

Atar Singh and ors. Vs. Jiledar Singh and ors.

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Court : Madhya Pradesh

Decided On : Jan-28-2005

Reported in : AIR2005MP157; 2005(2)MPHT266; 2005(2)MPLJ259

Judge : N.K. Mody, J.

Acts : [Transfer of Property Act, 1882](#) - Sections 105, 106, 107 and 117; Madhya Pradesh Land Revenue Code, 1959 - Sections 168; Zamindari Abolition Act

Appeal No. : Second Appeal No. 132/1997

Appellant : Atar Singh and ors.

Respondent : Jiledar Singh and ors.

Advocate for Def. : V.S. Chaturvedi, Govt. Adv. for the Respondent No. 3.

Advocate for Pet/Ap. : P.C. Chandil and ;Sanjiv Tiwari, Advs.

Judgement :

N.K. Mody, J.

1. Being aggrieved by the judgment and decree dated 8-1-1997 passed by First Additional District Judge, Morena, in Civil Appeal No. 133-A/94, whereby the judgment and decree passed by Civil Judge Class I, Ambah, District Morena, dated 16-9-1994 in C.S. No. 156- Aof 1989 has been set aside, the present appeal

has been preferred by the appellants.

2. The substantial questions of law involved in this appeal are :--(1) Whether the provisions of lease are applicable to agricultural lease ?

(2) Whether under the provision of Section 117 of the Transfer of Property Act, lease of agricultural land requires registration ?

3. Short facts of the case are that the appellants/plaintiffs filed a suit for declaration and permanent injunction alleging that the land bearing Survey No. 349, measuring 3 Bighas 1 Biswa, situated at Village Ikahara, Tehsil Ambah, District Morena (which shall hereinafter be referred to as the 'suit property') is in occupation of the appellants. It was alleged that in the revenue record the name of respondent Nos. 1 and 2 has been recorded as Bhumiswami but they were never in occupation of the suit property. Further case of the appellants was that Jabar Singh, predecessor-in-title of the appellants, was in occupation of the suit property prior to the Zamindari Abolition Act. In Samvat 2018 Vijai Bahadur Singh, predecessor-in-title of respondent Nos. 1 and 2, leased out the suit-property to Jabar Singh for a period of 50 years on payment of premium of Rs. 200/- and on payment of lease rent at the rate of Rs. 50/- per year. It was alleged that the predecessor-in-title of the appellants, Jabar Singh, died in the year 1982 and after his death the appellants are in occupation of the suit property. It was alleged that since the lease in favour of the predecessor-in-title of the appellants was against the provisions of Section 168 of the M.P. Land Revenue Code, 1959, the appellants have become Bhumiswami of the suit property. On the basis of the aforesaid pleadings it was prayed that the appellants are Bhumiswami of the suit property and respondent Nos. 1 and 2 be restrained from interfering with the possession of the appellants. Respondent Nos. 1 and 2 submitted written statement wherein plaint allegations were denied. It was also denied that the suit property was leased out by Vijai Bahadur Singh to the predecessor-in-title of Jabar Singh.

4. On the basis of pleadings of the parties, Trial Court framed issues, recorded evidence and decreed the suit holding that Jabar Singh, predecessor-in-title of the appellants and, after his death, the appellants are in occupation of the suit

property, and from the evidence it is also proved that there was a lease agreement between the parties. Learned Trial Court also restrained respondent Nos. 1 and 2 from interfering with the possession of the appellants. In appeal, learned Appellate Court reversed the findings of the Trial Court holding that it is not indicated in Khasra entries (Ex. P-1 to Ex. P-7) as to how the name of the appellants has been mutated. It was also found that from reading together Ex. P-1 to Ex. P-7 and Ex. D-1 it is found that from Samvat 2019 to Samvat 2035 the appellants were shown in possession in column 12 of the Revenue Record but the Appellate Court held that since the lease for a period of 50 years is based on oral lease agreement, no lease can be granted under Section 105 or Section 106 of the Transfer of Property Act. Learned Appellate Court further held that since the witnesses of the appellants have stated that Vijai Bahadur Singh, predecessor-in-title of respondent Nos. 1 and 2 was an old man, he was covered under the proviso to Section 168 of the M.P. Land Revenue Code. Hence, no rights of Bhumiswami have accrued to the appellants. Thus, the appeal was allowed and the judgment and decree passed by the Trial Court was set aside.

5. Shri P.C. Chandil, learned Counsel for the appellants, submits that the findings of the Appellate Court that Sethbandhu and Atar Singh have stated that Vijai Bahadur Singh, predecessor-in-title of respondent Nos. 1 and 2 was an old man and was not doing agricultural operations, are not correct. Learned Counsel read out the statements of Sethbandhu and Atar Singh to demonstrate that nowhere it is stated by them that Vijai Bahadur Singh was unable to do the agricultural operations. On the basis of it, it was argued that the findings are perverse. Learned Counsel further submits that in view of Section 117 of the Transfer of Property Act, for an agricultural land the provisions of Sections 105 and 107 are not applicable. As per Section 117 of the Transfer of Property Act the provisions of Chapter V are not applicable. Section 117 of the Act reads as under :--

'117. Exemption of leases for agricultural purposes.-- None of the provisions of this Chapter apply to leases for agricultural purposes, except in so far as the State Government may by Notification published in the Official Gazette declare all or any of such provisions to be so applicable in the case of all or any of such leases, together with, or subject to, those of the local law, if any, for the time being in

force.

Such Notification shall not take effect until the expiry of six months from the date of its publication.'

Learned Counsel for the appellants further submits that under Section 168 of the M.P. Land Revenue Code neither it is necessary that there should be a document in writing nor it is required that it should be registered. Reliance was placed on a decision of this Court in Shankar Rao v. State of M.P., reported in 1961 MPLJ-SN 260, wherein the Division Bench has held that, 'Section 117 excluded agricultural leases from the operation of its own provisions. That being so, such leases could be made orally. It was a case where though a registered document was not necessary to effectuate the transaction, a deed was in fact executed and not registered. In such a case the transaction was not rendered nugatory by the unregistered deed. The 'Patta' could not be used as evidence for creation of the lease. The unregistered lease deed could not be submitted in evidence to prove its terms.

6. Learned Counsel for the appellants further, placed reliance on a decision in Vaikunthibai v. State of M.P., reported in 1987 JLJ 409, wherein it has been held that the Khasra entries, unless rebutted, can not be directed as proof of sub-tenancy.

7. Shri V.S. Chaturvedi, learned Counsel for respondent No. 3 placed reliance on a decision of the Hon'ble Supreme Court in Beohar Rajendra Singh v. State of M.P. and Ors., reported in 1970 JLJ 73, wherein Hon'ble Supreme Court has observed that the possession entered in remark column shows neither ownership nor tenancy. So far as the substantial question of law :

whether the provisions of lease are applicable to agricultural lease, is concerned, in view of Section 117 of the Transfer of Property Act, it is not necessary that the lease for agricultural land should be registered. Therefore, learned Appellate Court has committed an error in dismissing the suit on the ground that the lease was not registered. However, in view of the facts and circumstances of the case, learned Appellate Court shall reappraise the evidence and shall give a finding regarding

the alleged lease for a period of 50 years and also relating to possession.

8. Shri V.S. Chaturvedi, learned Counsel for respondent No. 3, also submitted that so far as the dismissal of the suit on the ground that the lease was not registered, is concerned, dismissal of the suit by the learned Appellate Court is not correct in view of the law laid down by the Hon'ble Supreme Court in a case *Kishansingh v. Arvind Kumar*, reported in 1995 J LJ Page 1, wherein the Supreme Court has held that under Section 117 of the Transfer of Property Act the agricultural leases are excluded from operation of the Act, and, therefore, the provisions of Section 107 do not apply to it, nor is there any merit in the submission that even if Transfer of Property Act does not apply the principles contained therein would be applicable to agricultural lease. In view of the specific provision in the Transfer of Property Act excluding agricultural leases from the operation of the Act, and the Tenancy Act of the State having provided for execution of the lease which does not contain any provision like Section 107 of the Transfer of Property Act, the principles of Section 107 can not be extended to it.

9. With the aforesaid observation, the judgment and decree passed by the learned Appellate Court is set aside with the direction to decide the appeal afresh. Parties are directed to remain present before the Court below on 14-3-2005. No order as to costs.