AFR

HIGH COURT OF CHHATTISGARH, BILASPUR

Second Appeal No.433 of 2008

Judgment reserved on :16.07.2020

Judgment delivered on:10.08.2020

1. Radheshyam, S/o Kanshiram, Aged about 28 years, R/o Village Asnind (Kurraha), P.S. & Tahsil-Kasdol, District Raipur (CG)
2. Sushila Bai, D/o Kanshiram, Aged about 30 years, R/o Magranchaba, Tahsil-Baloda Bazar, District-Raipur (CG)

---- Appellants/Defendants

Versus

1. Malej, S/o Konda Kanwar, Aged about 68 years,
2. Jageshwar S/o Konda (Dead) Legal Representatives:-

   (a) Chhatram, S/o Jageshar, Aged about 14 years, Minor through legal guardian big father Malej S/o Konda Kanwar,

   (b) Gauri Bai, D/o Jageshar Kanwar,

   All Resident of Village Asnind, P.H.No.-133/6, Tahsil-Kasdol, District-Raipur (CG)

---- Plaintiffs

3. State of Chhattisgarh, Through Collector, Raipur, District-Raipur (CG)

---- Respondents

For Appellants/Defendants: Mr.H.V.Sharma, Advocate

For Respondents No.1 & LR's of Respondent No.2/ Plaintiffs: Mr.K.P.Sahu, Advocate

For Respondent No.3: Dr.Veena Nair, Dy.A.G.

Hon'ble Shri Justice Sanjay K. Agrawal

C.A.V. Judgment

1. This second appeal has been taken-up for final hearing through video conferencing.

2. This second appeal preferred by legal representatives of original defendant No.1 was admitted for hearing on 29.6.2010 by formulating the following substantial question of law:-

> "Whether the first appellate Court has committed an error of law by ignoring the material piece of evidence, i.e., the statement of plaintiff Malej before Tahsildar Kasdol vide Ex.D-1 and has thereby recorded a perverse finding to the effect that Berson was not the son of Maidan Kanwar?"

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

3. Two plaintiffs-Malej and Jageshwar being sons of Konda filed a suit for declaration of title, confirmation of possession and permanent injunction stating inter-alia that their father were two brothers namely Konda and Murit, they were sons of Maidan Kunwar. Murit died issueless. Mother of Berson was kept as keep by their grandfather Maidan Kunwar, but Berson was not son of Maidan Kunwar out of marriage and original defendant No.1-Ghasnin Bai was daughter of Berson and as such, Berson had no relation at all with the plaintiffs' family, but she

has got her name mutated in revenue records, which is totally unauthorized, therefore, original defendant No.1 has no right and title over the suit land and she has no right of partition and as such, the plaintiffs possession be confirmed over the suit land and decree for declaration of title and permanent injunction be granted in their favour.

4. Original defendant No.1-Ghasninbai (died and her legal representatives were brought on record) filed her written statement and pleaded that her grandmother was the wife of Maidan Kunwar as Maidan Kunwar has kept her mother as wife and out of their wedlock, Berson has taken birth. It was also pleaded that plaintiff No.1-Malej has made statement in mutation proceedings vide Ex.D-1 that Ghasninbai was daughter of Berson and Berson was brother of Konda, therefore, his father and name of Ghasninbai were also mutated in revenue records and therefore, the suit deserves to be dismissed as her name has validly been entered into revenue records and the plaintiffs are not entitled for any decree.

5. The trial Court upon appreciation of oral and documentary evidence available on record, by its judgment and decree 4.4.2005, dismissed the suit. The

plaintiffs preferred first appeal before the first appellate Court. The first appellate Court by the impugned judgment and decree 21.4.2008 allowed the appeal and decreed the suit of the plaintiffs granting decree for declaration of title and permanent injunction restraining legal representatives of defendant No.1 from interfering with their peaceful possession. Feeling aggrieved against that judgment and decree, this second appeal under Section 100 of the CPC has been filed by legal representatives of defendant No.1, in which substantial question of law has been formulated by this Court, which has been set-out in the opening paragraph of this judgment for sake of completeness.

6. Mr.H.V.Sharma, learned counsel for legal representatives of defendant No.1/appellants, would submit that plaintiff-Malej has already made statement before the Tahsildar, Kasdol vide Ex.D-1 that Ghasninbai is daughter of Berson and Berson was brother of his father Konda and prayer was made for addition of name of Ghasninbai also along with them, as such, statement made by plaintiff No.1 is an admission within the meaning of Sections 17 and 18 of the Indian Evidence Act, 1872 and therefore, it is

binding on the plaintiffs and thereby the first appellate Court has wrongly recorded a finding that Berson was not son of Maidan Kunwar, as such, the judgment and decree of the first appellate Court deserves to be set aside and the appeal be allowed restoring the judgment and decree of the trial Court.

7. Mr.K.P.Sahu, learned counsel for the respondents/plaintiffs, would submit that plaintiff No.1 has not made any such statement before the Tahsildar and mutation proceedings are not judicial proceedings. He would further submit that alleged admission, if any, of plaintiff No.1 would not bind plaintiff No.2, and therefore, the first appellate Court has rightly disbelieved Ex.D-1 and rightly decreed the suit of the plaintiffs, as such, this second appeal deserves to be dismissed.

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

9. It is the case of the plaintiffs that their grandfather Maidan Kunwar had kept Berson's mother as keep and there was no marriage at all between them and original defendant No.1-Ghasninbai being daughter

of Berson was not at all related with the plaintiffs' family, to which, original defendant No.1 claimed that plaintiff No.1 has made a statement before the Tahsildar, Kasdol (Ex.D-1) that original defendant No.1's father Berson was his father's brother and therefore, name of Ghasninbai be also mutated in revenue records along with them. Ex.D-1 states as under:-

"सा. अनावेदक पक्ष सा. कं. 1

शपथ पूर्वक बयान

मेरा नाम – मलेच्छ वल्द कोंदा, उम्र 45 वर्ष, व्यवसाय–कास्तकारी, निवास–कुर्रहा {असनींद}

सच बोलूंगा.

(1) मैं आवेदिका घसनीन बाई को जानता हूँ। यह बरिसन की पुत्री है। बरिसन मेरे पिता कोंदा का बड़ा भाई था।

(2) घसनीन को ग्राम कुर्रहा असनींद में लगभग 1.00 एकड़ जमीन कमाने खाने को हम लोग दिये हैं।

(3) घसनीन वादग्रस्त भूमि में अपना नाम चढ़ाना चाहती है तो उसमें उसका नाम चढ़ा दिया जावे।

(4) हमारे पिता कोंदा के हम लोग 2 वारिस उसके दोनों पुत्र कमशः मलेच्छ वो जगेसर है। हमाने पिता कोंदा भी फौत हो चुके हैं।

(5) बरिसन फौत हो चुका है। उसकी वारिस उसकी एक मात्र पुत्री घसनीन है।

(6) मुरितराम भी फौत हो गया है। उसका कोई वारिस नहीं है।

(7) वादग्रस्त खाते में घसनीन का नाम जोड़ दिया जावे तथा हमारे पिता का फौती भी उठा दिया जावे।

पढ़कर सुनाया सत्यस्वीकृत
सही/–
मलेज

सही/–
तहसीलदार
कसडोल

सही/–
तहसीलदार
कसडोल

10. A careful perusal of Ex.D-1 would show that it does not bear signature of plaintiff NO.1 Malej and it is undated. Ex.P-2 is order-sheet of Naib-Tahsildar, Kasdol dated 28.6.96 in which it has been recorded that Malej has refused to sign in the said statement, which states as under:-

न्यायालय नायब तहसीलदार कसडोल के न्या0 का रा0मा0 कमांक 13/26 वर्ष 95–96 आवेदिका घसनीन विरूद्ध मलेच्छ ग्राम घसनींद पह 133 तहसील कसडोल जि0 रायपुर म0प्र0

28/6/96 आवेदिका घसनीन उपस्थित ।
इसके साक्ष्य लाल सा का कथन अंकित किया गया।
अनावेदक मलेच्छ को सुना गया। इसका कथन अंकित किया गया। इसने हस्ताक्षर करने से इंकार किया। इसका सुनवाई का अवसर भी समाप्त किया गया।
ह0 पटवारी को निर्देशित किया जाता है कि वह पक्षकार के मध्य 1/2 हिस्से में फर्द सूची पेश करे।

29/6/96 हस्ता/सही
नायब तहसीलदार
कसडोल

11. The question for consideration would be, whether such a statement made by plaintiff No.1-Malej would be binding on him and statement made by plaintiff No.1-Malej in mutation proceedings would be "evidence" within the meaning of Section 3(1) of the Indian Evidence Act, 1872 ?

12. Section 3(1) & (2) of the Indian Evidence Act, 1872 which defines "evidence" state as under:-

> "Evidence".-"Evidence" means and includes-
> (1) all statements which the Court permits or requires to be made before it by witnesses, in relation to matters of fact under inquiry, such statements are called oral evidence.
>
> (2) all documents including electronic records produced for the inspection of the Court,
>
> such documents are called documentary evidence.

13. "Court" has been defined in Section 3 of the Indian Evidence Act, 1872 which means the "Court" includes all Judges and Magistrates, and all persons except arbitrators, legally authorized to take evidence.

14. Section 31 of the Chhattisgarh Land Revenue Code, 1959 confers status of Courts on Board and Revenue Officers and it provides that the Board of a Revenue Officer, while exercising power under this Code or any other enactment for the time being in force to enquire into or to decide any question arising for determination between the State Government and any person or between parties to any proceedings, shall be a Revenue Court. Undisputedly, Tahsildar is a Revenue Officer by virtue of Section 11 of the Code of 1959.

15. The Privy Council in the matter of **(Thakur) Nirman Singh and others v. Thakur Lal Rudra Partab**

Narain Singh and others[1] has held that mutation proceeding is not a judicial proceeding and does not decide title and is no evidence of exclusion from property.

16. The above-stated decision has been further followed by the Privy Council in the matter of **Nand Kishwar Bux Roy v. Gopal Bux Rai and others**[2] and it has been held that mutation proceedings are merely in the nature of fiscal inquiries, instituted in the interest of the State for the purpose of ascertaining which of the several claimants for the occupation of the property may be put into occupation of it with the greater confidence that the revenue for it will be paid.

17. In the matter of **Mahila Bajrangi (Dead) through LRS. and and others v. Badribai w/o Jagannath and another**[3] with reference to Section 110 of the MP Land Revenue Code, Their Lordships of the Supreme Court have clearly held that mutation proceedings before the Revenue Authorities are not judicial proceedings in any court of law and does not decide questions of title to immovable property is a trite position and principle of law. It was held as under:-

---

1 AIR 1926 Privy Council 100
2 AIR 1940 Privy Council 93
3 (2003) 2 SCC 464

"6. Explanation (VIII) to Section 11 CPC on which strong reliance has been placed, in addition to certain judgments brought to our notice can be of no assistance whatsoever to the appellants in this regard. The said Explanation stipulates that an issue "heard and finally" decided though by a court of limited jurisdiction, which the said "court" is competent to decide such an issue, shall operate as res judicata in a subsequent suit, notwithstanding that such court of limited jurisdiction was not competent to try such subsequent suit in which such issue has been subsequently raised. Merely because in exercising powers under Section 110 of the Code for mutation of acquisition of rights in the field books and other relevant land records, the Tehsildar was obligated to afford reasonable opportunity of being heard to the persons interested and hold further inquiry as may deem necessary into the claim, before making necessary entries or that some witnesses were examined by such authority, though not substantiated that he had any power to administer oath or compel and enforce attendance of witnesses, it cannot be elevated to the status of "court" and its orders credited with the force and efficacy of a decision of a Court of justice in a judicial proceeding. Such entries made in land records even as per the Code, shall be presumed to be correct only until the contrary is proved. Section 111 of the Code provides that 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. Consequently, it could not legitimately be claimed that the Tehsildar or authorities exercising powers of mutation (original, appellate or revisional) have been accorded the status of civil courts or courts of exclusive jurisdiction and for that matter, to use such orders as a basis or source for asserting a claim of res judicata before a competent civil court in a subsequent suit involving adjudication of title to the immovable property. That

> mutation proceedings before Revenue Authorities are not judicial proceedings in any Court of law and does not decide questions of title to immovable property is a trite position and principle of law vide Thakur Nirman Singh & Ors vs Thakur Lal Rudra Partab Narain Singh and Ors (supra)....”

18. Going by the principle of law laid down by the Privy Council and the Supreme Court in the above-stated judgments (supra), it is quite vivid that mutation proceedings are not judicial proceedings though the Revenue Officers under the Code have been conferred with status of Court and therefore, any statement made by any person before Revenue Officer/Revenue Court in mutation proceedings is not a statement in the Court and therefore, the said statement would not be “evidence” within the meaning of Section 3(1) of the Indian Evidence Act, 1872.

19. In the matter of **Ambika Prasad Thakur and others etc v. Ram Ekbal Rai (dead) by his legal representatives and others etc**[4], Their Lordships of the Supreme Court have held that admission made by witness in other litigation is admissible against him alone and not against other defendants.

20. Reverting to the facts of the present case in the light of aforesaid legal position, it is quite vivid that the first appellate Court has clearly held

4 AIR 1966 SC 605

that Ex.D-1, the statement by which plaintiff No.1 has allegedly admitted certain facts admitting the father of defendant No.1 to be his father's brother, in which plaintiff No.1 has refused to sign duly recorded ordersheet (Ex.P-2) on 28.6.96 by Naib-Tahsildar, Kasdol and even order-sheet has not been signed by plaintiff No.2-Jageshwar and therefore, it is doubtful. Once the alleged statement (Ex.D-1) is not signed by plaintiff No.1 before the Naib-Tahsildar, Kasdol and that too in duly recorded proceeding (Ex.P-2), it cannot be said to be statement of plaintiff No.1 and cannot be said to be admission of the plaintiffs. Similarly, mutation proceedings under Section 110 of the Chhattisgarh Land Revenue Code are not judicial proceedings conducted by the Court as held by the Supreme Court in **Mahila Bajrangi** (supra) and Privy Council in the above-stated judgments (supra), therefore, such a statement/admission of plaintiff No.1 before the Revenue Officer in a mutation proceeding would not statement within the meaning of “evidence” under Section 3 (1) of the Evidence Act, 1872 and alleged admission, if any, would not be an admission under Sections 17 and 18 of the Indian Evidence Act, 1872

and even otherwise, admission alleged to have made by plaintiff No.1 is not binding to plaintiff No.2. The finding recorded by the first appellate Court in this behalf is a finding of fact based on evidence available on record and has rightly held that Berson was not son of Maidan Kunwar and original defendant No.1-Ghasninbai being daughter of Berson had no right and title over the suit property, as such, the first appellate Court is absolutely justified in granting the appeal filed by the plaintiffs. I do not find any illegality or perversity in the said finding. The substantial question of law is answered in favour of the plaintiffs and against the defendants.

21. Accordingly, the second appeal being devoid of merit is liable to be and is hereby dismissed leaving the parties to bear their own cost(s).

22. A decree be drawn-up accordingly.

Sd/-

(Sanjay K.Agrawal)
Judge

B/-