AFR

HIGH COURT OF CHHATTISGARH, BILASPUR

Second Appeal No.437 of 2008

Judgment reserved on: 26-11-2019

Judgment delivered on: 29-11-2019

Hari Prasad (Dead) Through LRs
(Plaintiff)

1. Smt. Kaveri Sharma, aged 55 years
2. Smt. Usha Mishra, aged 38 years
3. Nandkishore Sharma, aged 36 years
4. Janak Dulari Choubey, aged 34 years
5. Smt. Yamini Dubey, aged 32 years
6. Kirankumar Sharma, aged 30 years

(No.1 Widow, 2, 4 & 5 Daughters, and 3 & 6 are sons of Late Hari Prasad), all R/o Village Dewarbhat, P.O. Jhalmala, Tehsil Baloud, Distt. Durg (C.G.)

---- Appellants

Versus

1. State of Chhattisgarh, through Collector, Durg (C.G.)
2. Tahsildar, Balod, Tahsil Balod, Distt. Durg

(Defendants)
---- Respondents

For Appellants: Mr. B.P. Gupta, Advocate.
For Respondents / State: -
Mr. Ravi Kumar Bhagat, Deputy Govt. Advocate.

Hon'ble Shri Justice Sanjay K. Agrawal

C.A.V Judgment

1. This plaintiff's second appeal was admitted for hearing by

formulating the following substantial questions of law: -

> "1. Whether both the Courts below were justified in dismissing the suit of the plaintiff by recording a perverse finding contrary to record after having held that the plaintiff is title and possession holder of the suit land holding that the suit is barred by Section 257(f) of the Chhattisgarh Land Revenue Code, 1959, ignoring the fact that the suit was basically for declaration of title and permanent injunction and consequently for correction of entries in revenue records made pursuant to the circular of the State Government dated 11.1.88 (Ex.D/1C)?
>
> 2. Whether both the Courts below were justified in dismissing the suit as barred by limitation?"

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

2. The plaintiff filed a suit for declaration of title and permanent injunction stating inter alia that he has purchased the suit land by registered sale deed dated 15-6-1976 for a cash consideration of ₹ 5,000/- from Raghunandan Prasad, S/o Banwali Prasad, and came into possession of the suit land. It was further pleaded that in March, 2000, he obtained the certified copy of Khasra Panchshala and B-1 for the year 1999-2000 on 30-3-2000 in which after the name of the plaintiff it was mentioned, "Sarvadhikar Radha Krishna Mandir, Prabandhak Collector, District Durg", whereas, it is not the property of any temple nor it is any trust's property by which the plaintiff filed an application under Section 57(2) of the Chhattisgarh Land Revenue Code, 1959 (for short, 'the Code') before the Sub-Divisional Officer, Balod which was dismissed as withdrawn on 20-2-2001,

thereafter, he filed application for correction of revenue records before the Sub-Divisional Officer, Balod which was rejected on 17-4-2001 necessitating the filing of suit after serving notice under Section 80 of the CPC, for declaration of title and for further declaration that the Collector is not the manager / sarvadhikar of the suit land and the plaintiff is entitled for declaration of title and permanent injunction in which the defendants appeared and setup a plea that the disputed property is of the temple and the Collector's name has rightly been inserted in view of the order of the State Government dated 11-1-1988 (Ex.D-1C), as such, the suit deserves to be dismissed.

3. The trial Court on appraisal of oral and documentary evidence on record, by its judgment & decree held that the plaintiff is title holder and possession holder of the suit land bearing Khasra No.846, area 2.99 hectares, situated at Village Dewarbhat, Patwari Halka No.10, Tahsil Balod, Distt. Durg, but dismissed the suit holding that the court has no jurisdiction in view of Section 257(f) of the Code, as the revenue records can only be corrected by revenue court. On appeal being preferred by the plaintiff, the first appellate Court dismissed the appeal affirming the judgment & decree of the trial Court.

4. Mr. B.P. Gupta, learned counsel appearing for the appellants herein / LRs of the plaintiff, would submit that both the Courts below are absolutely unjustified in dismissing the suit after having held that the plaintiff is title holder and possession holder of the

suit land, they ought to have decreed the suit. He would further submit that the finding recorded that the suit is barred by virtue of Section 257(f) of the Code is also apparently illegal, as the two Courts below have clearly held that the plaintiff is title holder and possession holder of the suit land and the name of the Collector by notification Ex.D-1C dated 11-1-1988 as Manager cannot be entered into, as such, both the Courts below have committed illegality in dismissing the claim after holding the title and possession of the plaintiff over the suit land.

5. Mr. Ravi Kumar Bhagat, learned State counsel appearing for the respondents herein / defendants, would submit that both the Courts below have rightly dismissed the suit of the plaintiff in light of the notification dated 11-1-1988 reiterating the earlier notification dated 12-4-1974 and as such, the suit is barred by Section 257(f) of the Code.

6. I have heard learned counsel for the parties and considered their rival submissions made herein-above and went through the record with utmost circumspection.

Answer to substantial question of law No.1: -

7. It is the case of the plaintiff that the suit property is his private property, as he has purchased the same by registered sale deed dated 15-6-1976 vide Ex.P-9C from one Raghunandan Prasad which the trial Court has accepted him to be title holder and possession holder, but dismissed the suit holding it to be barred by Section 257(f) of the Code, as correction in revenue records

can be made only by Revenue Court, and the said finding has been affirmed by the first appellate Court, as such, the two Courts below have clearly held that the plaintiff is title holder and possession holder of the suit land, but the suit is held to be barred by Section 257(f) of the Code.

8. Section 257(f) of the Code reads as follows: -

> "**257. Exclusive jurisdiction of revenue authorities**.- Except as otherwise provided in this Code, or in any other enactment for the time being in force, no Civil Court shall entertain any suit instituted or application made to obtain a decision or order on any matter which the State Government, the Board, or any Revenue Officer is by this Code, empowered to determine, decide or dispose of, and in particular and without prejudice to the generality of this provision, no Civil Court shall exercise jurisdiction over any of the following matters:—
>
> (f) any claim against the State Government to have any entry made in any land records or to have any such entry omitted or amended."

9. Section 257 of the Code confers exclusive jurisdiction to the revenue authorities with respect to the matters mentioned therein. Exclusive jurisdiction has been conferred on the revenue authorities with respect to suit instituted or application made to obtain a decision or order or any other matter which the State Government, Board, or any other Revenue Officer is by this Code, empowered to determine, decide or dispose of.

10. A careful perusal of the aforesaid provision would show that if any claim against the State Government to have any entry made in any land records or to have any such entry omitted or amended, the revenue authorities shall have exclusive jurisdiction

and civil suit shall not be entertained. Clause (f) of Section 257 of the Code will not be a bar to omit or amend the entry which was not made by the revenue authorities in accordance with the provisions of the Code, but was made unauthorisedly alleging to be by the order of the State Government.

11. Here, in the present case, no such claim was made against the State Government to have any entry made in the land records or to have any entry omitted or amended. What the plaintiff claimed is that he is title holder and possession holder of the suit land and therefore name of the Collector as Sarvadhikar / manager could not have been entered into. Both the Courts below having held that the plaintiff is title holder and possession holder declined to grant decree in his favour on the ground that the suit is barred by the aforesaid provision i.e. Section 257(f) of the Code.

12. In the considered opinion of this Court, Section 257(f) of the Code is not attracted, at all, as the plaintiff has claimed his own right over the suit land and consequently, he wanted to have deletion of the name of the Collector unauthorizedly entered into in the revenue records, as the State has no jurisdiction to direct the name of the Collector to be recorded in the personal property or private property of an individual or a citizen.

13. Vide Ex.D-1C, the State Government has reiterated the circular dated 12-4-1974 by circular dated 11-1-1988 which states as under: -

मध्यप्रदेश शासन
राजस्व (शाखा–9) विभाग

18/सात–9/87, भोपाल, दिनांक : 11 जनवरी 88

समस्त कलेक्टर्स,
मध्यप्रदेश ।

विषय : शासन नियंत्रित देवस्थानों के भवनों पर नगरपालिका/नगरनिगम/ग्राम पंचायत रेकार्ड में व्यवस्थापक के रूप में कलेक्टर का नाम इन्द्रास करने बाबत ।

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शासन नियंत्रित देवस्थानों की भूमि पर पुजारी के नाम के साथ साथ संबंधित कलेक्टर के नाम का इन्द्राज प्रबंधक की हैसियत से करने बाबत इस विभाग के ज्ञाप क्रमांक 745/3683/आठ/73 दिनांक 12.4.1974 द्वारा जारी निर्देशों के तारतम्य में, शासन के ध्यान में यह बात लाई गई है कि देवस्थानों की भूमि के अतिरिक्त अन्य अचल सम्पत्तियों जैसे भवन आदि का खुर्द बुर्द न ही इसलिये राज्य शासन द्वारा निर्णय लिया गया है कि देवस्थानी भूमि के अतिरिक्त अन्य अचल सम्पत्तियों पर बतौर प्रबंधक की हैसियत से कलेक्टर, का नाम भी अंकित बकाया जावे ।

मध्यप्रदेश के राज्यपाल के नाम
से तथा आदेशानुसार
सही/–
(एस. एन. ध्रुव)
उप सचिव
मध्यप्रदेश शासन, राजस्व विभाग

14. A careful perusal of the circular dated 11-1-1988 (Ex.D-1C) would show that it relates to the Government controlled religious institutions and it nowhere directs the name of the Collector to be recorded in the revenue records in personal property of an individual.

15. The M.P. High Court (Division Bench) in the matter of **Sadashiv Giri and others v. Commissioner, Ujjain and others**[1] while considering the notification dated 12-4-1974 which has been reiterated by the notification dated 11-1-1988 (Ex.D-1C), held that the Collector cannot manage private temples and land belonging to a private temple cannot be treated as Government

1 1985 RN 317

land, and observed as under: -

> "9. There is also no substance in the contention of the learned counsel for the petitioners that the memo No. 745/3693/VIII/73 dated 12-4-74 (Annexure 4) issued by the Under Secretary, Survey & Settlement Department, Government of Madhya Pradesh, is unauthorised and invalid. By the said memo, the State Government has instructed all the Collectors that the name of the Collector should also be entered along with the name of the Pujari in the khasra of the lands belonging to temples, which are not Private trusts with a view to save the temple property from being disposed of unauthorisedly and to properly manage the same. This was done because complaints were received that the Pujaris of such temples were disposing such property unauthorisedly. It is difficult to appreciate how this memo can be challenged by the petitioners. This memo only applies to the property of the temples, which are not private trusts and according to the petitioners. the Ganpati temple is a private trust. If that be so, regarding which we express no opinion, the said memo does not affect the property belonging to the Ganpati temple."

16. The principle of law laid down in **Sadashiv Giri** (supra) has been followed subsequently in the matter of **Hargovind v. State of M.P.**[2] in which the M.P. High Court speaking through S.C. Pandey, J. has clearly held that the memorandum of the State Government dated 12-4-1974 does not relate to a private temple and it relates to only public temples and not to private temples, therefore, the S.D.O. had no power to interfere with the management of the property or the temple, which belongs to the private persons.

17. The principle of law laid down in the aforesaid case clearly applies to the present case. Ex.D-1C is a reiteration of memo dated 12-4-1974, therefore, the circular dated 12-4-1974 and

2 1999 RN 243

Ex.D-1C would relate to public temples and not to private temples and private lands held by individuals.

18. Admittedly and undisputedly, as per the finding recorded by the two Courts below, while answering issues No.1 & 2, the trial Court has clearly held that the plaintiff is title holder of the land bearing Khasra No.846, area 2.99 hectares, and name of the Collector was recorded in the revenue records as per the circular Ex.D-1C which cannot be directed in view of the fact that the aforesaid circular applies only to public temples, not to private temples and private lands.

19. Reverting to the facts of the present case, finally, in view of the discussion made herein-above, it is quite vivid that the suit land is the land held by the plaintiff in individual capacity, but the trial Court has committed error in declining to interfere on the ground that the suit is barred by Section 257(f) of the Code, however, the said provision is not applicable in the instant case, as the plaintiff has claimed the suit land on individual right and sought for interference of the Court in entering the name of the Collector as manager of the said suit land which has been directed pursuant to Ex.D-1C dated 11-1-1988 and which the M.P. High Court has clearly held that it would not apply to private temples / lands of private persons and for deletion, Section 257(f) of the Code would not be bar. Therefore, both the Courts below have concurrently committed legal error in dismissing the suit after having held that the plaintiff is title holder and possession holder

of the suit land. As such, following the decisions of the M.P. High Court in **<u>Sadashiv Giri</u>** (supra) and **<u>Hargovind</u>** (supra), it is held that the suit land being the private property of the plaintiff, the State Government has no jurisdiction to direct the name of the Collector to be entered into and it has wrongly and illegally been entered into which is without jurisdiction and without authority of law.

<u>Answer to substantial question of law No.2</u>: -

20. Undisputedly, as held by the two Courts below, the plaintiff is title holder and possession holder of the suit land. He brought an action for declaration that he is the title holder of the suit land, but in March, 2000, an announcement was made by the concerned Kotwar to the agriculturists to obtain copy of revenue records by payment of requisite fees in compliance of which, the plaintiff made an application for copy of Kishtbandi Khatauni B-1 for the year 1999-2000 and Panchshala Khasra for the year 1999-2000 which he received on 30-3-2000 and on which he came to know that along with his name, name of the Collector as Manager – "Sarvadhikar Radha Krishna Mandir, Prabandhak Collector, District Durg", has been recorded which led him to file suit for declaration of title and for permanent injunction and also for correction of revenue records and ultimately, he filed suit on 30-8-2001. As such, the plaintiff's suit for declaration of title under Article 58 of the Limitation Act cannot be held to be barred by limitation, as the cause of action of the instant case arose on 30-3-

2000 when the plaintiff received certified copies of revenue records recording the name of the plaintiff along with the Collector as Manager – "Sarvadhikar Radha Krishna Mandir, Prabandhak Collector, District Durg". Therefore, the finding of the two Courts below that the suit is barred by limitation is also perverse and contrary to record and is liable to be set-aside.

21. Accordingly, judgments & decrees of both the Courts below to the extent of declaring the suit to be barred by Section 257(f) of the Code is hereby set aside and the suit is decreed. The substantial questions of law are answered accordingly. It is ordered that the plaintiff is title holder and possession holder of the land bearing Khasra No.846, area 2.99 hectares, situated at Village Dewarbhat, Patwari Halka No.10, Tahsil Balod, Distt. Durg, and name of the Collector from the revenue records as "Sarvadhikar Radha Krishna Mandir, Prabandhak Collector, District Durg" is directed to be deleted forthwith. The defendants are restrained form interfering with the possession of the plaintiff over the said land.

22. The second appeal is allowed to the extent indicated herein-above. No order as to cost(s).

23. Decree be drawn-up accordingly.

Sd/-
(Sanjay K. Agrawal)
Judge

Soma