

Sukhdev and ors Vs. the State of M.P. and ors

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Court : Madhya Pradesh

Decided On : Jan-02-2013

Appellant : Sukhdev and ors

Respondent : The State of M.P. and ors

Judgement :

(1) Civil Revision No.1502/2002 HIGH COURT OF M. P. JUDICATURE AT JABALPUR Single Bench : Hon'ble Shri Justice A.K. Shrivastava Civil Revision No.1502 / 2002 Applicants :

1. Sukhdev S/o. Parasram Gond, Khadaan Mazdoor, 2. Bansilal (deleted) 3. Laxmi Prasad, S/o. Damru Kastkar, Both r/o. Village Mayabadi, Tehsil Parasia, District Chhindwara (M.P.) Vs. Respondents :

1. State of Madhya Pradesh Through Collector, Chhindwara 2. SDO / Sub Divisional Magistrate, Parasia Tehsil Parasia, District Chhindwara 3. Tehsildar Parasia, District Chhindwara.

4. M.P. Wakf Board, through its Chief Executive Officer.

5. Kabristan Village Mayabadi, Regd. Wakf, Under Wakf Act, 1954 bearing Regn. No.23 through its Managing Committee, Wakf Vill. Mayabadi Ke Nayab Sadar Sheikh Rajjaque, Mayabadi, Tehsil Parasiya, District Chhindwara

Shri Vijay Nayak and Shri Anand Nayak, Advocates for applicants. Shri Rahul Jain,

Government Advocate for respondents no.1 to 3. None for other respondents.

ORDER

(02/01/2013) This revision under Section 115 of Civil Procedure Code, (2) Civil Revision No.1502/2002 1908 read with Section 83(9) of Wakf Act, 1995 (in short Wakf Act.) has been filed at the instance of defendants no.3, 4 and 5 i.e. Sukhdev, Bansilal and Laxmi Prasad. During the pendency of the revision, the name of applicant no.2 Bansilal has been deleted vide order dated 08.11.2006 of this Court.

2. Indeed a Civil Suit for injunction on 19.06.1990 was filed by plaintiff/respondent no.1 in the Court of Second Civil Judge, Class-II Chhindwara which was registered as Civil Suit No.50-A/1990 in respect of property which has been mentioned in the plaint and which is the subject matter of the suit on the averments that the land in question belongs to graveyard (hereinafter referred to as Kabristan.) and from beginning the said land has been reserved for burying the dead bodies of members of muslim community.

3. On constitution of Wakf Tribunal under the Wakf Act, the aforesaid civil suit was directed to be transferred vide order dated 05.11.1997 of learned Second Civil Judge, Class-II Chhindwara and accordingly it was received by the said Tribunal where trial of suit was further proceeded. According to the plaintiff, the suit property has been shown to be Kabristan throughout in the revenue record. For the first time in the part of suit land on 24.04.1982, the mother of 4th defendant Bansilal was cremated and thereafter the dispute arose. However, on account of intervention of the Collector, Sub Divisional Officer and Tehsildar who were arrayed as defendants no.1 to 3 the matter was settled to extent that khasra No.185 admeasuring 1 acre be partitioned (3) Civil Revision No.1502/2002 and 25 decimal land be given to non-muslims for cremation ground and it was also directed by the revenue authorities that in the disputed land survey no.185 area 82 decimal the plantation should be made. It was observed by the revenue authorities that this land will neither be treated as Kabristan nor it will be used for cremation by any community. A decision was being taken by the revenue authorities that

another khasra no.123 be given to muslim community for Kabristan but it was objected by other communities as a result of which on 15.05.1990 the State of M.P. and its functionaries (defendants no.1 to

3) alongwith their employees encircled the entire suit land by wire fencing after dividing it into two parts. The eastern part was given to muslim community for the use of Kabristan while the western side was given to non-muslim community for cremation ground. Indeed this action of revenue authorities has been challenged in the suit with a further prayer that since the suit land which is survey no.185 be permitted to be used as Kabristan and the defendants should not interfere in the possession of plaintiff and further a decree of injunction be granted in favour of the plaintiff.

4. The written-statement was filed by defendants no.4 to 6 by denying the plaint averments. Similarly defendants no.1 to 3 i.e. State of M.P. and its functionaries by filing a separate written-statement resisted the claim made by the plaintiff-respondent no.5 and prayed that said suit be dismissed.

5. Necessary issues were framed and after recording the (4) Civil Revision No.1502/2002 evidence of the parties, learned Tribunal decreed the suit of plaintiff and passed a decree of injunction against all the defendants including the State of M.P. and its functionaries. In this manner this revision has been filed under Section 83(9) of Wakf Act.

6. The contention of Shri Nayak, learned counsel for private defendants no.4 to 6 /applicants is that learned Tribunal illegally passed the decree of injunction particularly when there is specific direction of the revenue authorities by dividing the suit land in two parts and permitting the muslim community to bury the dead bodies and to use the eastern portion of the suit land for Kabristan and further allowing the non-muslim community to use western portion for cremation. It has also been put-forth by him that there is no cogent evidence on record in order to hold that the suit land was earlier being used as Kabristan and if that is the position, the impugned order be set aside.

7. On the other hand Shri Rahul Jain, learned Government Advocate contends that order of the Tribunal is bad in law. No one has put appearance on behalf of respondent No.5-plaintiff.

8. Having heard learned counsel for the parties, I am of the view that this revision deserves to be dismissed.

9. During the pendency of this revision application, the name of applicant no.2 who was defendant no.4 was directed to be deleted vide order dated 08.11.2006 and it was accordingly deleted.

10. On bare perusal of the impugned order as well as by paying heed to the documentary evidence it is gathered that revenue record (5) Civil Revision No.1502/2002 pertaining to suit property from the year 1961-62 onwards has been filed by the plaintiff-respondent no.5 wherein the disputed land has been shown to be that of Kabristan. Under Section 117 of the M.P. Land Revenue Code there is a presumption of correctness of the revenue record. Certainly the presumption is having rebuttal character but in absence of filing any documentary evidence in the rebuttal by any of the defendants it cannot be said that the suit land was never used as Kabristan. Learned Tribunal by paying heed to the revenue record which is throughout consistent in favour of plaintiff-respondent no.5 showing the land to be of Kabristan, has rightly arrived at a conclusion that plaintiff is entitled for the decree of injunction.

11. There is no substance in the revision, the same is hereby dismissed with no order as to costs. (A.K. Shrivastava) Judge SS

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