(2013) 01 MP CK 0046

Madhya Pradesh High Court (Indore Bench)

Case No: F.A. No. 45 of 1974

Abdul Hussain and Others		APPELLANT
	Vs	
State of M.P. and Others		RESPONDENT

Date of Decision: Jan. 29, 2013

Acts Referred:

- Civil Procedure Code, 1908 (CPC) - Order 2 Rule 3, Order 22 Rule 4, Order 22 Rule 9, Order 41 Rule 27, 80
- Easements Act, 1882 - Section 62(h)
- Limitation Act, 1963 - Section 5
- Specific Relief Act, 1963 - Section 42

Citation: (2013) 2 MPLJ 106

Hon'ble Judges: S.K. Seth, J

Bench: Single Bench

Final Decision: Dismissed

Judgement

S.K. Seth, J.

This is plaintiffs'' first appeal against dismissal of then-suit filed in the year 1960, by the Additional District Judge Mandsaur. Looking to the number of defendants, apart from the State of M.P., in all 102 deaths occurring among the parties was the principal cause of this huge delay. The three original plaintiffs brought this suit in a representative capacity to establish their title as against the State to the suit lands situated in Mouja Suwasara District Mandsaur, alleging that the suit property belongs to Bohra Samaj. Plaintiffs being Karyakartas of the Bohra Samaj, were entitled to manage the affairs of the Samaj. They also claimed that the auction sales of these lands by the State in favour of the defendants 2 to 102 were illegal, and also claimed permanent injunction restraining the defendants from interfering with their possession.

2. It is common ground that the village Suwasra belonged to the erstwhile Gwalior State, and in the year 1920 the Ruler of Gwalior by Gazette Notification (Ex.P-1) declared his intention of giving grant of 31 bighas and 16 biswa land in the said village for purpose of establishing a new market (Mandi). Out of these lands, by a Parwana dated 21-8-1926 certain blocks were granted to Bohras without consideration for construction of buildings like Masjid; Jamatkhana; Madarsa; Tahirya Club etc. and even after that as most of the licensed land was lying vacant and was not put to use for unbroken period of 20 years; therefore State took steps to auction suit plots. Bhanwarlal Soni was one of the first purchasers in such auction sales having purchased plot from Block No. 153/154, therefore a suit for permanent injunction, on same allegations as are made in the present suit, was filed by Daud Bhai Bohra Jamat with an application for temporary injunction. Said application was rejected by the learned appeal Court (Ex. D. 1) on well settled parameters. What transpired thereafter to the suit, parties in this suit are completely silent. It seems that after the appeal was allowed and application for temporary injunction was rejected, plaintiffs came out with the present suit in representative capacity after giving notice u/s 80, CPC to have another shot at the litigation.

3. Plaintiffs'' case in brief was that originally one Abdul Hussain son of Tayyab Ali was the Karyakarta of the Bohra Samaj and on his death plaintiffs became the Karyakartas and as such were entitled to prosecute this suit in a representative capacity. According to plaint allegations, out of the land reserved for Mandi, by a Parwana dated 21-8-1926 (Ex.P-3), certain land was granted to Bohra Samaj and it became owner thereof. It was alleged that over the part of suit land, Samaj had built community buildings like Madarsa, Masjid, Club, Zamatkhana etc. In 1958, respondent State had cast a cloud on the title of Samaj when it illegally carved out plots in block Nos. 153 and 154 and sold them to the other defendants by a public auction. Hence this suit for declaration and permanent injunction.

4. Respondent State denied all the material allegations in the plaint. Allotment or grant of any land in the village was never made in representative capacity to the plaintiffs. In fact lands were given to individual members of the Bohra community on license and on their failure to utilize the land for the purpose of the license in good time, the license came to end, and the land vested in the State and hence that vacant land was carved out into plots and sold by public auction to defendants 2 to 102. The State denied that the plaintiffs could bring a representative suit, and in any case such a suit without prior permission of the Court could not lie. Reference was also made to earlier suit filed by the Daud-Bhai Bohra Samaj against one Bhanwarlal Soni, in which the reliefs claimed in the present suit were available but not claimed, the present suit was barred or at any rate there was non-joinder/misjoinder of causes of action. Plaintiffs were not entitled to any relief whatsoever.

5. The other defendants filed written statements and it seems to us that it is not necessary to refer to them since they are sailing in the same boat as the State, and

sink or swim with the State.

6. On the material on record the lower Court found (1) that the plaintiffs were not entitled to bring and maintain the suit as they were neither representatives of the Bohra Community or owners of the suit lands; (2) the grant of lands under the Parwana Ex. P.3, was to three individuals mentioned in it; (3) it was not proved that the suit lands were included in the Parwana, and even if held proved, failure to utilize the licence for unbroken 20 years and more had resulted in the termination of the licence, and vesting of the lands in the State; (4) the present suit was barred under provisions of Order 2, Rule 3 of the Civil Procedure Code. On these findings the Court below dismissed the suit with costs.

7. Aggrieved by the decision, the plaintiffs have come up in appeal.

8. The first point for consideration is whether the lands in suit were given to individuals or to the Bohra community through the three plaintiffs under the Parwana Ex. P. 3. To appreciate this, we think, it would be appropriate to reproduce the documents which are pivotal to the controversy; they are as under:--

Gwalior Government Gazette dated 6-11-1920-Ex. P-1

The next most important document is the Parwana dated 21-8-1926 (Ex. P-3), relevant extract whereof reads as under:--

(English words as explained by counsel)

9. Apart from these documents, there is no other clinching document to establish that the land in question was granted to Bohra Samaj for community purposes. No doubt on certain blocks plaintiff have raised community buildings and the State has not raised any objections, does not mean that State has recognised plaintiffs'' representative title over the suit land bearing Survey Nos. 153/154 as specifically mentioned in para 15 of the plaint.

10. Judicial scrutiny of the documents clearly further shows that the lands therein were given without any consideration on the desire made by individual members. Hence the claim of the land in question was granted to the Bohra Samaj and that it had become owner cannot stand. They were clearly licensees under the Parwana, for a limited purpose. Despite having contested the suit since 1960, plaintiffs could not adduce single document to show that the lands were granted to Bohra Community. In the evidence it has come that Alia Bux (PW3) remained as "Amil" of Suwasra from 1922-1934 and he clearly states:

(Emphasis is added).

11. The other evidence on record is also of no consequence. It nowhere shows that land was granted to Bohra community. On the contrary, evidence on record clearly shows that grant was made in favour of individuals. And it was rightly held so by the Court below.

12. The next point for consideration is whether the licence stands terminated. As already mentioned, market was to be set up on the plots in question and grant was made for construction of shops in the Mandi area. And the plaintiffs'' failed to utilise the entire land in terms of the grant for a period of 20 years. For proof of such construction, we have to look in vain in this case. No amount of oral testimony about the plaintiffs wanting to build structures, and with that idea getting building material on some of the suit plots (as has been attempted) could not take the place of documentary evidence about the buildings contemplated. No maps, no sanctions, no accounts, or other documentary evidence is on record to prove the point in question. So the conclusion is that u/s 62(h) of the Indian Easements Act, 1882 the licence stood automatically terminated for not complying with the terms and conditions of the Parwana for an unbroken period of 20 years. Hence on this ground alone the plaintiffs are out of Court, and are not entitled to any relief.

13. The plaintiffs have attempted to prove their possession over some of the suit lands by examining witnesses to show putting up building materials on some plots, and letting out some others for brick kilns, but the question in this case is not about possession, but about not complying with the terms of the licence.

14. In view of the finding recorded above, the other points involved in this case are left with academic importance only, and as such need not be discussed exhaustively. A brief reference may be made about the other points. It seems to us that the suit is not barred u/s 42 of the Specific Relief Act. As regards the earlier suit, barring this suit, it seems there is no substance in this objection raised by the State, since the earlier suit was about some 60 x 56 feet of land, which has nothing to do with any of the suit lands. The trial Court has in para 24 of its judgment held that the suit is barred under provisions of Order 2, Rule 3 of the Civil Procedure Code. This clearly is erroneous, since the rule is directed to securing the exhaustion of the relief in respect of a cause of action and not to inclusion in one and the same action of different causes of action even though they arise from the same transaction. Hence it seems that that there is no bar to the present suit under provisions of Order 2, Rule 3, Civil Procedure Code. The finding to the contrary by the trial Court is therefore set aside.

15. This brings us to the application dated 10-1-2012 under Order 41, Rule 27 (I.A. No. 395/12) filed by the appellants for additional evidence touching the suit land. It is highly belated and we are not satisfied with the reasons assigned in the application for such belated attempt to fill up the lacuna. Even otherwise, documents filed with the application in our considered opinion do not advance the case that the grant was made to the Bohra Community. But since in the foregoing discussion we have given reasons for failure of plaintiffs'' case, on grounds of not complying with the terms of the licence, the application for allowing additional evidence, is meaningless, since the evidence sought to be introduced is not germane to the main point. Hence the application deserves dismissal.

16. There are applications (I.A. No. 141/12; 142/12; 143/12; and 144/12). I.A. No. 141/12 is an application under Order 22, Rule 4 for substitution of legal representative of respondent No. 76(b) and I.A. No. 142/12 is an application under Order 22, Rule 9 read with section 5 of the Limitation Act. Similarly 143/12 is an application under Order 22, Rule 4 for substitution of legal representative of respondent No. 3A and I.A. No. 144/12 is an application under Order 22, Rule 9 read with section 5 of the Limitation Act. These applications no longer call for any orders, since we have held that the plaintiffs are out of Court, and no useful purpose would be served by considering the application in hand.

In the result the appeal fails and is hereby dismissed. The judgment and decree passed by the lower Court are hereby affirmed, with the modification as indicated above. Plaintiffs'' to bear costs throughout. Counsel''s fees Rs. 5,000/-.