

Anirudh Singh Vs. Amresh Kumar Singh

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Court : Madhya Pradesh

Decided On : Aug-30-2013

Appellant : Anirudh Singh

Respondent : Amresh Kumar Singh

Advocate for Pet/Ap. : Shri. Abhishek Gulatee

Judgement :

---1--- W.A.No.783/2013 30.8.2013 Shri Abhishek Gulatee, learned counsel for the appellant.

This appeal is directed against an order dated 15.7.2013 in W.P.No.3152/2012 by which a writ petition preferred by the appellant, against an order passed by the Board of Revenue dated 12.10.2011 Annexure P-17 of the writ petition, confirming the order of Revenue Court, dismissing the application filed by the appellant under Section 250 of M.P.Land Revenue Code, was dismissed.

Learned counsel for the appellant submitted that the writ Court has dismissed the writ petition merely on the ground that title is to be enquired into by the Civil Court and the appellant, if advised so, may file civil suit, while the matter has already been adjudicated by the Civil Court, therefore, there was no occasion for issuing such direction.

Learned counsel for the appellant submitted that application under Section 250 of M.P.Land Revenue Code, 1959 (hereinafter referred to as the Code) was filed for

restitution of the possession.

The Revenue Court ought to have considered the application and could not have dismissed the same with a direction to the appellant to approach the Civil Court.

From the perusal of record, we find that a civil suit was filed by the respondent Amresh Kumar Singh and others against the appellant for declaration that the sale deed dated 6.2.1992 executed by the plaintiff in favor of the appellant was null and void.

The trial Court, Second Additional District Judge, Rewa in Civil Suit No.4-A/2001, considered the case and dismissed the ---2--- suit.

In the suit, the contention of the plaintiff was that he was in possession, but the Civil Court while deciding issue No.6 had recorded a finding that the plaintiff alongwith his brother was in joint possession of the land.

Meaning thereby, on 24.12.2005, the appellant herein was not in possession of the land and as per findings recorded by the Civil Court, the possession was of the plaintiffs since 6.2.1992, the date on which the sale deed was executed.

Section 250 of the Code provides thus :- 250.

Reinstatement of bhumi-swami improperly dispossessed - [(1) For the purpose of this section and Section 250-A bhumiswami shall include occupancy tenant and Government lessess.].[(1-a) If a Bhumiswami is dispossessed of the land otherwise than in due couRs.of law or if any person unauthorisedly continues in possession of any land of the Bhumiswami to the use of which such person has ceased to be entitled under any provision of this Code, the Bhumiswami or his successor-in-interest may apply to the Tahsildar for restoration of the possession - (a) in case of bhumiswami belonging to a tribe which has been declared to be an aboriginal tribe under sub-section (6) of Section 165 - (i) before the 1st July, 1978 in cases of unauthorised dispossession prior to the 1st July, 1976; and (ii) in any other cases within five years from the date of dispossession or from the date on which the ---3--- possession of such person becomes unauthorised, as the case may be; (b) in case of a bhumiswami not covered by clause (a).within two years

from the date of dispossession or from the date on which possession of such person becomes unauthorised, as the case may be.].[(1-b) The Tahsildar shall on coming to knot that a bhumiswami has been dispossessed of his land otherwise than in due couRs.of law, suo motu start proceedings under this section.].(2) The Tahsildar shall, after making an enquiry into the respective claims of the parties, decide the application and when he orders the restoration of the possession to the Bhumiswami, put him in possession of the land.

[(2-a) The proceedings started under this section shall after receipt of reply from the other party, continue from day to day unless for reasons to be recorded in writing a longer adjournment is considered necessary and in that case a copy of the order sheet containing the reasons fro such adjournment shall be sent to the Collector.].[(3).The Tahsildar may at any stage of the enquiry pass an interim order for handing over the possession of the land to the bhumisami, occupancy tenant or Government lessee, as the case may be, if he finds that he was dispossessed by the opposite party within six months prior to the submission of the application or commencement of suo motu proceedings under this section.

In such case the opposite party shall, if necessary, be ejected under orders of the Tahsildar.].---4--- (4) When an interim order has been passed under sub-section (3) the opposite party may be required by the Tahsildar to execute a bond for such sum as the Tahsildar may deem fit for abstaining from taking possession of land until the final order is passed by the Tahsildar.

(5) If the person executing a bond is found to have entered into or taken possession of the land in contravention of the bond, the Tahsildar may forfeit the bond in whole or in part and may recover such amount as an arrear of land revenue.

[(6) If the order passed under sub-section (2) is in favour of the applicant the Tahsildar shall also award compensation to be paid to the applicant by the opposite party which shall be at the prorata rate of two hundred and fifty rupees per hectare per year.].(7) The compensation awarded under this section shall be recoverable as an arrear of land revenue.

[(8) When an order has been passed under sub-section (2) for the restoration of the possession to the bhumiswami the Tahsildar may require the opposite party to execute a bond for such sum as the Tahsildar may deem fit for abstaining from taking possession of the land in contravention of the order.

(9) Where an order has been passed under sub-section (2) for the restitution of the possession of the bhumiswami, the opposite party shall also be liable to fine which may extend to five thousand rupees: Provided that it shall not be competent to the Tahsildar to impose a fine of amount ---5--- exceeding one thousand five hundred rupees but if in any case he considers that circumstances of the case warrant imposition of a higher fine, he may refer the case to the Sub-Divisional Officer who shall, after giving the party concerned an opportunity of being heard, pass such orders in respect of fine as he may deem fit.

The aforesaid provision specifically provides that if a bhumiswami is dispossessed without following due process of law, the bhumiswami may move an application to the Tahsildar for restoration of the possession within a period of two years from the date of dispossession or from the date on which possession of such person becomes unauthorised, as the case may be.

In the present case, the respondent is in possession of the land since 6.2.1992, when the aforesaid sale deed was executed in favour of Respondent No.1 and even if the date of the decision may be taken into consideration for the purposes of Section 250 of the Code, i.e.24.12.2005, it is the date on which civil suit was dismissed.

But the present application was filed on 27.5.2008, which was not within the period of limitation.

In the aforesaid circumstances, if the writ Court has directed appellant to approach the civil Court for ventilation of the grievance, no fault is found.

In view of the aforesaid, this appeal is found without merit and the same is dismissed, with no order as to costs.

(Krishn Kumar Lahoti) (Subhash Kakade) Acting Chief Justice Judge Anchal

