HIGH COURT OF CHHATTISGARH, BILASPUR

FA No. 373 of 1998

1. Kyamuddin s/o Basarat Miya, aged about 50 years
2. Gulam Husain son of Sarafat Miya, aged about 45 years
3. Jalalluddin s/o Wali Mohammad, Aged about 50 yrs

All resident of village Kusmi, Tahsil-Kusmi (Samri) District-Sarguja, M.P.

---- Appellants

Versus

1. Rampati s/o Jagtu Kishan, aged about 30 years
2. Bandha s/o Bharu Kishan aged about 50years

Both residents of village Kusmi, Tahsil Kusmi (Samri) District Sarguja

3. State of Madhya Pradesh Through The Collector Sarguja.

---- Respondents

For appellants- Shri B.P. Gupta, Advocate.
For respondents-Shri S.R. Sinha, Advocate.

Hon'ble Shri Justice Goutam Bhaduri

Judgement

30/10/2018

Heard.

1. Instant appeal is against the judgement and decree dated 12/05/1998 passed in Civil Suit No.26-A/1997 by the Second Additional District Judge, Ambikapur. Suit was filed for declaration and permanent injunction by Kayamuddin plaintiff No.1, Gulam Hussain plaintiff No.2 and Jallaluddin plaintiff no.3 against Rampati as defendant No.1, Banda as defendant No.2.

2. Suit of the plaintiff was that plaintiff No.1 Kayamuddin had purchased two land bearing khasra No.383/1 admeasuring 0.020 hectare and khasra No.384/1 admeasuring 0.040 hectare for an amount of Rs.90/- from one Kusa Kisan and delivered the possession of the said land. Subsequently, name of the plaintiffs were mutated in the revenue records.

The plaintiff No.2 Gulam Hussain contended that he purchased khasra No.307/2 admeasuring 0.056 hectare from one Madul S/o Lakhu in the year 1958 for an amount of Rs.90/- and after purchase of the land he is in possession of the same and residing there on after construction of the house therein. It was stated that the land was used otherwise than agricultural purpose.

3. The plaintiff No.3 Jallaluddin stated that out of khasra No.363 a part of it admeasuring 0.025 hectare was purchased by him from Kusa and Ghasiya by way of a sale deed in 1967 and after the purchase he is in possession thereof. Plaintiffs further stated that the transfer so made in their favour was by Dusa kisan and Kusa kisan who are non-tribal. Therefore, such transfer would not be governed under section 165 (6) of the then M.P. Land Revenue Code and as such the provisions of Section 170-B of the Land Revenue Code would not be applicable. It was further stated that after purchase of the said land the house were constructed over the land, therefore the provisions of Section 170-B of the Land Revenue Code would not be applicable. The plaintiffs further pleaded that descendants of Kusa and Ghasiya kisan from whom the land were purchased identified themselves to be tribal and started a proceeding before the Revenue Authorities whereby by an order dated 6/02/1996 without giving any opportunity of hearing to the plaintiffs the order was passed to return the possession of the land which was pleaded in the suit.

4. It was further stated that in respect of the plaintiff No.3 Jallaluddin the order was passed by the SDO Ramanujganj to deposit an amount of Rs.1756/- to effect transfer of the land. It was further pleaded that the SDO Ramanujganj exceeded its jurisdiction on 6/02/96 in three revenue case bearing no.311-A-23/90-91, further revenue case bearing no. 240-A-23/90-91 and lastly revenue case bearing no.290-A-23/90-91 passed

order against the plaintiffs. The plaintiffs stated that cause of action arose to file suit was on 6/02/96 whereby right and title of the plaintiffs were put under the cloud and since then efforts were made to dispossess them as such civil suit was filed. It was stated that the plaintiff No.1 Kayamuddin be declared owner of the land bearing khasra No.383/1 and 384/1. Likewise plaintiff No.2 Gulam Hussain be declared owner of the land khasra No.307/2 admeasuring 0.056 hectare and likewise the plaintiff No.3 Jallaluddin be declared the owner of the land bearing khasra No. 363 admeasuring 0.025 hectare. Prayer was further made that defendants their agents be restrained by permanent injunction not to disturb the peaceful possession of the plaintiffs.

5. Before the trial court defendants No.1 and 2 namely Rampati and Banda remained exparte. The trial court framed six issues and dismissed the suit on the ground that the suit was barred under section 257 of the Land Revenue Code. Further the court held that the suit was liable to be dismissed for misjoinder and also held that while passing order by the SDO in revenue case on 6/02/96 the court did not exceeded its jurisdiction and dismissed the suit. The court further held that plaintiffs No.1 and 2 were put in possession of the suit land, however did not come to a finding as to ownership of it. With respect to the plaintiff No.3 no issues were framed and eventually the suit was dismissed. Hence this appeal.

6. Learned counsel for the appellants would submit that the court has misdirected itself to hold that seller were tribal though were shown to be kisan. He submits that kisan are not tribal, therefore the entire provision of section 170-B of the Land Revenue Code, 1959 would not be applicable. It is further submitted that finding of the court that the suit is barred is also bad in law as if the seller was not covered within the specified schedule under section 165-B of the Land Revenue Code the applicability of section

170-B of the Land Revenue Code would not be made applicable. Subsequently, the civil court have jurisdiction to try the suit. He placed his reliance in case of **Dhanajiram & anr. Vs. Praveen Kumar & ors**. reported in **2014 (2) C.G.L.J. 334** and would submit that in that case court held that civil suit to challenge the proceeding under section 170-B of the Land Revenue Code is maintainable. It is further submitted that court further misdirected itself to hold that case was misjoinder as against this Order 1 Rule 1 of CPC allows that any right to relief in respect of the transaction or series of acts if is one then person can jointly and severally file the suit and even if court found that separate suit should have been filed and court should have ordered it under Order-1 Rule 2 of CPC, therefore order is bad in law requires to be set aside.

7. Per contra, learned counsel for the respondents submits that the plaintiffs have miserably failed to prove any evidence. It is submitted that neither any document were placed to show their ownership how they became the owner except the possession and further submit that even order which was under challenge dated 6/02/96 was not included in the prayer of the plaint to be set aside. Consequently, no relief could have been granted in absence of any prayer thereof.

8. Perused the record of the court below. Prima facie it appears that finding of the court about misjoinder would not be applicable in this case. Perusal of the plaint shows that three plaintiffs have filed the suit and the pleading would demonstrate that order dated 6/02/96 passed in three separate revenue case was under challenge as such the finding about misjoinder of the plaintiffs would not be proper as Order-1 Rule-1 CPC provides that all persons may be joined in one suit as plaintiffs where any right to relief in respect of, or arising out of, the same act or transaction or series of acts or transaction is alleged to exist in such persons, whether

jointly, severally or in the alternative and if such persons brought separate suits, any common question of law or fact would arise. Therefore, by application of it would show that even if separate suit would have filed common question of law or fact would arise as the similar order dated 6/02/96 was under challenge. Consequently, the finding of the misjoinder of the plaintiffs is not proper and is set aside.

9. Now coming to the merits of this case. The perusal of the record would show that plaintiff No.2 Gulam Hussain was examined as PW-2, plaintiff No.3 Jallaluddin was examined as PW-4 and plaintiff No.1 Kayamuddin was examined as PW-5. Statement of the Gulam Hussain PW-2 would show that he stated that he alongwith Kayamuddin and Jallaluddin had purchased the land. He further stated that at village Kusmi khasra no.307/2 admeasuring 0.056 hectare were purchased from original owner Madul and Ladku kisan in 1958 for Rs.90/- and the sale deed was of Rs.90/-. Thereafter, construction was made over the land and the diversion amount has been paid. He further stated that in respect of the same case under section 170-B the SDO commenced proceeding at Kusmi camp and he was not noticed about the same and order dated 6/02/96 passed against Gulam Hussain was marked as Ex.P-1. Perusal of Ex.P-1 would reflect that plaintiff Gulam Hussain did not produce any document of title of purchase of the land and further court held that in the revenue court settlement land was recorded in the name of Madul S/o Latku whose heirs were Rampati and Jagtu. Said final order has been produced. No document has been produced to show that Gulam Hussan plaintiff No.2 was not heard before passing any such order or any opportunity of hearing was not given. Therefore, it was burden of the plaintiffs to show that the concerned authority has complied with the prescribed procedure or not. It has been held in case of **Dhanajiram &**

anr. Vs. Praveen Kumar & ors. (supra) para 12 is relevant which is quoted hereunder:-

> "12. In view of the aforesaid legal position inspite the bar created under section 257(1)(L-1) of the Code against orders passed by the Revenue Authorities under section 170-A and 170-B of the Code in their exclusive jurisdiction even then the civil Court had jurisdiction to entertain and consider the matter up to the extent whether the authority concerned has complied with the prescribed procedure or not while holding the enquiry and passing the order. But such jurisdiction is limited as laid down in the case of Dhulabhai Vs. State of M.P. reported in AIR 1969 SC 78. The civil Court cannot consider the questions decided by such revenue authorities on merits under their exclusive jurisdiction. Thus, it is held that the civil Court has jurisdiction to entertain such suit upto the aforestated extent."

10. Gulam Hussain has filed certain revenue record to show that his name was recorded but except that no document of title is on record. Likewise Jallaluddin the plaintiff No.3 PW-4 had stated that he purchased the land from Pusa kisan and has constructed his house there and was being used otherwise than agriculture. He contended that in camp court of Kusmi proceeding were drawn to return the land wherein they were not heard. The order dated 6/02/96 passed in respect of Jallaluddin is not before this court neither it was called for in evidence by plaintiff. Likewise Kayamuddin plaintiff No.1 and examined as PW-5 has made similar statement that he purchased the land from Pusa kisan in 1968 and thereafter has raised his house there. Order dated 6/02/96 again is not been challenged . Perusal of the plaint would show that order dated 6/02/96 passed in three revenue cases bearing No. 311-A-23/90-91, 240-A-23/90-91 and 290-A-23/90-91 though were claimed to be set aside but prayer to set aside was not made. When plaintiffs were coming to the court with a specific case that they were not heard and given opportunity of hearing in the revenue case, it was their duty to prove those facts by

calling the revenue case proceeding to show no opportunity of hearing was given. In absence thereof presumption of 114-e of the Evidence Act, 1872 would follow that due opportunity was given. Further more no prayer was made to set aside such finding of revenue case.

11. In the result, after entire evaluation of the evidence and record it shows that the plaintiffs have failed to establish the facts by proper pleading and admissible evidence that they were not heard before the order of revenue case on dated 6/02/96 were passed. Further in absence of the prayer to set aside the said orders no interference can be made by this court in the order of the court below dated 12/05/1998.

12. In the result, appeal has no merit and it is dismissed.

Sd/-

(Goutam Bhaduri)

JUDGE

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