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HIGH COURT OF CHHATTISGARH AT BILASPUR

Second Appeal No. 256 of 2006

1. State of Madhya Pradesh (Now Chhattisgarh) through the Collector, Distt. Raigarh.
2. Principal, District Education and Training Institute, Dharamjaigarh, Distt. Raigarh.
3. Sub-Divisional Officer (Revenue), Distt. Raigarh.

---Appellants/Defendants No. 1 to 3

Versus

1. Smt. Dulari Bai W/o Amarnath Verma, Aged about 35 years, R/o Civil Lines, Dharamjaigarh, Distt. Raigarh, Chhattisgarh. **--- Plaintiff**
2. Raja Vijay Singh S/o Chandrachud Pratap Singh Judeo, Aged about 52 years, R/o Dharamjaigarh.
3. Ajit Pratap Singh (died) through Lrs. :-

   (a). Smt. Kanti Singh Wd/o Late Ajit Pratap Singh, Aged about 54 years.

   (b). Ira Singh D/o Late Ajit Pratap Singh, Aged about 37 years.

   (c). Puja Singh D/o Late Ajit Pratap Singh, Aged about 35 years.

   (d). Manisha Singh D/o Late Ajit Pratap Singh, Aged about 31 years.

   (e). Nisha Singh D/o Late Ajit Pratap Singh, Aged about 54 years.

   (f). Anjali Singh D/o Late Ajit Pratap Singh, Aged about 27 years.

(g). Hanud Singh S/o Late Ajit Pratap Singh, Aged about 23 years.

All 3(a) to 3(g) are R/o House No. 81, Civil Line, Ward No. 5, Dharamjaigarh, Distt. Raigarh, Chhattisgarh.

4. Indira Kumari Singh D/o Chandrachud Pratap Singh Judeo, Aged about 47 years, R/o Dharamjaigarh, Presently residing at Sargama, Distt. Ambikapur, Sarguja.

5. (a). Smt. Phoolo Devi Wd/o Kirti Pratap Singh, Aged about 42 years.

(b). Kumari Jai Singh, D/o Kirti Pratap Singh, Aged about 23 years.

(c). Digvijay Singh, S/o Kirti Pratap Singh, Aged about 20 years.

(d). Ku. Vijiya Singh, D/o Kirit Pratap Singh, Aged about 18 years.

Sl. No. 5(a) to (d) R/o Bajarpara, Dharamjaigarh, Distt. Raigarh, Chhattisgarh.

--- Respondents

For Appellants/State :- Mr. Ravi Bhagat, Dy. G.A.
For Respondent No. 1 :- Mr. A.N. Bhakta, Advocate

Hon'ble Shri Justice Sanjay K. Agrawal

Judgment on Board

22/06/2021

1. This second appeal preferred by the appellants/defendants No. 1 to 3/State was admitted for hearing on 24/09/2019 by

formulating the following two substantial questions of law :-

> “1. Whether the first appellate Court was justified in granting decree in favour of the plaintiff ignoring the fact that erstwhile owner of the suit land namely Raja Chandrachud Pratap Singh and his son Vijay Pratap Singh has already executed a title deed / sale deed dated 28.08.1962 (Ex.D-1) in favour of defendants No. 2 & 3, by recording a finding which is perverse and contrary to the record ?
>
> 2. Whether the first appellate Court was justified in not remitting the matter to the Collector after holding that the permission for review was granted without affording opportunity of hearing to the plaintiff by virtue of provisions contained in Section 51 of the Land Revenue Code, 1959 ?”

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

2. Plaintiff herein filed a suit stating inter alia that she purchased the suit land (Nazul land) shown in Schedule 'A' of the plaint from Kirti Pratap Singh by two sale deeds dated 07/08/1988 and 30/08/1988 (Exhibits P/1 and P/2) and thereafter, she got her name mutated in the revenue records by orders dated 29/10/1990 and 25/03/1999 passed by the Nazul Officer, Dharamjaigarh and came to be in possession of

the suit land. It is the case of the plaintiff that Collector, Raigarh by order dated 05/08/1997 (Ex. P/3) permitted the S.D.O.-cum-Nazul Officer, Dharamjaigarh to review its earlier order mutating the name of the plaintiff and ultimately, by order dated 12/11/1997 (Ex. P/5), the S.D.O. and Nazul Officer, Dharamjaigarh annulled the earlier order of mutation passed in favour of the plaintiff and mutated the suit land in favour of defendant No. 2 without hearing the plaintiff which is ex-facie illegal and without authority of law and it necessitated filing of the suit by the plaintiff for declaring the order dated 05/08/1987 (Ex. P/3) by which the Collector, Dharamjaigarh gave permission to the Nazul Officer for reviewing its earlier order as well as the order dated 12/11/1997 (Ex. P/5) by which the S.D.O. and Nazul Officer, Dharamjaigarh annulled the earlier order of mutation in favour of the plaintiff, as illegal and void and also claimed decree for permanent injunction in favour of the plaintiff restraining defendants No. 1 to 3 from interfering with her possession.

3. Defendants No. 1 to 3 filed joint written statement stating inter alia that the suit land was sold by its erstwhile owner Raja Chandrachud Pratap Singh and his minor son Vijay Pratap Singh in favour of State of M.P. vide sale deed dated 03/01/1962 which was registered on 28/08/1982 (Ex. D/1) and the Nazul Officer, Dharamjaigarh without informing defendant No. 2 who was the interested party, directed for mutation of plaintiff's name in the revenue record which has rightly been revoked by the S.D.O.-cum-Nazul Officer vide order dated 12/11/1997 (Ex. P/5) after obtaining permission of review from the Collector vide Exhibit P/3, as such, plaintiff does not have any right or title over the suit land and her suit deserves to be dismissed.

4. Learned trial Court, after appreciating the oral and documentary evidence on record, dismissed the suit vide judgment and decree dated 30/09/2002 holding that title over the suit land has already been transferred in favour of defendant No. 2 by sale deed (Ex. D/1) executed by Raja Chandrachud Pratap Singh and his minor son Vijay Pratap Singh in favour of State of

M.P. and therefore, plaintiff has no right or title over the suit land. On appeal being preferred by the plaintiff, learned first appellate Court reversed the judgment and decree of the trial Court and decreed the suit of the plaintiff by its impugned judgment and decree dated 20/12/2005 against which this second appeal under Section 100 of CPC has been preferred in which two substantial questions of law have been framed and set out in the opening paragraph of this judgment.

5. Mr. Ravi Bhagat, learned Deputy Government Advocate appearing on behalf of appellants/defendants No. 1 to 3/State, would submit that plaintiff has failed to prove her title over the suit land whereas defendants No. 1 to 3 have categorically stated that they have purchased the suit land from its erstwhile owner Raja Chandrachud Pratap Singh and his minor son Vijay Pratap Singh by sale deed (Ex. D/1) which is a thirty years old document that could not have been disbelieved by the first appellate Court by recording a finding which is perverse and contrary to the record, as such, presumption under Section 90 of the Indian Evidence Act,

1872 is available in favour of defendants No. 1 to 3. He would further submit that Kirti Pratap Singh from whom plaintiff is said to have purchased the suit land had no right or title over the suit land as it had already been alienated in favour of defendants vide Exhibit D/1. He would also submit that suit land is admittedly and undisputedly nazul land and therefore, the provisions of Section 51 of the Chhattisgarh Land Revenue Code, 1959 would not be applicable and assuming no opportunity of hearing was granted by the Collector while permitting the S.D.O.-cum-Nazul Officer to review its earlier order on that ground, since Land Revenue Code itself is not applicable to nazul land, the first appellate Court clearly fell into legal error in setting aside the order passed by the Collector and S.D.O. (Exhibits P/3 and P/5), as such, the judgment and decree passed by the first appellate Court deserves to be set aside.

6. Mr. A.N. Bhakta, learned counsel appearing for respondent No. 1/plaintiff, would submit that the first appellate Court has rightly decreed the suit of the plaintiff as defendants No. 1 to

3 have failed to plead and establish that they have purchased the suit land from its erstwhile owner as the original sale deed was not produced before the Court and only schedule of property has been mentioned therein and no other description of the property has been appended, as such, the said sale deed (Ex. D/1) is a suspicious document and it cannot be held that by the said sale deed (Ex. D/1) title over the suit land has been transferred in favour of defendants No. 1 to 3. Even otherwise, the provisions of Chhattisgarh Land Revenue Code, 1959 are applicable in a proceeding before the Nazul Officer and certain powers of Land Revenue Code have been conferred to the Nazul Officer with respect to nazul land, therefore, it cannot be held that Section 51 of Land Revenue Code would not be applicable for revoking the order of mutation of nazul land, therefore, instant appeal deserves to be dismissed.

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

<u>Answer to substantial question of law No. 1 :-</u>

8. It is a case of defendants No. 1 to 3 that they have purchased the subject land from its erstwhile owner Raja Chandrachud Pratap Singh and his minor son Vijay Pratap Singh vide Exhibit D/1 which is a copy of the sale deed executed by these persons in favour of his excellency Governer of State of M.P. and said to have delivered the possession of the suit land to the State of M.P.

9. In order to prove the sale deed (Ex. D/1), the record keeper of the Office of Sub-Registrar, Raigarh namely S.R. Pathari (D.W. 1) has been examined and cross-examined to a great extent that certain portion of the sale deed has been fraudulently added, but that has not been found to be established by the trial Court and it has been held by the trial Court that though Exhibit D/1 is neither the original sale deed, nor is it a certified copy, but rather it is a copy of the sale deed kept in the Office of Registrar admissible under Section 76 of the Indian Evidence Act, 1872 and it is admissible under Sections 77 and 79 of the Evidence Act. Not only this, the execution of the sale deed (Ex. D/1)

has been proved by the S.D.O. Satyendra Kumar Sharma (D.W. 2) and Smt. K. Puri, Principal, District Education and Training Institute (D.W. 3) and the document being 30 years old, the presumption under Section 90 of the Evidence Act would be available.

10. A careful perusal of the sale deed (Ex. D/1) would show that at the end of the sale deed further description of the suit land has been added that an area of 0.35 acre (.35 decimal) of Plot Nos. 1514 and 1516/3 (suit land) over which the building intended for Superintendent's quarter has also been sold for the same price and it has also been stated that these two plots were recorded in the name of Raja Saheb and it has been signed by the Ex-Ruler, Udaipur.

11. In the considered opinion of this Court, there is no reason to disbelieve the said sale deed (Ex. D/1) which was 30 years old on the date of institution of the suit and as such, presumption under Section 90 of Indian Evidence Act, 1872 is available to presume the legality of the said sale deed and the said sale deed (Ex. D/1) has rightly been held to be admissible by the trial Court. As such, it is held that the suit land

had already been alienated by its erstwhile owner Raja Chandrachud Pratap Singh and his minor son Vijay Pratap Singh in favour of defendants No. 1 to 3. Therefore, the first appellate Court has erred in holding that defendants No. 1 to 3 have no right or title over the suit land. Consequently, the question of law No. 1 is answered in favour of defendants No. 1 to 3 and against the plaintiff.

Answer to Substantial Question of Law No. 2 :-

12. Now, the first appellate Court has held that though permission was granted by the Collector vide Exhibit P/3 to the S.D.O. and Nazul Officer to review the orders passed by the Nazul Officer on 29/10/1990 and 25/03/1999, but while granting the said permission, the opportunity of hearing has not been afforded to the plaintiff and therefore, the order passed by the Collector (Ex. P/3) permitting the S.D.O.-cum-Nazul Officer to review its earlier order of mutation is unsustainable and bad in law. True it is that the opportunity of hearing should have been afforded to the plaintiff before granting permission for review of the earlier order, but the question would be whether the provisions

contained in Section 51 of the Chhattisgarh Land Revenue Code, 1959 would be strictly applicable to the proceedings particularly with respect to nazul land ?

13. By virtue of Section 24 of Chhattisgarh Land Revenue Code, 1959, the State of Chhattisgarh on 02/02/1968 has conferred on all Deputy Collectors working as Nazul Officers in the State the powers conferred on any Revenue Officer under sections 28, 33, 37, 57(2), 72, 73, 87, 93, 94, 107, 108, 109, 110, 113, 115, 116, 120, 124, 125, 129, 130 and 131of the Code.

14. The Madhya Pradesh High Court in the matter of **<u>Ail Das v. Board of Revenue</u>**[1] has held that the provisions of the Land Revenue Code are not applicable to nazul lands and held in paragraph 12 as under :-

> "12. AS such, the said Act is applicable to the property of aboriginals, who are members of the scheduled tribes and who have property in the rural areas. Any property in the urban area is specifically excluded from the operation of the said Act. It was for the first time when the M.P. Land Revenue Code, 1954, was enacted, which came into force with effect from 1-10-1955, that Chapter 8 of the said Code was enacted regarding assessment and re-assessment of land in urban areas. As such, there can be no doubt that Chapter 8 of the said Code would govern the lands

1 AIR 1973 MP 130

situated in urban areas. The M.P. Land Revenue Code, 1954, was subsequently repealed by the M.P. Land Revenue Code, 1959, which also made similar provisions. Chapter 7 of the 1959 Code provides for revenue survey and settlement in non-urban areas; while Chapter 8 of the 1959 Code makes provisions for assessment and re-assessment of lands in urban areas. AS such, there can be no doubt that Chapter 8 of the M.P. Land Revenue Code, 1959, will be applicable to lands situated in urban areas. But it is not possible to accept the contention of the learned counsel for the respondents that the other Chapters of M.P. Land Revenue Code, 1959, will be applicable to Nazul lands situated in urban areas. As such, we are clearly of the opinion that Section 165 of the M.P. Land Revenue Code, 1959, which forms part of Chapter 12 of the Code, would not be applicable to Nazul lands in urban areas. We may observe that Section 157 of the Code, which is the first Section in Chapter 12, lays down that there shall be only one class of tenure-holders of lands held from the State to be known as Bhumiswami. The plot proprietors of Nazul land in urban areas are also known as Bhumiswami. But it does not mean that the provisions of Chapter 12 in their entirety can be made applicable to such plot proprietors of Nazul land in urban areas, who are also known as Bhumiswamis."

15. Reverting to the facts of the present case in light of the aforesaid legal discussion, since plaintiff had no right or title over the suit land as it has already been held by this Court in the preceding paragraphs and further since the provisions of the Chhattisgarh Land Revenue Code,1959 would not be applicable to nazul land and as suit land is admittedly nazul land, in

the considered opinion of this Court, the first appellate Court went wrong in setting aside the order passed by the Collector (Ex. P/3) granting permission to the S.D.O-cum-Nazul Officer to review its earlier order of mutation in favour of the plaintiff as well as the order dated 12/11/1997 (Ex. P/5) passed by the S.D.O-cum-Nazul Officer annulling its earlier order. Since, plaintiff had no right or title over the suit land, even otherwise, mutation of her name could not be sustained, as such, the first appellate Court has clearly committed legal error in granting decree in favour of the plaintiff.

16. As a fallout and consequence of the aforesaid discussion, the judgment and decree passed by the first appellate Court is hereby set aside and plaintiff's suit stands dismissed.

17. The second appeal is allowed to the extent indicated herein-above. No cost(s).

18. Decree be drawn-up accordingly.

Sd/-
(Sanjay K. Agrawal)
Judge

Harneet