

Dhansingh Vs. Gangubai

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Court : Madhya Pradesh

Decided On : Jan-24-1992

Reported in : AIR1992MP311

Judge : R.C. Lahoti, J.

Acts : Madhya Pradesh Land Revenue Code, 1959 - Sections 168(2); M.B. Land Revenue and Tenancy Act, 1950 - Sections 74; [Specific Relief Act, 1963](#) - Sections 37

Appeal No. : Appeal No. 425 of 1977

Appellant : Dhansingh

Respondent : Gangubai

Advocate for Def. : R.G. Waghmare and ;Paohekar G.A., Adv.

Advocate for Pet/Ap. : S.D. Sanghi, Adv.

Disposition : Appeal partly allowed

Judgement :

R.C. Lahoti, J.

1. The defendant/appellant has come up in appeal aggrieved by the judgment and decree of the lower appellate Court directing the suit for declaration of title and

issuance of permanent preventive injunction to be dismissed in reversal of the decree of the trial Court which had decreed the suit.

2. Admittedly, the plaintiff/respondents Nos. 1 and 2 are the recorded Bhoomiswamis of the land. They are the heirs of the late Sewaram and the suit land has devolved upon them from late Sewaram. The plaintiff alleged that he had secured the land on sub-lease from late Sewaram sometime in the year 1946-47 and has been in possession of the land ever since then. With the coming into force of M.P. Land Revenue Code, 1959, the rights of occupancy tenant and then of Bhoomiswami . tenant have accrued to him which rights are being denied by the defendant/respondents after the death of late Sewaram in the year 1970.

3. The defendants, in their written-state-ments, denied all the material plaintiff-averments. The lower appellate Court has found that the plaintiff was inducted as a sub-lessee sometime after the year 1950 and not in the year 1946-47 as alleged by him. It has also been found that late Sewaram was an old aged person, also having gone blind and as such was a person subject to physical disability. He could have validly sub-leased his lands but the sub-lessee would remain a sub-lessee as holding under a person subject to physical disability; his rights would not enlarge into that of a Bhoomiswami.

4. Vide order dated 17-10-1977, this Court admitted the appeal for hearing parties on the following substantial question of law:--

'(1) Whether in the facts and circumstances of this case, the plaintiff should have been given a decree for permanent injunction in spite of the finding that he was not entitled to the relief of declaration of his title?

(2) Whether the judgment of the Court below is vitiated by misreading of evidence, looking into evidence contrary to the pleadings and making out for the respondent No. 1 a new case which was put to the plaintiff in his cross-examination?

(3) Whether a tenant suffering from old age. physical infirmity and bad eye-sight can merely for this reason be regarded as a disabled person within the meaning of Section 74 of the M.B. Land Revenue and Tenancy Act and Section 168(2)(v) of

the M. P. Land Revenue Code unless it is also proved that he could not even get the land cultivated by a member of his family or by servants under his supervision?

(4) In case it is found that deceased Sewaram granted sub-lease of the suit land to the plaintiff prior to the commencement of the M. B. Land Revenue and Tenancy Act and that he was at that time a disabled person within the meaning of Section 74 of that Act, will he still be entitled to become an occupancy tenant on 2-10-59 under the M. P. Land Revenue Code?

(5) Whether in case it is found that the land was sub-leased to the plaintiff after 2-10-59 then in that case the plaintiff became an occupancy tenant under Section 169 of the M.P. Land Revenue Code?'

Questions Nos. 2 to 5 :--

5. Though the learned Counsel for the appellant has been at pains in carrying this Court through the pleadings and evidence on record but it is difficult to agree with the learned Counsel that there has been any perversity in appreciation of pleadings or evidence by the learned lower appellate Court on account of any material evidence having been misread or ignored. What has been found by the lower appellate Court is essentially the defence which was taken in the written statement.

6. It has been found as a fact that Sewaram recorded Bhoomiswami was a person under physical disability in the year 1950 when M.B. Land Revenue and Tenancy Act came into force as also on 2-10-1959 when M. P, Land Revenue Code became applicable. Under Section 168(2), a Bhoomiswami who is a person subject to physical or mental disability due to old age or otherwise may lease the whole or the part of his holding. It is an irrelevant consideration if the Bhoomiswami can have the land cultivated by a1 member of his family or by his servants under his supervision. The test is physical or mental disability of Bhoomiswami and nothing more. The finding recorded by the lower appellate Court that Sewaram was a person subject to physical disability, is binding in second appeal.

7. In view of that finding, the legal aspect need not detain the Court any more in view of the Full Bench decision of this Court rendered in *Sunder v, Prahlad*, 1981 J LJ 239. The Full Bench has held that a tenant holding under a disabled person on 2-10-1959 could not get the status of an occupancy tenant.

8. It, therefore, follows that the lower appellate Court did not err in negating the claimed title of the plaintiff.

Question No. 1:--

9. Though the title to the plaintiff has been negated and it has been found that the Bhoomiswami rights continued to vest in the plaintiff/respondents Nos. 1 and 2 still the relief of injunction could not have been denied to the plaintiff/appellant. The Courts below have found the plaintiff to have been in settled and peaceful possession of the suit land since the year 1950 that is for a period of about 23 years prior to the institution of the recent suit. It is not a case of flimsy or casual trespass nor a case of a trespasser having been caught and sought to be obstructed in the course of committing the trespass.

10. Recently in *Krishna Ram Mahale v. Shobha Venkat Rao*, AIR 1989 SC 2097, their Lordships have held vide para 8:--

'It is a well-settled law in this country that where a person is in settled possession of property, even on the assumption that he had no right to remain on the property, he cannot be dispossessed by the owner of the property except by recourse to law. If any authority were needed for that proposition, we could refer to the decision of a Division Bench of this Court in *Lally Yeshwant Singh v. Rao Jagdish Singh*, (1968) 2 SCR 203 at pp. 208-210 : (AIR 1968 SC 620 at pp. 622-23). This Court in that judgment cited with approval the well-known passage from the leading Privy Council case of *Midnapur Zamindary Co. Ltd. v. Naresh Narayan Roy*, 51 Ind App 293 at p. 299: (AIR 1924 PC 144), where it has been observed 208 (of SCR) at p. 622 of AIR): 'In India persons are not permitted to take forcible possession; they must obtain such possession as they are entitled to through a Court.'

11. Vide para 9, their Lordships have reiterated their own view taken in *Ram Rattan v. State of Uttar Pradesh*, AIR 1977 SC 619, to the following effect:--

'..... a true owner has every right to dispossess or throw out a trespasser while he is in the act or process of trespassing but this right is not available to the true owner if the trespasser has been successful in accomplishing his possession to the knowledge of the true owner. In such circumstances, the law requires that the true owner should dispossess the trespasser by taking recourse to the remedies under the law.'

12. In *Munshi Ram v. Delhi Administration*, AIR 1968 SC 702, their Lordships' summed up the law as under:--

'It is true that no one including the true owner has a right to dispossess the trespasser by force if the trespasser is in settled possession of the land and in such a case unless he is evicted in due course of law he is entitled to defend his possession even against the rightful owner. But stray or even intermittent acts of trespass do not give such a right against the true owner. The possession which a trespasser is entitled to defend against the rightful owner must be a settled possession extending over a sufficiently long period and acquiesced in, by the true owner. A casual act of possession would not have the effect of interrupting the possession of the rightful owner. The rightful owner may re-enter and reinstate himself provided he does not use more force than necessary. Such entry will be viewed only as a resistance to an intrusion upon possession which has never been lost. The persons in possession by a stray act of trespass, a possession which has not matured into settled possession, constitutes an unlawful assembly, giving right to the true owner, though not in actual possession at the time to remove the obstruction even by using necessary force.'

13. The facts found by the lower appellate Court show that the plaintiff is entitled: to protect his possession against the threatened dispossession by the defendant/respondents taking the law in their own hands. The defendants are not covered by any exceptional clause which authorises them to obstruct or remove an intrusion. The defendant/ respondents must as civilised citizens take recourse to law and secure ejectment of the plaintiff/appellants if so advised.

14. Relying on Yeshwant Singh v. Jagdish Singh, AIR 1968 SC 320, it has been held in Ramshree Mahavir- v. Girdharilal, 1970 Gujarat Law Reporter 971 :--

'Once it is established by the plaintiff that he is in-exclusive possession and it is admitted by the defehdant that he is in such possession, an injunction restraining the defendant from dispossessing the plaintiff by force must issue as a matter of course.

15. For the foregoing reasons, the appeal is partly allowed. The judgment and decree of the. lower appellate Court dismissing the plaintiff/appellant's suit for declaration of title are maintained. The judgment and decree of the lower appellate Court to the extent to which they deny relief of injunction to the plaintiff are set aside. It is directed that the plaintiff/appellant shall be entitled to remain in possession of the suit property and the defendant/respondents shall remain restrained from dispossessing the plaintiffs except by due process of law. In view of the fractional success of the parties, they are directed to bear the costs as incurred throughout. Counsel's fee as per schedule, if pre-certified.

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