

HIGH COURT OF CHHATTISGARH, BILASPURSecond Appeal No.432 of 2004

Vishnuprasad, S/o Mukutram, aged about 25 years, Agriculturist,
R/o Village Rampura, Tahsil Bemetara, District Durg.

(Plaintiff No.1)

---- Appellant

Versus

1. State of C.G., Through Collector, Durg.

(Defendant No.1)

2. Mukutram, Since deceased, Through LRs.

(a) Katchara Bai, D/o Mukutram, aged about 45 years,

(b) Subhadra Bai, D/o Mukutram, 38 years,

(c) Vivekanand, S/o Vishnuprasad, aged 23 years.

All R/o Birampur, Tahsil Kawardha, District Kawardha and Village
Rampura, Tahsil Bemetara, District Durg.

(LRs of Plaintiff No.2)

---- Respondents

For Appellant: Mr. Hari Shankar Patel, Advocate.

For Respondent No.1 / State: -

Mr. Ravi Kumar Bhagat, Deputy Govt. Advocate.

For Respondents No.2(a), (b) and (c): -

Mr. Viprasen Agrawal, Advocate.

Hon'ble Shri Justice Sanjay K. Agrawal

Judgment On Board

13/11/2019

1. This second appeal preferred by plaintiff No.1 was admitted for
hearing by formulating the following substantial question of law: -

“Whether the learned lower appellate Court was justified
in law in holding that the suit is barred under Section 46
of the Madhya Pradesh Ceiling on Agricultural Holdings
Act, 1960?”

(For sake of convenience, parties hereinafter will be referred
as per their status shown and ranking given in the plaint before the

trial Court.)

2. A revenue proceeding under the Madhya Pradesh Ceiling on Agricultural Holdings Act, 1960 (for short, 'the Act of 1960') against plaintiff No.1's father Mukutram (deceased plaintiff No.2) for the lands shown in Schedule "A" of the plaint was registered as Revenue Case No.365-B/90(3)/1974-75. The plaintiff made an objection, but the objection was turned down by the competent authority holding that the lands described in Schedule "A" of the plaint belong to plaintiff No.1's father and declared 15.20 acres of land as surplus. The aforesaid order of the competent authority was questioned in appeal before the Board of Revenue, Gwalior and the Board of Revenue remanded the matter by setting aside the said order and further directed for conducting fresh enquiry. The competent authority by order dated 9-3-1978 has declared 8.32 acres of land as surplus against the property shown in Schedule "A" of the plaint and draft statement as provided under Section 11 of the Act of 1960 was prepared proposing for vesting the land to the State on 15-5-1978 and final publication has been made on 15-5-1978.
3. The plaintiffs brought civil suit for declaration of title in the disputed property filed on 11-7-1978 stating that Mukutram – father of plaintiff No.1, has executed a registered sale deed in favour of plaintiff No.1 and revenue records have also been mutated as such, the civil suit is said to be filed under Section 11(5) of the Act of 1960 and prayed that the order passed by the competent authority dated 9-3-1978 be set-aside.
4. The main plea in the written statement filed by the defendant / State

was that the suit is barred by Section 46 of the Act of 1960 which the trial Court did not accept and decreed the suit and in first appeal filed by the State, it was reversed by the first appellate Court and held that since no objection was raised by the plaintiffs after final publication on 15-5-1978 and compliance of Section 11(3) of the Act of 1960 as required has not been done and further, Section 11(4) & (5) have not been complied with, therefore, the suit itself is barred by Section 46 of the Act of 1960 against which this second appeal has been filed by plaintiff No.1 in which substantial question of law has been framed and which has been set-out in the opening paragraph of this judgment.

5. Mr. Hari Shankar Patel, learned counsel appearing for the appellant herein / plaintiff No.1, would submit that the first appellate Court is absolutely unjustified in holding that the suit is bared by Section 46 of the Act of 1960, as the suit was maintainable and not barred by Section 46 in view of Section 11(5) of the Act of 1960 and as such, judgment & decree of the first appellate Court deserve to be set-aside and that of the trial Court be restored.
6. Mr. Ravi Kumar Bhagat, learned State counsel, would support judgment & decree of the first appellate Court.
7. I have heard learned counsel for the parties and considered their rival submissions made herein-above and also went through the record with utmost circumspection.
8. In order to appreciate the point raised at the Bar, it would be appropriate to notice sub-sections (3), (4) & (5) of Section 11 of the Act of 1960 which state as under: -

“11. Preparation of statement of land held in excess of the ceiling area.—(1) to (2) xxx xxx xxx

(3) The draft statement shall be published at such place and in such manner as may be prescribed and a copy thereof shall be served on the holder or holders concerned, the creditors and all other persons interested in the land to which it relates. Any objection to the draft statement received within thirty days of the publication thereof shall be duly considered by the competent authority who after giving the objector an opportunity of being heard shall pass such order as it deems fit.

(4) If while considering the objections received under sub-section (3) or otherwise, the competent authority finds that any question has arisen regarding the title of a particular holder and such question has not already been determined by a court of competent jurisdiction, the competent authority shall proceed to enquire summarily into the merits of such question and pass such orders as it thinks fit.

(5) The order of the competent authority under sub-section (4) shall not be subject to appeal or revision, but any party may, within three months from the date of such order, institute a suit in the civil court to have the order set aside, and the decision of such court shall be binding on the competent authority, but subject to the result of such suit, if any, the order of the competent authority shall be final and conclusive.”

9. Sub-section (5) of Section 11 of the Act of 1960 was amended by M.P. Act 8 of 1989 with effect from 1-11-1988 which states as follows: -

“(5) The order of the competent authority under sub-section (4) shall subject to the decision in appeal or revision be final and conclusive.”

10. Since, in this case, the civil suit was filed on 11-7-1978, the unamended provision of Section 11 (5) of the Act of 1960 would be applicable.
11. A careful perusal of the scheme of Section 11(3) of the Act of 1960 would show that any objection to the draft statement published under Section 11(3) has to be filed within 30 days of the publication thereof and that objection is required to be considered by the

competent authority after giving an opportunity of hearing to the objector. If, under Section 11(4) of the Act of 1960, while considering the objections received under sub-section (3) or otherwise, the competent authority finds that any question has arisen regarding the title of a particular holder and such question has not already been determined by a court of competent jurisdiction, then the competent authority shall proceed to enquire summarily into the merits of such question and pass such orders as it thinks fit. By virtue of Section 11(5) of the Act of 1960 (unamended), the order of the competent authority under sub-section (4) shall not be subject to appeal or revision, but any party may, within three months from the date of such order, institute a suit in the civil court to have the order set aside, and the decision of such court shall be binding on the competent authority, but subject to the result of such suit, if any, the order of the competent authority shall be final and conclusive.

12. Section 46 of the Act of 1960 provides as under: -

“46. Bar of jurisdiction of Civil Courts.-Save as expressly provided in this Act, no Civil Court shall have any jurisdiction—

(i) to settle, decide or deal with any question which is by or under this Act required to be settled, decided or dealt with by the competent authority; and

(ii) to grant stay in any case under this Act.”

13. A careful perusal of the aforesaid provision would show that jurisdiction of civil court has been expressly barred except with regard to the cases which exception has been carved out, one such exception is incorporated in Section 11(5) of the Act of 1960; when an order is passed under Section 11(4) of the Act of 1960, then

such order can be challenged under Section 11(5) of the Act of 1960. Similar view has been taken by the M.P. High Court in the matter of **Bhaiya Lal and another v. State of M.P.**¹.

14. Reverting to the facts of the present case, the question would be whether in the instant case, objection under Section 11(3) of the Act of 1960 has been made to the draft statement published on 15-4-1978? The answer is, no objection was raised and final publication has been made on 15-5-1978. The aforesaid fact is apparent from paragraph 3(b) of the plaint which states as under: -

(ब) यह कि प्रकरण रिमाण्ड में आने के पश्चात् श्रीमान् सक्षम अधिकारी द्वारा पुनः जाँच की गई एवं दिनांक 9-3-78 को उक्त प्रकरण में आदेश पारित कर पिछले प्रारूप विवरण को निरस्त कर वाद पत्र की अनुसूची "अ" में दर्शित भूमि में से 8-32 एकड़ भूमि के अतिरिक्त घोषित कर उसे शासन में निहित करने के आदेश दे दिये गये। यह भूमि वाद पत्र की अनुसूची "स" में दर्शित है। अनुसूची "स" को वाद पत्र का अंग माना जावे इस आदेश के आधार पर पुनः म०प्र० की कृषि खातों की अधिक तक जोत सीमां अधिनियम 1960 की धारा 11 नियम 6 के उपनियम 1 के अन्तर्गत नये प्रारूप विवरण का प्रकाशन ग्राम रमपुरा में किया गया जिसके अनुसार ग्राम रमपुरा की अनुसूची "स" में दर्शित भूमि शासन में निहित किये जाने का प्रस्ताव रखता गया। इस प्रारूप विवरण द्वारा वादपत्र की अनुसूची "ब" में दर्शित भूमि में विष्णु के स्वत्व एवं अधिकारों पर प्रतिकूल प्रभाव पड़ा इस प्रारूप विवरण का प्रकाशन ग्राम - रमपुरा में लगभग दिनांक 15-4-78 को हुआ। इस प्रकाशन के पश्चात् उस पर आपत्ति करने के लिये पुनः 30 दिन की अवधि वैधानिक प्रावधानों के अनुसार प्राप्त होती है परन्तु उक्त अवधि में आपत्ति प्रस्तुत न किये जाने के कारण अन्य प्रकार से उक्त प्रारूप विवरण का प्रस्ताव लगभग दिनांक 15-5-78 को अंतिम हो गया जिसका कारण वाद पत्र की अनुसूची "अ" एवं "ब" में दर्शित भूमि में वादी क्रमांक 1 के स्वत्व एवं अधिकारों की ओर पूर्णतः दुर्लक्ष करके वाद पत्र की अनुसूची "स" में दर्शित भूमि शासन में निहित कर दी गई। फलस्वरूप उक्त भूमि में विष्णु के वैधानिक स्वत्व व अधिकारों पर आघात हुआ है जबकि उक्त भूमि में से कोई भी भूमि या उसका अंश शासन में निहित किये जाने योजन नहीं था। अतः वादी गण अपने स्वत्व की घोषणा हेतु यह दावा प्रस्तुत करते हैं।

15. A focused glance of the aforesaid plaint averment would show that it is the case of the plaintiffs that draft statement was published on

¹ AIR 1998 MP 234

15-4-1978 and 30 days period expired on 15-5-1978 as such, the draft statement has become final. Therefore, admittedly, no objection was preferred under Section 11(3) of the Act of 1960 and as such, it was not adjudicated by the competent authority under Section 11(4) of the Act and thus, no suit could have been filed under Section 11(5), as civil suit was maintainable against the order of the competent authority passed under Section 11(4) of the Act of 1960. Since, in the instant case, neither objection was filed nor it was adjudicated under Section 11(4) of the Act of 1960 and no order was passed, therefore, no suit would lie under Section 11(5) of the Act of 1960 and it would be barred by Section 46 of the Act of 1960, as held by the M.P. High Court in **Bhaiya Lal** (supra).

16. The first appellate Court after critical analysis of the facts available on record has clearly held that no objection was filed by the plaintiffs under Section 11(3) of the Act of 1960 after publication of draft statement and as such, no question has arisen regarding title of the plaintiffs and therefore though civil suit under Section 11(5) of the Act of 1960 was filed, but in absence of objection with regard to title of the plaintiffs raised before the competent authority after publication of draft statement and in absence of enquiry and order by the competent authority, civil suit under Section 11(5) of the Act of 1960 would not be maintainable and barred by Section 46 of the Act.

17. In view of the aforesaid analysis, I do not find any merit in the contention raised by Mr. Patel, learned counsel for the appellant herein / plaintiff No.1, and the first appellate Court has rightly dismissed the suit as barred by Section 46 of the Act of 1960 which

is hereby affirmed. The substantial question of law is answered accordingly. Resultantly, the second appeal preferred by plaintiff No.1 deserves to be and is hereby dismissed with no order as to cost(s).

18. Decree be drawn-up accordingly.

Sd/-
(Sanjay K. Agrawal)
Judge

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