

Mahesh Tiwari Vs. Smt. Vimla Devi

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Court : Madhya Pradesh

Decided On : Sep-23-2013

Appellant : Mahesh Tiwari

Respondent : Smt. Vimla Devi

Advocate for Pet/Ap. : Shri. Ajit Singh

Judgement :

1 W.P No.14627 of 2013 23.9.2013 Shri Ajit Singh, counsel for the petitioner.

The petitioner has filed this petition under Article 227 of the Constitution of India being aggrieved by the order dated 15.4.13 (Annex.P/1) passed by the Board of Revenue in Revenue Revision No.3780/2-12, whereby allowing the revision of respondent No.1, the order dated 31.8.12 passed by Tehsildar Huzur district Rewa in Case No.385/A-27/11-12 allowing the application of the respondent No.2 predecessor in title of the petitioner under section 178 of the M.P.Land Revenue Code, 1959 (in short the `Code') has been set aside and case has been remitted back to the Tehsildar to decide afresh in accordance with the procedure prescribed under section 178 of the Code.

2.

Having heard the counsel, keeping in view the arguments, after going through the record, it is apparent that initially some proceedings filed by the respondent No.2 the predecessor-in-title of the petitioner herein under section 178 of the M.P.Land

Revenue Code before Tehsildar against the respondent No.1.

In such proceedings, the respondent No.1 has filed her objections and without deciding such objections, the case was decided by the Tehsildar in favor of the respondent No.2.

It is also apparent that Tehsildar has not adopted the procedure prescribed under section 178 of the Code as inspite availability of the information on record that some civil litigation is going on between the parties before appropriate civil court, the parties were not directed to obtain the appropriate order and did not stay the proceedings for the period prescribed under such section.

So, in such premises, the respondent No.1 herein approached to the Board of Revenue where considering all aforesaid legal questions, the order of the Tehsildar, was set aside and case has been remitted back to the Tehsildar to consider afresh in accordance with the procedure prescribed under the law and as per submission of the petitioner's counsel, he being bonafide purchaser from respondent No.2 was necessary party before the Board of Revenue and 2 W.P No.14627 of 2013 without impleading him, the impugned order has been passed.

So, the same is not sustainable and prayed to set aside the impugned order with a direction to the Board of Revenue to decide the matter afresh after impleading the present petitioner as party in the matter by admitting and allowing this petition.

3.

In the aforesaid factual matrix, I am of the considered view that the petitioner herein had stepped in the shoes of respondent No.2 and he is claiming the right under the right of respondent No.2 who is a recorded Co.buhumi swami with respondent No.1.

So, in such premises, the parties are governed with the provision of section 52 of the Transfer of Property Act.

Besides this, if there is any independent right of the present petitioner with respect of the disputed land then he is at liberty to file appropriate application before the

Tehsildar, even after remanding the matter by the impugned order, permitting him to join the proceedings to file the objections and on filing such application, the same shall be considered by the Tehsildar in accordance with the procedure prescribed under the law but in the available circumstances, at the instance of the petitioner, this petition could not be entertained even for admission.

Consequently, this petition being devoid of any merits, deserves to be and is hereby dismissed at the stage of motion hearing.

4.

In view of the aforesaid, it is observed that any finding or observation made by this court or by the Board of Revenue in the order impugned shall not come in the way of the petitioner before the Tehsildar considering his aforesaid application.

On filing such application by the petitioner, the same shall be considered by the Tehsildar independently without influencing from any observation made either by this court in the present order or in the order impugned in accordance with the procedure prescribed under the law.

C.C as per rules.

MKL (U.C.Maheshwari) Judge 3 W.P No.14627 of 2013

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