

State of Madhya Pradesh Vs. Ramsingh

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Court : Madhya Pradesh

Decided On : Mar-18-2005

Reported in : 2005(2)MPHT449; 2005(2)MPLJ292

Judge : A.K. Shrivastava, J.

Acts : Madhya Bharat Zamindari Abolition Act, Samvat 2008 - Sections 2, 2(6), 3, 4, 4(1) and 4(2); [Specific Relief Act, 1963](#) - Sections 34 and 42; Code of Civil Procedure (CPC) - Sections 80; Madhya Pradesh Land Revenue Code, 1959 - Sections 57(2) and 57(3)

Appeal No. : Second Appeal No. 183/1991

Appellant : State of Madhya Pradesh

Respondent : Ramsingh

Advocate for Def. : S.R. Kochatta, Adv.

Advocate for Pet/Ap. : S.S. Garg, Dy. Govt. Adv.

Disposition : Appeal allowed

Judgement :

A.K. Shrivastava, J.

1. This second appeal has been preferred by the defendant, against the judgment and decree of reversal passed by the Appellate Court decreeing the suit of the plaintiff.

2. In brief the suit of plaintiff is that Village Nipanya Tonk was the Zamindari village of erstwhile Gwalior Estate and plaintiff was the then Zamindar of the said village. On 2-10-1951 the Zamindari system was abolished on account of the enforcement of Madhya Bharat Zamindari Abolition Act Samvat 2008 (Act No. 13 of 1951), hereinafter referred to as 'the Act'. According to plaintiff the suit land was in the self cultivation of plaintiff soon before the date of vesting, i.e., 2-10-1951 as he started cultivation only soon before the date of vesting. Since the land was in the self cultivation of plaintiff before the date of vesting, he became 'Pacca Krishak' by operation of law and his name was also mutated as such in the revenue record. However, in Samvat 2012 plaintiff was shown as trespasser in the revenue record and this entry was made behind back of plaintiff without issuing notice to him and, therefore, since the suit land was in self cultivation of plaintiff before the date of vesting, he became 'Pacca Krishak' and on coming into force of M.P. Land Revenue Code in 1959 he became Bhumiswami by operation of law. Plaintiff after sending a notice under Section 80, CPC filed the present suit for declaration of Bhumiswami right with a further relief that he is entitled to get his name mutated as Bhumiswami in the revenue record.

3. The defendant-State of Madhya Pradesh resisted the suit by filing written statement. In the written statement they admitted the status of plaintiff to be Ex-Zamindar of the village and also admitted that the suit land was in his Zamindari area. But, it was denied that the suit land was in the self cultivation of plaintiff before the date of vesting. According to defendant, since suit land was not in self cultivation of plaintiff and he was also not so recorded in the revenue record, it can not be said that plaintiff acquired pacca tenancy right after the abolition of Zamindari system and therefore he did not become Bhumiswami on coming into force of M.P. Land Revenue Code, 1959 (hereinafter referred to as 'the Code'). In a special plea, an objection was also taken that after the dismissal of the application of plaintiff, filed under Section 57(2) of the Code on 6-11-1971 by the Sub-Divisional Officer, plaintiff is not entitled to file the suit. In Para 8 it has been

pleaded that the suit is barred by limitation.

4. The Trial Court dismissed the suit of plaintiff. The first appeal which was preferred by the plaintiff has been allowed by the impugned judgment and decree and the suit of plaintiff has been decreed. Hence this second appeal.

5. On 19-8-1991 this second appeal was admitted on the following substantial questions of law :--

(1) Whether in facts and circumstances of the case, the plaintiff was illegally held to be cultivating suit land as Khud Kast on the date of vesting result in accrued of Bhumiswami rights ?

(2) Whether the suit is barred by limitation in view of the Section 57(2) of the M.P. Land Revenue Code ?

6. Regarding substantial question of law No. (1) :

It has been contended by Shri S.S. Garg, learned Dy. Govt. Advocate that plaintiff has filed certified copy of Khasra of Samvat 2008 (Year 1951) which is Ex. P-1. According to him in order to attract provision of Section 4 (2) of the Act the land of proprietor should be Khud Kast and should also be recorded as such in the annual village papers before the date of vesting. Since plaintiff has failed to submit Khasra of Samvat 2007, i.e., before the date of vesting in order to show the applicability of Section 4(2) of the Act, thus the land vests in the State.

7. Shri Kochatta, learned Counsel appearing for respondent/plaintiff has submitted that Khasra of Samvat 2008 is on record in which the land has been shown as Khud Kast and, therefore, it would be deemed that the land was under self cultivation of plaintiff before the date of vesting. The learned Counsel has also submitted that Khasra of Samvat 1984 (year 1927) (Ex. D-3) is on record in which the suit land has been shown in self cultivation of plaintiff, therefore, plaintiff has successfully demonstrated that the suit land was under the self cultivation of plaintiff and was so recorded in the revenue papers before the date of vesting and, therefore, it is proved that the land in question before the date of vesting was not only in possession of plaintiff, but was under his self cultivation and was so

out of this provision. See State of M.P. v. Kashiram, 1995 RN 159 and Sadashiv Rao v. Purushottam Rao, 1997 RN 76.

9. If Khasra of Samvat 2008 is considered in proper perspective it is revealed that the name of plaintiff has been shown in column of 'Krishak'. But nowhere it has been so mentioned that the land is in his Khud Kast which is the cardinal principle of Section 4(2) of the Act. Before any right is to be accrued, the plaintiff should demonstrate that the land in question was not only under his self cultivation, but was also so recorded in the annual village papers before the date of vesting. Even in khasra of Samvat 2008 (Ex. P-1), it is not shown that the suit land was in the self cultivation of plaintiff. Shri R.C. Lahoti, J., as His Lordship then was in the case of Girdayal v. Munni, 1992 RN 352, while explaining the scope Section 4(2) of the Act has held that if the land has not been recorded as Khud Kast land of the ex-proprietor on the date of vesting, no relief can be granted under this provision. The Khasra of Samvat 2007 is not placed on record. But, plaintiff Ramsingh (P.W. 1) has stated in Para 1 of his statement that he cultivated the land in Samvat 2007. In Para 7 of his statement he has admitted that earlier to Samvat 2007 the entire land was 'Padti'.

10. I am not impressed with the submission of the learned Counsel for the respondent/plaintiff that Khasra (Ex. D-2) which is of Samvat 1984 (year 1927), the suit land has been shown in the self cultivation of plaintiff and, therefore, it would be deemed that before the date of vesting it was in self cultivation of plaintiff. It be seen that the land in question was situated in the erstwhile State of Gwalior and the relevant revenue law at the relevant point of time was 'Qanoon Mal Gwalior Samvat 1983'. Though by pointing out Khasra of Samvat 1984 (Ex. D-3) it has been submitted that the suit land was under self cultivation. But, in between Samvat 1984 of 2008 what happened to the suit land there is no document on record. Under Section 2 (6) of the Qanoon Mal Gwalior the land which was under cultivation but was not cultivated was called as 'Padti'. The 'Padti Jadeed' land means the 'Padti' land which continued as 'Padti' for 3 years and after 3 years thereafter 'Padti Jadeed' is called 'Padti Kadeem'. Thus even if in Samvat 1984 the land was in self cultivation of plaintiff would not mean that before the date of vesting it was in self cultivation of plaintiff. I have quoted the statement of plaintiff

for this purpose only. Thus the land before the date of vesting, i.e., 2.10.51, was 'Padti Kadeem' and therefore the 'Padti Kadeem' could never be saved under Section 4 (2) of the Act and would vest in the State.

11. Since there is nothing on record in order to show that before the date of vesting the suit land was under self cultivation of plaintiff and was so recorded in the annual village papers in terms of Section 4 (2) of the Act, therefore, after abolition of Zamindari system the land vested in the State. The plaintiff himself in Para 8 of his testimony has admitted that earlier to Samvat 2007 the suit land was Padti. There is no document on record in order to show that in Samvat 2007 the suit land was in self cultivation of plaintiff. The case of Gorabai (supra) is thus not applicable in the present case. The substantial question of law is answered accordingly.

12. Regarding substantial question of law No. (2) :

The plaintiff himself has pleaded that he submitted an application under Section 57(2) of the Code before the Sub Divisional Officer, Sonkachchha and that application was dismissed on 5-11-1971 by the said authority. The present suit has been filed on 21-12-1972, i.e., after one year from the date of dismissal of application under Section 57(2) of the Code. Under Section 57(3) of the Code prescribed period of limitation is one year and, therefore, the present suit is time barred. Learned Counsel for the respondent/plaintiff has placed reliance on the decision in the case of Jamna Prasad v. State of M.P., 1985 RN 344. This case is not at all applicable in the present factual scenario for the simple reason that in that case, the case under Section 57(2) of the Code was closed by the SDO and neither the application filed under Section 57(2) of the Code was allowed nor it was disallowed by the SDO. In these circumstances it was held by this Court that Section 57(3) of the Code is not applicable. Learned counsel for the respondent/plaintiff has also placed reliance on the Division Bench decision of this Court in the case of Jeewansingh v. State of M.P., 1980 RN 531, and has contended that Section 57(3) of the Code is not applicable. According to me, Division Bench decision Jeewansingh (supra) is tangentially off the point. In that case application which was filed under Section 57(2) of the Code was allowed by

the SDO on 5-6-1968. Thereafter Collector in suo motu revision set aside the order. The Commissioner and therefore the Board of Revenue by order dated 24-2-1975 affirmed the order of the Collector. Thereafter plaintiff filed a civil suit on 16-9-75. But the Trial Court dismissed the suit as barred by time. Under these circumstances it was held by the Division Bench in Para 3 that since said order was in favour of plaintiff of that case and the said order of SDO was set aside by the Collector and the order of the Collector was maintained by the Commissioner and the Board of Revenue, therefore, under those circumstances, the limitation prescribed under Section 57(3) of the Code was having no application. However, in the present case the application filed under Section 57(2) of the Code was dismissed by the SDO on 5-11-1971 (See Para 4 of the plaint) and the present suit was filed on 21-12-1972. Thus, admittedly the plaintiff has filed the present civil suit after one year from the date of dismissal of his application and therefore, the present suit is barred by prescribed period of limitation as it has not been filed within one year from the date of order of the dismissal of application filed before SDO.

13. Apart from this plaintiff has not challenged the order dated 5-11-1971 passed by SDO dismissing his application filed under Section 57(2) of the Code by plaintiff. In the case of Jugraj Singh v. Jaswant Singh, AIR 1971 SC 761, the Apex Court in Para 11 has held as under :--

'11. In these circumstances, we are satisfied that there was proper execution of the document and registration. It is hardly necessary in view of our decision to say anything more about this case. We are also satisfied that the appellants were not entitled to a declaration. We have reproduced the paragraph in which the reliefs were asked in the plaint. It will be noticed that they neither asked for the cancellation of the order of the Collector nor for any injunction, two of the reliefs which they were entitled to ask in the case in addition to the declaration. Such a suit would be hit by Section 42 of the Specific Relief Act and we would be quite in a position to deny from the declaration without these specific reliefs. Indeed they had only to ask for the setting aside of the order.'

In the present case also it is noticed that plaintiff has not asked for cancellation of the order of the SDO and, therefore, his suit is not maintainable under Section 34 of the [Specific Relief Act, 1963](#). The substantial question of law No. (2) is hereby answered accordingly.

14. In the result the appeal succeeds and is hereby allowed. Judgment and decree passed by the Lower Appellate Court is hereby set aside and by restoring the judgment and decree passed by the Trial Court, the suit filed by respondent/plaintiff is hereby dismissed. No costs.

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