

(1900) 01 MP CK 0035

MADHYA PRADESH HIGH COURT

Case No: 1913 of 2005

Surendra Sharma

APPELLANT

Vs

State of M.P.

RESPONDENT

Date of Decision: Jan. 1, 1900

Acts Referred:

- Constitution of India, Article 227 - Power of superintendence over all courts by the High Court
- Code of Civil Procedure, 1908, Section 100, Section 80</

Hon'ble Judges: Justice Anurag Shrivastava

Bench: Single Bench

Advocate: G.S. Baghel, Sanjay Verma, D.K. Bohre, Prakash Gupta, Y.M. Tiwari

Judgement

1. This is the second appeal under Section 100 of Civil Procedure Code preferred by the appellants/plaintiffs assailing the judgment of reversal dated 21.07.2005 passed by Vth Additional District Judge, Satna, in Civil Appeal No.2- A/2005 allowing the appeal of the respondents/defendants and thereby reversing the judgment and decree dated 10.12.1999, passed in Civil Suit No.23-A/1999, by 1st Civil Judge Class-II, Satna,

2. In brief, the suit of plaintiffs is that the plaintiffs are legal heirs and successor of Late Sheikh Babbu. The disputed land bearing Khasra No.502, 506, 507, 508, 532 and 533 total area 32.48 acres situated at Village-Kolgawan Kothar, Tahsil- Raghuraj Nagar, District-Satna was of Bachai S/o Somai Lonia, who was cultivating the land as Pattedar tenant till 1940. As he could not pay the rent (Lagaan) of the land, he had given the disputed land to Late Sheikh Babbu. The Tahsildar, Satna in Revenue Case No.608, dated 22.08.1941 vide order dated 28.08.1941 settled the disputed land and granted half of the land to Late Sheikh Babbu and half of the land to Sharad Indu

Banerjee as Gairhaqdar Kastkar. It is further pleaded that although half of the disputed land was given to Sharad Indu Banerjee, but he never occupied the land and the entire land was possessed and cultivated by Late Sheikh Babbu. After independence, Mannumal and Shivan Das Sindhi applied for allotment of the half part of the land, which was given to Sharad Indu Banerjee, on the ground that the land was lying uncultivated and unoccupied by Sharad Indu Banerjee. The revenue Commissioner, Rewa in Revenue Case No.508/1950-51 vide order dated 25.05.1950 dismissed the application of Mannumal and Shivan Das Sindhi on the ground that Late Sheikh Babbu was in possession of the land and cultivating it. He was paying the rent also, therefore, the land may be allocated to him.

3. It is further pleaded by the plaintiffs that Late Sheikh Babbu was continuously occupying and cultivating the disputed land as Gairhaqdar Kastkar and after coming into force of M.P. Land Revenue Code, 1959, he became bhumiswami and his name was recorded in revenue records as bhumiswami. The disputed land was never a State Bandh or Tank. Late Sheikh Babbu had never possessed the land as government lessee. He was recorded as Bhumiswami and after his death on 30.09.1971, his sons Mohd. Suleman, Mohd.Usman and Mohd.Ahsan were recorded as bhumiswami on disputed land. In the year 1970-71 Sharad Indu Banerjee instituted the proceedings before Tahsildar for eviction of Late Sheikh Babbu from half portion of the disputed land. This proceedings was dismissed in Revenue Case No.4-A/1974/1970-71 vide order dated 06.06.201972.

4. It is further averred by the plaintiffs that in Khasra of 1961-62 to 1962-63 below the name of Late Sheikh Babbu, a entry of "government lessee" had been made by different ink. This entry was made without any order of revenue authority and also without notice to Late Sheikh Babbu. This entry is false and fabricated. In the year 1993, after the death of one of co-owner Mohd. Suleman, his legal heirs applied for substitution and mutation as Bhumiswami in revenue records. The Tahsildar had rejected the prayer on the ground that the deceased was recorded as "government lessee". As per plaintiffs, they are bhumiswami of the disputed land. The State Government is denying their rights on the land without any sufficient ground, this causes cloud on their title. Therefore, plaintiffs have sent a notice under Section 80 of C.P.C. to the defendants and thereafter, filed the present suit for declaration of title and possession on the disputed land also issuance of permanent injunction to restrain the defendants to interfere with possession of plaintiffs.

5. In the trial Court, the defendants did not appear and they have been proceeded ex-parte. The trial Court recorded the evidence of plaintiffs and vide judgment dated 10.12.1999, found the title and possession of the plaintiffs on the disputed land proved and decreed the suit.

6. Aggrieved by the judgment and decree of trial Court the respondents preferred

first appeal only on the ground that the disputed land was recorded as State Bandh. It is a tank. Late Sheikh Babbu was government lessee, therefore, bhumiswami rights cannot be conferred upon him. A proceedings for eviction against Late Sheikh Babbu was initiated on the ground that he had illegally sublet the disputed land. After losing his case in Board of Revenue, the plaintiffs have preferred the Misc. Petition No.740/1984 before the High Court under Art.226 and 227 of Constitution. In this writ petition, vide order dated 01.10.1999, Hon'ble Court has held that the disputed land is State Bandh, in which Late Sheikh Babbu was special tenant, who could not acquire rights of Bhumiswami, therefore, he can be evicted. Thus, Misc. Petition was dismissed by the High Court. The plaintiffs have filed the suit concealing above facts and fraudulently obtained the decree from the trial Court, which is liable to be set aside.

7. Keeping in view the order dated 01.10.1999, passed by High Court in Misc. Petition No.740/1984, Learned appellate Court by passing the impugned judgment allowed the appeal, and set aside the judgment and decree of the trial Court and also dismissed the suit of plaintiffs.

8. Against the judgment and decree of appellate Court, the plaintiffs have preferred this second appeal, which has been admitted on the following substantial question of law:-

(i) Whether the predecessor of plaintiffs Sheikh Babbu Musalman acquired the right of Pattedar tenant under Section 57 (4) of the Rewa Land Revenue and Tenancy Code, 1935 as his name was directed to be entered as ghairhaqdar vide order dated 22.08.1941 passed by Tahsildar as mentioned in Ex.P-1?

(ii) Whether under Section 185 (1) (iii) of M.P. Land Revenue Code, 1959 the plaintiffs became occupancy tenants and thereafter bhumiswamis by operation of law under Sections 189 and 190 of the Code as their predecessor Sheikh Babbu Musalman was Pattedar tenant?

9. This is the case of appellants/plaintiffs that during the period of erstwhile "Rewa State", in the year 1939, one Bachai S/o Samai Lonia was Pattedar tenant of the disputed land. As he was not able to pay the rent of the land, he surrendered the land and gave the possession of land to predecessor of plaintiffs i.e. Late Sheikh Babbu Musalman. Later on, in the year 1941, in Revenue Case No.608, dated 22.08.1941 vide order dated 28.08.1941, the Tahsildar settled the disputed land in favour of Sheikh Babbu and Sharad Indu Benerji and, granted half of the land to Late Sheikh Babbu and half of the land to Sharad Indu Banerjee as "Gairhaqdar Kastkar". To prove above facts, the plaintiffs have filed certificate copy Ex.P-1 of

Khasra of the year Samvat 1983 to 2002. (corresponding years 1936-1945 A.D.)

10. Khasra entry (Ex.P-1) shows that the disputed land was recorded on the name of Bachai Lonia as Pattedar tenant and the lands Khasra No.502, 506, 507, 508, 532 and 533 were shown as Bandh and ridges. There was an entry in Ex.P-1 of order of the Tahsildar passed in Revenue Case No.608/22.08.41, dated 28.08.1941, by which the 1/2 part of the disputed land was settled in favour of Late Sheikh Babbu Musalman and remaining 1/2 part was settled in favour of Sharad Indu Banerjee as "Gairhaqdar Kastkar". The names of Late Sheikh Babbu Musalman and Sharad Indu Banerjee were recorded as Gairhaqdar Kastkar on 1/2-1/2 part of the disputed land. This fact remained unchallenged before Trial Court and also corroborated by evidence of plaintiffs witnesses Md.Lukman(P.W.1). Therefore Trial Court rightly relied upon Ex.P1 khasra entries and held that the disputed land was allocated to Shaikh Babbu and Sharad Indu Banerjee as Gairhaqdaar Kastkar in the year 1941.

11. Now the main question arises for determination as to whether the disputed land is "Bandh or State Bandh" or Tank?In the year 1941, Rewa Land Revenue and Tenancy Code, 1935 was in force. In this Code, Section 4 defines the land "Bandh and State Bandh" as under:-

"Bandh", when used with reference to a holding, includes the embankment, the boraru or normally sub-merged area, and the pakhar or area not so sub-merged but commanded by the embankment and demarcated on the ground as such, not exceeding the boraru area.

"State Bandh" means a bandh purchased by, or constructed at the expense of, the Darbar; and includes a bandh lapsing to the Darbar under a specific order relating to it, provided that such bandh is, at the date of lapse, the subject of a concession of 45 per cent., in rent or jama nikasi."

12. Thus, the lands Bandh and "State Bandh" are defined separately in Rewa Land Revenue and Tenancy Code, 1935(here in after referred as Rewa Code). Both are different lands. The disputed land was recorded as Bandh in revenue records Khasra Ex.P-1 of the year 1936 to 1945. Earlier the land was recorded as Bandh on the name of Bachai Lonia since 1936 to 1941 and thereafter, on the name of Late Sheikh Babbu and Sharad Indu Banerjee. Therefore, from revenue record, it can be presumed that the disputed land is a "Bandh".There is no evidence adduced by defendants in rebuttal of it.

13. It is contended by learned counsel for the appellants that since 1941, plaintiffs' predecessor Late Sheikh Babbu Musalman was occupying and cultivating the

disputed land as Gairhaqdar Kastkar, therefore, after coming into force of M.P. Land Revenue Code, 1959, by operation of law, under Section 158, Late Sheikh Babbu became bhumiswami of the said land. It is further contended that in Khasra of the years 1961-62 to 1962-63 Ex.P-26, first time without notice to Late Sheikh Babbu and without order of competent authority, in column III of Khasra below the name of Late Sheikh Babbu, an entry as "Government Lessee" was made by different ink, which is a false and fabricated entry. On the basis of this entry, the defendants are challenging the title of plaintiffs and trying to dispossess them.

14. Per contra it is argued by the learned counsel for the respondents that the disputed land was State Bandh (Tank). As per Section 149 of Vindhya Pradesh Land Revenue and Tenancy Act, 1953 (here in after referred as V.P.Act), which came into force from 01.04.1955, the right of Pattedar Tenant, shall not accrue to the holder of "State Bandh", therefore, Late Sheikh Babbu became Special Tenant under Section 150 (2) of V.P. Act. Late Sheikh Babbu and his heirs did not acquire Bhumiswami rights on the disputed land under the M.P. Land Revenue Code, 1959. Therefore, the entries of Government Lessee made in Khasra of the years 1961-62 to 1962-63 Ex.P-26 is correct.

15. M.P.Land Revenue Code 1959 came in to force on 02.10.1959. Section 158 of the Act provides for the conferral of bhumiswami rights to different categories of land holders and tenants. Bhumiswami rights accrue only in cases of limited categories of land holders and only on specified grounds. The provisions for Bhumiswami rights in respect of Gairhaqdar Kastkar of Rewa State are given in sec.158 (1) (d) (ii) of the Code which reads as under:-

Sec.158 Bhumiswami.-[1] Every person who at the time of coming into force of this Code, belongs to any of the following classes shall be called a Bhumiswami and shall have all the rights and be subject to all the liabilities conferred or imposed upon a Bhumiswami by or under this Code, namely:-

(a).....

(b).....

(c).....

(d)(i).....

(ii) every person in respect of land (other than land which is a grover or tank or which has been acquired or which is required for Government or public purposes) held by him in the Vindhya Pradesh region as a gair haqdar tenant and in respect of which he is entitled to a patta in accordance with the provisions of sub-section (4) of section 57 of the Rewa State Land Revenue and Tenancy Code, 1935.

16. Thus a Gair haqdar tenant, who is entitled to a patta u/s 57(4) of Rewa Land Revenue and Tenancy Act 1935 of the land held by him, shall become Bhumiswami if that land is not a grover or tank or which has been acquired or which is required for Government or public purposes. For conferral of Bhumiswami right it is not necessary that Gair haqdar tenant must have a patta of the land. Only requirement is that he is entitled to grant of Patta of the land.

17. The conditions for grant of patta to a Gairhaqdar kastkar is given in sec.57 of Rewa Land Revenue and Tenancy Act 1935 which reads as under:-

57.(1) All tenants, other than pachpan-paintalis tenant and pattedar tenants, are ghairhaqdar tenants.

(2) The interest of a ghairhaqdar tenant is, for the term of his contract, if any, heritable and will devolve in accordance with the provisions of section 48.

(3) The interest of a ghairhaqdar tenant is not transferable in any shape or form.

(4) A ghairhaqdar tenant who has occupied land other than grove-land, tank, or land acquired or held for a public purpose or a work of public utility, with the consent, express or implied, of the Tahsildar or the pawaidar or sub-pawaidar, as the case may be, shall be entitled to be recorded as a pattedar tenant and to obtain a patta if he agrees to pay rent determined in accordance with the provisions of section 83.

Thus only condition to obtain patta by Gairhaqdar kastkar is payment of rent determined by Settlement Officer. If he agrees to pay rent as determined, he shall be entitled to get patta if the land does not fall under prohibited categories.

18. In the present case the 1/2 part of the land was given to Shaikh Babbu and 1/2 was given to Sharad Indu Benergee as Gairhaqdar kastkar. This is the plaintiffs case that Sharad Indu Benergee was never remained in possession of the land and entire disputed land was possessed by Shaikh Babbu. In support of this the plaintiff has

filed documents Ex.P2 and Ex.P3. The document Ex.P3 is a certified copy of the order of Revenue Commissioner passed in Revenue Case no.508/1950-51 dated 25.05.1950, which shows that in the year around 1950, Mannumal and Shivan Das Sindhi applied for allotment of the half part of the land, which was given to Sharad Indu Banerjee, on the ground that the land was lying uncultivated and unoccupied by Sharad Indu Banerjee. The revenue Commissioner, Rewa by impugned order dismissed the application on the ground that " Sheikh Babbu is in possession of the land and cultivating it. He is paying the rent also, therefore, the land may be allocated to him if he is willing to obtain patta".

19. Another document Ex.P2 is certified copy of order of Additional Collector, Satna passed in Revenue Case no. 4/A74/ 1970-71 dated 06.07.1972 where in it is mentioned that In the year 1970-71 Sharad Indu Banerjee instituted the proceedings before Tahsildar for eviction of Late Sheikh Babbu from half portion of the disputed land, which was allotted to him in 1941. This proceedings was dismissed as abated. This document confirms the fact that Sharad Indu Banerjee was not possessing the land.

20. Thus order of Commissioner Ex.P3 shows the possession of Sheikh Babbu in the years 1950-1951. It appears that Sharad Indu Banerjee never occupied the land. The revenue records khasra of the year 1961-1962 Ex.P26, and khasras of subsequent years Ex.P-28 to Ex.P-36 shows the possession of Sheikh Babbu and his successors till now. Thus the presumption of Sheikh Babbu possession can be drawn from revenue records. There is no evidence produced by defendants in rebuttal as they remained ex-parte in Trial Court. The plaintiffs have also filed receipts of payment of rent of the land Ex.P-5 to Ex.P-25 since 1941 to 1976 etc..Thus relying upon above evidence it is rightly found proved that since from 1941 after settlement of the land, Sheikh Babbu was continuously in possession of the entire land including the part of land of Sharad Indu Banerjee and was paying the rent of the said land.

21. Sheikh Babbu was possessing and cultivating the entire disputed land as Gairhaqdar kastkar. He was paying the rent of entire land. The Revenue Commissioner in his order dated 25.15.1950 Ex.P3 approved the possession of Sheikh Babbu in entire disputed land and directed the grant of patta to him u/s sec.57(4) Rewa Land Revenue and Tenancy Act 1935. This shows that Revenue Commissioner had recognized Sheikh Babbu as Gairhaqdar kastkar in entire land and also found him entitled to grant of patta. This order of commissioner as remained unchallenged, is binding on defendants.

22. As per sec.158(1)(d)(ii) of M.P.Land Revenue Code 1959 a Gair haqdar tenant who is entitled to a patta u/s 57(4) of Rewa Land Revenue and Tenancy Act 1935 of the land held by him ,shall become bhumiswami if that land is not a grover or tank or which has been acquired or which is required for Government or public purposes.

The disputed land is a "Bandh", the rent of the same was being paid by Sheikh Babbu. Therefore, Sheikh Babbu was entitled to obtain patta of the land. Thus by operation of sec.158 of M.P. Land Revenue Code Sheikh Babbu became bhumiswami of disputed land. The revenue records khasra of the years 1961- 1962 Ex.P26.also corroborates this where in Sheikh Babbu is recorded as Bhumiswami of entire disputed land. The coordinate Bench of this Court in case law Keshar Bai (Smt.) Vs. Ramkhilawan and another 1993 Revenue Nirnaya 194, while considering the right of Pattedar tenant under V.P. Act, 1953, after coming into force of M.P. Land Revenue Code, 1959 in para 10 observed that:-

"On coming into force of the M.P. Land Revenue Code by virtue of section 158(d)(i), the plaintiff/appellants have acquired the status of a Bhumiswami. The accrual is automatic and does not depend on the mutation or change in the lands records."

23. As for as entry of "government lessee" in khasra of years 1961-62 Ex.P26 and subsequent years are concerned, on perusal of khasra Ex.P-26 it appears that in column III, name of Sheikh Babbu is written as bhumiswami and below this word, Government Lessee is written. It is further mentioned by the person who prepared the certified copy of Ex.P1 that "the word Government Lessee is written in different ink." Thus prima facie this entry of Government Lessee appears is to be made subsequently. It is not mentioned under whose direction or order it is written. There is no explanation given by respondents in this regard.

24. Government Lessee and Bhumiswami are different categories of holders of land as prescribed in M.P.Land Revenue Code 1959 .The relevant sec. 181.(2)(b) defines the Government lessee as under:-

"Every person who coming in to force of this code holds any land in the Vindhya Pradesh region as a special tenant as defined in the Vindhya Pradesh Land Revenue and Tenancy Act, 1953 (III of 1955), or as a gair haqdar tenant any grove or tank or land which has been acquired or which is required for Government or public purposes; or.....shall be deemed to be a Government Lessee in respect of such land."

25. The disputed land is not a grove or tank or land which has been acquired or which is required for Government or public purposes. As per sec.150 of Vindhya Pradesh Land Revenue and Tenancy Act, 1953, Special Tenancy can be created in respect of land "State Bandh", not in respect of "Bandh". Since the disputed land is a Bandh which does not come within the categories of lands as mentioned in above sec.181.(2)(b) of M.P.L.R. Code, therefore Sheikh Babbu can not be treated as

Government Lessee. A person cannot be a Bhumiswami and Government lessee simultaneously. The burden to prove this fact that the entry of "Government lessee" was rightly made in revenue records, lies upon respondent i.e. Government.

26. In the case law State of M.P. Vs. Mangilal ILR (2011) M.P. 3106, the disputed land was recorded on the name of plaintiffs as bhumiswami upto 1963-64, thereafter, the land was recorded as government land. The Tahsildar initiated eviction proceedings against the plaintiffs treating him as encroacher. There was nothing on record as to how and in what manner and when and by which order, the disputed land vested in the State. The coordinate Bench of this Court in para 12 observed as under:-

"According to me since the entire revenue record is in power and possession of the State government, therefore, it was bounden duty of the State government to produce the record in the Court, which could throw sufficient light on the controversy and the defendants State government cannot be heard to say, relying upon the the abstract doctrine of onus of proof that it was o part of its duty to produce that record unless he was called upon to do so. In this context I may profitably place reliance on the decision of Supreme Court Hiralal and others Vs. Badkulal and others AIR 1953 SC 225 and also the judgment of T.S. Murugesam Pillai Vs. M.D. Gnana Sambandha Pandara Sannadhi and others A.I.R. 1917 Privy Council 6. According to me if a party is in possession of best evidence which would throw sufficient light on the issue in controversy is withholding it the Court should draw an adverse inference against him notwithstanding that onus of proof does not lie on him. In this context I may profitably place reliance on the decision of Supreme Court Gopal Kirshnaj Ketkar Vs. Mohamed Haji Latif and others AIR 1968 Supreme Court 1413."

27. In the present case also, no evidence is adduced by respondents to explain that the entry of Government Lessee is validly made in revenue records. The entry of Government Lessee made in khasra Ex.P-26 and subsequent khasras and other revenue records are unauthorized and illegal.

28. Learned appellate Court relying upon the order dated 01.10.1999 of this Court in Miscellaneous Petition No.740/1984, dismissed the suit of plaintiffs on the ground that in above petition the coordinate Bench of this Court found the plaintiffs as encroacher on the disputed land and approved the proceedings of eviction against him. Therefore, the present suit is not maintainable and the decree in favour of plaintiffs, obtained by fraud concealing the decision of Writ Court is null and void.

29. To appreciate the findings of appellate Court, it is required to consider the nature of dispute raised in Misc. Petition No.740/1984. On perusal of impugned

order dated 01.10.1999, it appears that the Collector had ordered for eviction of Sheikh Babbu from the disputed land on the ground that he sublet the disputed land in contravention of Section 58 (3) of the Rewa Code. Sheikh Babbu had challenged the order of eviction before Commissioner and Board of Revenue and after getting defeated in both forum, he preferred a writ petition under Article 227 of Constitution before the High Court challenging the order dated 03.02.1984 passed by Board of Revenue.

30. Thus, it is evident that in writ petition Sheikh Babbu had challenged the eviction proceedings initiated against him by revenue authority. In these proceedings treating Sheikh Babbu as special tenant and the disputed land as "State Bandh", the order of eviction under Section 155 (1) (c) of V.P. Act was passed. Hon"ble writ Court had approved the eviction order and dismissed the petition holding that in State Bandh the Bhumiswami rights cannot be acquired.

31. This is settled law that a suit for declaration of title can be filed in civil Court. The full Bench of this Court in State of M.P. Vs. Balveer Singh 2001 (2) MPLJ 644 held as under:-

"The determination of question of Bhumiswami rights lies within the province of the Civil Court expecting the cases falling within the ambit of those specified under Section 257 of the code. A civil suit is directly maintainable in respect of the disputes with the State other than the disputes contemplated under Section 57 (1) of the Code."

The above view is also fortified by Hon"ble Apex Court in case law Rohni Prasad and others Vs. Kasturchand AIR 2000 SC 1283.

32. The present suit has been filed for declaration of Bhumiswami rights, which is maintainable in civil Court. In revenue proceedings, question of title or Bhumiswami rights of Sheikh Babbu was not raised and could not be adjudicated. The revenue Court proceeded against Sheikh Babbu treating the disputed land as State Bandh. The question whether the disputed land is a Bandh or State Bandh was not raised and adjudicated there. Since the writ was filed against the order of Board of Revenue wherein the disputed land was treated as State Bandh, whereas in present suit plaintiffs claimed title describing the land as Bandh, the nature of claim and dispute is different in both proceedings. Therefore the order of writ court shall not operate as res-judicata ,and present suit is maintainable.

33. It is argued by the learned counsel for the appellants that the proceedings for ejectment against Sheikh Babbu was initiated under Section 155 of V.P. Act, whereas

the disputed land was allotted to Sheikh Babbu as Gairhaqdar Kastkar under Rewa L.R. Code 1935. Since provisions of V.P. Act was not applicable in case of persons holding land as Gairhaqdar Kastkar, therefore, Sheikh Babbu cannot be ejected under the provisions of V.P. Act. In Rewa Land Revenue Code, a Gairhaqdar Kastkar can be evicted only under the grounds stated in Section 132, wherein subletting is not a ground mentioned for eviction. Therefore his eviction is illegal.

34. Section 228 of V.P. Act, 1953 provides for repeal and saving of Rewa Code, which reads as under:-

(i) The Rewa State Land Revenue and Tenancy Code, 1935 and the Vindhya Pradesh Board of Revenue Ordinance, 1949 are hereby repealed.

(ii) Notwithstanding such repeal, where any person is holding land at the commencement of this Act as a gairhaqdar tenant within the meaning of the Rewa Land Revenue and Tenancy Code, 1935 he shall continue to hold such land on the same terms and conditions on which he was holding it immediately before such commencement and the provisions of the said Code shall continue to apply to such tenants as if this Act had not been passed.

(iii).....

Thus, it is evident that provisions of V.P. Act was not applicable in case of persons holding land as Gairhaqdar Kastkar, and such persons shall be governed by old Rewa Land Revenue Code 1935.

35. Keeping in view the fact that Sheikh Babbu was Gairhaqdar Kastkar and provisions of V.P. Act 1953 are not applicable to Gairhaqdar Kastkar as per Section 228 of V.P. Act. The above arguments of learned counsel for the appellants is acceptable.

36. In view of facts and circumstances noticed hereinabove, from the uncontroverted evidence of plaintiffs it is found proved that Sheikh Babbu was possessing entire disputed land as Gairhaqdar kastkar. He was entitled to grant of patta of the land under Section 57(4) of Rewa Code, therefore after coming in to force of M.P. Land Revenue Code 1959, he became Bhumiswami of the land and his name was recorded as Bhumiswami in revenue records Ex.P-26. Subsequent entry of "Government Lessee" in khasra of disputed land seems to be made without any order or grounds, is illegal. A Bhumiswami right can not be canceled without

affording opportunity of hearing and without order of competent authority. After conferral of Bhumiswami right on a person he cannot be ejected treating him Gairhaqdar Kastkar of the same land under the provisions of repealed Act. Thus, the substantial question No.1 is answered affirmatively. As far as second question is concerned, the case of plaintiffs does not come under purview of Section 185 of M.P. Land Revenue Code as he is not an occupancy tenant. He was holding the land as Giarhaqdar Kastkar and his right as Bhumiswami is to be decided under Section 158 (1) (d) (ii) of the Code.

37. Thus, from above discussions, it is found proved that the plaintiffs/appellants are the Bhumiswami of disputed land. Their possession on the land as Bhumiswami is lawful and valid. The entries showing appellants as government lessee on the disputed land in the revenue records are illegal and liable to be deleted. The proceeding of ejectment of appellants from disputed land initiated by respondents, is illegal. The findings of appellate Court treating the appellants as encroachers on the disputed land is wrong and perverse. Consequently, appeal is allowed, the impugned judgment and decree of appellate Court is set aside and judgment and decree dated 10.12.1999 passed by trial Court i.e. 1st Civil Judge, Class II, Satna, is affirmed.

38. Parties to bear their own costs.

39. Decree be prepared accordingly.