
(1958) 10 MP CK 0010
In the Madhya Pradesh High Court
Case No : Rev. R. No. 9-A-12/58

Devi Prasad Nanhelal

APPELLANT

Vs

Maresh Prasad Jiyalal

RESPONDENT

Date of Decision : 08-10-1958

Acts Referred:

Madhya Pradesh Land Revenue Code, 1959 — Section 147, 169, 176, 41

Citation : (1959) MPLJ 722

Hon'ble Judges : R.D. Shukla, Member

Bench : Single Bench

Advocate : V.K. Sapre, for the Appellant; G.S. Tiwari, for the Respondent

Final Decision : Dismissed

Judgement

R.S. Shukla, Member

The applicant in this case is a transferee of the land held in malikmakbuza rights by the predecessor-in-title of the non-applicant Maresh Prasad. The land was originally held in tenancy rights by one Kallu and was sold to Kapporchand who, in turn, sold it to the present applicant on 29-7-56 i.e. after the Land Revenue Code came into force. The non-applicant claimed ejectment of the applicant u/s 176 of the Land Revenue Code. The Sub-Divisional Officer allowed the claim but his order was reversed by the Additional Collector. The learned Commissioner in second appeal restored the order of the Sub-Divisional Officer. Hence this revision.

As the learned Commissioner has stated in para. 4 of his order the point for determination is whether after the introduction of the M.P. Code occupancy tenants of the disputed lands would be governed by Section 147 or by Section 169 of the Madhya Pradesh Land Revenue Code (hereinafter called the Code).

The contention of the learned Counsel for the non-applicant is--as it was before the lower Courts that the expression "every person", who has been declared an occupancy tenant of a "malik-makbuza" occurring in Section 169(1) of the Code

is significant. This expression indicates that Section 169 refers only to such persons who have been declared tenants u/s 41 of the C.P. Tenancy Act. According to Section 37 of the Tenancy Act a person who holds, as a tenant, land from a malik-makbuza has to be deemed to be a sub-tenant, of that land. Such a person can be declared tenant only u/s 41 of the Tenancy Act. It, therefore, follows that a declaration u/s 41 is necessary before a sub-tenant is raised to the status of an occupancy tenant of the land held by him from a malik-makbuza. In his opinion, therefore, the word "declared" has significantly been used in Section 169(1) of the Code to limit its application only to such persons who were initially sub-tenants but became occupancy tenants as a result of declaration u/s 41 *ibid*. In the instant case, the learned Counsel pointed out that even at the time of settlement of 1911 the applicant was recorded as tenant of the land and it was only at a later date that the predecessor in-title of the non-applicant came to be recorded as malik-makbuza. In other words, the land was held in tenancy rights much before the malik-makbuza came on the scene. On the introduction of the Code, the applicant being a successor-in-title of the original tenant of the disputed land became Bhumidhari by operation of law (Section 147). As such, the sale of the land of the non-applicant by the last tenant cannot be challenged u/s 176 of the Code.

Very much the same line of arguments was taken up before the Commissioner. The learned Commissioner has very lucidly discussed the point at issue and I am in general agreement with the view taken by him. I need not, therefore, repeat all what he has correctly stated. I may, however, add that the factual position has not apparently been fully assessed by the learned Counsel for the applicant. A reference to the settlement Khasra of 1911 shows that at that time the land was held in maufi by Mst. Kanchanbai, predecessor-in-title of the non-applicant. A maufidar is nothing but a person who holds proprietary rights on the land but is exempt from paying revenue thereof to Government. His position is more or less, that of a plot-proprietor without liability to pay the land revenue. As the term "plot-proprietor" is anomalous Government have issued standing instructions vide Revenue Book Circular I-11 that such plot-proprietors should be declared malik-makbuzas. It is in this sense that maufidars came subsequently to be recorded as malik-makbuzas of the land. So far as the tenant of such a land is concerned it cannot but be admitted that he was holding the land as a tenant from the maufidar at the time of settlement and, on the proper terminology of "malik-makbuza" having been given to the maufidar he would still be deemed to have been holding the land from malik-makbuza. A tenant cannot create a tenancy in his own favour. He must hold land from someone who is entitled to collect rent from him. In view of the settlement entries noted above, the non-applicant cannot escape the conclusion that the land was originally held from the maufidar whose tenant his predecessor-in-title must have been declared at the time of settlement u/s 70 of the C.P. Land Revenue Act. It is, therefore, not a fact that the applicant's predecessors-in-title were holding land in tenancy rights independently of the maufidar or malik-makbuza as the latter

came to be known subsequently. The entries by the patwari are due to lack of proper instructions to him, for to say that a person is a Bhumidhari of a Bhumiswami is apparently meaningless as the same land cannot be held by two persons in different tenures. The patwari could not be expected to distinguish between the occupancy tenant of an ex-Malguzar who became Bhumidhari under the Code, and the tenants of a malik-makbuza who has continued to be called occupancy tenant and has been treated differently under Chapter XIV-B of the Code.

In view of the above discussion the transferor of the disputed land had no better status than that of an occupancy tenant of a malik-makbuza and would fall within the ambit of Section 169 of the M.P. Code. I therefore see no reason to interfere with the order of the learned Commissioner. The revision Petition is rejected accordingly.