(1997) 08 MP CK 0025

Madhya Pradesh High Court (Gwalior Bench)

Case No: Second Appeal No. 9 of 1992

Hanumant Singh		APPELLANT
	Vs	
Shafique Ahmed Khan (since deceased through Legal Heirs) and Another		RESPONDENT

Date of Decision: Aug. 27, 1997

Acts Referred:

- Madhya Pradesh Land Revenue Code, 1959 - Section 158, 183, 185

Citation: (1997) 2 MPLJ 441

Hon'ble Judges: Tejinder Singh Doabia, J

Bench: Single Bench

Advocate: K.K. Lahoti and D.D. Bansal, for the Appellant; J.D. Suryawanshi, Government Advocate, R.D. Jain and S.K. Jain, for the Respondent

Judgement

T.S. Doabia, J.

This second appeal has come to be filed under following circumstances.

A suit was filed by the present appellant. This was for a declaration and permanent injunction in respect of the agricultural land located in survey Nos. 302 and 490. (Old Survey Nos. 292 and 556) The land is situated in village Sunoti, Tehsil Sironj, Distt. Vidisha. The declaration was sought on the plea that plaintiff was occupancy tenant and therefore, on 2nd of October, 1959, the date on which, Madhya Pradesh Land Revenue Code of 1959 (hereinafter referred to as ''Code'' of 1959) came into force, he acquired ''bhumi swam'' rights. It was this plea which was main plank for seeking declaration as noticed above.

The defendants put an appearance. They took a plea that the plaintiff/appellant was not an occupancy tenant and therefore, he could not acquire any right in terms of Section 158 of the 1959 Code. A plea was also taken that the land in question was

''service land'' and therefore, no lease could be granted which would be beyond a period of one year.

The trial Court recorded following findings :

(i) That, plaintiff/appellant was not an occupancy tenant;

(ii) The land in question was ''service land'' visualised by Section 183 of the 1959 Code and therefore, the lease beyond one year would be void.

An appeal was preferred, the appellate Court has concurred with the findings recorded by the trial Court.

The learned counsel for the appellant has argued that as the appellant was in possession before the coming into force of the 1959 Code therefore, he is entitled to all those benefits which Section 185 of the Code confers on a person in possession as tenant.

It be seen that the plaintiff/appellant came to the court on the plea that he was inducted as a tenant before the coming into force of 1959 Code. It is this claim of the appellant/plaintiff which was found to be not established by the courts below. In my opinion, the view expressed by the courts below is correct.

This is the land which is situated in the Sironj region and has been specifically dealt u/s 185(1)(v). Relevant provisions read as under :

"185. Occupancy Tenants. - Every person who at the coming into force of this Code holds;

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(i)    **                  **                  **
(ii)   **                  **                  **
(iii)  **                  **                  **
(iv)   **                  **                  **
(v)    in the Sironj region;
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(a) any land as a sub-tenant of a Khatedar tenant or grove holder as defined in the Rajasthan Tenancy Act, 1955 (3 of 1955); or

(b) any land as a sub-tenant or tenant of Khudkasht as defined in the Rajasthan Tenancy Act, 1955 (3 of 1955) :

shall be called an occupancy tenant and shall have all the rights and be subject to all the liabilities conferred or imposed upon an occupancy tenant by or under this Code."

Reading of the above mentioned provision makes it apparent that a person in order to be an occupancy tenant has to be a sub-tenant of a Khatedar tenant or a grove holder or a sub-tenant or a tenant of Khatedar. Such was not the plea taken by the plaintiff in the plaint and therefore, the courts below rightly concluded that the

plaintiff was not an occupancy tenant and therefore, he would not acquire any right in terms of Section 158 of the 1959 Code. Apart from this, the revenue record indicates that the land was ''service'' land as defined in Section 183 of the 1959 Code. Ex.P/3 on which reliance has been placed by both the sides makes mention of the fact that the land in question was muafi land. It was given to the Patel. This Patel is Mushtaq Ahmed Khan father of respondent tenant. Thus, the additional reason given by the courts below that the land in question was ''service land'' and it could not be given on lease for a period exceeding one year, is also a good reason and the reasoning so given is upheld.

The net result is that the plaintiff/appellant has not been able to establish his case that he was an occupancy tenant u/s 185 of the 1959 Code. The land was ''service land'' and lease beyond one year could not be created. As such, plaintiff appellant has failed to substantiate his claim in the manner which may give him benefit of Section 158 of the Code.

Faced with the above situation, the learned counsel for the appellant has argued that the appellant cannot be dispossessed except in due course of law. This is correct but is subject to the condition that the appellant shall be liable to pay mesne profit for the land which has remained in his possession.

It be seen that the plaintiff/appellant remained in possession on account of interim order issued by the courts below and also by this court. As a matter of fact, on 25th of February, 1992, this court also passed an order to the effect that appellant be not dispossessed. As the possession of the appellant has been found to be not in accordance with law, the defendants would be entitled to mesne profits. The agricultural land is only 7 Bighas. The defendants would accordingly be entitled to mesne profits at the rate of Rs. 250.00 per hectare under the Code of 1959. The defendants would be entitled to this much mesne profits from the date of filing of the suit. Defendants shall also be entitled to the costs which is fixed at Rs. 500/-.