

CASE NO.:
Appeal (civil) 2231 of 1996

PETITIONER:
MOTILAL AND ANR.

RESPONDENT:
NIYAZUDDIN (DEAD) BY LRS. AND ORS.

DATE OF JUDGMENT: 21/07/2003

BENCH:
SHIVARAJ V. PAUL & D.M. DHARMADHIKARI

JUDGMENT:
JUDGMENT

2003 Supp(1) SCR 617

The Judgment of the Court was delivered by

DHARMADHIKARI, J. The High Court of Madhya Pradesh vide its impugned judgment dated 26.7.1994 passed in Civil Second Appeal No. 2 of 1981 interfered with the concurrent findings of the Court below and dismissed plaintiffs suit both on facts and law. The plaintiffs are, therefore, in appeal before this court.

The fact not in dispute are that the suit lands in two villages of the erstwhile State of Madhya Bharat which now form part of the new State of Madhya Pradesh were recorded in the revenue papers in the ownership of the petitioners. It is also not in dispute that sometimes between the year 1949 to 1952 in the erstwhile Gwalior State which later became part of the erstwhile State of Madhya Bharat and now State of Madhya Pradesh, the suit land were taken under 'Nigrani meaning 'supervision and management of the State for recovery of loan obtained by the plaintiffs. The suit lands were given by the State for cultivation to one Ramji for the limited purpose of recovery of loan outstanding against the plaintiffs.

In the year 1954, the plaintiffs made an application to the Collector, Devas [MP], seeking restoration of possession of the lands on the ground that the outstanding loan stood recovered. According to the plaintiffs's case on 30.3.1954, Collector, Devas made an order in favour of the plaintiffs directing restoration of the land and pursuant thereto, formal possession of the lands was taken by plaintiffs under Panchnama dated 30.3.1954 [Ex. P-1]. The further case of plaintiffs is that within a period of five days of restoration of possession of the lands to them, the defendant no. 1. Niyazuddin respondent no. 1 [who died pending this appeal and his estate is represented by his LRs] forcibly dispossessed the plaintiffs on 15.6.1959. the plaintiffs, therefore, filed a suit in the year 1962 for declaration that on passing of the Madhya Pradesh Land Revenue code, 1959 [for short 'the Code'] they acquired status of 'Bhumiswami' under Section 158(1) (b) of the said code and delivery of possession of the lands from the deceased/ respondents no. 1.

The State of Madhya Pradesh (respondents no.2) did not dispute the plaintiffs' claim. Respondents no. 3 - Manakbai (dead) was also one of the recorded owners on the suit land but as she did not join as plaintiff, she was formally made as defendant to the suit and has been impleaded as respondent no. 3 in this appeal. On her death, her legal representatives have been brought on record.

The only contesting defendant was the deceased/Niyazuddin [respondent no.1] whose legal representatives have also been brought on record. The suit was resisted by the contesting defendant on the ground that he was put in possession of the suit lands by Ramji as Shikmi tenant and he having

continued in cultivating possession of the lands for a long period of 30 years has acquired status of 'Pakka tenant' under the provision of Madhya Bharat Land Revenue and Tenancy Act, Samvat 2007 [hereinafter referred to as Act no. 66 of 1950]. The contesting defendant also denied the case of the plaintiffs that possession of the land was restored to them on the orders of the Collector and they were subsequently dispossessed. It was also pointed out that the order of the Collector, Devas [M.P.] directing restoration of lands was set aside in appeal by the Board of Revenue.

After hearing learned senior counsel Shri A.K. Chitale appearing on behalf of the petitioners, we have formed an opinion that there was justification neither on facts nor in law for the High Court to upset the concurrent findings recorded by the courts below and allow the appeal.

The State of Madhya Pradesh represented before us by the learned counsel appearing for it does not dispute the title and possession of the lands claimed by the plaintiffs. The legal representatives of the sole contesting respondent no. 1 [defendant no. 1] have been duly served with a notice of this appeal but they have not taken care to arrange for their representation personally or through any counsel. We have, therefore, ourselves looked into the whole record. After hearing arguments advanced on behalf of the petitioners and on perusal of the impugned judgment passed by the High Court in Second Appeal. We find that the learned Judge has devoted more attention to decide the issue of restoration of possession and subsequent dispossession of the plaintiffs as raised by the plaintiffs. By describing the concurrent findings of the courts below in favour of the plaintiffs as 'perverse' the High Court has interfered with the same and re-appreciated the evidence to come to a conclusion against the plaintiffs.

The main issue based on claim of title by the contesting parties was treated to be without any merit by High Court describing it as "a legal storm in Tea cup". In our opinion, the main question to which the High Court to have addressed itself was whether plaintiffs have proved their title to the suit lands and were entitled to the relief of grant of decree of declaration of their title and possession of the lands. On the issue of title, the High Court in second appeal came to the conclusion in favour of the contesting defendant that the lands of which possession was given to him for cultivation during the period of Nigrani for the recovery of loan, conferred on him tenancy right under Madhya Bharat Zamindari Abolition Act, Samvat 2003 [hereinafter referred to as Act no. 13 of 1951] an Madhya Pradesh Land Revenue Code, 1959. Surprisingly, the learned Judge deciding the Second Appeal recorded a conclusion that the lands given for cultivation to Ramji and through him to the contesting defendant during the period of 'Nigrani' by the government were so given 'for and on behalf of the recorded land owners. Such a conclusion was wholly unwarranted in law and for it there, was no foundation laid in the written statement or in evidence led by the contesting defendant.

We consider it necessary to reproduce the impugned part of the judgment of the High Court on the question of title of the lands to demonstrate the legal flaws in it :-

"It may briefly be mentioned that to my mind it will not make much of a difference except raising a legal storm in a tea cup by contesting that the appellant did not hold the lands directly from the holders of the lands namely the plaintiffs/respondents but that he held the lands from government officials as the lands were under Nigrani for recovery of debts on government dues. The simple legal position appears to be that Nigrani was nothing but supervision or management of the lands for and on behalf of the landlords on account of their default to repay the debt and consequently the supervisor and manager stepped into shoes of defaulting landlords who would be certainly open to exposure of the ex-proprietary legislation vis-a-vis the rights of cultivating tenant even from the supervisor or the manager' of the lands Nigrani held for and on behalf of the landlords. The basic theme of the ex-proprietary legislation is 'land

to the tiller' unless the exceptions are clearly established to deprive of their rights of enlargement. Consequently, it does not lie in the mouth of the plaintiffs/respondents to say that because the land was not managed by themselves but was managed through their agents, (in this case the government agency by taking the land in Nigrani) the cultivating tenants would not be entitled to enlargement of their rights under the ex-proprietary legislation.

As a result of the finding that the appellant was in cultivating possession of the suit lands much before from 1954 and the case of the plaintiffs of dispossession of the appellant of the lands of Kamlapur in 1954 and of the lands of village Khusai in 1961 having failed, it follows as a legal consequence that the appellant/cultivator can certainly successfully resist the claim of the plaintiffs for possession on the ground of the appellant/cultivator having acquired Bhumiswami rights under the present Code of 1959. His defence to that effect in answer to the claim in suit succeeds ."

[Italics for inviting pointed attention]

It is not disputed that the contesting defendant came in possession of the suit lands during the 'Nigrani' period through the government. The land was taken in nigrani by the government only for the purpose of recovery of its outstanding loan advanced to the plaintiffs. This arrangement for recovery of loan through the supervision and management of lands by the government did not create any inter se relationship between the recorded owner and the person to whom the possession was given for cultivation. It is not disputed that during Nigrani, possession was given to one Ramji Defendant no. 1 claimed to have obtained Shikmi rights from Ramji. There was no direct relationship of recorded owner and the contesting defendant no. 1. who was inducted in cultivating possession of the suit lands by Ramji. The High Court, therefore, was clearly wrong in coming to a conclusion that the delivery of possession of the suit lands by the government to Ramji and though him to defendant for recovery of loan was an act 'for and on behalf of the recorded owner.

The next issue that appears to have been answered wrongly in favour of contesting defendant no. 1 is that under the Madhay Bharat Zamindary Abolition Act, 1951 and Madhya Pradesh Land Revenue Code 1959, the defendant no.1 who came in possession of the suit lands for cultivation during the Nigrani period though the government had acquired status of Bhumisawmi. It is pointed out to us by the learned counsel appearing for the petitioners that prior to coming into force of the M.P Land Revenue Code 1959, the provision of Madhya Bharat Land Revenue and Tenancy Act, Samvat 2007 [Act No. 66 of 1950] regulated the relationship of the parties with regard to the land in suit. Section 54 in Part-11 of Chapter IV of the Act of 1950 contains definitions of various categories of tenants and sub-tenants. Learned counsel submits that in the revenue papers the plaintiffs were recorded as 'Ryot Pattedar' on the lands. They therefore, fall in the definition of 'Pakka Tenant' defined in Section 54(vii) as under :-

"54 (vii) Pakka tenant-means a tenant who has been or whose predecessor in interest had been lawfully recorded in respect of his holding a "Ryot Pattedar", 'Mamuli Maurusi,' Gair Maurusi, and Pukhta Maurusi when this Act comes into force or who may in future be duly recognised as such by a competent authority.'

Sub- clause (viii) & (ix) of Section 54 of the Act of 1950 define 'ordinary tenant' and 'sub tenant' as under :-

"54 (viii). Ordinary tenant - means a tenant other than a Pakka tenant and shall not include a sun-tenant."

54(xi) Sub-tenant - means a person who holds land from a Pakka or an ordinary tenant or from a holder of a service holding or from a

concessional holder as defined in sub-clause (x).

All land owners recorded as 'Pakka tenant' in accordance with Madhya Bharat Land Revenue and Tenancy Act, Sam vat 2007 [Act No. 1950] have been conferred with status of Bhumiswami under Section 158 (1) (b) of Madhya Pradesh Land Revenue code, 1959 which reads thus :-

"158. Bhumiswami - (1) Every person who at the time of coming into force of this Code, belongs to any of the following classes shall be called a Bhumiswami and shall have all the rights and be subject to all the liabilities conferred imposed upon a Bhumiswami by or under this code, namely :-

(a)

(b) every person in respect of land held by him in the madhya bharat region as a Pakka Tenant or as a Muafidar, Inamdar, or Concessional holder, as defined in the Madhya Bharat Land Tenancy Act, Sam vat 2007 (66 of 1950)

(c).....

The contesting defendant having obtained cultivating possession from Ramji to whom government had given possession during Nigrani for recovery of loan, does not fall in the definition of 'Pakka Tenant', 'Ordinary tenant' or 'Sub tenant'. As we have held above, the High Court was prima facie wrong in assuming relationship of tenancy between the recorded owners and defendant no. 1. The lands were handed over during 'Nigrani' by the government to a cultivator/Ramji for the limited purpose of recovery of outstanding loan. This delivery of possession during Nigrani by the government to a cultivator cannot create any direct or indirect relationship between the recorded owner of the land and the cultivator concerned. The handing over of land by the State to a cultivator for recovery of its loan was a coercive action against the land owner and not an act on his own volition. Such action on the part of the State can create no relationship inter se of tenancy between land owner and the cultivator who has been indicted by the State. Neither the provisions of Madhya Bharat Land Revenue and Tenancy Act, 1950 nor the Madhya Pradesh Land Revenue Code, 1959 confer any status of 'tenant' or Bhumiswami on such a person who enters upon lands for cultivation during Nigrani period of the government. The reference to the provisions of Madhya Bharat Zamindari Abolition Act No. 13 of 1951 was wholly inappropriate as it was nobody's case that the plaintiffs were proprietors or Zamindars and any rights were acquired by the defendant under the said Act.

The conclusion, therefore, drawn by the High Court in favour of defendant no. 1 that he acquired right of 'tenant' is unsustainable in law.

No plea of limitation was raised by the defendant. In our opinion, even if the plaintiffs case of their having been restored to possession and subsequently dispossessed is held to be a make-believe story and hence unreliable, the plaintiffs deserve to succeed on the basis of their title and right to claim possession from the contesting defendant who had lost all rights to continue in possession of the land after the period of Nigrani was over and the loan had been satisfied.

Consequently, we allow this appeal and set aside the impugned judgment of the High Court Passed in Second Appeal. In consequence, the judgement of the trial court and the First Appellate Court shall stand restored. Since the contesting defendant [legal representatives of respondents no. 1] were not represented before us, we would leave the parties to beat their own costs in this appeal.