

(2003) 03 MP CK 0063
In the Madhya Pradesh High Court
Case No : Second Appeal No. 221/81

Bhagirath (deceased) through L.Rs. Kanhaiyalal and Others	APPELLANT
Vs	
Lal Singh	RESPONDENT

Date of Decision : 04-03-2003

Acts Referred:

Madhya Pradesh Land Revenue Code, 1959 — Section 190

Citation : (2003) 2 MPHT 405

Hon'ble Judges : A.M. Sapre, J

Bench : Single Bench

Advocate : M. Barania, for the Appellant; None, for the Respondent

Final Decision : Dismissed

Judgement

A.M. Sapre, J.—It is a second appeal filed u/s 100 of CPC by the plaintiff against the judgment/decreed, dated 1-10-1980, passed by learned IVth Additional District Judge, Ujjain, in C.A. No. 46-A of 1977, which in turn arises out of Civil Suit No. 27-A of 1973, decided by Civil Judge, Class II, Badnagar, on 4-5-1976. It was admitted for final hearing on following substantial questions of law:--

"(1) Whether on the coming into force of Abolition of Zamindari, Lalsingh could be said to be in occupation of the land ?

(2) Whether the transfer in favour of Lalsingh would be void, as he was minor at that time ?"

2. Heard Shri M. Barania, learned Counsel for the appellants. None for the respondent despite service.

3. Having heard the learned Counsel for the appellants and having perused the record of the case, I am unable to notice any infirmity in the impugned judgment/decree and hence, appeal must be dismissed.

4. It was a case where the plaintiff (appellant) herein sought a declaration of title to begin with on the strength of Patta. It was on this basis, he also claimed that

he can not be also dispossessed from the suit land. The defence was that of denial contending that grant of Patta itself is invalid and can not be of any use. It is this issue which was gone into by the Trial Court and later in first appeal at the instance of plaintiff while dismissing the suit, both by the Trial Court and later affirmed by the First Appellate Court, it was held that when issue relating to Patta itself was subject matter of Revenue Courts and the same having been held to be illegal by Board of Revenue, no benefit accrues to the plaintiff. Accordingly, suit came to be dismissed giving rise to filing of this second appeal by the plaintiff.

5. I concur with the finding of two Courts when it proceeded to dismiss the suit on a valid ground. It was not disputed that the alleged Patta on which the plaintiff was relying upon had become subject-matter of litigation in Revenue Courts which went upto Board of Revenue. It was terminated against the plaintiff wherein it was held that it was an illegal grant. Secondly, when the initial grant in favour of defendant Lalsingh was bad, he did not derive any benefit by virtue of grant in his favour, nor did he derive any benefit of provisions of Abolition of Zamindari Act so as to create any further transfer of the same in favour of other persons. It is this issue which was gone into and rightly decided against the plaintiff.

6. Learned Counsel for the appellant placed reliance on Sri Aurobindo Society Vs. Ramadoss Naidu, , in support of his contentions. These judgments were taken note of by the First Appellate Court and were distinguished on facts. I find no case to take any other view than the one taken by the Lower Appellate Court while dealing with this issue.

7. As a consequence of aforesaid discussion and since I am in agreement with the view taken by the two Courts below dismissing the suit. I do not wish to repeat the entire facts and case law again and accordingly dismiss this second appeal filed by the plaintiff.

8. Appeal, thus fails and is dismissed in limine.