
(2005) 03 MP CK 0062

Madhya Pradesh High Court (Indore Bench)

Case No: S.A. No. 114 of 1988

State of M.P. and Others

APPELLANT

Vs

Ramchandra and Another

RESPONDENT

Date of Decision: March 15, 2005

Acts Referred:

- Civil Procedure Code, 1908 (CPC) - Section 80
- Madhya Pradesh Land Revenue Code, 1959 - Section 157, 57

Citation: AIR 2005 MP 217 : (2005) 2 MPLJ 218

Hon'ble Judges: A.K. Shrivastava, J

Bench: Single Bench

Advocate: S.S. Garg, for the Appellant; I.C. Gangarde, for the Respondent

Judgement

A.K. Shrivastava, J.

This second appeal has been preferred by the defendants feeling aggrieved by the judgment and decree dismissing their appeal by First Appellate Court.

The plaintiffs who are respondents In this appeal filed suit for Injunction praying that a decree of perpetual Injunction be Issued against defendants appellants from Interfering In their possession with a further relief of injunction that they be restrained from auctioning the agricultural lands in question.

In brief the suit of plaintiffs is that Shri Ram Mandir is entered in the revenue record as Bhumiswami and in the revenue record Laxman Das S/o Sukhram Das Balragi is entered as Pujarl and Manager. However, since beginning the possession on the suit land is of plaintiffs. Earlier their predecessors were possessing the suil land. The plaintiffs father passed away 20 years earlier to the date of filing of the suit (suit tiled on 6-8-1979). After the death of their father, they are possessing the suit land and the partition has also been taken place between them. The land situated on the southern side is being possessed by plaintiff No. 2 Ganesh alias Ganpat and the land

located at the northern side is of plaintiff No. 1 Ramchandra. In the revenue record, Collector Ratlam (defendant No. 1) has been entered as Manager of which no Intimation was given to the plaintiffs and no opportunity of hearing was provided to them. According to the plaintiffs, the said entry is void.

An alternative plea is also taken by the plaintiffs that if it is held that the suit land is of temple Ramchandra Ji, then it would be a trust property and plaintiffs are managing the temple as Pujarl. Since, they are possessing the disputed land, the same has been vested in them and defendant No. 1 -- Collector, Ratlam is having no authority to interfere the possession of plaintiffs. It has also been pleaded that Collector is not having any right to obtain possession from the plaintiffs even then defendant No. 2 -- Tahsildar, Ratlam had issued notice to lease out the suit land for one year and has put the land to auction. Hence after sending notice u/s 80 CPC. a suit for perpetual injunction has been filed.

The defendants-appellants by filing written statement resisted the suit. According to the defendants, plaintiffs are not the owner of the disputed land nor their possession, as owner is on the said land. According to them, temple Ramchandra Ji is the Government temple and therefore the Collector is its Manager. In the written statement, It has been denied that Laxmandas was the Pujarl or he was managing the temple. The entry in that regard according to the defendants is incorrect. It has also been pleaded that by the said entry plaintiffs' right are not affected. The defendants further denied that plaintiffs are possessing the suit land. It has also been set forth in the written statement that since the temple is a Government temple, it is imperative to record the name of Collector as the Manager of the temple. It is not necessary to give any information in that regard to plaintiffs. The plaintiffs though were in the knowledge about the said entry, but, they did not raise any objection.

In the special pleas, it has been pleaded by the defendants that plaintiffs are not the Bhumiswami of the disputed land and even if their possession is proved, their status is of trespasser as such they are not entitled to bring any suit. The defendants prayed that suit be dismissed.

The trial Court on the basis of averments made in the plaint and the denial in the written statement, framed necessary Issues and thereafter recorded the evidence. The Trial Court while deciding issue Nos. 1 and 2 came to hold that, plaintiffs are the owner of the lands in question is not proved, nor it is proved that there was Inter se partition between the plaintiffs. However, the Trial Court held that plaintiffs are in possession and since it is not proved that Ram Mandir is a Government temple, therefore, this fact is not proved by the defendants that under which provision of law the land in question is being given on lease and for that purpose the same was put to auction. The Trial Court decreed the suit of injunction directing defendants not to dispossess plaintiffs.

The defendants preferred first appeal before lower appellate Court which has been dismissed by the impugned judgment. The Appellate Court came to hold that the possession of appellants is as of trespasser and therefore the defendants by initiating due process of law may evict them. However, they are not entitled to take law in their own hands and without affording any opportunity of hearing to plaintiffs, by force neither they can dispossess plaintiffs nor could auction, the suit land in order to dispossess them. Hence this appeal.

This Court on 30-4-1988 admitted the second appeal on following substantial questions of law :

"(1) Whether in the facts and under the circumstances of the case the order of the Commissioner making the entry of the name of Collector as Vyavasthapak in record of rights is wrong?

(2) Whether the burden of proving the factual existence of Shri Ram Mandir has been wrongly thrown on the appellants?

(3) Whether the finding that the appellants cannot auction the land in dispute is contrary to law?"

I have heard Shri S. S. Garg, learned Dy. Govt. Advocate; for appellant and Shri I.C. Gangrade, learned Counsel for respondents.

Regarding substantial question of law No. 1. and. 2 : On bare perusal of the plaint averments, it is found that the case of plaintiffs is that the lands in question belong to Shri Ram Mandir and the Pujari and Manager of this temple is Laxman Das S/o Sukhram Das Bairagi. Indeed, though plaintiffs set forth an alternative plea in the plaint that the suit land is to be treated as trust, property since it belongs to temple Ram Chandra Ji, but. they at the time of adducing the evidence chose to stand their case based on earlier part of their pleading that they are possessing the land in question. The plaintiffs abandoned the alternative plea about the disputed land to be the trust property since no evidence was adduced on their behalf in that regard. The testimony of plaintiff PW-1 Ramchandra is quite clear in this regard.

The two Courts below on the basis of the oral and documentary evidence came to hold that the status of plaintiffs is that of trespasser only, and if that is the position, according to me, it is not necessary to decide the above said two substantial questions of law in the present facts and circumstances because, it is to be seen whether the Courts below have rightly decreed the suit of injunction of plaintiffs. Even if it is held that Commissioner directed to enter the name of Collector as "Vyavasthapak" in the record is wrong, it would not prejudice the case of plaintiffs because as per their own showing in para 2 of the plaint, the suit, land is entered in the name of Shri Ram Mandir In revenue record and it is Laxman Das who has been shown as Pujari and Vyavasthapak. No where in the plaint, it has been pleaded by the plaintiffs that they are the Bhumiswami of the lands in question. It has also not

been pleaded by them that they are the Pujari or they are managing the Shri Ram Mandir as Manager and in that capacity they are possessing the lands in question. Though very feebly they have stated in para 5 of the plaint that the suit land is being possessed by them under their ownership right. u/s 57 of M.P. Land Revenue Code, the State is the owner of the entire land and it is only Bhumiswami rights which are given to the tenure holder u/s 157 of the Code. The plaintiffs did not file any document in order to show and establish their Bhumiswami right. The Trial Court while deciding issue No. 1 also came to hold that plaintiffs are not the owner and this finding has been affirmed by the Appellate Court and this is a finding of fact against the plaintiffs. The plaintiffs did not file any cross-objection in the appellate Court in that regard. Thus, impliedly the plaintiffs have accepted that their status on the suit land is of trespasser. For this reason, it is not necessary, in the present factual scenario, to decide substantial question of law No. 1 and 2.

Regarding substantial question of law No. 3:

It has been found by the two Courts below by arriving at a finding of fact that plaintiffs are trespasser on the suit land as they utterly failed to prove their title by adducing any cogent evidence in the shape of document. The finding of the Courts below holding that plaintiffs are the trespasser is a pure finding of fact, though it has been held that plaintiffs are in possession since long and, therefore, their suit for the grant of decree of injunction has been rightly passed by the Courts below. In the case of *Munshiram v. Delhi Administration* AIR 1968 SC 702, it was observed that no one including the true owner has the right to dispossess the trespasser by force, if the trespasser is in settled possession of the land and in such a case, unless he is evicted in due course of law, he is entitled to defend his possession even against the rightful owner. In the case of [Puran Singh and Others Vs. The State of Punjab](#), it has been decided by the Apex Court that the nature of possession which may entitle a trespasser to exercise the right of private defence of property. Thus, the legal position in this regard is this that a person who is in settled possession of the land, even if his possession is found without title he can protect his possession even against true owner for a limited purpose till he is evicted by due course of law. In this regard, I may profitably rely the decision of the Division Bench of this Court in the case of *Gajendra Singh v. Mann Singh* (2000) 2 MPLJ 316 : 2000 AIHC 3102.

Indeed, the First Appellate Court while dismissing the appeal of defendants categorically held that defendants are free to evict plaintiffs after adopting due process of law by providing them opportunity of hearing. This Court is also affirming the said finding in the same terms. Since, the suit land, as being possessed by the plaintiffs, therefore, without issuing them any notice and providing them opportunity of hearing, the land in question cannot be put to auction "because their possessory right, even though they are trespasser, are. infringed. The substantial question of law No. 3 is answered Accordingly.

The appeal is accordingly dismissed With the aforesaid observations: It is how ever made clear that the defendants if they choose may adopt the procedure as prescribed under the law to evict the plaintiffs as they are trespassers. The parties are dirercted to bear their own costs.