

(2003) 07 MP CK 0085
In the Madhya Pradesh High Court
Case No : L.P.A. No. 260 of 2003

Ambika Prasad Bakshi and Another	Vs	APPELLANT
Onkar Prasad Saini and Others		RESPONDENT

Date of Decision : 09-07-2003

Acts Referred:

Citation : AIR 2005 MP 60

Hon'ble Judges : Bhawani Singh, C.J; S.L. Jain, J

Bench : Division Bench

Advocate : A.S. Usmani, for the Appellant; P.S. Das, for the Respondent

Final Decision : Dismissed

Judgement

S.L. Jain, J.—Being aggrieved by the order dated March 20, 2003, passed by the learned single Judge, in Writ Petition No. 5498/2000, appellants have filed this Letters Patent Appeal under Clause 10 of the Letters Patent.

2. The brief resume of the facts required to be stated for disposal of this appeal is as follows :--

A Civil Suit No. 76-A/61 was filed in the Court of Civil Judge Class II, Sagar by Babu Gokul Prasad as plaintiff against the defendants Laxman and Jairam, alleging that he purchased the suit-land bearing Khasra No. 503, area 5 acres, situate at Moza Sagar Khas, Tahsil and District Sagar, from Babu Shiv Prasad and Babu Kashi Prasad on 30-11-1958. The defendants entered into illegal possession of the said land. They neither paid the damages nor delivered possession of the suit-land in spite of notice by the plaintiff.

3. The defendants pleaded that the sale-deed in favour of the plaintiff dated 3-11-1958 is a fictitious and sham transaction which was not meant to be acted upon. It was only a collusive transaction. Gokul Prasad, having lost the civil suit preferred Civil Appeal No. 68-A/64 which was dismissed vide judgment and decree dated 9-9-1965 and thereby the judgment and decree of the trial Court

was confirmed.

4. The plaintiff/appellants Babu Gokul Prasad preferred a Second Appeal No. 1034/85 in the High Court of M.P. at Jabalpur. During the pendency of the appeal, Laxman, the defendant/respondent No. 1 died and his legal representatives were brought on record. The High Court set aside the judgment and decree of both the Courts-below. The aggrieved defendants thereafter filed SLP No. 5263/72, in the Supreme Court.

5. The SLP was allowed and the case was registered as Civil Appeal No. 2272/72, during the pendency of which Babu Gokul Prasad died and in his place Smt. Sardar Bahu was substituted and brought on record as respondent. Smt. Sardar Bahu also died and vide order dated 2-5-1986, her legal representatives were brought on record. The appellant Jairam also died and his legal representatives were also brought on record. Supreme Court heard the Civil Appeal No. 2272/72 and decided it finally by judgment dated 18-12-1990 whereby the appeal was allowed and the judgment and decree of the High Court was set aside and that of both the Courts-below were restored.

6. In view of the judgment of the Supreme Court, Babu Gokul Prasad and his legal representatives had no right, title or interest over the suit-land and the defendants acquired the status of Bhumiswamis of the suit land and the defendant Hariram and others could not be dispossessed from the suit-land.

7. After the judgment of the Supreme Court, legal representatives of Laxman and Jairam (defendants), who are respondents herein filed an application for mutation of their names over the suit-land as title-holder/Bhumiswamis. Tahsildar, Sagar allowed the application for mutation and Sub-Divisional Officer, Sagar confirmed the same in appeal.

8. Against the order of Sub-Divisional Officer, Sagar Ambika Prasad, the appellant No. 1 herein filed an appeal before the Additional Commissioner, Sagar, who set aside the orders of Sub-Divisional Officer, Sagar and Tahsildar, Sagar and remanded the case to Tahsildar with a direction to investigate the question of title with regard to the suit-land. The respondents herein then filed a review petition before the Additional Commissioner, Sagar and also filed a revision before the Board of Revenue, Gwalior. The Additional Commissioner, Sagar, dismissed the review petition on the ground that the revision is pending before the Board of Revenue, Gwalior. The Board of Revenue dismissed the revision filed by the respondents, on the ground that the review petition filed by the respondents before the Additional Commissioner is pending therefore, they could not have preferred a revision.

9. This order of Board of Revenue was challenged by the respondents before this Court by filing a Writ Petition No. 1792/95 and this Court as per order dated 1-11-1999 directed the Board of Revenue to hear the matter afresh on merits and while doing so, to keep in view the order passed by the Apex Court in Civil Appeal No. 2272/72 as well as the scope of objection, if any, raised by Ambika

Prasad. Pursuant to the order of this Court, the Board of Revenue again dismissed the revision as per order Ex. P. 8 holding that there is no infirmity in the order passed by the Additional Commissioner.

10. The orders passed by the Additional Commissioner and Board of Revenue were assailed before this Court by filing Writ Petition No. 5498/2000.

11. Combating the allegations made in the above writ petition, the present respondents filed return stating that a review petition was filed before the Supreme Court. In the review petition it was submitted before the Supreme Court that Kashi Prasad was not a party to the appeal and Ambika Prasad is entitled to the property on the basis of a Will executed by Sardar Bahu widow of Gokul Prasad in his favour. This contention was dismissed by the Supreme Court on the ground that on the death of Babu Gokul Prasad, his widow was brought on record and when she died, Babu Shiv Prasad and five sons of Kashi Prasad were brought on record. Since some of the legal representatives of the wife of Gokul Prasad were brought on record, the estate of the deceased was represented and the omission to bring on record all the legal representatives including Kashi Prasad did not render the appeal incompetent. It was observed by the Supreme Court that there is no abatement of the suit or appeal and the impleaded legal representatives sufficiently represented the estate of the deceased and the decision will be binding not only on those who have been impleaded but the entire estate including those who were not brought on record. About the claim of Ambika Prasad, the Supreme Court in review petition said that the same cannot be adjudicated in the review petition.

12. Appellant Ambika Prasad contended in the writ petition that his right on the basis of the Will has not been adjudicated. He is not bound by the decision recorded against Sardar Bahu, the widow of Gokul Prasad, therefore, without any enquiry regarding his claim which is based on a Will, the Revenue Courts could not have allowed mutation application and the orders of Additional Commissioner and Board of Revenue regarding the enquiry are proper.

13. The learned single Judge, by the impugned order, allowed the petition holding that the matter travelled up to the Apex Court and the claim of Gokul Prasad and his successors was dismissed and the claim of the respondents that they have become Bhumiswamis after the enforcement of Madhya Pradesh Land Revenue Code was accepted, therefore, the Revenue Court ought to have given effect to the orders passed by the Apex Court. The Revenue Courts cannot sit over the orders passed by the Civil Court which travelled up to the Apex Court. Ambika Prasad is claiming on the basis of a will executed by Sardar Bahu. He is also bound by the decree against Sardar Bahu. If, at all, he has any claim, he can file a civil suit. A Revenue Court cannot decide his title. Title cannot be decided in the mutation proceedings as the same is for fiscal purpose and when the respondents herein have succeeded in the title suit they are entitled to mutation of their names. Accordingly, the learned single Judge quashed the orders passed by the Additional Commissioner and Board of Revenue and

restored the orders passed by the Tahsildar and Sub-Divisional Officer, Sagar. It is against this order of the learned single Judge that the appellants have come up in this appeal.

14. We have heard Shri A. Usmani, learned counsel appearing for the appellants and gone through the record of the case.

15. The first contention of learned counsel for the appellants is that learned single Judge has not properly followed the order of the Apex Court whereby the judgment and decree passed by the trial Court and first appellate Court were restored. No decree was passed by the trial Court or by the first appellate Court ordering the mutation. Since there was no order for mutation, the appellants were entitled to raise objections at the time of mutation. He submitted that Revenue Courts are not bound by the decree passed by the Civil Court and if some party questions the decree of Civil Court, the proper enquiry is to be held by the Revenue Courts. The Revenue Court can consider as to whether the objector was a party to the decree of Civil Court and whether the decree is binding on the objector and if the decree is not binding on the objector. The claim of the objector can be decided by the Revenue Court. Even if it is so, it is not a case where the decree was not binding on the objector. The Apex Court while deciding the review petition observed as under :--

"From what has been narrated above it is clear that the entire claim appears to proceed on misconception, Kashi Prasad was not a necessary party to the appeal. The original respondent was Babu Gokul Prasad. On his death his widow was brought on record. When she died Babu Shiv Prasad and five sons of Kashi Prasad were brought on record. Since some of the legal representatives of wife of Gokul Prasad were brought on record the estate of the deceased was represented. The omission to bring on record all the legal representatives did not render the appeal incompetent. The controversy has been set at rest by this Court in series of decisions. In *Daya Ram and Others Vs. Shyam Sundari*,) where one Shyam Sundari had died and some of her legal representatives were brought on record, it was claimed that the appeal in absence of impleadment of all the legal representatives was incompetent and liable to be abated. It was..... :

"When this provision speaks of legal representatives" is it the intention of the legislature that unless each and every one of the legal representatives of the deceased defendants, where these are several, is brought on record, there is no proper constitution of the suit or appeal, with the result that the suit or appeal would abate? The almost universal consensus of opinion of all the High Courts is that where a plaintiff or an appellant after diligent and bona fide enquiry ascertains who the legal representatives of a deceased defendant or respondent are and brings them on record within the time limited by law, there is no abatement of the suit or appeal, that the impleaded legal representatives sufficiently represent the estate of the deceased and that a decision obtained with them on record will bind not merely those impleaded but the entire estate

including those not brought on record."

Same principle was reiterated in Ram Das and Another Vs. Deputy Director of Consolidation, Balia and Others,).

As regards claims of Ambika Prasad that cannot be adjudicated in these proceedings.

The review petitions are, therefore, dismissed."

Thus, in view of the observations of Supreme Court it is not open for the appellant to claim that the decree is not binding on them.

16. Regarding the claim of Ambika Prasad, learned single Judge has said that he is claiming under Sardar Bahu, who was a party before the Supreme Court. The claim of Ambika Prasad cannot be larger than that of Sardar Bahu under whom he is claiming. In any case, in view of the learned single Judge, if Ambika Prasad has any right, he is at liberty to file the civil suit. His title can only be decided by the Civil Court and not by the Revenue Courts.

17. We refrain from making any comment regarding the claim of Ambika Prasad as the same was left open by the Supreme Court, and any observation by us in that regard may cause prejudice to the parties. Suffice it to say that the jurisdiction of a Civil Court is superior to the Revenue Courts and whatever is decided by the Civil Court is the final decision and Tahsildar is bound to make a mutation on the basis of a valid order of the Civil Court. Where a judgment of the Civil Court relating to disputed land is produced before the Revenue Court, the Revenue Court is bound by it and should order mutation according to the decree of the Civil Court. When there was definite finding of the Civil Court that the respondents have become Bhumiswamis of the suit land, the Revenue Courts had no jurisdiction to enquire regarding the rights of the respondents after coming into force of M.P. Land Revenue Code, 1959.

18. The learned counsel for the appellants next contended that the learned single Judge failed to see that in the trial Court and the lower appellate Court, the suit filed by the plaintiffs was dismissed on the ground that notice of termination of the original tenancy was not valid as the tenancy was terminated in the month of April, instead of month of June and the title of the respondents was not decided.

19. The contention is devoid of any merit. In fact, the judgment of the trial Court and lower appellate Court were to the effect that since the defendants have acquired the right of Bhumiswami, the plaintiffs lost their claim in the suit property. Thus, title of the respondents was decided and on the basis of this decision the Revenue Courts were bound to order the mutation of the names of the defendants in the suit whose estate the present respondents represent

20. Learned counsel for the appellants also contended that admittedly, the land was taken by the respondents or, their predecessors for cutting grass only and, therefore, they did not become Bhumiswamis. This contention also is fallacious.

After the decision of the Supreme Court that the defendants have become Bhumiswamis of the suit land, it is not open for the appellants to raise the matter again in the writ petition.

21. Yet another contention of the learned counsel for the appellants is that the respondents were never in possession of the suit land and the names of the appellants, being continuously recorded in the revenue, records establish that they are in exclusive possession of the suit land. Therefore, without enquiry, the Revenue Court could not have ordered the mutation and the learned single Judge erred in allowing the writ petition.

22. Needless, to say that this contention is also benefit of any substance. When the Supreme Court has finally decided that the respondents are the Bhumiswamis, it is not open for the appellants to raise such question. When the title of the respondents has been decided, the Revenue Courts cannot sit over the judgment of the Supreme Court and embark an enquiry regarding title of the respondents.

23. Even if we accept the Contention of the appellants that the claim of appellant Ambika Prasad was left open by the Supreme Court, the same cannot be agitated before the Revenue Courts. The Will executed by Sardar Bahu in favour of Ambika Prasad can have no bearing on the Bhumiswami rights of respondents determined in Special Leave Petition.

24. Learned counsel for the appellants lastly submitted that the learned single Judge on one hand has observed that if Ambika Prasad has any claim on the basis of Will executed by Sardar Bahu in his favour, he may agitate the same before competent Civil Court but on the other hand learned single Judge has observed that Ambika Prasad is bound by the decree passed against Sardar Bahu. The later observation of learned single Judge will cause great prejudice to Ambika Prasad if he chooses to file a civil suit. We can only explain that these observations of learned single Judge are simply obiter and if any civil suit is filed, the Civil Court shall not be influenced by these observations.

25. With these observations, we do not find any merit in this appeal and the same is dismissed at the admission stage.