

CASE NO.:
Appeal (civil) 5835 of 2000

PETITIONER:
Zaminder Dharmik & Shekshnik Nyas

RESPONDENT:
Siddhanath (dead) by Lrs

DATE OF JUDGMENT: 22/05/2007

BENCH:
Dr. ARIJIT PASAYAT & LOKESHWAR SINGH PANTA

JUDGMENT:
J U D G M E N T

Dr. ARIJIT PASAYAT, J.

1. Challenge in this appeal is to the order passed by a learned Single Judge of the Madhya Pradesh High Court dismissing the civil appeal filed by the appellant under Section 100 of the Code of Civil Procedure, 1908 (in short the 'CPC'). The appeal was dismissed summarily at the admission stage holding that no substantial question of law is involved.
2. Learned counsel for the appellant submitted that several questions of law are involved.
3. Learned counsel for the respondent on the other hand submitted that there is no substantial question of law involved.
4. Background facts in a nutshell as projected by appellant are as follows:
5. The present case relates to a land measuring 3.23 acres belonging to the ancestors of Rao Nihal Karan Jamindara Bada Ravala of Indore and later on was a part of a religious and educational trust. The appellants are its trustees. The land in dispute is an important place where the appellant trust is carrying out annual Dussehra Puja even prior to independence. The Zamindar family used to perform puja from generation to generation. There was no dispute whatsoever raised about the said land upto 1969. The respondent was merely a vegetable seller who used to collect vegetables and fruits from the land on contract from the trust.
6. In 1969, Government issued a notice for ejectment under Section 248 of the M.P. Land Revenue Code (in short 'the Code') claiming the land to be a land of the Government and the appellant was dispossessed.
7. The Panchnama dated 12.6.1975 shows that the land in dispute was handed over to the Government by none else than the father of the respondents herein i.e. the original plaintiff Siddhanath.
8. An application for adjudication of right and title of the appellant was made before the Sub Divisional Officer, Indore, who was a competent authority under Section 57 of the Code.
9. Section 57 of the M.P. Land Revenue Code reads as

under:

"57. State ownership in all lands. - (1) All lands belong to the State Government and it is hereby declared that all such lands, including standing and flowing water, mines, quarries, minerals and forests reserved or not, and all right in the sub-soil of any land are the property of the State Government: Provided that nothing in this section shall, save as otherwise provided in this Code, be deemed to affect any rights of any person subsisting at the time of coming into force of this Code in any such property.

(2) Where a dispute arises between the State Government and any person in respect of any right under sub-section (1) such dispute shall be decided by the Sub-divisional Officer.

(3) Any person aggrieved by any order passed under sub-section (2) may institute a civil suit to Contest the validity of the order within a period of one year from the date of such order.

3-a) (a) Notwithstanding anything contained in the Code of Civil Procedure, 1908 (V of 1908) no Civil Court shall, in a civil suit instituted under sub section (3) on or after 24th October, 1983, by order of temporary injunction disturb the person to whom possession is restored under section 250 if such person furnishes a reliable surety to recompensate the aggrieved party against any loss in case the Civil Court grants a decree in favour of the aggrieved :

Provided that no surety shall be required to be furnished by a member of a tribe declared to be an aboriginal tribe under sub-section (6) of Section 165;

(h) Where a Civil Court by an order of temporary injunction disturbed the person referred to in clause (a) on or after 24th October, 1983 but before the publication of Revenue Department's Notification No.1-70-VII-N-2-83, dated 4th January, 1984 such order shall abate on such publication and the Tehsildar shall restore possession to a person who is disturbed by such order.

(4) Where a civil suit has been instituted under sub-section (3) against any order, such order shall not be subject to appeals or revision."

10. The Sub-divisional Officer decided the title and declared the appellant as Bhumiswami of the land in dispute and also held that the land was being used for Dussehra Puja by the appellant

11. In pursuance of the application for restoration of possession in view of the aforesaid order dated 19.9.1974, the Tehsildar ordered restoration of possession to the appellant. In pursuance of the said order of the Tehsildar, the Patwari went to the spot and made a report that the place was in possession of the plaintiff/respondent's father Shri Siddhanath. The appellant, therefore, applied for an order before the Tehsildar. The Tehsildar on the one hand passed an order seeking clarification from the Board of Revenue about the area of the land and at the same time served a copy of the appellant's application to Sri Siddhanath, father of the Respondent.

12. Siddhanath filed an appeal challenging the order dated 19.9.1974 which was dismissed.

13. Aggrieved by the order of the Collector, Siddhnath, father

of the respondent filed a revision before the Commissioner (Land Revenue) which was also dismissed on the ground of limitation.

14. Aggrieved by the order of the Commissioner, Siddhanath, father of respondent filed revision before the Board of Revenue.

15. The Board of Revenue, vide its order dated 26.8.1982 also dismissed the said revision filed by the father of the respondent.

16. Siddhnath, father of the respondent, in the meanwhile filed a civil suit No.259A/1981 for declaration of title and for injunction against the appellant and Rao Nihal Karan much after the expiry of one year from the date of order of Sub-Divisional officer dated 19.9.1974. The suit was thus barred under Section 57(3) of the M.P. Land Revenue Act, 1959 (in short the 'Act'). However, in the said suit the appellant filed an application for discovery of documents. The father of the respondent did not file the said documents and the said suit was dismissed on 17.8.1983 under Order XI Rule 21 CPC. Order XI Rule 21 CPC reads as under:\027

"Order XI. discovery and Inspection.
Rule 21. No-compliance with order for discovery - (1) Where any party fails to comply with any order to answer interrogatories, or for discovery or inspection of documents, he shall, if a plaintiff, be liable to have his suit dismissed for want of prosecution, and, if a defendant, to have his defence, if any, struck out, and to be placed in the same position as if he had not defended, and the party interrogating or seeking discovery or inspection may apply to the Court for an order to that effect and an order may be made on such application accordingly, after notice to the parties and after giving them a reasonable opportunity of being heard.

(2) Where an order is made under sub-rule(1) dismissing any suit, the plaintiff shall be precluded from bringing a fresh suit on the same cause of action."

17. No further appeal or revision or any other proceedings against the said order were opted and thus this decision became final under Section 57 of the Act.

18. Siddhnath, father of the respondent, not deterred by previous orders, filed present suit without making the appellant or Rao Nihal Karan as a party to the said suit. In the said suit Siddhnath claimed adverse possession against the State of M.P. as will be evident from para 8 of the plaint. Respondent concealed the institution of his previous suit dated 21.12.1981 as well as the order of its dismissal dated 17.8.83.

19. Appellant herein who was not made a party, applied for being made a party which was allowed and the appellant was arrayed as Defendant No.3.

20. The State authorities in collusion with the respondent filed written statement and admitted that the respondent was in possession since 1950.

21. As the appellant is a religious and charitable trust, the trustees could not collect the relevant documents of the ancestors of Zamindara Bada Ravala nor could timely lead the evidence. However, the appellant filed some documents and memo of appeal presented by Siddhnath which was allowed to be taken on record.

22. Thereafter the appellant filed an application under Order XIII Rule 10 for proving the Memo of Appeals filed against the order dated 19.9.1974 in which the respondent specifically took the plea that he was in possession on behalf of the appellant.

23. The trial Court rejected the said application.

24. The appellant also filed an application under Order VI Rule 17 for amendment of the written statement for inserting very important facts including the fact that the dismissal order dated 17.8.83 of the previous suit make the present suit as not maintainable. The same was also rejected.

25. The trial Court vide judgment and order decreed the said suit on 31.1.1997.

26. Aggrieved by the judgment of the trial Court, the appellant herein filed first appeal before the Additional District Judge, being First Appeal No.3 of 1997.

27. The IIIrd Additional District Judge, Indore vide its order dismissed the first appeal on 30.1 1999.

28. Second appeal was filed which as noted above was dismissed.

29. In the Memorandum of appeal following questions were formulated by the appellant:

- (i) Whether the learned Courts below have not erred in decreeing plaintiff-respondent's suit?
- (ii) Whether the plaintiff's claim could be decreed without there being any challenge to the decision of the Revenue Authorities for restoration of possession to the appellant?
- (iii) Whether the learned Courts below are right in accepting the plaintiff's claim of possession in his own right or adverse possession?
- (iv) Whether the learned First Appellate Court was right in rejecting the applications, I.A. 5 and I.A. 6?
- (v) Whether the decisions are rendered by wrongly placing burden of proof on the appellant?
- (vi) Whether the suit of the plaintiff was maintainable in view of the dismissal under Order XI Rule 21 of his earlier Suit No. 359/81?

30. In our considered view the questions (ii), (iii) and (vi) are prima facie substantial questions of law which need to be adjudicated. Accordingly we set aside the order of the High Court and remit the matter to it for hearing the second appeal on the questions (ii), (iii) and (vi) as quoted above. We make it clear that though prima facie there appears to be substantial questions of law, the High Court shall be free to decide the matter in accordance with law.

31. Appeal is allowed without any orders as to costs.