

HIGH COURT OF CHHATTISGARH, BILASPUR**Second Appeal No.113 of 2008****Judgment reserved on :27.01.2020****Judgment delivered on : 20.03.2020**

- 1.State of Chhattisgarh, Through the Collector, Rajnandgaon (CG)
- 2.Naib Tahsildar, Revenue Inspector Circle Khujji, District Rajnandgaon (CG)

----- Appellants/Defendants**Versus**

- 1.Rupnarayan Shukla, S/o Late Ramanand Shukla, Aged about 48 years,
- 2.Smt. Rajkumari, W/o Shiv Kumar Diwan, aged about 40 years,
Residents of village Tarpogi, Tahsil Bemetara, District Durg (CG)
- 3.Prakash Shukla (dead) through LR's
 - 3(a) Smt. Rani Shukla, Wd/o. Late Prakash Shukla, aged about 45 years,
 - 3(b) Pranaya Shukla, S/o Late Prakash Shukla, aged about 22 years,
 - 3(c) Sameer Shukla, S/o Late Prakash Shukla, aged about 20 years,
 All 3(a) to 3(c) are resident of village Latmata, Post Office-Chircharikala, Tehsil - Chhuria, District - Rajnandgaon, Chhattisgarh
- 4.Smt.Chandra Lekha, W/o M.S. Lal Sharma, aged about 30 years, Resident of village Harhi Sargaon, Tahsil Mungeli, District Bilaspur (CG)
- 5.Naresh Shukla, S/o Late Ramanand Shukla, aged about 33 years,
- 6.Tarun Shukla, S/o Late Ramanand Shukla, aged about 30 years,
- 7.Smt. Kevrabai, Widow of Late Ramanand Shukla, aged about 70 years,

Respondents No.1, 5, 6 & 7 are residents of village Lalmeta, Tahsil and District Rajnandgaon (CG)

8. Pradyuman, S/o Ram Sai Halba, aged about 26 years,

9. Santu (deleted)

10. Bhagat, S/o Raghunath Kanwar, Aged about 35 years,

11. Devlu, S/o Dhanu Kanwar, aged about 60 years,

12. Anantram, S/o Jagnu Halba, Aged about 30 years

Respondents No.8 to 12 are residents of village Lalmeta, Tahsil & District Rajnandgaon (CG)

---- Respondents

For Appellants/Defendants:

Mr.Ravi Kumar Bhagat, Dy.G.A.

For Respondents No.1 to 7:

Mr.V.K.Sharma, Advocate

Hon'ble Shri Justice Sanjay K. Agrawal

C.A.V. Judgment

1. The substantial question of law involved, formulated and to be answered in this second appeal preferred by the appellants/defendants is as under:-

"Whether both the Courts below were justified in holding that plaintiff has acquired 'bhoomiswami rights' over the suit land under the provisions contained in Chhattisgarh Land Revenue Code, 1959 and he is entitled for declaration of title and permanent injunction restraining the State from interfering with their possession by recording a finding which is perverse to the record ?"

[For the sake of convenience, the parties would be referred hereinafter as per their status shown and nomenclature in the suit before the trial Court].

2. The Superintendent of erstwhile State of Rajnandgaon had executed a patta in favour of Shri Ramsahay Shukla, father of the plaintiff, for cash consideration of ₹ 4600/- only up to 1943 to 1946 under the Mahakaushal Act, 1943 for the purpose of development of village Latmeta having total 608 acres of land and thereafter the land was distributed among the nearby cultivators and they were in continuous possession of the part of land given to them for cultivation. Plaintiff-Ramanand Shukla had retained some land bearing Khasra Nos.31/1 and 216/1, total area 27.25 acres as per Schedule appended with the plaint. In the meanwhile, the M.P. Land Revenue Code came into force w.e.f. 2nd October, 1959 giving the status of "land owners" against the land which they were in occupation or were cultivating the land personally. Thereafter, the jurisdictional patwari had submitted the encroachment report against the plaintiff before the Additional Tahsildar being Revenue Case No.105-A/68/1981 against original plaintiff Ramanand Shukla and that was taken cognizance of and by order dated 20.3.1984 the plaintiff was directed to remove encroachment on the disputed land, fine of ₹ 1500/- was also imposed upon him. In the meanwhile, the

plaintiff preferred an application before the Sub-Divisional officer, Rajnandgaon under Section 57(2) of the Land Revenue Code, 1959 (hereinafter called as 'Code'), which was registered as Revenue Case No.3A/1/1983-84 and that application was rejected by the SDO by order dated 17.1.2001. The plaintiff preferred appeal against that order before the Additional Collector, Rajnandgaon, which is said to be pending at the time of filing the suit as per para-4 of the plaint. It is further case of the plaintiff that on 5.7.2000 the Naib-Tahsildar, Khujji issued proclamation for distribution of disputed land bearing Khasra Nos.31 and 216/1, total 27.25 acres under the provisions of the Code and has invited objection against the proposed allotment of a part of land belonging to the plaintiff in favour of respondents No.8 to 12, leading to filing of the suit for declaration of title and permanent injunction by the plaintiff (who died during the pendency of the suit stating) inter-alia that he is only title-holder and possession holder of the suit land and he being title-holder of the suit land under section 57(2) of the Code, he be declared title-holder of the suit land appended with the plaint and also he be granted decree for permanent

injunction restraining the defendants from interfering with his peaceful possession.

3. The official defendants filed their written statement and denied the averments made in the plaint stating inter-alia that in 1979-80 the suit land was surveyed and adhikar abhilekh was prepared and Khasra Nos.31 and 216, area 30.50 acres was declared as government grass land and therefore, the suit land being government land, the State is competent to use it for public purpose and the plaintiff has no right and title over the suit land .

4. The trial Court upon evaluation and after appreciation of oral and documentary evidence available on record, by its judgment and decree dated 26.8.2006 held that the plaintiff is in possession of the suit land for last 58 years and under Section 57(2) of the Code, he is title-holder and therefore, entitled for permanent injunction restraining the defendants from interfering with his possession and that has been upheld by the first appellate Court in appeal preferred by defendants No.1 and 2/appellants herein, against which, this second appeal under Section 100 of the CPC has been preferred by the appellants/defendants No.1 and 2,

in which substantial question of law has been formulated by this Court, which has been set-out in the opening paragraph of this judgment.

5. Mr. Ravi Bhagat, learned Deputy Government Advocate for the appellants/defendants No.1 and 2, would submit that proceeding was initiated by the plaintiff before the Sub-Divisional Officer under Section 57(2) of the Code and that was rejected as per plaint allegation on 17.1.2001, but order of the SDO was not challenged by the plaintiff in the instant civil suit and even the plaintiff did not disclose the result of appeal preferred against the order of the SDO dated 17.1.2001, as such, that order has attained finality and therefore, the suit as framed and filed could not have been entertained by two Courts below in absence of challenge to order dated 17.1.2001 passed by the SDO under Section 57(2) of the Code and as such, the appeal deserves to be allowed and the judgment and decree passed by two Courts below deserve to be set aside by dismissing the suit.

6. Mr. V.K. Sharma, learned counsel for respondents No.1 to 7, would submit that two Courts below have rightly decreed the suit of the plaintiff and admittedly and undisputedly, the plaintiff is in

possession of the suit land for last 58 years, as such, no exception can be taken on account of non-questioning of order passed by the SDO under Section 57(2) of the Code as civil suit for declaration of title is the province of Civil Court and it is maintainable, as such, the second appeal deserves to be dismissed.

7. I have heard learned counsel for the parties and considered their rival submissions made hereinabove and also went through the records with utmost circumspection.

8. In order to consider the plea raised at the Bar, it would be appropriate to notice the provisions contained in Section 57 of the Code which states 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 rights 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 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 State Government.

(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.

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

9. A careful perusal of the aforesaid provision would show that any dispute between the State Government and any person in respect of any right under sub-section (1) shall be decided by the Sub-Divisional Officer under Section 57(2) of the Code and 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. Sub-section (4) of Section 57 of the Code provides where a civil suit has been instituted under sub-section (3) against any order such order shall not be subject to appeal or revision.

10. In the instant case, the dispute between the plaintiff and the State Government has been decided as per plaint averment (para-4) on 17.1.2001 by order of the Sub-Divisional Officer (Revenue) and suit has been instituted thereafter on 24.2.2001 before the trial Court, but legality and validity of order passed by the SDO under Section 57(2) of the Code adjudicating the dispute between the plaintiff

and the State has not been questioned by the plaintiff in the suit so instituted. The order passed by the SDO under Section 57(2) of the Code has become final and is binding on the plaintiff. He ought to have challenged the said order while filing civil suit, but it has not been challenged for the reasons best known to the plaintiff.

11. It is well settled law that even a void order or decision rendered between parties cannot be said to be non-existent in all cases and in all situations. Ordinarily, such an order will, in fact, be effective inter partes until it is successfully avoided or challenged in a higher forum.

12. The Supreme Court in the matter of State of Kerala v. M.K. Kunhikannan Nambiar Manjeri Manikoth, Naduvil (Dead) and others¹ has clearly held that even a void order or decision rendered between parties will be effective inter partes until it is successfully avoided by observing as under: -

"7. ... even a void order or decision rendered between parties cannot be said to be non-existent in all cases and in all situations. Ordinarily, such an order will, in fact, be effective inter partes until it is successfully avoided or challenged in a higher forum. Mere use of the word 'void' is not determinative of its legal impact. The word 'void' has a relative rather than an absolute meaning.

1(1996) 1 SCC 435

It only conveys the idea that the order is invalid or illegal. It can be avoided. ..."

- 13.** The Supreme Court following the principle of law laid down in M.K. Kunhikannan Nambiar's case (supra), in the matter of Krishnadevi Malchand Kamathia and others v. Bombay Environmental Action Group and others² again held that whether an order is valid or void, cannot be determined by the parties. For setting aside such an order, even if void, the party has to approach the appropriate forum. Their Lordships of the Supreme Court observed in paragraphs 17, 18 and 19 as under: -

"17. *In State of Punjab v. Gurdev Singh*³ this Court held that a party aggrieved by the invalidity of an order has to approach the court for relief of declaration that the order against him is inoperative and therefore, not binding upon him. While deciding the said case, this Court placed reliance upon the judgment in *Smith v. East Elloe RDC*⁴, wherein Lord Radcliffe observed: (AC pp. 769-70)

"... An order, even if not made in good faith, is still an act capable of legal consequences. It bears no brand of invalidity [on] its forehead. Unless the necessary proceedings are taken at law to establish the cause of invalidity and to get it quashed or otherwise upset, it will remain as effective for its ostensible purpose as the most impeccable of orders."

2(2011) 3 SCC 363

3(1991) 4 SCC 1

41956 AC 736 : (1956) 2 WLR 888 : (1956) 1 All ER 855

18. In *Sultan Sadik v. Sanjay Raj Subba*⁵, this Court took a similar view observing that once an order is declared non est by the court only then the judgment of nullity would operate *erga omnes* i.e. for and against everyone concerned. Such a declaration is permissible if the court comes to the conclusion that the author of the order lacks inherent jurisdiction/competence and therefore, it comes to the conclusion that the order suffers from patent and latent invalidity.

19. Thus, from the above it emerges that even if the order/notification is void/voidable, the party aggrieved by the same cannot decide that the said order/notification is not binding upon it. It has to approach the court for seeking such declaration. The order may be hypothetically a nullity and even if its invalidity is challenged before the court in a given circumstance, the court may refuse to quash the same on various grounds including the standing of the petitioner or on the ground of delay or on the doctrine of waiver or any other legal reason. The order may be void for one purpose or for one person, it may not be so for another purpose or another person."

14. Reverting to the facts of the present case, it is quite vivid that though the SDO has passed the order under Section 57(2) of the Code rejecting the dispute of title between him and the State raised by the plaintiff, but the plaintiff for the reason best known to him even did not brand the order of the SDO as invalid or illegal in the civil suit so instituted and as such, the order passed by the SDO under Section 57(2) of the Code has become final and

5(2004) 2 SCC 377

is binding on the parties to lis (plaintiff) unless it is successfully avoided, specially when the Supreme Court in M.K. Kunhikannan Nambiar's case (supra) and Krishnadevi Malchand Kamathia (supra) has clearly held that even an invalid or illegal order has to be avoided successfully or to be challenged in a higher forum, as such, in the suit filed he ought to have questioned the said order passed under Section 57(2) of the Code in the suit so brought seeking declaration that he is bhumiswami of the suit land.

15. There is one more reason for upholding the suit to be not maintainable.

16. The plaintiff's claimed that he is title-holder of the suit land and filed a suit for declaration of title, but did not seek consequential relief of setting aside the order of the SDO dated 17.1.2001.

17. The Supreme Court in the matter of Jugraj Singh and another v. Jaswant Singh and others⁶ in similar fact situation held that consequential relief of cancellation or setting aside the order of the revenue officer ought to have been sought by observing as under:-

"11. In these circumstances, we are satisfied that there was proper execution of the document and registration. It is

hardly necessary, in view of our decision, to say anything more about this case. We are also satisfied that the appellants were not entitled to a declaration. We have reproduced the paragraph 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."

As such, the present suit filed for declaration of title and permanent injunction was also hit by proviso to Section 34 of the Specific Relief Act, 1963 for non-questioning the order dated 17.2.2001 passed under Section 57(2) of the Code.

18. At this stage, it would be appropriate to notice the submission of learned counsel for the appellant/plaintiff that the suit for declaration of title is always the province of Civil Court and therefore, the suit was maintainable without questioning the order of the Sub-Divisional Officer dated 17.1.2001.

19. The Full Bench of the Madhya Pradesh High Court in the matter of Ramgopal Kanhaiyalal v. Chetu Batte⁷, has held that determination of the question of title is the province of the Civil Court and

unless there is any express provision to the contrary, exclusion of the jurisdiction of the Civil Court cannot be assumed or implied and held as under:-

"12. The scheme of the Code consistently preserves the jurisdiction of the civil Court to decide questions of title and that jurisdiction is not excluded. For instance, in the Chapter relating to mutation and record of rights (Chapter IX), Section 111 enacts:--

"The Civil Court shall have jurisdiction to decide any dispute to which the State Government is not a party relating to any right which is recorded in the record-of-rights."

Again, in a proceeding for partition, under Section 178, if any question of title is raised, the Tahsildar shall not make any partition until the question of title has been decided by the Civil Court.

14. It must be remembered that a Bhumiswami has a title though he is not the "Swami" of the "Bhumi" which he holds, in the sense of absolute ownership, because as declared in Section 257 of the Revenue Code, ownership of land vests in the State Government, yet, he is a Bhumiswami. He is not a mere lessee. His rights are higher and superior. They reakin to those of a proprietor in the sense that they are transferable and heritable, and, he cannot be deprived of his possession, except by due process of law and under statutory provisions, and his rights cannot be curtailed except by legislation."

20. The Full Bench finally answered the reference by holding that a party aggrieved is entitled to

maintain civil suit to establish his title and held as under:-

"17. We, therefore, hold that a Bhumiswami is not bound to avail himself of the speedy remedy provided in Section 250 of the Code. It is open to him to take recourse to the summary remedy under Section 250, or even without it straightway bring a suit in the Civil Court for declaration of his title and possession. Even if there has been a decision under Section 250 by a revenue Court, the party aggrieved may institute a civil suit to establish his title to the disputed land. We further hold that Nathu v. Dilbande Hussain, AIR 1967 M. P. 14 = 1964 Jab LJ 707 was correctly decided. The Civil Court can take cognizance of a suit. This is our answer to the questions referred to us."

21. Thereafter, the Supreme Court in the matter of **Rohini Prasad and others v. Kasturchand and another**⁸ noticed the Full Bench decision of Madhya Pradesh High Court in **Ramgopal** (supra) with approval and held that the civil suit for possession based on title is triable by the Civil Court and held as under:-

"8. In three different appeals coming to the Madhya Pradesh High Court, Hon'ble Judges sitting singly have consistently held that the civil suit of possession based on title is triable by the Civil Court. That being the law laid by the High Court of Madhya Pradesh while interpreting the code which applies to the State of Madhya Pradesh and having held the field for all these years, it is not desirable for the Supreme Court to give a different interpretation and to upset the settled law. Merely because a different

view is possible and that on that ground the decision of the High Court is erroneous, in our view, should not be a ground to interfere. Law should be certain and parties should know where they stand."

22. Thereafter, in the matter of Hukam Singh (Dead) by Lrs. and others v. State of M.P.⁹, the Supreme Court noticed Full Bench decision of Madhya Pradesh High Court rendered in Ramgopal Kanhaiyalal (supra) with reference to Section 57(2) of the Code and did not approve the judgment and decree of High Court by holding that suit for declaration of title sought by plaintiff therein in relation to his rights as a *Bhumiswami* was maintainable directly before Civil Court and followed the decision of Rohini Prasad (supra). Paragraphs 6 & 8 of the report state as under:

"6. A reading of the judgment of the trial court shows as if the suit was for declaration of title. We have seen the original plaint, which is in Hindi. The learned counsel for the State, on seeing the averments made in the plaint and the relief sought for, could not dispute that in the said suit, declaration was sought by the appellant in relation to his rights as a *Bhumiswami*.

8. The view taken by the Full Bench of the Madhya Pradesh High Court is affirmed by the Court in Rohini Prasad v. Kasturchand [(2000) 2 SCC 668]. This being the position, the first substantial question of law is wrongly decided by the High Court. Under the circumstances, the impugned order

9 (2005) 10 SCC 124

cannot be sustained. Consequently, the civil appeal is allowed and the judgment and decree passed by the High Court is set aside. The second appeal is remitted to the High Court for disposal afresh on merits accepting that the suit is maintainable, having regard to the law laid down by the Full Bench of the Madhya Pradesh High Court in **Ramgopal** as affirmed by this Court in **Rohini Prasad**."

- 23.** Thus, upon examination of the relevant statutory provisions and following the principles laid down by Their Lordships of the Supreme Court in the aforesaid cases and Full Bench decision of Madhya Pradesh High Court, it would appear that the instant civil suit for declaration of title and permanent injunction, claiming Bhumiswami rights over the suit land filed by the plaintiff in relation to his rights as a Bhumiswami, the civil suit was maintainable and cognizable by Civil Court and there is no bar under Section 57(2) of the Code, as Full Bench decision of the Madhya Pradesh High Court in **Ramgopal Kanhaiyalal** (supra) has been approved by the Supreme Court in **Rohini Prasad** (supra) and further in **Hukum Singh** (supra) it has been held that aggrieved Bhumiswami has remedy of filing a civil suit for establishing his title on the suit land of his Bhumiswami rights and for recovery of possession. But, in the instant case, the plaintiff having moved under Section 57(2) of the Code and having invited adverse order by the SDO dated 17.1.2001 cannot be permitted to directly file a suit for declaration of title and

permanent injunction without questioning the order passed by the SDO dated 17.1.2001 under Section 57(2) of the Code as that order has become final and is binding on the plaintiff and unless the order dated 17.1.2001 is challenged successfully in regular civil suit filed under Section 57(3) of the Code, the said order would remain binding on the plaintiff and the plaintiff would not be entitled for decree dehors the order dated 17.01.2001 passed by the SDO under Section 57(2) of the Code. Both the Courts below have committed illegality in holding that the plaintiff is entitled for decree of declaration of title and permanent injunction.

24. For the foregoing reasons, the judgment and decree of both the Courts below are set aside and the plaintiff's suit would stand dismissed.

25. The second appeal is allowed to the extent indicated hereinabove leaving the parties to bear their own cost(s).

26. Decree be drawn-up accordingly.

Sd/-

(Sanjay K.Agrawal)
Judge

B/-