

(1982) 02 MP CK 0009

In the Madhya Pradesh High Court

Case No : Second Appeal No. 43 of 1970

Gopilal Badrilal Vaishya

APPELLANT

Vs

Bajranga and others

RESPONDENT

Date of Decision : 12-02-1982

Acts Referred:

Constitution of India, 1950 — Article 226
Madhya Pradesh Land Revenue Code, 1959 — Section 168, 168(2), 168(2)(v), 185, 185(3)

Citation : (1982) MPLJ 589

Hon'ble Judges : G.L. Oza, J

Bench : Single Bench

Advocate : K. S. Shrixastava, for the Appellant; M. S. Indapurkar, for the Respondent

Final Decision : Allowed

Judgement

G. L. Oza, J.

This second appeal has been filed by the appellant defendant against whom a decree has been passed by the A. D. J. Morena in C. A. No. 102/68, dated 31-10-69, setting aside the judgment and decree passed by Civil Judge (Class II) Sheopur in C. S. No. 29-A/66, dated 21-9-66.

The respondents plaintiffs filed a suit in the Court of Civil Judge (Class II) Sheopur for declaration in respect of survey Nos. 39, 249, 364, 365, 566, 607 and 614 situated in village Indrapura that they had acquired the rights of occupancy tenants on the ground that they were sub-tenants of the appellant defendant and by coming into force of the M. P. Land Revenue Code, they had now acquired the status of occupancy tenants and, therefore, entitled to be conferred with the rights of Bhoomiswami.

The appellant defendant's plea in the written statement was that he was a disabled person as contemplated in clause (v) of section 168(2) of the M. P. Land

Revenue Code. It was also contended that in this view of the matter, he being a person protected, the rights of occupancy tenants could not be conferred on the plaintiffs respondents in view of the language of section 185 of the M. P. Land Revenue Code.

The defendant appellant submitted a certificate of one Dr. Pathak and also examined him in evidence. He stated that the appellant defendant is suffering from foot drops of both the lower legs as a result of which he is not in a position to walk fast or run, but he can walk slowly. On this evidence, the trial Court dismissed the suit holding that the appellant defendant falls within the ambit of clause (v) of section 168(2) of the M. P. Land Revenue Code and, therefore, u/s 185 of this Act, the plaintiff respondents are not entitled to the rights of occupancy tenants.

On appeal, the learned Additional District Judge accepted the finding arrived at by the trial court, but observed that the doctor's evidence does not disclose that the disability is of such a nature that the appellant could not get the cultivation done through a servant under his supervision and, therefore, felt that as the appellant could get the land cultivated personally through servants under his supervision, he will not fall within the category of "disabled person" as defined in clause (v) of section 168(2). The learned Additional District Judge therefore, allowed the appeal and set aside the judgment and decree passed by the trial court and decreed the suit filed by the respondents plaintiffs. Against this the present second appeal has been filed.

Learned counsel appearing for the appellant contended that in section 74 of Madhya Bharat Land Revenue and Tenancy Act, the terminology

(Sic 591) In this provision, what has been provided is that if a person is incapable on account of physical or mental infirmity and is incapable of personally cultivating the land, then alone he was permitted to sub-let. It is, therefore, clear that this provision did not stop at infirmity only, but further provided that an infirmity should be such which did not permit the person to cultivate personally and it was this phrase that came up for consideration and it was interpreted to mean that if it was not possible for the person to cultivate through servants under this provision, then alone this exception will be available to protect a sub-letting.

Learned counsel for the respondents drew my attention to section 2, sub-clause (z-2) of the M. P. Land Revenue Code where cultivating personally has been defined. It is as under:

(z-2) "to cultivate personally" means to cultivate on one's own account-

(i) by one's own labour; or

(ii) by the labour of any member of one's family; or (iii) by servants on wages payable in cash or kind but not in crop share; or

(iv) by hired labour under one's personal supervision or the personal supervision of any member of one's family.

It is significant that in spite of the fact that in this Code the phrase "to cultivate personally" has been specifically defined and in this definition it has also been provided that if one gets his land cultivated by servants on wages payable in cash or kind, but not in crop share, will also be included in the phrase "Cultivate personally." Therefore, it is clear that if the phrase "cultivate personally" is used, it will not only mean cultivating personally through one's own labour, but will also include cultivation through servants who are paid in cash or kind except the share in the crops. It is, therefore, clear that in section 168 of the M. P. Land Revenue Code, in spite of the fact that this phrase "cultivating personally" was defined, it was not incorporated. This goes to show the legislative intent. If the Legislature intended to put a further restriction in section 168(2)(v), this phrase "cultivating personally" would have been introduced, but it appears that the Legislature, in its wisdom, chose not to put this further fetter on clause (v) of section 168(2).

Section 168 (main part) is as under:

Leases (1) (Except in cases provided for in sub-section (2), no Bhumiswami shall lease any land comprised in his holding for more than one year during any consecutive period of three years)." Sub-clause (v) of section 168(2) reads as under :

(2) A Bhumiswami who is-

(v) a person subject to physical or mental disability due to old age or otherwise;"

This provision only talks of a person subject to physical or mental disability due to old age or otherwise. Otherwise there is a wider phrase which indicates -that disability may be either due to ailment, disease or by birth, but it has not been stated as to what should be the extent of the disability and it has not been provided that the disability should be such which will prevent the person from cultivating personally as "cultivating personally" which is defined in this Code, even goes to the extent of cultivating through servants. Under these circumstances, therefore, when the Legislature, in their wisdom, chose not to incorporate this further restriction in sub-clause (v), it is difficult to understand how this Court, while interpreting the provision, could further put a rider which the Legislature, in their wisdom, chose not to put.

Learned counsel placed reliance on the Division Bench decision of this Court reported in M. P. Revenue Nirnaya 1969, 131, cited above. In this decision, the only passage which could be referred to section 185(3) of the Code, reads as under:

The petitioner's contention that he was a disabled person and therefore the non-applicants could not become his occupancy tenants u/s 185(3) of the Code must also be rejected. The applicant stated that the disability from which he was

suffering was a fracture in his backbone and dislocation of his left shoulder joint. The Board of Revenue, the Additional Commissioner and the Sub-Divisional Officer have all found as a fact that this alleged infirmity of the petitioner was not such as to prevent the petitioner, who was in Government service, from cultivating the land through servants under his supervision. This finding of fact can not be disturbed in these proceedings." A perusal of these observations would show that their Lordships, while considering the petition under Article 226 of the Constitution of India, felt that the finding of fact arrived at by the Revenue Tribunals could not be interfered with. A casual observation has been made about the finding of fact arrived at by the Revenue Tribunals to the effect "all found as a fact that this alleged infirmity of the petitioner was not such as to prevent the petitioner, who was in Government service, from cultivating the land through servants under his supervision. This finding of fact cannot be disturbed in these proceedings.

It is, therefore, clear that we don't have the complete finding of fact arrived at by the Revenue Tribunals, but what appears from these observations would show that the person was in Government service and in this context, it appears that the disability was considered. It is further clear from these observations that their Lordships were not considering the implication of subclause (v) of section 168(2) of the M. P. Land Revenue Code, but in the circumstances of that case, in view of the finding of fact arrived at by the Revenue Tribunals, chose not to exercise discretion under Article 226 and interfere with the decisions of the Revenue Tribunals. Under these, circumstances, it could not be said that this decision could be quoted as a precedent on interpretation on clause (v) of section 168(2).

Learned counsel for both the parties frankly conceded that except this decision, there is no other decision of this Court which has considered the language of clause (v) of section 168(2). It is, therefore, clear that the language of clause (v) of section 168(2) does not contemplate a further rider, but what it contemplates is either physical or mental disability.

If the question of disability which would permit a person to cultivate through servants under his supervision is extended, it could be contended that in all cases of physical disability, the person can employ servants and get cultivation done through them under his supervision so long as he is mentally fit. This will negate the use of the phrase "physically disabled" and will only lead to a further amendment of clause (v) which in my opinion is not the domain of the Courts which are only expected to interpret the provisions and not to legislate. Looking to these circumstances in my opinion it is clear that in clause (v) of section 168(2) of the M. P. Land Revenue Code, nothing further could be introduced except what has been specifically provided by the Legislature. In this view of the matter, therefore, the view taken by the learned A. D. J. does not appear to be justified.

The medical opinion in the present case which is not disputed now as has been found as a fact by the learned lower appellate Court, is that the appellant has the

disability of the lower legs and this disability it is not disputed, will fall within the ambit of physical disability and in this view of the matter, therefore, the appellant is a person who is permitted to sub-let the lands within the meaning of clause (v) of section 168(2) and, therefore, by coming into force of the M. P. Land Revenue Code and by application of section 185, the respondents cannot claim to have acquired the rights of occupancy tenants.

The appeal is, therefore, allowed. Judgment and decree passed by the lower appellate Court are set aside and those passed by the trial Court are restored. Appellant shall be entitled to costs of this appeal. Counsel's fee as per schedule, if certified.