

Mohni Devi Vs. State of Madhya Pradesh

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Court : Madhya Pradesh

Decided On : May-09-2014

Judge : U.C. Maheshwari

Appeal No. : Second Appeal No. 545 of 2012

Appellant : Mohni Devi

Respondent : State of Madhya Pradesh

Judgement :

Per U.C. Maheshwari, J.

1. On behalf of the appellant/plaintiff this appeal is preferred under Section 100 of CPC being aggrieved by the judgment and decree dated 30.1.2012 passed by 5th Additional District Judge, Bhopal in Civil Regular Appeal No.56/2011 affirming the judgment and decree dated 4.2.2011 passed by the 8th Civil Judge, Class-II, Bhopal in Civil Original Suit No.169-A/2009, whereby her suit filed for declaration and perpetual injunction with respect of the land in dispute describe in plaint has been dismissed.

2. The facts giving rise to this appeal in short are that the appellant/plaintiff filed the impugned suit for declaration and perpetual injunction with respect of the land bearing survey No.428/1/2 area 0.37 acre out of total area 8.77 acres contending that she entered into an oral agreement in the year 1992 with Bhoomiswami

Munshilal and Rajaram to purchase the aforesaid land and pursuant to it the possession of such land was also obtained by her. Subsequent to it the registered sale deed of this land was also executed in her favour by the aforesaid Bhoomiswami on 26.2.1994 and since then she is coming in possession of the land. It is further contended that she had also applied to Tahsildar, Circle Bairagarh, Bhopal for mutation of such land in her name but without conducting proper inquiry the same was dismissed holding that aforesaid land being not recorded in the name of the seller of the aforesaid sale deed, as such the same is recorded in the name of State of Madhya Pradesh could not be mutated in her name. It is also stated that possession of the disputed part of the land was never taken by the authorities of the respondent under the Urban Land Ceiling and Regulation Act 1976 (In short the Act) as such after declaring the aforesaid land to be the surplus under the Ceiling Act the same was recorded in the name of State of Madhya Pradesh illegally. In any case, its possession was never taken by the State authorities either from the appellant/plaintiff or from its earlier owner/Bhoomiswami. It is further stated that mere on account of non-recording the name of the plaintiff/appellant over such land in the revenue record, it could not be said that she did not have the right and title over the land. With these pleadings the plaintiff/appellant had filed the aforesaid suit to declare her to be the Bhoomiswami of such land with a further prayer to issue perpetual injunction to restrain the authorities of the respondent to interfere in her possession of such land in any manner.

3. In the written statement of the respondent/State, by denying the averments of the plaint, it is stated that the disputed part of the land is not in possession of the appellant/plaintiff and her mutation application after carrying out proper inquiry was rightly dismissed. It is further stated that in respect of entire land of aforesaid Khasra No.428/1/2 area 8.77 acres under the provision of Urban Land (Ceiling and Regulation), Act, 1976 (In short the Act) a ceiling case No.57/91-92 was registered against the then Bhoomiswami named above and in such proceeding out of the aforesaid land by deeming four acres land to be dry land and considering Munshilal and Rajaram to be one unit in this regard 0.37 acre land was left and remaining land was declared to be surplus and same was acquisitioned. In this regard in accordance with the procedure provided under

Section 8(3) of the Act the proceeding was carried out and its intimation was also given to the Bhoomiswami/land holder and thereafter by preparing a memorandum (Panchnama) the possession of such surplus land (including the disputed land) was taken over by the authorities of the revenue department on 12.2.2000. On filing the appeal against the order of competent Authority by the then Bhoomiswami/land holder in the Court of Commissioner, the same was dismissed by appellate authority vide order dated 25.9.1995 and accordingly the surplus land was recorded in the name of the State of Madhya Pradesh. In the aforesaid ceiling case considering the statement (Vivarni) of the then Bhoomiswami/the holder of the land, filed before the competent Authority under the Act, in which some other land was also described, aforesaid holder of the land were found to be entitled to keep 5.14 acres land including the 0.37 acre land for their one unit and remaining was held to be surplus land. Subsequent to such proceeding the aforesaid earlier recorded Bhoomiswami and the holder of the land had transferred such land left with them by way of sale to some other persons and thereafter, no land was remained in the name of earlier Bhoomiswami in the revenue record. In such premises, it is further stated that plaintiff/appellant is trying to encroach the disputed land on the basis of forged and fabricated documents. In any case, if any sale transaction had taken place between aforesaid earlier holder of the land and the appellant either during pendency of the ceiling proceedings or subsequent to passing the order in such proceedings, then the same being ab-initio void and illegal could not be acted upon. The appellant herself has categorically stated in the plaint that at the time of aforesaid oral agreement/transaction in the year 1992 and on execution of the sale deed in the year 1994, the aforesaid ceiling case was pending against the Munshilal and Rajaram and as per averments of aforesaid sale deed (Ann. P.1), such facts regarding pendency of ceiling case was within the knowledge of the appellant/plaintiff also. In such premises, the impugned suit deserves to be dismissed on merits as well as barred by time also. It is further stated that under the provision of Section 257 of MPLRC, so also the provision of Ceiling Act the civil suit is barred. With these averments the prayer for dismissal of the suit is made.

4. In view of aforesaid pleadings of the parties, after framing the issues the evidence of the parties was recorded. On appreciation of the same the suit was

dismissed by the trial court. Being dissatisfied with such dismissal, the appellant had filed a Civil Regular Appeal before subordinate appellate Court. On consideration by affirming the judgment and decree of the trial Court the appeal was dismissed, on which the appellant has come to this Court with this appeal with a prayer to admit this appeal on the following substantial questions of law:

A. Whether both the Subordinate Courts have erred in law in overlooking and ignoring the fact that the suit land remain in continuous and undisputed physical possession of the appellant and her predecessor recorded Bhoomiswami from whom the appellant had purchased the land and therefore, by virtue of repeal of Act 33 of 1976 the action initiated stood abated and the title of appellant on the suit land stood revived in favour of the appellant ?

B. Whether both the Subordinate Courts have erred in overlooking that respondent failed to take possession of the suit land complying the provisions of Section 10 (5) and 10 (6) of the Act of 1976, till the repeal of the Act and on account of respondent's failure the suit land continued in possession of appellant and as a result the ceiling proceedings continued and remain alive till passing of the Urban Land (Ceiling and Regulation) Repeal Act, 1999 leading to abatement of the proceedings ?

5. Appellant's counsel after taking me through the record of the trial Court as well as the appellate Court argued that courts below have committed error in dismissing her suit without considering the factum that undisputedly the appellant is coming in possession of the land since the date of aforesaid oral agreement and registered sale deed executed by the then Bhoomiswami/holder of the land in her favour, and, therefore, the approach of the Courts below is not sustainable. On proper appreciation of the evidence the impugned suit ought to have decreed by the courts below. In continuation he said that in pendency of the proceeding of ceiling case against the then recorded Bhoomiswami Munshilal and Rajaram the appellant had purchased the land from them and steps in the shoes of such earlier recorded Bhoomiswami and in such premises she is entitled to enjoy all the right of Bhoomiswami of such land as successor of earlier recorded Bhoomiswami and in this back ground he further argued that aforesaid act of 1976 was repealed by

the Urban Land (Ceiling and Regulation) Repealed Act, 1999 and by virtue of such repealed Act after 17.2.2000, no pending proceeding could be proceeded further including the proceeding for taking the possession of surplus land. In continuation he said that even after declaring the aforesaid land to be surplus by the competent authority in the aforesaid ceiling case the possession of such disputed land was not taken in accordance with the procedure prescribed under the Act before 17.2.2000 and thereafter, the authority had no right to take the possession of the land and in such premises being successor of earlier Bhoomiswami land has been vested in the appellant and in such premises, the Court below ought to have declared her to be Bhoomiswami and possession holder of the same but without considering the validity of the proceedings drawn up by the competent authority (constituted under the Act) carried out for taking the possession of the land, her suit has been dismissed under the wrong premises. He further said that the proceeding of Section 10 (5) and 10 (6) of the Act, whereby the possession of the land was said to be taken over by the officials of the revenue department authorized by the competent authority constituted under the Act, being not in accordance with the procedure is neither admissible nor binding against the appellant. In such premises, the findings of the Courts below holding that the possession of the aforesaid land was taken over by the State Government before coming into force the repealed Act 1999, are not sustainable and prayed to admit this appeal by framing the above mentioned proposed substantial questions of law.

6. Having heard the counsel keeping in view the arguments advanced, I have carefully gone through the record of the Courts below.

7. It is undisputed fact in the case that the aforesaid disputed part of the land was not purchased by the appellant from earlier Bhoomiswami before the appointed day under the Act 1976. As per averments of sale deed (Ex.P.1), the appellant had purchased the land from such Bhoomiswami when aforesaid ceiling case was pending against the then Bhoomiswami and such Bhoomiswami/land holder had also filed their statement (Vivarani) before the competent authority and on consideration in the ceiling case some land of aforesaid Bhoomiswami including the dispute part of land was declared to be surplus and thereafter in accordance

with the procedure prescribed under the law the proceeding for taking the possession was also carried out. It is apparent that on filing the appeal by the then Bhoomiswami against the order of competent authority before the Commissioner Revenue, on consideration by affirming the order of the competent authority the same was dismissed on 25.9.1995, and till passing such orders in spite having the aforesaid registered sale deed in her favour the appellant had not taken any steps either to join the aforesaid ceiling proceeding or to file her objection in that respect before the competent authority or the appellate authority. It is also apparent on record that after finalization of proceeding of Ceiling Act up to appellate authority by adopting the procedure prescribed under the law after giving requisite notice to the earlier recorded Bhoomiswami the possession of the disputed land was taken by the authorities under the provision of Section 10(5) and 10 (6) of the Act on 12.2.2000 (Ex. P.9) and for years together such proceeding was not challenged on behalf of the appellant till filing the impugned suit. It is apparent fact that such possession was taken by the State authorities after carrying out the entire proceeding under the provision of Ceiling Act 1976 and before enforcement of repealed Act 1999. So, in such premises for taking over the possession of the disputed land by such authorities, there is concurrent findings of both the Courts below and it is settled proposition of law that concurrent findings of the Courts below on the question of possession being finding of fact could not be interfered at the stage of second appeal under Section 100 of CPC as laid down by the Apex Court in the matter of Kishanlal Biharilal Maheshwari and others v. Ramrao Hanumant Rao Patil and another reported in AIR 1981 S. C 1183.

8. Apart the aforesaid by virtue of Section 5 of the Act of 1976 the alleged transfer of the land by the then Bhoomiswami in favour of the appellant could be considered to be subjected to final order of the proceeding of Ceiling Act, which was pending against the then Bhoomiswami before the Competent Authority and after finalization of such proceeding up to the appellate authority in presence of the then Bhoomiswami the appellant being successor could not get better right in comparison of those Bhoomiswamies and the appellant is also bound by such order and the proceedings. In the available circumstances after getting finality of order of Competent Authority and taking over the possession of surplus land by the authorities the appellant did not have any authority to challenge any of such

proceeding. In any case unless such proceeding is challenged by the then recorded Bhoomiswami or holder of the land, contrary to the order of the Ceiling case and the proceeding drawn up by the competent authority to take the possession of the land mere at the instance of the appellant in her suit, no inference could be drawn in her favour to hold her possession over the disputed land.

9. It is apparent on record that any of the recorded Bhoomiswami/land holder whose land was declared to be surplus has/have not challenged either the proceedings of the Ceiling case or of taking over the possession of the surplus land. So, in the lack of any locus-standi to the appellant's to file the suit, the same could not have been decreed by the Courts below and in such premises, the courts below have not committed any error in dismissing the suit. I am of the considered view that unless it is proved by the appellant/ plaintiff that she has acquired the right, title and possession of the disputed land legally and in accordance with the law and procedure, mere on her pleading or oral statement she could not be deemed to be the title holder and in possession of such land. For the sake of argument, it is assumed that she is in possession of the disputed land contrary to the revenue record and aforesaid proceeding of the Ceiling case then such possession could be deemed to be as an encroacher and as per settled law no suit of the encroacher could be decreed by any Court of law either for declaration and/or for perpetual injunction. So, in such premises also I have not found any force in the arguments of the appellant for admission of this appeal.

10. Apart the aforesaid, I would like to mention here that by following the procedure prescribed under the law, if any memorandum for taking over the possession of the disputed property was drawn up by the officials of the revenue authorities under the direction and order of the competent authority, then in view of law laid down by the Apex Court in the matter of Larsen and Toubro Ltd Vs. State of Gujrat and others reported in (1998) 4 SCC 387 and in the matter of Gokul Prasad Vs. State of M. P. and others reported in 2003 (2) MPLJ 271 such proceeding and papers could not be discarded, so in such premises also, I have not found any scope in this appeal for admission.

11. In view of aforesaid discussion, I have not found any material or substantial circumstance in the case giving rise to any questions of law rather than the substantial question of law requiring any interference at this stage under Section 100 of CPC. Consequently, this appeal being devoid of any merits deserves to be and is hereby dismissed at the stage of motion hearing. There shall be no order as to costs.

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