
(2010) 12 MP CK 0024
In the Madhya Pradesh High Court
Case No : S.A. No. 116 of 2007

Azizuddin Qureshi

APPELLANT

Vs

State of M.P.

RESPONDENT

Date of Decision : 08-12-2010

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 100, 9, 96
Constitution of India, 1950 — Article 226
Treasure Trove Act, 1878 — Section 4, 5

Citation : (2011) ILR (MP) 978 : (2011) 5 MPHT 71

Hon'ble Judges : U.C Maheshwari, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

U.C. Maheshwari, J.—This appeal is directed on behalf of the Appellant / Plaintiff u/s 100 of CPC being aggrieved by the judgment and decree dated 31.7.2006 passed by 4th Additional District Judge, Jabalpur, in Civil Regular Appeal No. 35-A/2005, modifying the judgment and decree dated 6.8.2005 passed by the 18th Civil Judge, Class-II, Jabalpur in COS No. 152-A/05 dismissing his suit for declaration to declare him the owner of the suit property seized by the official of the Respondent No. 1 under the provisions of The Indian Treasure Trove Act, 1878 (in short the Act), with a further prayer to declare the order dated 16.3.2004 passed by the Respondent No. 2/ Collector, with respect of such property, under the Act, being illegal is not binding on him. While modifying the judgment and decree of the trial court the appellate court instead to decree the suit directed the Appellant to file the appeal against the aforesaid Order of the Collector dated 16.3.2004 under the provision of Section 9 of the Act before the Chief Controlling Revenue Authority.

2. The facts giving rise to this appeal in short are that the Appellant herein filed the aforesaid suit against the Respondents contending that in the year 1975-76, he was residing in a house of one Shri Ansari situated at Gurandi Bazar, Jabalpur,

during such period such house was subjected to burn, on which to save the lives, the Appellant and his family member by leaving their goods and belonging in such premises had left the same and subsequently after extinguishing such fire he came back to such house on 13.5.1976 then only he came to know that some unsocial elements by committing the theft had taken away his aforesaid domestic goods and belongings, on which he lodged a report of theft with the Police Station, Belbagh on the same day i.e. 13.5.1976. In such report besides the other stolen articles one sealed "Gund" (A Metallic utensil) was also stated. As per further averments, in such "Gund" his old coins and other valuable were kept. Subsequent to incident after removing said coins and belongings such blank Gund was thrown in his house. Out of the alleged stolen articles some of them after recovery had been returned to him by the Collector, Jabalpur vide order dated 2.1.1977, while some of the articles on recovery were returned to him by the Collector, Dindori vide order dated 22.4.2004. As per further averments of the plaint some of the stolen articles were recovered by the Police Station Omti and Madan Mahal in the year 1997, on which on behalf of Respondent No. 2 by publishing a news in this regard in the bulletin of Dainik Bhaskar of 2.1.2003, the claims with respect of such seized property were invited within six months under the provision of the Act On such publication the Plaintiff herein filed his claim in the office of the Respondent No. 2/ Collector, Jabalpur. Besides the Appellant one Santosh Kumar has also filed his claim on 20.6.2003 with respect of the same seized property. After receiving such claims the Respondent No. 2 has registered the cases under the Act, in which the statement of the present Appellant and said Santosh Kumar were recorded. On subsequent occasion said Santosh Kumar had relinquished his right with respect of the seized property. Thereafter the Appellant was the only claimant to receive such seized valuable articles. But on adjudication of such matter the Respondent No. 2 vide order dated 16.3.2004 stating that the seized articles were not specifically mentioned by the Appellant in his first information report dated 13.5.1976 and pursuant to that by holding that Appellant has failed to prove his title over such seized property/ articles dismissed his claim. It Was also held by the Respondent No. 2 that aforesaid articles were recovered in the territorial jurisdiction of the Police Station Omti and Madan Mahal, which are very far away from the alleged place of the Appellant, the Gurandi Bazar from where his articles were stolen, thus it could not be deemed to be the property of the Appellant. According to further pleadings of the Appellant such order was passed by the Respondent No. 2 without having any territorial jurisdiction over the matter and also contrary to the provisions of Section 6, 7 and 8 of Act. It is also stated that inspite the availability of sufficient evidence showing the right and tide of the Appellant over the seized property his claim was dismissed contrary to such record by the Respondent No. 2 With these averments besides the above mentioned prayer of declaration a prayer of mandatory injunction directing the Respondent No. 2 to deliver the disputed seized articles to him is also made.

3. In spite service of notice on the Respondent s no one was appeared before the

trial court, on which the case was proceeded ex-parte against them.

4. After recording the evidence on appreciation of the same the trial court by holding the Plaintiff has failed to prove his case or title over the disputed property dismissed his suit. While dismissing such suit trial court also observed that the aforesaid order dated 16.3.2004 being passed under the provision of the Act, was appealable u/s 9 of the Act before the prescribed appellate authority and, the suit being filed without exhausting such remedy, the same could not be deemed to be entertainable in the Civil Court. Being dissatisfied with such judgment and decree of the trial court the Appellant filed an appeal u/s 96 of CPC before the subordinate appellate court. After hearing the parties, on consideration the appellate court by allowing such appeal in part and held that the trial court has committed grave error in deciding the question of title of the property, specially when the order of the Respondent No. 2/ Collector was appealable u/s 9 of the Act, therefore, unless such remedy of appeal is exhausted by the Appellant, the Civil Court did not have the jurisdiction over the matter to decide the question of title of such disputed property and pursuant to that by setting aside the judgment and decree of the trial court extended the liberty to the Appellant to approach the appellate authority, The Chief Controlling Revenue Authority u/s 9 of the Act against the order of Respondent No. 2/ Collector dated 16.3.2004 (Ex.P. 14), on which the Appellant has come forward to this Court with this appeal.

5. Shri Ahadullah Usmani, learned Counsel for the Appellant after taking me through pleadings of the plaint, evidence available on the record and the exhibited documents, said that his unrebutted evidence has not been properly considered by the courts below, on proper appreciation of the same the courts below ought to have decreed the suit as prayed for declaration and appropriate direction to the Respondent No. 2 for delivery of the seized articles to the Appellant. In continuation, by referring the provision of Section 9 of CPC he said that the Collector has not conducted the proceeding in accordance with the prescribed procedure and invoking the power vested in him under the Act then certainly in such circumstance the Civil Court had jurisdiction to examine such position. In continuation, he said that although the trial court dismissed the suit holding that in view of provision of appeal the same is not maintainable but the appellate court by setting aside such judgment of the trial court has held that civil suit was maintainable but in view of the provision of appeal the trial court did not have any authority to decide the title of the disputed property and in such premises, the judgment and decree of the trial court was set aside. According to his submission after holding the suit is maintainable, there was no occasion with the appellate court except to pass the decree as prayed by the Appellant but contrary to that without taking into consideration the appellate court has directed the Appellant to file the regular appeal against the aforesaid order of the Collector before the appellate authority u/s 9 of the Act. Such debatable inconsistency of the impugned judgments being substantial question of law requires consideration u/s 100 of CPC at this stage and prayed for admission of

this appeal on the substantial question of law mentioned in the appeal memo.

6. Having heard the counsel, keeping in view the arguments of the Appellant, after perusing the record of the courts below and the impugned judgments along with the case law in the matter of Munawar Ali Khan v. The Punjab Province reported in AIR 1949 East Punjab 33 cited by the Appellant's counsel, I am of the considered view that the appellate court has not committed any error in setting aside the judgment and decree of the trial court, dismissing the suit, by allowing the appeal in part and directing the Appellant to approach the Appellate Authority u/s 9 of the Act against the order of the Respondent No. 2/ Collector Jabalpur dated 16.3.2004.

7. As per provisions of the Indian Treasure Trove Act, 1878, on receiving the Treasure property exceeding the amount of Rs. 10/- u/s 4 of the Act, the Collector is bound to publish the notification u/s 5 of the Act by mentioning the information as per requirement of such Section, for inviting the objection and the claim of the interested persons with respect of such property within the prescribed limitation. In response of such publication on receiving the claims/objections the Collector is bound to deal with the same in accordance with the provision of Section 7 and onwards sections of the Act. According to Section 6 on account of non-appearance of the persons having any right to such treasure or in any part thereof in compliance of the notification u/s 5 of the Act, such right of the concerning persons shall be forfeited by the authority. If some objection(s) comes then the Collector is directed to deal with the same in accordance with the provision of Section 7 and 8 of the Act and during the course of inquiry u/s 7 of the Act, if the Collector sees the reasons to believe that treasure was hidden within one hundred years before the date of finding by a person as required by the said notification and claiming such treasure or by some other person, under whom such person claims, the Collector shall make an order adjourning the hearing of the case for such period as he deems sufficient, to allow of a suit being instituted by the claimant, to establish his right. Such order would be passed u/s 8 of the Act, and after holding inquiry in accordance with the provision of Section 7 and 8 of the Act the Collector may declare the treasure to be an owner less property in the circumstance enumerated u/s 9 of the Act and such order is further made appealable under the same Section of the Act.

8. In the available circumstance, after going through the record, it is revealed that in the present matter without directing the Appellant to get decided his title over the property or without extending any opportunity to him to file the Civil Suit, on appreciation, the Respondent No. 2/ Collector had passed the order dated 16.3.2004 (Ex-P. 1.4) holding and declaring the treasure to be owner less property and accordingly the Appellant was not held to be the owner or title holder of such treasure.

9. It is undisputed fact in the case that before filing the instant suit for declaration and other prayers made in it, in the course of the inquiry either under Section. 7 or 8 of the Act no such direction to file Civil Suit by adjourning the

case was given by the Collector to the Appellant. On the other hand after holding the inquiry by virtue of earlier part of Section 9 of the Act such treasure was declared to be the owner less property and by virtue of later part of Section 9, such order is made appealable under the Act.

10. On going through the entire provision and the scheme of the aforesaid Act, 1878, it appears to be a complete Code to resolve all the question relating to the treasure trove property and in such premises unless specific direction or observation is given by the Collector u/s 8 of the Act to the party to approach the Civil Court to get decided the title by adjourning the case, the Civil Court did not have any jurisdiction to entertain the civil suit in the matter. On passing the order by the Respondent No. 2 under earlier part of Section 9 of the Act, if the Appellant was aggrieved by such order then could have exhausted the remedy of appeal under the aforesaid provision and subject to order of such appellate court on arising the occasion the Appellant could have proceeded further. But contrary to such provision without exhausting the remedy of the appeal u/s 9 of the Act the impugned suit of the Appellant could not be entertained directly by the Civil Court and in such premises the appellate court has not committed any error in setting aside the judgment of the trial court dismissing such suit and directing the Appellant to approach the appellate authority u/s 9 of the Act against the order dated 16.3.2004 (Ex.P. 14) passed by the Respondent No. 2. It is settled law that where there is a self contained complete Code is available under the specific Act or enactment then in such circumstance no Civil Suit could be entertained by the Civil Court by virtue of Section 9 of Code of Civil Procedure. Such principle laid down by the Apex Court in the matter of State of Bihar Vs. Dhirendra Kumar and others, , in which it was held that the Act being a complete Code in itself, jurisdiction of Civil Court is excluded by necessary implication and jurisdiction under Article 226 of the Constitution of India can be invoked. Although such case was decided taking into consideration the provision of Land Acquisition Act, but the principle, analogy and ratio of the same is applicable in the available circumstance to the case at hand.

11. On arising the occasion such principle was further followed by the Division Bench of this Court in the matter of Dev Kunwar Ben Shah v. State of Madhya Pradesh reported in 2005 (4) MPLJ 146, in which it was held as under:

12. in this case, proceedings u/s 4 of the Act have not been challenged. What is under challenge is the fresh notification u/s 6 of the Act dated 13.8.1998. therefore, in such a situation, whether such suit will be maintainable. Apex Court in the case of State of Bihar v. Dhirendra Kumar (Supra) has held that the Act being a complete Code in itself, jurisdiction of Civil Court is excluded by necessary implication and jurisdiction under Article 226 of the Constitution of India can be invoked. Thus, in view of the judgment of the Apex Court in the aforesaid case which has been following by the Division Bench of this Court in the case of Pashu Chikitsa (Supra), covering the question of law has been delivered in the matter of the Act, therefore, judgment referred in the case of

Dhulabhai (Supra) will not be applicable to the present case. Therefore, the suit as filed itself is not maintainable. Even otherwise, since the proceedings are u/s 17 of the Act and emergency clause was invoked, therefore in the light of the judgment in the case of Satendra Prasad Jain (Supra), provisions of Section 11-A of the Act will not be applicable. Therefore, the suit has rightly been dismissed by the trial Court.

12. In view of the aforesaid discussion the case law cited on behalf of the Appellant in the matter of Munawar Ali Khan v. The Punjab Province (Supra), is not helping to the Appellant.

13. Under the aforesaid circumstance, I have not found any perversity, infirmity, irregularity or any circumstance in the judgment impugned giving rise to any question of law rather than substantial question of law requiring any consideration at this stage u/s 100 of Code of Civil Procedure. Consequently, this appeal being devoid of any such question, the same is hereby dismissed at the stage of motion hearing. However, it is made clear that any observation made by this Court in this order or in the impugned judgments by the courts below shall not come in the way of the Appellant on filing the appeal u/s 9 of the Act and the Appellant shall also be entitled to get the exclusion of the period of limitation which have been spent by him in prosecuting the present litigation from civil suit up to second appeal on filing the appeal provided u/s 9 of the Act. It is further directed that appellate authority shall be at liberty to decide the appeal without influencing any observation either made in this order or in the judgments impugned.

14. The appeal is dismissed as indicated above. There shall be no order as to costs.