

HIGH COURT OF CHHATTISGARH, BILASPUR**Second Appeal No.279 of 2010****Judgment reserved on: 16-2-2021****Judgment delivered on: 2-3-2021**

Smt. Heminbai, W/o Shivcharan Sahu, aged about 68 years,
Cultivator and resident of Village Kosrangi, Tahsil and District
Mahasamund.

(Plaintiff)
---- Appellant

Versus

1. The State of Madhya Pradesh (the State of Chhattisgarh),
through the Collector, Mahasamund.
2. The Competent Authority cum Sub-Divisional Officer,
Mahasamund, District Mahasamund.
3. Smt. Brindabai (dead) through Legal Representative – Atanya
Arjun, S/o Bahadur Lal Sahu, aged about 27 years, R/o
Kosrangi, Post Bacheda, Tahsil & District Mahasamund (C.G.)
(Defendants)
---- Respondents

For Appellant / Plaintiff: -

Mr. A.K. Prasad, Advocate.

For Respondents No.1 & 2 / Defendants No.1 & 2 / State: -

Mr. Ravi Kumar Bhagat, Deputy Govt. Advocate.

For Respondent No.3 / LR of original Defendant No.3: -

Mr. Ravindra Agrawal, Advocate.

Hon'ble Shri Justice Sanjay K. Agrawal

C.A.V. Judgment

1. This second appeal preferred under Section 100 of the CPC
by the appellant herein / plaintiff was admitted for hearing on
1-2-2021 by formulating the following substantial question of
law: -

“Whether the First Appellate Court is justified in
reversing the judgment and decree of the Trial

Court and thereby dismissing the suit filed by the plaintiff holding that she was not competent to institute a suit against the order of the Competent Authority passed under the provisions of the Chhattisgarh Ceiling on Agricultural Holdings Act, 1960 by recording a finding perverse to the record?”

Thereafter, on 9-2-2021, following additional substantial question of law was framed and parties herein were noticed on the additional substantial question of law and they were heard also: -

“Whether the First Appellate Court is justified in reversing the judgment and decree of the Trial Court by holding that the order of the Competent Authority dated 19.05.1976 (Ex-P-4) is in accordance with law by recording a finding perverse to the record?”

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

2. In a proceeding initiated under the M.P. (Chhattisgarh) Ceiling on Agricultural Holdings Act, 1960 (for short, ‘the Ceiling Act’) on 21-1-1976 in Revenue Case No.2247-B/92 year 74-75 (State of Madhya Pradesh v. Brinda Bai), the competent authority under the Act passed order on 19-5-1976 rejecting the objection of the plaintiff and vesting 9.54 acres of land in the Government in exercise of power conferred under sub-section (4) of Section 11 of the Ceiling Act and further directed for issuance of final draft statement. The plaintiff / objector filed suit under Section 11(5) of the Ceiling Act on 18-8-1976 seeking that the order of the competent authority is illegal and bad in law and that be declared illegal and for

declaration of her title. It is the case of the plaintiff that the suit property was originally held by Jirau, his first wife was Jhehli Bai and second wife was Brinda Bai – original defendant No.3. The plaintiff is daughter of Jirau out of his wedlock with first wife Jhehli Bai, whereas Brinda Bai is second wife of Jirau. It is the further case of the plaintiff that in partition, the suit land i.e. 9.54 acres fell in her share and her name has also been recorded in the revenue records and she along with defendant No.3 has also alienated the suit house vide Ex.P-3 and her name has also been recorded in the revenue records, but the aforesaid fact has been ignored by the competent authority, as such, she is entitled for declaration of invalidation of the order of the competent authority.

3. Defendant No.1 – the then State of Madhya Pradesh, filed its written statement opposing the plaint allegations stating inter alia that in order to circumvent the provisions of the Ceiling Act, the plea of partition has been setup which is a plea to come out of the clutches of the Ceiling Act, as such, the competent authority has rightly declared the suit land to be vested in the State Government and directed for publication of final draft statement. However, defendant No.3 Brinda Bai supported the claim of the plaintiff.
4. The trial Court upon appreciation of oral and documentary evidence available on record, decreed the suit of the plaintiff and held that the plaintiff is title holder and possession holder of 9.54 acres of land and restrained the defendants from

interfering with her peaceful possession.

5. Questioning the judgment and decree of the trial Court, the State of Madhya Pradesh and the competent authority-cum-Sub-Divisional Officer preferred first appeal before the first appellate Court. The first appellate Court allowed the appeal and set aside the judgment & decree of the trial Court and further held that the jurisdiction of civil court is barred and Hemin Bai had no right and title to file suit, as the holder of the property is Brinda Bai – original defendant No.3 and the plaintiff has no right and title over the suit property against which this second appeal has been preferred by the plaintiff in which substantial questions of law have been formulated which have been set out in the opening paragraph of this judgment for the sake of completeness.
6. Mr. A.K. Prasad, learned counsel appearing for the appellant herein / plaintiff, would submit that the first appellate Court went absolutely wrong in holding that plaintiff Hemin Bai had no right to institute suit, as the first appellate Court ignored the fact that Hemin Bai objected the ceiling case under Section 11(3) of the Ceiling Act and she is having interest over the suit property, particularly the suit land of 9.54 acres as the same was allotted to her on partition and therefore she being objector was allowed to adduce evidence to prove her title summarily by the competent authority and the same has been prima facie considered by the competent authority also under Section 11(4) of the Ceiling Act. Therefore, the first appellate Court is not justified in holding that the plaintiff had

no right to institute suit and even otherwise, the plaintiff's suit was filed under Section 11(5) of the Ceiling Act (un-amended which was amended with effect from 1-11-1998) and suit was maintainable against the order passed under Section 11(4) of the Ceiling Act. Further, the plaintiff has proved her title over the suit land. Therefore, the first appellate Court is absolutely unjustified in reversing the judgment and decree of the trial Court. Mr. Prasad would rely upon the decisions of the Supreme Court in the matters of Digambar Adhar Patil v. Devram Girdhar Patil (died) and another¹ and Vineeta Sharma v. Rakesh Sharma and others² and that of the Madhya Pradesh High Court in the matter of Vijaysingh and another v. Competent Authority, Sub-Divisional Officer, Tarana³ to buttress his submission.

7. Mr. Ravindra Agrawal, learned counsel appearing for respondent No.3 herein / legal representative of original defendant No.3, would support the impugned judgment and submit that the original holder of the suit land was Brinda Bai and though objection of the plaintiff was considered by the competent authority, but there is no evidence on record to hold that the suit property was allotted to Hemin Bai on partition by Jirau, as such, the appeal deserves to be dismissed and judgment & decree of the first appellate Court deserve to be upheld. He relied upon the decision of the Supreme Court in the matter of Dharam Singh (dead) through

1 1995 Supp (2) SCC 428

2 (2020) 9 SCC 1

3 AIR 1978 MP 72 (FB)

legal representatives and others v. Prem Singh (dead) through legal representatives⁴ and that of the Madhya Pradesh High Court in the matter of Churamani v. Ramadhar⁵ in support of his contention.

8. Submission of Mr. Ravi Kumar Bhagat, learned State counsel appearing for respondents No.1 & 2 herein / defendants No.1 & 2, is that the order of the competent authority declaring the suit land as surplus, is in accordance with law and the suit has rightly been dismissed.
9. I have heard learned counsel for the parties and considered their rival submissions made herein-above and also went through the record with utmost circumspection.

Answer to the first substantial question of law: -

10. The trial Court decreed the suit filed by the plaintiff against which first appeal was preferred by the then State of Madhya Pradesh, whereas the first appellate Court has reversed the decree of the trial Court. The first appellate Court while reversing the decree of the trial Court has clearly held that since the plaintiff was not holder of the land within the meaning of Section 2(h) of the Ceiling Act and only an objector in the ceiling proceeding, she was not entitled to institute suit under Section 11(5) of the Ceiling Act and in fact, the suit was not maintainable at her instance. In order to judge the correctness of the said finding, it would be appropriate to notice Sections 11(3) to 11(6) of the Ceiling Act

⁴ (2019) 3 SCC 530

⁵ 1991 MPLJ 311

which state as under: -

“(3) The draft statement shall be published at such place and in such manner as may be prescribed and a copy thereof shall be served on the holder or holders concerned, the creditors and all other persons interested in the land to which it relates. Any objection to the draft statement received within thirty days of the publication thereof shall be duly considered by the competent authority who after giving the objector an opportunity of being heard shall pass such order as it deems fit.

(4) If while considering the objections received under sub-section (3) or otherwise, the competent authority finds that any question has arisen regarding the title of a particular holder and such question has not already been determined by a court of competent jurisdiction, the competent authority shall proceed to enquire summarily into the merits of such question and pass such orders as it thinks fit:

Provided that if such question is already pending for decision before a competent court, the competent authority shall await the decision of the court.

(5) The order of the competent authority under sub-section (4) shall not be subject to appeal or revision, but any party may, within three months from the date of such order, institute a suit in the civil court to have the order set aside, and the decision of such court shall be binding on the competent authority, but subject to the result of such suit, if any, the order of the competent authority shall be final and conclusive.

(6) After all such objections, pending proceedings and the suit, if any, filed under sub-section (5) have been disposed of, the competent authority shall, subject to the provisions of the Act and the rules made thereunder, make necessary alterations in the draft statement in accordance with the orders passed on objections, the decision of the competent court and the decision of the civil suit, as the case may be, and shall declare the surplus land held by each holder. The competent authority shall,

thereafter, publish a final statement specifying therein the entire land held by the holder, the land to be retained by him and the land declared to be surplus and send a copy thereof to the holder concerned. Such a statement shall be published in such manner as may be prescribed and shall be conclusive evidence of the facts stated therein.”

11. Section 11(5) of the Ceiling Act was amended with effect from 1-11-1988 and it provides as under: -

“(5) The order of the competent authority under sub-section (4) shall subject to the decision in appeal or revision be final and conclusive.”

12. The provision contained in Section 11(3) read with Section 46 of the Ceiling Act was considered by a Full Bench of the M.P. High Court in the matter of Vijaya Singh v. Competent Authority (Sub-Divisional Officer), Tarana⁶ and it has been held by the Full Bench that under Section 11(4) of the Ceiling Act, questions of title cannot be decided by the competent authority conclusively, the decision is only summary and is further subject to decision of civil Court under Section 11(5) of the Ceiling Act. Their Lordships of the Full Bench observed in paragraphs 5, 6 and 7 as under: -

“5. Section 11 sub-sections (3), (4) and (5) to which reference has been made earlier clearly go to show that questions of title cannot be decided by the competent authority conclusively. The scheme of this section goes to show that whenever such a question arises before a competent authority he has to—

(a) decide it either in accordance with the decision of a competent Court if such a decision is already there;

(b) await the decision of the competent Court if

the matter is pending before it;

(c) decide it summarily;

but this summary decision has further been made subject to a decision of the civil Court. This clearly goes to show that so far as the decision on the question of title is concerned the competent authority is not vested with jurisdiction to decide the matter finally. It is left to the decision of a civil Court and the decision of the competent authority is described as a "summary" decision.

6. In this view of the matter, therefore, the effect of sections 11 and 46 of the Ceiling Act would be that so far as questions of title are concerned there is no bar of the jurisdiction of the civil Court as section 46 in the context of section 11 could not be read to mean that there is any bar about the jurisdiction of the civil Court so far as questions of title are concerned. In *Ramgopal v. Chetu*⁷, a Full Bench of this Court examining the question in the context of the provisions contained in sections 157 and 57 and 250 and 257 of the Madhya Pradesh Land Revenue Code held:—

“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.”

In view of this decision it is clear that the jurisdiction of the civil Court in respect of questions of title could not be taken away without an express provision taking away the jurisdiction of the civil Court with regard to such a question. But it also must be understood that when under sub-section (4) of section 11 of the Ceiling Act the competent authority chooses to decide a question of title summarily, then either party to the proceeding before the competent authority can only file a civil suit within the prescribed period under sub-section (5) of that section. The result therefore is that if the competent authority has not decided the question of title under sub-section (4), then the civil Court has jurisdiction to entertain a suit independently of the

provisions contained in Section 11 of the Ceiling Act. Similarly, if there are no proceedings before a competent authority, then too, the civil Court will have jurisdiction to entertain a suit pertaining to the question of title. But if there are proceedings before the competent authority and an order is passed under sub-section (4) of section 11 deciding the question of title summarily, then the civil Court will have jurisdiction only in a suit as contemplated under sub-section (5) of section 11 of the Ceiling Act.

7. Our answer, therefore, to the first question is that the jurisdiction of the civil Court to entertain a suit pertaining to the question of title has not been excluded under the scheme of the Madhya Pradesh Ceiling on Agricultural Holdings Act, 1960 and the civil Court will have jurisdiction to entertain a suit pertaining to the question of title even independently of sub-section (4) of section 11 of that Act.”

13. Further, in the matter of Dhanbai D/o Late Shri Cowasji v. State of M.P. and others⁸, a Division Bench of the M.P. High Court has further held that when the plaintiff has claimed share in the suit land by filing objection and where the objection has been rejected and competent authority has decided the claim against the plaintiff, the plaintiff's suit for declaration of title would be maintainable.

14. Reverting to the facts of the case in the light of the aforesaid decisions, it is quite vivid that under Section 11(3) of the Ceiling Act, objection can be filed by the person interested in addition to the holder of land etc. and draft statement under Section 11(3) of the Ceiling Act shall be published at such place and in such manner as may be prescribed and a copy of thereof shall be served on the holder or holders concerned,

the creditors and all other persons interested in the land to which it relates. The plaintiff though is not holder of the land within the meaning of Section 2(h) of the Ceiling Act, yet she is the person interested in the suit land, therefore, in that capacity, she has objected under Section 11(3) of the Ceiling Act and claimed title on the basis the suit land having been received on partition which has been summarily rejected by the competent authority under Section 11(4) against which suit would be maintainable under Section 11(3) under the amended provision. (It is pertinent to notice that Section 11(5) of the Ceiling Act has been amended with effect from 1-11-1988 and right to file suit against rejection of objection under Section 11(4) has been taken away as already noticed.) As such, in the instant case, the plaintiff made objection in the capacity of person interested and that has been entertained by the competent authority and has been rejected summarily. Therefore, the plaintiff has failed to prove her title over the suit land that she has been given the suit land on partition. As such, suit filed by the plaintiff, who was the person interested within the meaning of Section 11(3), was quite competent in view of the decision of the M.P. High Court in Vijaya Singh (supra) and further held in Dhanbai (supra). The amended provision would not apply. Therefore, the finding recorded by the first appellate Court that since the plaintiff was not holder of the suit land, she was not entitled to make objection and civil suit at her instance is not maintainable, is liable to be set aside and is hereby set aside. The first substantial question

of law is answered accordingly.

Answer to the additional substantial question of law: -

15. Now, the question would be whether the suit land was given to the plaintiff on partition between her and defendant No.3 Brinda Bai?
16. The plaintiff has mainly relied upon the entry made in the document Ex.P-1 in which in remark column, the name of plaintiff Hemin Bai has been recorded and those are the only documentary evidence on record to prove that she was also the title holder of the suit land on partition which has taken place between her and defendant No.3 during the lifetime of her father Jirau. At this stage, it would be appropriate to notice whether the Patwari is competent to make entry in the remark column of Khasra Panchshala.
17. The question is, whether the entry made by the Patwari in the remarks column (Column 12) in Ex.P-1 showing that the plaintiff is in possession / her name is recorded in the remarks column on the suit land, can be relied upon to prove the fact of partition in her favour?
18. It is well settled law that the provisions of Chapter IX of the Chhattisgarh Land Revenue Code, 1959 (for short, 'the Code') or even other provisions of the Code, including the Rules framed in respect of them, do not require a Patwari to make any other kind of entry in a Khasra or field book in respect of the matter relating to occupation of lands. He is not required to make any entry in the remarks column or any other column

of a Khasra or field book with regard to any person other than recorded holder being in occupation of the land unauthorizedly or on the basis of any imperfect title. It is obvious that in case, he does make any such entry, the same cannot have any presumptive value as regards its correctness under Section 117 of the Code.

19. In the matter of Harisingh and others v. Dheerajsingh⁹, the Madhya Pradesh High Court has categorically held that presumption under Section 117 of the Code arises with respect to entries which are required to be made under the law, and observed as under:-

"8. ... It will also be relevant to point out that the presumption with regard to the entries in the Khasra in the light of Section 117 of the Code arises only in respect of those entries which are required to be made under Chapter 9 of the Code and in respect of entries in other land record prepared under the Code. It applies only to those entries which are required to be made under the law. If any entry, existing in the land records is not required to be made either under Chapter 9 of the Code or under any other provision of the Code, no presumption of correctness can arise in respect of such entry. In the records of right and the Khasra, it is required that an entry should be made as to subtenant or occupancy tenant, cultivating the field and, therefore, had the defendants No.1 been in occupation, having been inducted as a sub-tenant or an occupancy tenant, he would have been entered as such and the entry would not have been in column No. 12 which is only with regard to Remarks."

20. Thereafter, in the matter of Churamani v. Ramadhar¹⁰, a Division Bench of the Madhya Pradesh High Court noticing

9 1983 RN 57

10 1991 MPLJ 311

Harisingh (supra) has held that the rules framed under the Code do not cast duty on the Patwari to make any entry in remarks column of Khasra in regard to any other person unauthorizedly in possession and held as under:-

"10. We find ourselves unable to accept the abovesaid contention of the learned counsel. In our opinion, no presumption of correctness can attach to an entry made by a Patwari in the remark column of a Khasra or field-book showing therein some third part/trespasser to be in possession of a land held by a Bhumiswami and recorded as such in his name in the said land record.

12. For our present purpose, the special provisions with regard to raising of presumption are contained in Section 117 of the M.P. Land Revenue Code, 1959. According to the said section, all entries made under Chapter IX (containing sections 104 to 123) in the land records shall be presumed to be correct until contrary is proved. Taking even a broader view of the section, it has been held that the presumption under the section applies only to those entries which are required to be made under the law. Thus, even as per the broader view, the presumption arises only in respect of those entries which are required to be made under Chapter IX and in respect of entries in other land records prepared under the Code.

16. Accordingly, in our opinion, in the facts and circumstances of the case, the appellate Court i.e. the Additional Judge to the Court of District Judge, Satna did not act improperly or with illegality in refusing to draw any presumption as regards continuity of possession' of the plaintiffs-petitioners over the suit land on the basis of their so called 'actual' possession having been recorded by the Patwari in the remark column of the Khasras for the period 1963-1964 to 1981-1982."

21. The aforesaid decision in **Churamani** (supra) has again been followed by the Madhya Pradesh High Court in the matter of **Jageshwar Ramsahay Ahir v. Parmeshwar Ramprasad Yadav**

and others¹¹ and it has been held as under :-

"3. ... in which it has been laid down that a presumption as regards continuity of possession of the plaintiffs over the suit land could not be drawn in favour of the plaintiffs on the basis of the remarks recorded in the remarks column. No presumption of correctness can attach to an entry made by the patwari in the remarks column of a Khasra or field book showing therein some third party/trespasser to be in possession the land held by a bhumiswami and recorded as such in his name in the said land records. Presumption under Section 117 of the Code applies to those entries which are required to be made under Chapter IX and in respect of entries in other land records prepared under the Code. The provisions of the Code or the Rules made thereunder do not require the patwari to make any entry in the remarks column and if such an entry is made, the same cannot have any presumptive value as regards its correctness under Section 117 of the Code. As there is no such duty cast on the patwari to make an entry in the remarks column there arises no question of drawing any presumption under Section 114(e) of the Evidence Act regarding any act of the patwari having been regularly performed."

22. Not only this, the plaintiff has not brought any evidence to show that entry made in Ex.P-1 was made in accordance with the rules. Though the plaintiff has examined Basantlal (PW-1), Patwari, but he has only stated that Hemin Bai is in possession of Khasra No.18.

23. As such, in that view of the matter, it cannot be held that by Ex.P-1, the plaintiff has been able to prove the fact of partition. Now, the plaintiff has heavily relied upon the oral statements of her witnesses.

24. The Supreme Court in a recent pronouncement in the matter

of Vineeta Sharma v. Rakesh Sharma and others¹² with regard to oral partition held that plea of partition based on oral evidence cannot be accepted and to be rejected out-rightly; however, in exceptional cases where plea of oral partition is supported by public documents and partition is finally evinced in the same manner as if it had been affected by a decree of a court, it may be accepted.

25. Coming to the oral evidence, the first appellate Court has not relied upon the oral evidence upon its appreciation. Basantlal (PW-1) is Village Patwari where the suit land is situated. He has proved that he has issued the Khasra Panchshala Ex.P-1. Goutam Verma (PW-2) is Ameen Patwari. He has stated that the lands at Village Kosrangi are irrigated by the Government canal and he has proved Ex.P-2. PW-3 is the plaintiff herself. She has stated that her father Jirau has partitioned the property between her and her step-mother in his lifetime and as per partition, she is in possession of the suit land. Sevakram (PW-4) has stated that partition was not made in writing, but stated that Jirau in his lifetime has partitioned the property between Brinda Bai and Hemin Bai. Milau (PW-5) has clearly stated in paragraph 4 of his evidence that partition was not affected in his presence. But Jaindu (PW-6) has stated about partition. Brinda Bai (PW-7) has also stated about oral partition.

26. Taking the statements of aforesaid witnesses and documentary evidence on record and in view of the decision

of the Supreme Court in Vineeta Sharma (supra), it is quite vivid that the plea of partition is not supported by any public document and finding of fact recorded by the first appellate Court that the plaintiff has failed to prove the fact of partition is correct finding, it is neither perverse nor contrary to the record. Consequently, it is held that though the plaintiff's suit as framed and filed was maintainable, but she is not entitled for decree as claimed on merits. The additional substantial question of law is answered accordingly.

27. Consequently, the second appeal deserves to be and is hereby dismissed leaving the parties to bear their own cost(s).

28. Appellate decree be drawn-up accordingly.

Sd/-
(Sanjay K. Agrawal)
Judge