

(1973) 04 MP CK 0001

Madhya Pradesh High Court

Case No: Miscellaneous Petition No. 45 of 1966

Dangalia and Others

APPELLANT

Vs

Deshraj and Others

RESPONDENT

Date of Decision: April 30, 1973

Acts Referred:

- Civil Procedure Code, 1908 (CPC) - Section 144
- Constitution of India, 1950 - Article 226, 227

Citation: AIR 1974 MP 49 : (1977) ILR (MP) 739 : (1973) LJ 768 : (1973) 18 MPLJ 796

Hon'ble Judges: P.K. Tare, C.J; K.K. Dube, J

Bench: Division Bench

Advocate: R.S. Dabir and O.P. Namdeo, for the Appellant; J.M. Sood, for the Respondent

Final Decision: Dismissed

Judgement

Tare, C.J.

This is a petition under Articles 226 and 227 of the Constitution of India seeking to quash the order of the Board of Revenue, dated 31-12-1965 (Petitioners Annexure-D) passed in Revenue Revision No. 88-IV/65, as also the order of the Sub-Divisional Officer, passed in Revenue Appeal No. 261/63-64, dated 24-10-1964 (Petitioners Annexure-B).

This case has had a chequered career and the litigation originally started in the year 1954.

The petitioner. Dangalia filed an application u/s 91 of the Madhya Bharat Land Revenue and Tenancy Act. 1950, alleging that he had sublet the lands for three years to the first respondent. Deshraj alias Dost Mohammad and in spite of efflux of time, the first respondent did not surrender back possession, to the said petitioner. Therefore, ejectment of the first respondent was sought. The proceedings for ejectment were dismissed by the Tahsildar. The order of dismissal was confirmed in

appeal by the Sub-Divisional Officer. The Commissioner Gwalior Division, however, allowed the appeal of the petitioner Dangalia and decreed the ejectment of the first respondent in Revenue Appeal No. 17 of 1954, dated 29-7-1954.

Thereupon the first respondent. Deshrai filed a revision before the Board of Revenue and by order dated 2-6-1955 passed in Revenue Revision No. 599 of 1954, the Board of Revenue upheld the order of the Commissioner purporting to do so u/s 76 of the Madhya Bharat Land Revenue and Tenancy Act 1950. According to the petitioners, this order of the Board of Revenue became final and binding on the parties. In Pursuance of the same, the first petitioner took possession on 19-7-1955 in Execution Case No. 28 of 1955 from the Court of the Tahsildar, Mungaoli. The petitioners thereafter claimed to have been in possession of the disputed land.

Thereafter Deshrai (respondent No. 1) filed a Civil Suit in the Court of Shri R. C. Jain. Civil Judge, Class II, Mungaoli, which was registered as Civil suit No. 18 of 1957, and the relief of possession was claimed. The trial Judge dismissed the suit and that decision was affirmed in Civil Appeal No. 12 of 1957, dated 29-1-1959. According to the petitioners the judgments in those cases became final and binding on the parties. In the meantime, the first respondent, Deshraj on 17-3-1955 fled an application in the Court of the Naib Tahsildar. Mungaoli, u/s 21 of the Madhya Bharat Abolition of Jagirs Act. 1951, for conferral of the right of a pucca tenant. According to the petitioners, there were many defects in that application. However, the Naib-Tahsildar, by order, dated 19-7-1955, allowed the first respondent's application. The petitioners' contention is that the Naib Tahsildar had no jurisdiction. Against that decision, the petitioners filed an appeal, which also was dismissed and thereafter, they filed a revision before the Commissioner. Gwalior Division. The Commissioner referred the case to the Board of Revenue. The Board of Revenue decided the revision in favour of the Present petitioners. However, Deshrai filed a writ petition under Articles 226 and 227 of the Constitution of India challenging the said decisions. The High Court allowed the writ petition and quashed the orders of the Revenue Courts. The said case is reported in Deshraj v. Dangalia, 1964 MPLJ 69. As a result, the order of the Naib Tahsildar allowing the petitioner's application u/s 21 of the M. B. Abolition of Jagirs Act. 1951, was restored.

Thereafter the dispute started on the execution side about restitution as per Section 144 of the Code of Civil Procedure. The Naib Tahsildar vide order dated 23-3-1964 (Petitioners' Annexure-A), passed in Revenue Case No. 1/63-64/21 rejected the application for restitution. Against the said order the first respondent filed an appeal before the Sub-Divisional Officer, which was allowed and the case was remanded for a fresh inquiry vide order, dated 24-10-1964, passed in Revenue Appeal No, 261 of 1963-64 (Petitioners' Annexure-B). Thereafter, the petitioners filed a Second Appeal before the Commissioner, Gwalior Division. The Commissioner, vide order, dated 6-4-1965 (Petitioner's Annexure-C) passed in Revenue Appeal No. 123/64-65 allowed

the appeal and dismissed the application of the first respondent. Thereupon, the first respondent filed a revision before the Board of Revenue, which was registered as Revenue Revision No. 88/IV/65. The petitioners raised an objection before the Board of Revenue that the first respondent had already initiated proceedings u/s 250 of the M. P. Land Revenue Code, 1959 and, therefore, the present proceedings for restitution were not maintainable. According to the petitioners, this objection was not decided by the Board of Revenue. On merits the Board of Revenue set aside the order of the Commissioner by order, dated 31-12-1965 (Petitioners' Annexure-D) and restored the order of the Sub-Divisional Officer (Petitioners' Annexure-B). Therefore, the petitioners have filed the present Writ Petition challenging the orders of the Board of Revenue and the Sub-Divisional Officer. Under these circumstances the question whether the Revenue Courts have the jurisdiction to order restitution in pursuance of the order passed by the High Court in Misc. Petition No. 19 of 1962, dated 31-10-1963 (reported in *Deshraj v. Dangalia* 1964 MPLJ 69) arises which the Revenue Board answered in favour of the first respondent.

In this connection it is to be noted that the Madhya Pradesh Land Revenue Code 1959, is a law which confers certain rights of some categories on persons as also it prescribes the procedure to be followed by the Revenue Courts. It came into force with effect from 1st of October, 1959, and it repealed all the regional laws. Therefore, it may be necessary to note the relevant provisions of this Act conferring powers on the Revenue Courts, Section 31 of the M. P. Land Revenue Code, 1959, confers status of Courts on the Revenue Board and the Revenue Officers. It provides that the Board or the 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. Section 32 of the Code provides that nothing in this Code shall be deemed to limit or otherwise affect the inherent power of the Revenue Court to make such orders as may be necessary for the ends of justice or to prevent the abuse of the process of the Court. Section 33 of the Code states that subject to the provisions of Sections 132 and 133 of the Code of Civil Procedure, 1908, and to rules made u/s 41, every Revenue Officer acting as a Revenue Court shall have power to take evidence, to summon any person whose attendance he considers necessary either to be examined as a party or to give evidence as a witness or to produce any document for the purposes of any inquiry or case arising under this Code or any other enactment for the time being in force. Section 43 of the Code further provides that unless otherwise expressly provided in this Code, the procedure laid down in the Code of Civil Procedure, 1908 shall, so far as may be, be followed in all proceedings under this Code. Further on, we may note Section 55 of the Code which provides that for avoidance of doubt it is "hereby declared that save as otherwise expressly provided in this Code, the provisions of this Chapter shall apply to:--

- (a) all orders passed by any Revenue Officer before the date of coming into force of this Code and against which no appeal or revision proceedings are pending before such date; and
- (b) all proceedings before Revenue Officers, notwithstanding that they were instituted or commenced or arose out of proceedings instituted or commenced before the coming into force of this Code.

Thus, the said provisions not only constitute Revenue Officers as full-fledged Courts, which would be governed by the special provisions of the M. P. Land Revenue Code, 1959, and in the absence of such provisions, they are to be governed by the Code of Civil Procedure, 1908, if they do not come in conflict with the former. Moreover, from the date of commencement of the said Code, i.e. 1-10-1959, the procedure as prescribed by the said Code has been made applicable to all Revenue proceedings of whatever kind by virtue of Section 55 of the Code, although such proceedings may have been initiated or orders in those proceedings might have been passed by Revenue Officers prior to the coming into force of the Code under any of the repealed regional enactments. Thus, there can be no doubt that with effect from 1-10-1959, it is only the M. P. Land Revenue Code, 1959, which will apply and a resort to any of the repealed enactments cannot be made by any of the parties.

The learned counsel for the petitioners, however, urged many objections, particularly on the basis of the orders passed by the Revenue authorities in proceedings u/s 91 of the Madhya Bharat Land Revenue and Tenancy Act, 1950. We may observe that the proceedings u/s 91 of the M. B. Land Revenue and Tenancy Act, 1950, will have no particular bearing on the proceedings initiated u/s 21 of the Madhya Bharat Abolition of Jagirs Act, 1951. It is to be noted that all subtenants, who had not been actually ejected were protected by the Madhya Bharat Ryotwari Sub-Lessee Protection Act, 1955 (No. 29 of 1955) and any dispossession of a sub-tenant would be illegal and would not be operative. As such, the alleged possession said to have been obtained by the petitioners on 19-7-1955 in Execution Case No. 28 of 1955 of the Court of Tahsildar, Mungaoli, could not be legally operative so as to defeat these rights of the first respondent as conferred by the final orders passed in proceedings u/s 21 of the M. B. Abolition of Jagirs Act, 1951.

Moreover the orders passed in those revenue proceedings having become final and binding on the parties, the petitioners cannot be allowed to raise all sorts of untenable objections in execution proceedings. Firstly, whatever objections they had on the basis of the orders passed in proceedings u/s 91 of the Madhya Bharat Land Revenue and Tenancy Act, 1950, were open to them in the proceedings u/s 21 of the M. B. Abolition of Jagirs Act, 1951, and such objections were raised by the petitioners and they were duly disposed of and ultimately the order of the High Court in the previous Writ petition (reported in 1964 M. P. L. J. 69) would be binding on the parties and thereafter, the petitioners cannot be permitted to raise the very same objections in the execution proceedings.

The learned counsel for the petitioners invited attention to the observations of a learned Single Judge of the Mysore High Court in *Smt. Kamalabai Narayan v. Smt. Rukmanibai Krishnaji* AIR 1972 Mys. 282 in which it was held that if the decree or order be not varied or reversed in appeal; an application for restitution would not be maintainable. The suggestion of the learned counsel for the petitioner was that the order of the Board of Revenue had been reversed in a writ petition and, therefore, strictly speaking Section 144 of the CPC cannot be attracted. So far as this part of the argument is concerned, we may observe that Section 144. C. P. C. no doubt states that where and in so far as a decree or an order is varied or reversed, the Court of first instance shall on the application of any party entitled to any benefit by way of restitution or otherwise, cause such restitution to be made as well, so far as may be, place the parties in the position Which they would have occupied but for such decree or such part thereof as has been varied or reversed; and, for this purpose, the Court may make any orders including orders for the refund of costs and for the payment of interest, damages, compensation and mesne profits, which are properly consequential on such variation or reversal.

Thus, the reference may be to an appellate or a revisional Court reversing a decree of the Court below. But when the CPC 1908 was itself enacted it was never contemplated that orders would be reversed in writ proceedings. However, after the Constitution as Articles 226 and 227 of the Constitution of India have conferred prerogative powers on the High Courts, it will be proper to interpret Section 144. C. P. C. to include such orders as may be passed in Writ Proceedings as well. It is to be noted that the Section does not confine the variation or reversal to an order passed in appeal or revision only. But the wording is wide enough to include any situation where any order or decree of the Court below has been reversed. The reversal may be in any manner. It can as well be by an independent decree passed in a separate suit or it can also be by a Writ issued in Writ Proceedings. Therefore, we are unable to accept the contention of the learned counsel for the petitioners that Section 144, C. P. C. in its turn should be restricted to reversal by an appellate or a revisional Court only.

Even apart from this, as inherent powers have been conferred on the Revenue Courts, it would be too much to accept the contention that the Revenue Courts would not have power to nullify the damage that may be caused on account of its wrong orders, which have later on been reversed or varied either by the appellate Court or by the revisional Court or even by the High Court exercising prerogative power under Articles 226 and 227 of the Constitution of India. Such interpretation in our opinion, will be opposed to the very statutory provisions made in the M. P. Land Revenue Code, 1959, which have conferred the status of a Court on the Revenue Officers and which have also conferred on them the inherent powers to do justice between the parties.

On the other hand, the learned counsel for the first respondent invited attention to the observations of a Division Bench of the Allahabad High Court in [Vindhyachal Tewari Vs. Board of Revenue and Others](#), wherein the learned Judges laid down that Section 144 would apply to all cases in which a decree or order is varied or reversed. The reversal may be in an appeal or in a revision or in some other proceedings. It might be varied or reversed in a separate suit or it might be varied or reversed even by subsequent legislation. An abatement of a suit or proceedings would have the effect of nullifying the entire suit or proceedings and all orders and decrees passed in those proceedings. Therefore, the Division Bench held that the abatement on account of legislation would have the effect of reversing the decree or orders so passed. Therefore, according to the learned Judges Section 144 C. P. C. in terms would apply to the reversal of a decree or by means of abatement of proceeding as provided by R. 5 of the Rules framed under the U. P. Zamindari Abolition and Land Reforms Act. The Division Bench also held that Section 144 would apply to suits under the U. P. Tenancy Act. Thus, the learned Judges placed a broad based interpretation on Section 144 and did not restrict it to reversal in an appeal or a revision by a Revenue Court only. This case was followed by a learned single Judge of this Court in *Hariram v. Pooransingh M.* (S) A. No. 165 of 1958 D/- 7-10-1959 : 1960 MPLJ (SN) 150. Although the said case was not mentioned in the judgment. Naik J. in *Ganga Bai v. Raiaram Gujar M.* (S.) A. No. 78 of 1959, D/- 30-8-1960 : 1960 MPLJ (SN) 224 followed the principles as regards reversal by way of abatement provided by the statute relating to abolition of proprietary rights. Subsequently, S. B. Sen, J. in [Choudhary Hariram and Others Vs. Pooran Singh](#),) following that view, held that Section 144 would apply to cases of variation or reversal of a decree, either in appeal or revision or by separate suit or even by the subsequent legislation. We may add that the reversal can as well be in writ proceedings under Articles 226 and 227 of the Constitution of India and to restrict the operation of Section 144. C. P. C. by excluding such orders passed in writ proceedings would, in our opinion, not be the correct way of interpretation of Section 144. Even apart from that we would hold that a Revenue Court has inherent power to order restitution so as to compensate a damage done to a party by its wrong order which has been varied or reversed. The principle of *actus curiae neminem gravabit* will be applicable to such a situation and no act of Court shall prejudice any of the parties. Earlier we have already indicated that all these objections based on the orders passed in proceedings u/s 91 of the M. B. Land Revenue and Tenancy Act. 1950, are not available to the petitioners in the execution proceedings. At the most, they could be raised in the substantive proceedings u/s 21 of the M. B. Abolition of Jagirs Act. 1951. Such points, as the petitioners might have raised were decided against them and if they did not raise them, they will be barred from raising them by the rule of constructive *res judicata* and at any rate, the Executing Court would have no jurisdiction to go into these questions.

To conclude we are of opinion that the view taken by the learned Member of the Board of Revenue in the present case ordering restitution was perfectly correct and the same does not call for any interference whatsoever. Consequently, the writ petition fails and is accordingly dismissed with costs. Counsel's fee in this Court shall be Rs. 100/-, if certified. The outstanding amount of the security deposit, if any, after deduction of costs, be refunded to the petitioners.