of-attorney holder.

24. The contention of learned counsel for the appellant / defendant so far as issues no. 4 and 5 are concerned, which relates to the objection that the respondent / plaintiff has not valued the suit properly, and contended that even according to the statement of Purushottam Raghuwanshi (PW-1), at present the market value of the suit property is about 20-25 lakhs. Further stated that the respondent - plaintiff has filed the suit for declaration, possession and permanent injunction and, therefore, the respondent - plaintiff was required to properly value the suit and was required to pay the ad-valorem court fees and placed reliance on the decisions rendered in Premlata vs.Ajay reported in 2012 (2) MPLJ 584 and A.K. Ghosh vs. Dhruv Kumar haryani and another reported in 2011 (4) M.P.L.J. 493.

25. On perusal of memo of appeal, it is crystal clear that the appellant - defendant has not filed any appeal in respect of the finding of learned first appellate court relating to issues no. 4 and

5. Though, the appellant had challenged the finding of learned Civil Judge relating to issues no. 4 and 5 and his appeal was dismissed by the learned First Appellate Court. But, the appellant has challenged only the finding of learned both the courts below in the appeal filed by the respondent - plaintiff and as he has not stated anything in the prayer clause of memo of instant appeal and thus, the finding of learned first appellate court in respect of dismissing the appeal of the appellant - defendant on issues no. 4 and 5 relating to objection of ad-valorem court fees is just and proper and the contention of learned counsel for the appellant is misconceived and therefore, this court finds that there is no merit on the aforesaid contention in respect of issues no. 4 and 5. Apart from that, learned both the courts below have rightly dealt with the said issue on proper adjudication and this court finds no illegality, perversity and irregularity in respect of findings of issues no. 4 and 5 and no interference is warranted.

26. In view of the foregoing discussion, the aforesaid substantial question of law is answered, accordingly against the respondent - plaintiff. This second appeal is allowed and the impugned judgment and decree dated 24.4.2018 passed in Civil Appeal No.93/16 by learned Tenth Additional District Judge, Bhopal is hereby set-aside and the judgment and decree dated 25.2.2016 passed in Civil Suit No.712-A/11 by learned Sixth Civil Judge Class-1, Bhopal is hereby affirmed. No orders as to costs. The decree be drawn up accordingly.

27. Accordingly, stay granted on 14.6.2018 stands vacated.

A copy of this judgment along with records be sent back to the courts below for information and its compliance.

(ARUN KUMAR SHARMA) JUDGE JP/-

JITENDRA KUMAR PAROUHA 2022.05.09 18:01:07 +05'30'