

Mohanlal Vs. Rampratap

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Court : Madhya Pradesh

Decided On : Oct-08-2002

Reported in : 2003(1)MPHT66

Judge : S.B. Sakrikar, J.

Acts : Madhya Pradesh Land Revenue Code, 1959 - Sections 129 and 257; [Code of Civil Procedure \(CPC\) , 1908](#) - Sections 9

Appeal No. : Civil Revision No. 370/2001

Appellant : Mohanlal

Respondent : Rampratap

Advocate for Def. : V.P. Saraf, Adv.

Advocate for Pet/Ap. : P.K. Saxena, Sr. Adv. and ;Rawka, Adv.

Disposition : Revision allowed

Judgement :

ORDER

S.B. Sakrikar, J.

1. Defendant/applicants have directed this revision against the order dated 6-2-2001 passed by Civil Judge, Class I, Mandsaur in C.S. No. 60-A/96 whereby a

preliminary issue with regard to jurisdiction of the Trial Court is decided in favour of the respondent No. 1/plaintiff.

2. The facts of the case in brief necessary for the disposal of this revision are :-- that in Village Kuchdod, District Mandsaur some agricultural lands are recorded in the name of respondent No. 1/plaintiff as 'Bhumiswami' rights and the adjacent lands are recorded in the name of present applicants as 'Bhumiswami'. As per plaintiffs' allegation non-applicant/plaintiffs applied for measurement and installation of boundary marks of the lands recorded in his name in the Court of the Tehsildar concerned under Section 129 of the M.P. Land Revenue Code. It is stated that because of the non-cooperation of the applicants the petition of the respondent/plaintiffs for installation of the boundary marks is pending in the Court of Tehsildar since long. As such, suit was filed before the Trial Court for issuance of injunction in the mandatory form directing the applicants as also the revenue officer of the respondent-State for disposal of the application filed by respondent/plaintiffs before the Tehsildar under Section 129 of the M.P. Land Revenue Code. In the written statement the applicant/defendants have taken objection that in view of the provisions of Section 257 (g) of the Code and the reliefs claimed in the suit, the plaintiffs' suit is not within the competence of the Civil Court alongwith other objections. The Trial Court framed a preliminary issue on the point of jurisdiction of the Court and after considering the submissions of the learned Counsel for the parties, passed the impugned order holding that in view of the Section 9 of the CPC the Trial Court (Civil Court) has jurisdiction to try the suit as filed by the respondent/plaintiffs. Aggrieved the applicants have filed this revision.

3. I have heard Shri P.K. Saxena, Sr. Counsel with Shri Rawka, for the petitioner and Shri V.P. Saraf, learned Counsel for the respondent.

4. The only contention of the learned Counsel for the petitioner is that as per provisions of Section 129 of the Code, the revenue officer of the concerned area has given exclusively powers for the measurement and installation of boundary marks under the aforesaid provisions. He also submitted that in view of the provisions of Section 257(g) of the Code, the jurisdiction of the Civil Court is

expressly barred on the aforesaid point and in view of the aforesaid provisions of the Code, the Trial Court has wrongly applied the law laid down by the Apex Court in case of Achutan Nair v. P. Narayanan and Ors., reported in AIR 1987 SC 2137, as no provisions like Section 129 or Section 257 (g) of the Land Revenue Code are existing in the State of Kerala.

5. Learned Counsel for the respondent No. 1 supported the impugned order of the Trial Court; in view of the judgment of the Apex Court.

6. Considering the submission of the learned Counsel and on perusal of the Section 129 and Section 257 (g) of the Land Revenue Code, I agree with the contention of the learned Counsel for the petitioner that the revenue officers in the State are exclusively interested in measurement and installation of the boundary marks with regard to revenue lands under Section 129 of the Code. The contention can be accepted that in view of the contents under Section 257 (g) of the Code, the jurisdiction of the Civil Court is barred on the point under dispute. As such, the plaintiffs' suit as filed before the Trial Court was not within the competence of the Civil Court in view of the expressed provisions of law in force in the State.

7. On perusal of the decision of the Apex Court in Achutan Nair's case, the contention of the learned Counsel also deserves to be accepted that the ratio of law decided in said case can not be applied to the case on hand as no such provisions like Sections 129 and 257 (g) of the Land Revenue Code are in existence in the State of Kerala.

8. On plain reading of Section 9 of the CPC, it is found that the Civil Courts shall have jurisdiction to try all the cases of civil nature excepting the suits of which cognizance is either expressly or impliedly barred in any law existing in this State. In the State of M.P. under the provisions of M.P. Land Revenue Code measurement and demarcation of boundary marks is exclusively within the competence of the revenue officers of the concerned area and Section 257 (g) of the Code expressly bars the jurisdiction of the Civil Courts with regard to the aforesaid disputes. As such, in my considered opinion, the suit as filed by the respondent/plaintiffs before the Trial Court was not within the competence of the

Civil Courts and the Trial Court has committed an error in deciding the preliminary issue on the point of jurisdiction of the Civil Court in favour of the respondent/plaintiffs.

9. Consequently this revision petition filed on behalf of the applicant/defendants succeeds and it is accordingly allowed. The impugned order of the Trial Court that the plaintiff respondents' suit as framed is within the competence of the Civil Courts, is quashed and held that the plaintiffs' suit as framed is not within the competence of the Civil Court, No order as to the costs.

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