

Mathura Pd. and ors. Vs. the State of M.P. and ors.

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Court : Madhya Pradesh

Decided On : Aug-27-2013

Appellant : Mathura Pd. and ors.

Respondent : The State of M.P. and ors.

Advocate for Pet/Ap. : Shri. Virendra Verma

Judgement :

M.P. No.3980 of 1993 HIGH COURT OF MADHYA PRADESH JABALPUR SINGLE BENCH: Honble Shri Justice A.K. Shrivastava MISCELLANEOUS PETITION No.3980 of 1993 PETITIONERS:

1. Mathura Prasad (since deceased) Through LRs. (a) Smt. Kamla Bai Wd/o Mathura Prasad aged about 53 years. (b) Smt. Kamal Kishori W/o B.K.Gautam, Aged 34 years, Resident of Lal Bahadur Shastri Ward, Hata Distt. Damoh M.P. (c) Smt. Sunita Baai W/o Ambika Prasad aged 28 years, R/o Village Kharpura Post Madiyadav Tah. Hata Distt. Damoh M.P. (d) Mithilesh Prasad S/o Late Shri Mathura Prasad aged 23 years. (e) Vinot Kumar S/o Late Shri Mathura Prasad aged 21 years. (f) Vinot Kumar S/o Late Shri Mathura Prasad aged 15 years Minot through Mother Natural guardian Smt. Kamla Bai All R/o. Padri Dube Post Bhaliya Tah. Hata Distt. Damoh M.P.

2. Smt. Ghagwati Bai aged about 42 years, W/o Harishankar R/o Village Uttakheda Tah. Gadhakota Distt. Sagar M.P.

3. Kamta Prasad aged 50 years, S/o Raghunandan Piyashi 4. Purshottam aged 42 years, S/o Raghunandan Payashi 5. Ramesh Kumar aged about 38 years S/o Raghunandan Payashi. M.P. No.3980 of 1993 Versus RESPONDENTS:

1. The State of Madhya Pradesh through Chief Secretary Vallabh Bhawan Bhopal (M.P.) 2. The Board of Revenue, Gwalior M.P.

3. The Sub-Divisional Officer Cum-Competent Officer, Hatta, Tehsil Hatta District Damoh M.P.

Shri Virendra Verma, Advocate for the petitioners. Shri Sudesh Verma, Government Advocate for the respondents/ State.

ORDER

(27.08.2013) By this petition under Articles 226 and 227 of the Constitution of India, the petitioners are seeking following reliefs : (a) a writ of certiorari quashing Annexure 'F', the Order Dt. 19.02.1989, passed by Respondent No.3 and Annexure 'G', the Order Dt. 8.4.1993, passed by Respondent No.2. (b) a writ of mandamus commanding Respondents Nos.1 to 3 to drop the entire proceedings initiated by Case No.492, 493, 494-A/90 (B.3) of 1974-75 and culminating into the impugned orders. (c) a writ of prohibition restraining the Respondent No.3 from allotting the Lands in question to Landless persons. M.P. No.3980 of 1993 (d) Any other writ or orders and directions as the circumstances of the case warrant and (e) to award the Costs of the Petition.

2. Today is the august day of this August month because the writ petition which was filed two decades ago is being decided today.

3. During the pendency of this petition, deceased- first petitioner Mathura Prasad died on 15.2.1999 as a result of which his LRs who are figured as petitioners 1(a) to (f) have been brought on record. The genealogy of the petitioners is as under :- Ganga Prasad (Died in the year 1970) Gorishankar (D. on 6.1.72) Ganeshi Bai (Died in the year 1993) Mathura Prasad Bhagwati Bai Kamta Pd. Ramesh (Petitioner No.1) (Petitioner No.2) (Pet. No.3) (Pet. No.5) Purshottam (Pet. No.4)

4. According to the petitioners, the first petitioner Mathura Prasad along with his

father Gauri Shankar and grand father Ganga Prasad constituted a co-parcenary which held agricultural lands of the total area 177.31 acres situated in Mauja Padri Dubey, Kutri, Bhatia and Bijori Pathak, Tehsil Hatta District Damoh. The co-parcenary owned and possessed sufficient nucleus and all these lands were acquired from the income of co-parcenary though in the M.P. No.3980 of 1993 names of different members of the co-parcenary. The said land thus constitute co-parcenary property. There was no partition in the family of the parties and the parties although remained joint. Ganga Prasad had died in the year 1970 and his son Gourishankar also died on 6.1.1972. The deceased first petitioner - Mathura Prasad and petitioner No.2 Bhagwati Bai (wrongly typed as Ghagwati Bai) are the son and daughter of Gaurishankar. The other petitioners No.3, 4 and 5 are the sons of Smt Ganeshi Bai who was the daughter of Ganga Prasad. The said Smt. Ganeshi Bai died in the year 1993 leaving behind petitioners No.3 to 5 as her heirs.

5. It is the further case of petitioners that said Ganga Prasad executed a Will on 15.10.1968 bequeathing 18.97 acres of land to his daughter Ganeshi Bai. After the death of Ganga Prasad the Will dated 15.10.1968 became effective and 18.97 acres of land passed out of the family leaving only 158.34 acres with the co-parcenary out of which 79.17 acres fell in the share of Gourishankar and remaining 79.17 acre fell in the share of Ganeshi Bai in accordance to the theory of notional partition as envisaged under Section 6 of the Hindu Succession Act, 1956. Upon the death of Ganeshi Bai her share devolved on her sons, namely, petitioner No.3 to 5. So far as the lands falling to the share of Gourishankar are concerned, deceased first petitioner was major son had a share therein by birth. After the death of Gourishankar in the year 1972, 79.17 acres of co- parcenary lands held by him devolved on his son Mathura Prasad- M.P. No.3980 of 1993 petitioner-1 (not deceased) and his daughter Bhagwati Bai (petitioner No.2) in the shares of one half each. The deceased petitioner No.1 came to hold 39.58 acres of land whereas remaining 39.58 acres of land fell in the share of second petitioner Bhagwati Bai.

6. According to the petitioner in spite of the aforesaid facts under misconception of the intent and applicability of the Ceiling on Agricultural Holdings Act, 1960 (in

short 'the Act of 1960') the competent authority initiated ceiling case No.492, 493, 494-A/90/ (B-3) 1974-75 against only deceased first petitioner and issued notices to his transferees to show cause as to why alienations made by him in their favour should not be declared as null and void under Section 4 of the Act of 1960. The first petitioner appeared and filed a return giving full details of the co-parcenary holdings and the course of its devolution upon the death of Ganga Prasad and Gaurishankar as also the entitlement of Ganeshi Bai as a result of devolution and on account of the Will of Ganga Prasad having taken effect and the entitlement of petitioner No.2 Bhagwati Bai as a result of devolution.

7. The competent authority (respondent No.3) vide its order dated 29.6.1976 (Annexure-B) rejected all the contentions of deceased petitioner No.1 and declared that 113.11 acres of lands held by him are in excess of the ceiling limit. Thereafter, the purchasers from first petitioner preferred an appeal before the Board M.P. No.3980 of 1993 of Revenue, Gwalior (respondent No.2) who set aside the order dated 29.6.1976 (Annexure-B) of the competent authority and remanded the case for consideration afresh after issuing notices to the parties concerned and after determining the share of Smt. Ganeshi Bai and petitioner No.2 Bhagwati Bai.

8. It is the further case of petitioners that no notice as directed by the Board of Revenue were issued, but petitioners no.1 and 2 as also Ganeshi Bai appeared before the respondent no.3 and their depositions were recorded which are Annexures C, D and E respectively and the Will in favour of Ganeshi Bai was proved. However, the competent authority held that the Will being unregistered as well as otherwise too was unreliable and rejected the same by further holding that Ganeshi Bai and Bhagwati Bai (petitioner No.2) having gone out of that family could not claim to inherit a share in the co-parcenary property. Eventually an order was passed by respondent No.3 on 17.2.1989 (Annexure -F) maintaining its earlier order.

9. Thereafter against the aforesaid order dated 17.2.1989 (Annexure-F) the purchasers from first petitioner preferred an appeal before the Board of Revenue which was registered as Appeal No.76-B/89 and the same was dismissed on 8.4.1993 (Annexure-G). Hence this petition.

10. The contention of Shri Virendra Verma, learned counsel for the petitioners is that there is specific averment in para 12 and 13 of M.P. No.3980 of 1993 the memorandum of writ petition that the Board of Revenue after setting aside the order of competent authority dated 29.6.1976 (Annexure-B) directed to issue notice under Section 4 of the Act of 1960 to Ganeshi Bai and Bhagwati Bai but no notices were ever issued to them under Section 4 of the Act of 1960 although they appeared as witnesses. Learned counsel submits that once it was directed by the Board to issue notices to these two persons, it was incumbent upon the competent authority to have issued notice to them because under Section 11(3) of the Act of 1960 the notices should not only be served to the holder or holders concerned but also to the creditors and all other persons interested in the land which it relates. Having failed to do so, the impugned order dated 17.2.1989 (Annexure-F) of competent authority -respondent No.3 and also the order dated 8.4.1993 (Annexure-G) of the Board of Revenue are illegal and be set aside and the matter be sent back to the competent authority to issue notice to these persons.

11. On the other hand Shri Sudesh Verma, learned Government Advocate argued in support of the impugned order passed by the competent authority as well as Board of Revenue and has submitted that the story of Will which has been established is nothing but an eye-wash and in order to defeat the provisions of the Act of 1960, the said concocted theory has been set up. Learned Government Advocate submits that true the Will was submitted before the competent authority but had it been ever executed by Ganga M.P. No.3980 of 1993 Prasad on 15.10.1968 certainly after the death of Ganga Prasad which took place in the year 1970 certainly it would have been brought in the lime light and would have been implemented, by filing necessary application of mutation etc., but this was never done and except submitting this document of Will in the ceiling proceedings for the first time it becomes highly suspicious. Further it has been submitted by him that it is well settled in law that the Will if it is in existence should be brought in the light after the death of the testator. Further he submits that even if no application for mutation was ever filed by said Ganeshi Bai, she has not filed even a single document in order to show that she is possessing the land in question pursuant to the said Will not there is anything on record that a suit for partition was filed claiming her exclusive share upon 18.79 acres and, therefore de jure it cannot be

said on behalf of the holders/petitioners that the Will was ever executed.

12. Further it is propounded that the Board of Revenue never directed to issue notices to second petitioner Bhagwati Bai and Ganeshi Bai and in this regard my attention has been invited to the averments made in para 12 and 13 of the return wherein specifically it has been denied that there was any order of the Board of Revenue issuing notice to these two ladies, hence submitted that rightly the notices were not issued to them. It has also been canvassed that on bare perusal of the impugned order Annexure F of the competent authority dated 17.2.1989, the notices were given M.P. No.3980 of 1993 to Bhagwati Bai and Ganeshi Bai and, therefore, the contention of learned counsel for the petitioners is having no basis.

13. Lastly it has been put forth by him that even for the sake of arguments, if it is held that notices under Section 4 of the Act of 1960 were not given to aforesaid ladies, namely, Bhagwati Bai and Ganeshi Bai since they appeared as witnesses, therefore no prejudice is caused and merely on this ground the order of the competent authority Annexure-F which has been affirmed by the Board of Revenue by the impugned order Annexure-G cannot be set aside. Hence it has been prayed that this petition be dismissed.

14. Having heard learned counsel for the parties, I am of the view that this petition deserves to be allowed and the case is sent back to the competent authority - respondent No.3 to re-decide the case after giving notices under Section 4 of the Act of 1960 to LRs of Ganeshi Bai and Bhagwati Bai.

15. The earlier order of the Board of Revenue, upon which the order Annexure-F dated 17.2.1989 was passed by the competent authority, is not on record and neither parties filed the said order. However, if the averment made in para 12 and 13 of the petition as well as the averment made in the return, from these two paragraphs it is clear that the Board of Revenue directed to issue notices under Section 4 of the Act of 1960 to Bhagwati Bai and Ganeshi Bai . By paying heed to para 13 of the return, it can be inferred that such a direction was given by the Board of Revenue because had there M.P. No.3980 of 1993 been no such direction to issue notice under Section 4 of the Act of 1960, certainly this would not have been averred in para 13 of the return that the notices were not issued to

petitioners No.1 and 2 are denied.. That apart, when there is specific averment in that regard that notices under Section 4 of the Act of 1960 were not issued, it was incumbent upon the first respondent to file copies of the notices in order to show that notice under Section 4 of the Act of 1960 were given.

16. The fine distinction between the pleadings in a suit (plaint and written statement) and that of writ petition is that in plaint or written statement only fact but not the evidence is required to be pleaded. However in the writ petition not only the fact but evidence is also required to be stated and it should be materialized by filing relevant documents which we say annexures. In this context, I may profitably rely upon two decisions of the Supreme Court in the case of Bharat Singh and others Vs. State of Haryana and others, 1988 SC 218. and Rajasthan Pradesh V.S. Sardarshahar and another vs Union of India and others, AIR 201.SC 2121. The idea behind in holding such a rule is that the pleadings and particulars enables the court to decide the right of the parties. Thus the pleadings and the evidence (documents in the form of annexures) are very helpful to the court while deciding the writ petition, because it will narrow down the controversy involved in the case. In the present case, although there is a pleading of the State that notice M.P. No.3980 of 1993 under Section 4 of the Act of 1960 was given to petitioner no.2 Bhagwati Bai but in order to materialize the said stand copy of such notice has not been submitted in the form of evidence annexing along with the return in order to demonstrate that the notices were served and the averments made in the petition are false.

17. I do not find any substance in the argument of learned Government Advocate that from the order of the competent authority (Annexure-F) it reveals that such notices were issued. On bare perusal of said order (Annexure-F) internal page No.3 and 4 only this much is revealed that the notices were already issued to Bhagwati Bai and Ganeshi Bai. It be seen that after the remand by the Board, there is nothing on record that notices were issued to Bhagwati Bai and Ganeshi Bai. From the earlier order of the competent authority Annexure -B dated 29.6.1976, it does not transpire that notices were issued to them. That apart, on which date the notices were sent and when it was received by said Bhagwati Bai and Ganeshi Bai, the order Annexure-F of the competent authority is totally silent.

18. One more important fact which cannot be marginalized and blinked away is that had notice under Section 4 of the Act of 1960 been issued to Bhagwati Bai and Ganeshi Bai, certainly a separate case under the Ceiling Act would have been registered against them but on bare perusal of the title of the case it is as clear like a noon day that the ceiling case has been registered only against deceased M.P. No.3980 of 1993 first petitioner Mathura Prasad son of Gaurishankar and none else and, therefore according to me, the said contention of learned Government Advocate cannot be accepted.

19. Since the notice under Section 4 of the Act of 1960 was not issued to Bhagwati Bai and Ganeshi Bai , therefore, according to me, the order of competent authority dated. `17.2.1989 Annexure - F which has been affirmed by the Board of Revenue vide order dated 8.4.1993 Annexure G cannot be allowed to remain stand and they are hereby set aside and the case is sent back to the competent authority to re-decide the case afresh after giving notice to petitioner No.2 Bhagwati Bai and LRs of Ganeshi Bai since she is not no more in the world. Since the matter is quite old, this Court hopes and trust that it will be decided within a period of six months from today.

20. Accordingly, this petition is allowed with no order as to costs. The amount of security, if deposited, be refunded to the petitioners. (A.K.Shrivastava) Judge
27.08.2013 DV

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