

HIGH COURT OF CHHATTISGARH, BILASPURSecond Appeal No.245 of 2005Judgment reserved on: 23-7-2019Judgment delivered on: 26-7-2019

Mahadeo (Dead) Through LRs

(Defendant)

1. Smt. Chaiti Bai, Wd/o Mahadeo, aged about 44 years,
2. Rajendra Batti, S/o Mahadeo, aged about 24 years,

Both R/o Village Dadargarh, Tahsil Keshkal, District Baster (C.G.)

---- Appellants

Versus

1. Loknath, S/o Budhsai Kalar, aged about 58 years, R/o Village Dadargarh, Tahsil Keshkal, Present R/o Village Kokadi, Distt. Bastar (C.G.)

(Plaintiff)

2. State of Chhattisgarh, through Collector, Kanker, Distt. Kanker (C.G.)

---- Respondents

For Appellants: Mr. Shobhit Koshta, Advocate.

For Respondent No.1: None present, though served.

For Respondent No.2 / State: -

Mr. Arun Shukla, Govt. Advocate.

Hon'ble Shri Justice Sanjay K. Agrawal
C.A.V. Judgment

1. This is defendant's second appeal which was admitted for hearing on the following substantial question of law: -

“Whether the Tahsildar has power to confer Bhoomi Swami rights over the suit land on defendant/appellant in accordance with provisions of Chhattisgarh Land Revenue Code, 1959?”

2. The suit land was originally held by the plaintiff being his ancestral property. Under the proceeding under Section 176 of the Chhattisgarh Land Revenue Code, 1959 (for short, 'the Code'), the suit land was declared abandoned. Thereafter, it was auctioned on lease for three

consecutive years in favour of defendant No.1 and by order dated 30-3-1991, the Tahsildar, Keshkal under the provisions contained in Section 190 read with Section 110 of the Code conferred him the rights of Bhoomiswami and directed his name to be mutated which was duly mutated. Thereafter, the plaintiff on 4-3-1993 had filed suit for declaration that he is title and possession holder of the suit land and auction made in favour of defendant No.1 by the State be declared invalid which was dismissed by the trial Court, but the first appellate Court reversed that finding and allowed the appeal of the plaintiff and decreed the suit against which defendant No.1 / original appellant has preferred this second appeal under Section 100 of the CPC in which substantial question of law has been formulated which has been set-out in the opening paragraph of this judgment.

3. Mr. Shobhit Koshta, learned counsel appearing for the appellants / LR's of original defendant No.1, would submit that the first appellate Court went wrong in holding that the preconditions required for Section 176 of the Code are not satisfied and therefore it could not have been declared abandoned by the State Government under Section 176 of the Code, as the proceeding and order under Section 176 was not under challenge. He would further submit that the auction was made in favour of defendant No.1, but that has also not been challenged and therefore the finding recorded by the first appellate Court that the preconditions mentioned in Section 176 of the Code were not satisfied and therefore the plaintiff is entitled for decree, is contrary to facts and law available on record, as the order vesting the land and the order granting Bhoomiswami right dated 30-3-1991 were never challenged and no declaration or cancellation of those orders were sought for by the plaintiff and as such, the judgment

& decree of the first appellate Court deserves to be set aside.

4. None present for respondent No.1 / plaintiff, though served.
5. I have heard learned counsel for the appellants / LRs of the original defendant and considered his submissions made herein-above and also went through the record with utmost circumspection.
6. It is the case of the plaintiff that the suit land was declared abandoned by the State Government in a proceeding initiated under Section 176 of the Code and stands vested with the State Government. It was further averred that the said land was auctioned in favour of defendant No.1 and the plaintiff sought declaration of title and possession and also sought that the auction proceeding be declared void, but no auction documents were sought to be cancelled or avoided by decree of the Court. The trial Court dismissed the suit, but the first appellate Court allowed the same on the ground that the preconditions of Section 176 of the Code are not satisfied.
7. On a careful perusal of record, it is quite vivid that though the plaintiff pleaded that proceeding under Section 176 of the Code was taken and his land was declared abandoned, but proceeding under Section 176 of the Code and order passed therein declaring the land abandoned and vesting the land with the State Government was not questioned by the plaintiff. Not only this, the plaintiff also stated that the suit land was auctioned in favour of defendant No.1 by adopting the procedure which is illegal in law and not in accordance with law, but surprisingly, the plaintiff neither challenged the auction proceeding of his land initiated and concluded under Section 176 of the Code nor, though the cancellation was sought, but no documents by which the auction was made were sought to be challenged seeking that cancellation.

8. It is well settled law that under Section 34 of the Specific Relief Act, the plaintiff seeking decree of declaration is also under obligation to sue for other consequential reliefs, as in this case, he ought to have sought for declaration of order passed under Section 176 of the Code declaring the suit land to be abandoned be declared void, if not the relief of cancellation.

9. The Supreme Court in the matter of Jugraj Singh and another v. Jaswant Singh and others¹ held as under: -

“We are also satisfied that the appellants were not entitled to a declaration. We have reproduced the para in which the reliefs were asked in the plaint. It will be noticed that they neither asked for the cancellation of the order of the Collector nor for any injunction, two of the reliefs which they were entitled to ask in the case in addition to the declaration. Such a suit would be hit by Section 42 of the Specific Relief Act and we would be quite in a position to deny them the declaration without these specific reliefs. Indeed they had only to ask for the setting aside of the order.”

10. In the matter of Santoshchandra v. Gyansunder Bai², a Full Bench of the M.P. High Court had held that where it is necessary for a plaintiff to avoid an agreement or a decree or a liability imposed, he must seek the relief of having that decree, agreement, instrument or liability set aside and he is not entitled to a declaration simpliciter in such cases. That has been followed in the matter of Partap and another v. Smt. Puniya Bai and others³.

11. Thus, as in the instant case, revenue proceeding and order has been passed declaring the plaintiff's land abandoned and vesting it to the State and thereafter, further it has been auctioned in favour of defendant No.1, unless and until the order under Section 176 of the Code and the order making the auction are challenged by the plaintiff

1 (1970) 2 SCC 386

2 AIR 1971 MP 1 (FB)

3 AIR 1977 MP 108

and relief is sought for quashment, the suit would be hit by Section 34 of the Specific Relief Act as held by Their Lordships of the Supreme Court in Jugraj Singh (supra). In the instant case, the plaintiff has miserably omitted to sue for declaration / cancellation of the order under Section 176 of the Code as well as the proceeding auctioning the land in favour of defendant No.1. As such, the revenue officer has power and jurisdiction under Section 176 of the Code to declare the land abandoned, even otherwise, the declaration that the plaintiff has abandoned his suit land under Section 176 of the Code is not under challenge in the civil suit. The substantial question of law is answered accordingly.

12. I do not find any substantial question of law for formulation in the cross-objection filed by the plaintiff/respondent No.1 herein. It is accordingly dismissed.
13. Concludingly, the judgment & decree passed by the first appellate Court deserves to be and is accordingly set aside and that of the trial Court is restored. The suit as framed and filed is dismissed. No order as to cost(s).
14. Decree be drawn-up accordingly.

Sd/-
(Sanjay K. Agrawal)
Judge