
State Of Madhya Pradesh Vs Ramkhilawan And Ors

Second Appeal No. 964 Of 2000

Court: Chhattisgarh High Court

Date of Decision: Sept. 4, 2018

Acts Referred:

Chhattisgarh Land Revenue Code, 1959 " Section 57, 57(3)#Madhya Pradesh Abolition Of Proprietary Rights Act, 1950 " Section 2(g), 2(g)(1)(i), 4(1), 4(2)

Hon'ble Judges: Sanjay K. Agrawal, J

Bench: Single Bench

Advocate: Arun Sao, Ashish Surana

Final Decision: Allowed

Judgement

Sanjay K. Agrawal, J

1. The substantial question of law involved, formulated and to be answered in this defendant's second appeal is as under: -

Whether the first appellate Court is justified in reversing the decree of the trial Court dismissing the suit and thereby granting decree in favour of the

plaintiff by recording a finding which is perverse to the record". (For the sake of convenience, parties would be referred hereinafter as per their status

shown in the plaint before the trial Court.)

2. The plaintiff brought an action for declaration of title of the suit land bearing Khasra Nos.269/1, 269/2, 269/3, 277/1, 277/2 and 281 situate in Village

Bhadoriya Khar, Tahsil & District Bilaspur stating inter alia that he was the malgujar of the said village and the said land is khudkasht land and

recorded in his name in mutual bandobast 1929-30; as he is in possession of the said land, he filed application under Section 57 of the Chhattisgarh

Land Revenue Code, 1959 and that has been dismissed on 8-8-1996. On the aforesaid pleading suit for declaration of title was filed. The suit was

based on the provisions contained in the M.P. Abolition of Proprietary Rights (Estates, Mahals, Alienated Lands) Act, 1950 (for short, 'the Act of

1950').

3. Averment of the plaint was opposed by the defendant stating that the suit property is Government property and the plaintiff has no right and title

over the suit property and he is entitled for declaration.

4. The trial Court dismissed the suit on the ground that the plaintiff has failed to establish ownership over the suit land, as title and possession, both, are

not established, which was reversed by the first appellate Court granting decree in favour of the plaintiff against which this second appeal has been

filed in which substantial S.A.No.964/2000 question of law formulated has been set-out in the opening paragraph of this judgment.

5. Mr. Arun Sao, learned Deputy Advocate General appearing for the State/appellant/defendant, would submit that the first appellate Court is

absolutely unjustified in reversing the decree of the trial Court by recording a finding which is perverse to the record and has failed to consider Section

4(1) & (2) of the Act of 1950 and thereby recorded a finding which is contrary to record, as such, it is liable to be set aside restoring the decree of the

trial Court.

6. Mr. Ashish Surana, learned counsel appearing for the respondents / LRs of the original plaintiff, would submit that the first appellate Court is

absolutely justified in granting decree in favour of the plaintiff, as the original plaintiff has established his title as per the provisions contained in Section

4(1) & (2) of the Act of 1950.

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

8. The plaintiff's suit is mainly based on the fact that the suit land is khudkasht land recorded in his name and based on the provisions contained in

Section 4(1) & (2) of the Act of 1950. Khudkasht is not defined in the Act of 1950, but Section 2(g) of the said Act defines ""home-farm"" which

includes khudkasht. Clause (g) of Section 2 of the Act of 1950 reads as follows: -

(g) ""home-farm"" means--

(1) in relation to the Central Provinces,--

(i) land recorded as sir and khudkasht in the name of proprietor in the annual papers for the year 1948- 49, and

(ii) land acquired by a proprietor by surrender from tenants after the year 1948-49 till the date of vesting;

(2) in relation to merged territories, that part of the land under the personal cultivation of the proprietor on the date of vesting which was similarly

under cultivation in the agricultural year 1949-50 and which he is entitled to retain on the termination of proprietary tenure under any instrument having

the force of law and applicable to such tenure.

Explanation.--Land under personal cultivation includes land allowed to lie fallow in accordance with the usual agricultural practice; but does not include

any land in lawful possession of a raiyot or tenant.

9. From the aforesaid definition of ""home-farm"" land which includes khudkhasht land and by virtue of the provisions contained in Section 4(1) and 4(2)

of the Act of 1950, the person claiming the land is required to establish following facts: -

(1) that the suit land is a 'home-farm land' within the meaning of Section 2(g)(1)(i) of the Act of 1950 on the date of vesting and recorded in the name

of the proprietor in the annual papers for the year 1948-49;

(2) that they are in possession of the said home-farm land on the date of vesting i.e. 31-3-1951; and (3) that they are in personal cultivation of the land

after the agricultural year 1948-49 but prior to the date of vesting i.e. 31- 3-1951.

10. In the matter of Haji Sk. Subhan v. Madhorao AIR 1962 SC 1230, the Supreme Court considered the question in the light of the provisions

contained in the Abolition Act and after quoting the definition of 'home-farm land' in Section 2(g) of the Act of 1950, Their Lordships discussed the

matter as under:--

(22) It is significant to note in this connection that sub- clause (i) refers to land actually recorded as sir and khudkasht in the annual papers of 1948-49

and does not refer in terms to land which was the sir and khudkasht of the proprietor in that year and which ought to have been recorded as such in

those papers but had not been so recorded. ...

Further :

(23) It is also significant to notice that in sub-section (2), the land answering the description of ""home-farm"" is described differently. Only that land

comes within the expression ""home-farm"" which had been under the personal cultivation of the proprietor on the date of vesting and which had been

similarly under cultivation in the agricultural year 1949-50, and which he is entitled to retain even on the termination of his proprietary tenure under any

instrument having the force of law and applicable to that tenure. Personal cultivation of the proprietor at two relevant dates was the main criterion.

Such cultivation was not made the criterion in the definition in sub-clause (i) of sub-section (1). It is not necessary, according to that sub-clause, that

the proprietor be personally cultivating that land. The only condition requisite for the proprietor having certain land treated as his home-farm was the

fact that the annual papers of 1948-49 recorded that land as his sir and khudkasht. The basis was the record and not the fact of actual cultivation or

his title to that land.

(24) The definition evinces the intention of the Legislature to remove the question of certain land be ""home-farm"" or not from the sphere of litigation.

Recorded entry was treated to be the basis for adjudging the land to be 'home-farm'.

11. At this stage, it would be appropriate to notice Section 4(2) of the Act of 1950 which states as under: -

4. Consequences of the vesting.Ã¢â¬

(1) xxx xxx xxx

(2) Notwithstanding anything contained in sub-section (1), the proprietor shall continue to retain the possession of his home-stead, home-farm land, and

in the Central Provinces also of land brought under cultivation by him after the agricultural year 1948-49 but before the date of vesting.

12. A close and careful perusal of sub-section (2) of Section 4 of the Act of 1950 would show that proprietor in possession of home-farm land on the

date of vesting is entitled to retain the possession notwithstanding the vesting of all his rights in the State Government.

13. In Haji Sk. Subhan (supra), the Supreme Court further held as under:--

In accordance with the provisions of this section, the proprietary rights in an estate, mahal, alienated village or alienated land in the area specified in

the notification vesting in a proprietor of such estate, etc., were to pass from such proprietor and vest in the State for purposes of the State free from

all encumbrances. These provisions themselves were sufficient to divest the proprietor of such estate, etc., of his proprietary right. The consequences

of such vesting are further specified in Section 4. In view of sub-section (2) of Section 3, no right could be acquired over the land which had vested in

the State except by succession or under a grant or contract in writing made or entered into by or on behalf of the State.

Thereafter, reference was made to various provisions of the Act and dealing with sub-section (2) of Section 4, it was held as under:--

Sub-section (2) of Section 4 of the Act provides that the proprietor can continue to retain possession of home- farm land after the vesting of his

proprietary right in the State. The respondent cannot take advantage of this provision even if the land in suit be held to be home-farm. He was not in

possession of the land in suit on the date of vesting and no question of continuing to retain possession arose.

(emphasis supplied)

Later:--

It is also significant to notice that in sub-section (2), the land answering the description of 'home-farm' is described differently. Only that land comes

within the expression 'home-farm' which had been under the personal cultivation of the proprietor on the date of vesting and which had been similarly

under cultivation in the agricultural year 1949-50, and which he is entitled to retain even on the termination of his proprietary tenure under any

instrument having the force of law and applicable to that tenure. Personal cultivation of the proprietor at two relevant dates was the main criterion.

14. The aforesaid decision of the Supreme Court in Haji Sk. Subhan (supra) was reiterated and followed by the Supreme Court in the matter of

Ramkhilawandhar and others v. Gajodharprasad (Dead) by LRs. and others (1985) 2 SCC 58 and it was observed as under:--

A reading of sub-section (2) of Section 4 with the definition of ""home-farm land"" shows that while all rights of the proprietor vest in the State

Government on the specified date, the proprietor shall continue to retain the possession of his home-farm land. In other words, notwithstanding the

vesting of all his rights in the State Government, the proprietor may continue to retain the possession of his home-farm land. The necessary implication

is that the proprietor is in possession of the land on the date of vesting. If he is in physical possession of the land on the date of vesting, he may

continue to retain the possession of such home-farm land. In the present case, admittedly the plaintiffs were not in possession of the lands in dispute

on the date of vesting and, therefore, their suit must necessarily fail.

15. Thus, from the aforesaid discussion, it is quite vivid that the plaintiff is required to plead and prove that the suit land is home-farm land within the

meaning of Section 2(g) of the Act of 1950 and on the date of vesting it was recorded in the name of the plaintiff in the annual papers for the year

1948-49. The plaint filed by the respondent/ plaintiff in this regard is blissfully silent. He has simply stated that the suit land is khudkasht land and was

purchased by his forefathers in 1925. In order to be home-farm land in relation to Central Provinces, the land has to be recorded as sir and khudkasht

land in the name of proprietor in annual papers for the year 1948-49. The plaintiff has placed reliance upon documents Exs.P-3 to P-11 to hold that the

land was recorded in his name in the annual papers for the year 1948-49. The plaintiff has relied upon Ex.P-8 which is a copy of khatauni kistbandi for

land revenue cess for the year 1948-49. It nowhere states that the plaintiff is in possession and the suit land is home-farm land on the date of vesting

and recorded in his name for the year 1948-49. There is no document on record filed and proved on behalf of the plaintiff showing that the plaintiff is

in possession of the said land i.e. on the date of vesting i.e. 31-3-1951. Likewise, it has not been established that the plaintiff was in personal

cultivation of the land in the agricultural year 1948-49 by which he is entitled to retain the possession, as the plaint averment in this regard is blissfully

silent with regard to these conditions. However, the defendants/State have brought on record document Ex.D-2C - adhikar abhilekh panji of the year

1954 in which the land is recorded as chhote jhad ka jangal aur ghas and in document Ex.D-4C, the land is recorded as charai bhumi - land reserved

for grazing. Similarly, in Ex.D-5C, the land has been recorded as chhote jhad ka jangal aur ghas and in Ex.D-6C, it has been recorded as land owned

by the State of Madhya Pradesh. Therefore, the plaintiff has failed to establish that the land in question is home-farm land within the meaning of

Section 2(g)(1)(i) of the Act of 1950 and failed to establish the conditions precedent for holding the land under Section 4(1) & (2) of the Act of 1950 in

view of the fact that there is no evidence on record to hold that the plaintiff is in possession of suit land.

16. There is yet another reason for not upholding the judgment & decree of the first appellate Court, as the plaintiff's application under Section 57 of

the Chhattisgarh Land Revenue Code, 1959 was rejected on 8-8-1996 which was required to be challenged by virtue of Section 57(3) of the said Code

and which has not been done and suit has been filed for bare declaration of title over the suit land.

17. In conclusion, the first appellate Court is absolutely unjustified in reversing the judgment & decree of the trial Court dismissing the suit, as such, the

judgment & decree of the first appellate Court is set aside and that of the trial Court dismissing the suit is restored.

Consequently, I answer the question of law in negative. Parties are left to bear their own cost(s).

18. The second appeal is allowed to the extent sketched herein-above.

19. A decree be drawn-up accordingly.