

HIGH COURT OF CHHATTISGARH, BILASPURSecond Appeal No.456 of 2009

1. Anand Sai S/o. Late Chandar Sai, aged about 90 years, Caste Rautia,
 2. Shivcharan Sai S/o. Late Narayan Sai, aged about 57 years,
 3. Shivkumar Sai S/o. Late Narayan Sai, aged about 45 years,
 4. Bhimprasad Sai S/o. Late Narayan Sai, aged about 40 years,
 5. Lavkush Sai S/o. Late Sukhbilas Sai, aged about 23 years,
 6. Bahura Sai S/o. Late Sukhbilas Sai, aged about 20 years,
 7. Bhuneshwar Sai S/o Late Bithusai, aged about 29 years,
 8. Pusa Sai S/o. Late Sanwar Sai, aged about 60 years,
 9. Haljeet Sai, S/o. Late Sundarnath Sai, aged about 30 years,
 10. Garju Sai S/o. Late Batu Sai, aged about 45 years,
- All of Caste Rautia, Occupation-Agriculture, R/o. Village Harradipa, Tahsil and District Jashpur (CG)

----- Appellants/
(Plaintiffs)

Versus

The State of Chhattisgarh Through Collector,
District-Jashpur (CG)

----- Respondent/
(Defendant)

For Appellants/Plaintiffs:

Mr.A.K.Prasad, Advocate

For Respondent/Defendant:

Mr.Ravi Kumar Bhagat, Dy.Govt.Advocate

Hon'ble Shri Justice Sanjay K. Agrawal

Judgment on Board (through video conferencing)

18/08/2020

1. The substantial questions of law involved, formulated and to be answered by this Court in the appeal preferred by the appellants/plaintiffs are as under: -

i. Whether the first appellate Court was justified in holding that the civil suit, as framed and filed, was barred by Section 57(2) of the Chhattisgarh Land Revenue Code, 1959 as the plaintiffs could not have approached the Civil Court directly ?

ii. Whether the first appellate Court was justified in dismissing the suit of the plaintiffs as barred by limitation by recording a finding which is perverse and contrary to the record, as no such plea was raised before the trial Court?

(Parties will hereinafter be referred as per their status shown and ranking given in the suit before the trial Court.)

2. The suit property shown in Schedule 'A' of the plaint was earlier held by Raja Bahadur and Raja Deosharan Singh Dev of Jashpur, who were having authority of the land and cultivating the suit land through Jamindar Durga Prasad Sai. It is the case of the plaintiffs that ancestors of the present plaintiffs have been allotted the suit land by the then Jamindar Durga Prasad Sai and since then the

suit lands were cultivated by their ancestors and thereafter the plaintiffs are cultivating the suit lands and giving revenue to the Jamindar through Khorposdar of the area and for the sake of convenience they have divided the suit lands in several parts and each of the persons are having not more than 15-20 acres of the land. After coming into force of the Madhya Pradesh Land Revenue Code, 1959 (hereinafter called as 'the Code'), the plaintiffs have perfected their right of bhumiswami. When they moved an application for mutation under Section 110 of the Chhattisgarh Land Revenue Code, 1959 (hereinafter called as 'Code'), the Naib-Tahsildar, Jashpur by order dated 30.3.2007 (Ex.P-1) rejected their application which has given them cause of action to file the instant suit for declaration of title.

3. The State remained ex-parte before the trial Court as well as before the first appellate Court, therefore, did not file either written statement or led no evidence to support of their stand.
4. The trial Court dismissed the suit by its judgment and decree dated 16.10.2008 on merits holding that the suit land has already been vested with the State Government vide Ex.P-6 on 29.3.89 under the

provisions of the Madhya Pradesh Ceiling on Agricultural Holdings Act, 1960 (hereinafter called as 'the Act of 1960') and the suit filed by Naik Nityanand Prasad Sai and another v. Anand Sai and others has already been dismissed vide Ex.P-5 in Civil Suit No.3A/70, decided on 8.9.75. On appeal being preferred by the plaintiffs, the first appellate Court dismissed the appeal on the basis of having been barred by the provisions contained in Section 57(1) of the Code as well as on the ground of limitation, against which, this second appeal under Section 100 of the CPC has been filed by the appellants/plaintiffs, in which substantial questions of law have been formulated, which have been set-out in the opening paragraph of this judgment for sake of completeness.

5. Mr.A.K.Prasad, learned counsel for the appellants/plaintiffs, would submit that the plaintiffs without raising any dispute under Section 57(1) of the Code directly approached the Civil Court for declaration of title and confirmation of possession which could not be said to be barred by the provisions contained in Section 57(1) of the Code in view of decision of the Supreme Court in the matter of Hukum singh (Dead)

by LRS. and others v. State of M.P.¹, as such, plea of limitation was not raised before the trial Court, therefore, the appeal could not have been dismissed by the first appellate Court, as such, the judgment and decree of both the Courts below deserve to be set aside and the suit deserves to be decreed.

6. On the other hand, Mr. Ravi Bhagat, learned Deputy Government Advocate for the respondent/defendant, would submit that admittedly and undisputedly vide Ex.P-6 the suit land was vested with the State Government under the provisions of the Act of 1960 and against the order of the competent authority under the Act, the jurisdiction of the civil Court is barred by virtue of the provisions contained in Section 46 of the Act of 1960 and further, the order of the competent authority dated 29.3.89 (Ex.P-6) was even not challenged in the said civil suit, by which the plaintiffs have held to be encroachers by the competent authority under the Act of 1960 and that order has attained finality and therefore, the appeal deserves to be dismissed.

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

¹ (2005) 10 SCC 124

circumspection.

8. Admittedly, the suit land belonged to Raja Bahadur and Raja Deosharan Singh Dev of Jashpur and Durgaprasad Sai was the Jamindar. It is the case of the plaintiffs that Jamindar had allotted the suit lands to the plaintiffs forefather and since then, they are in possession by giving land revenue to Jamindar through Khorposdar of the area, as such, they are in possession of the suit land. It is not in dispute that Jamindar of Jashpur and erstwhile Jamindar Naik Nityanand Prasad Sai filed a suit bearing Civil Suit No.3A/70 (Naik Nityanand Prasad Sai and another v. Anand Sai and others), which was dismissed by the civil Court on 8.9.75 on merits and thereafter in ceiling proceedings vide Ex.P-6 (State of Madhya Pradesh v. Shivgovind Prasad Sai S/o Durgaprasad Sai, Nityanand Prasad Sai S/o Durgaprasad Sai and Laxmi Kumari Wd/o Durgaprasad Sai) the suit land was vested with the State Government by the order of the competent authority under the Act of 1960 on 29.3.89 vide Ex.P-6 and objection of the plaintiffs that they have become occupancy tenant of the suit land under the Code was expressly rejected holding that the plaintiffs are only encroachers upon the suit land and the

order of the competent authority under the Act of 1960 has become final in absence of further challenge by the then holders of the suit land or by the plaintiffs in earlier suit or in the instant suit as the order of the competent authority dated 29.3.89 (Ex.P-6) has not been shown to be set aside either by the appellate authority or any other competent Court of law, as such, at present the position of the suit land is that the suit land stands vested with the State Government by the provisions contained in the Act of 1960 and the plaintiffs are claiming title over the suit land without questioning the order of competent authority vesting the suit land to the State Government under the Act of 1960.

9. Once the State Government has held to be titleholder by vesting order of the competent authority under the Act of 1960, the plaintiffs, if any, ought to have questioned the order of the competent authority, if appropriate by the instant suit. Even that order has not assailed in the instant civil suit and therefore, unless the order of vesting the suit land with the State Government is set aside, the plaintiffs cannot get any title.

10. In order to have a proper comprehension of the

attack made to the decree, it would be profitable to have a look of Section 57 of the Code, which runs 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 Sub-divisional Officer.

(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."

11. From a careful and close perusal of sub-section (2) of Section 57 of the Code, it would appear that where a dispute arises between the State Government and any person in respect of any right under sub-section (1), such dispute shall be considered and decided by the Sub-Divisional Officer.

12. From a careful and close perusal of sub-section (1) of Section 57 of the Code, it would appear that 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.

13. The short question that needs consideration is whether claim of Bhumiswami rights over the suit land would be right under Section 57(1) of the Code, by which, the plaintiff is required to raise a dispute before the Sub-Divisional Officer under sub-section (2) of Section 57 of the Code and can institute the suit only after adjudication by Sub Divisional Officer.

14. The question posed for consideration is no longer *res integra*. The Full Bench of the Madhya Pradesh High Court in the matter of Ramgopal Kanhaiyalal v. Chetu Batte², 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

2 AIR 1976 Madhya Pradesh 160(1)

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."

15. 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."

16. Thereafter, the Supreme Court in the matter of Rohini Prasad and others v. Kasturchand and another³ noticed the Full Bench decision of Madhya Pradesh High Court with approval in Ramgopal (supra) 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."

17. Thereafter, in the matter of Hukam Singh (supra), 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 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**."

18. Apart from this, in the matter of **State of Madhya Pradesh etc. v. Balveer Singh etc.**⁴, the Full Bench of Madhya Pradesh High Court has held that the

4 AIR 2001 MP 268

determination of question of Bhumiswami rights is within the province of the Civil Court excepting the cases falling within the ambit of those specified under Section 257 of the Code and held as under:-

"66. In view of what has been discussed and noticed hereinabove, the question referred to for consideration are answered as follows-

Question No. (1)-

The "right" contemplated under Section 57 (2) of the Madhya Pradesh Land Revenue Code, 1959 is a right other than the cultivatory right in respect of the land as defined under Section 2(1)(k) which stands secured in favour of a Bhumiswami, occupancy tenants or a Government lessee as defined under the said Code and this right has to be taken to be confined to the proprietary rights including those rights which are vested in the State by operation of law under the enactments in force prior to the coming into effect of the aforesaid Code.

Question No. (2)-

There can be no distinction as to the forum with respect of the rights of Bhumiswami acquired after coming into force of the Madhya Pradesh Land Revenue Code, 1959 and the Bhumiswami rights acquired on the basis of pre-existing rights.

Question No. (3)-

The determination of question of Bhumiswami rights is within the province of the Civil Court excepting the cases falling within the ambit of those specified under Section 257 of the Code."

19. 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 plaintiffs in relation to their 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.

20. Reverting to the facts of the present case in light of the provisions contained in Section 57(1) of the Code, it is quite vivid that in the instant suit, title of the suit land has already been vested with the State Government on 29.3.89 vide Ex.P-6 by virtue of the provisions contained in the Act of 1960 and that order has attained finality and

therefore, by virtue of the provisions contained in Section 46 of the Act of 1960 as well as by virtue of the provisions contained in Section 57(1) of the Code, the first appellate Court has rightly held that civil suit as framed and filed was not maintainable unless dispute is raised under Section 57(1) of the Code. I do not find any perversity in the said finding recorded by the first appellate Court. Similarly, once the civil suit is not maintainable having been barred, the first appellate Court is also justified in dismissing the appeal as barred by limitation. I do not find any merit in this second appeal preferred by the appellants.

21. Accordingly, the second appeal deserves to be and is hereby dismissed by answering the substantial questions of law in favour of the defendant and against the plaintiffs leaving the parties to bear their own cost(s).

22. A decree be drawn-up accordingly.

Sd/-
(Sanjay K. Agrawal)
Judge

B/-