

(2016) 09 CHH CK 0019
In the Chhattisgarh High Court
Case No : S.A.No.72 of 2005

Government of Madhya Pradesh

APPELLANT

Vs

Ishwar Chandra

RESPONDENT

Date of Decision : 23-09-2016

Acts Referred:

Chhattisgarh Land Revenue Code, 1959 — Section 248, Section 57(2)
Specific Relief Act, 1963 — Section 34

Citation : (2017) AIRCC 180 : (2016) 4 CGLJ 512

Hon'ble Judges : Shri Sanjay K. Agrawal, J.

Bench : Single Bench

Advocate : Mr. Prafull N. Bharat, Additional Advocate General and Mr. Om P. Sahu, Govt. Advocate, for the Appellants/State; Mr. B.P. Sharma, Mr. D.N. Prajapati and Mr. Hari Agrawal, Advocates, for the Respondent

Final Decision : Partly Allowed

Judgement

Shri Sanjay K. Agrawal, J.—The substantial questions of law involved, formulated and to be answered by this Court in the appeal preferred by the defendants/State are as under :-

- i. Whether the First Appellate Court is justified in reversing the finding on issue No.1 holding that the plaintiff is entitled for decree for declaration of title and permanent injunction ignoring the fact that the suit land is Nazul Land ?
- ii. Whether the First Appellate Court is justified in holding that the suit is not barred by the provisions contained in Section 57 (2) of the Chhattisgarh Land Revenue Code, 1959 ?
- iii. Whether the First Appellate Court is justified in reversing the well reasoned findings of the trial Court by recording findings which are perverse and contrary to the record ?

2. The above-stated substantial questions of law are required to be answered in the following factual backdrop :-

(Parties will hereinafter be referred as per their status shown in the suit before the trial Court.)

3. The respondent plaintiff instituted a civil suit for declaration of his title and permanent injunction over the suit land situated at Village Namnakala, Patwari Halka No.36(B) of Tahsil Ambikapur ad-measuring total area of 11.37 acres of land, pleading inter alia that the scheduled suit land was given in the year 1930 by the then Ruler of Sarguja State to his father Late Shri Panchuram for construction of house, for using as badi and also for agricultural purposes. It has further been pleaded that the said Panchuram, father of the plaintiff, was in possession of the suit land during his lifetime and thereafter, after his death it was succeeded by the plaintiff and the plaintiff is continuing in possession of the suit land. It was also pleaded that recognizing his long possession, the land was likely to be settled in favour of the plaintiff, the Tahsildar, Ambikapur in a duly instituted revenue case with due recommendation, sent his report to the Collector, Ambikapur ? defendant No.3 on 18-2-1985 and accepting the report of the Tahsildar, the Collector, Ambikapur ought to have granted lease/patta in favour of the plaintiff, but the Collector/defendant No.3 in turn, sent the case to the Sub-Divisional Officer, Ambikapur under Section 57(2) of the Chhattisgarh Land Revenue Code, 1959 for deciding the dispute, however, the defendant/Sub-Divisional Officer did not decide the dispute and again sent report to the Collector that the suit land has been declared as Nazul land in the year 1973, therefore, it ought to be decided by the Nazul Officer of the Collectorate. It was further pleaded that the plaintiff is in possession since 1930 and he has perfected his title by way of adverse possession and before declaring the land to be Nazul land, the plaintiff was never noticed and therefore, he claimed relief that since he is in possession for last 60 years and has perfected his title by way of adverse possession, he be declared Bhumi Swami. It was also pleaded that the defendants be directed that the plaintiff be granted lease of the said land under the Singhdeo Special Scheme after declaring him Bhumi Swami.

4. On being summoned, the defendants filed their joint written statement stating inter alia that neither the plaintiff's father nor the plaintiff was in possession of the suit land, the plaintiff has encroached upon some part of the suit land and the suit land is within the municipal limits of Municipal Corporation, Ambikapur. It has been pleaded that earlier, it was forest land, it has been converted into revenue land and ultimately, it has been declared as Nazul land and notice under Section 80 of the Code of Civil Procedure, 1908 has not been served to the State. It has been further pleaded that the suit is barred under Section 57 of the Land Revenue Code and as such deserves to be dismissed.

5. The trial Court framed following issues and decided all the issues in negative and thereby, dismissed the suit :-

"1- D;k oknHkwfe [k0ua0 243@1] 243@14] 243@15] 243@16] 243@23] 243@24 rFkk 243@25 dqy jdck 11-37 ,dM= o"kZ 1930 esa rRdkyhu egkjktk ljxqtk }kjk oknh ds firk Lo0 iapwjke [kSjokj dks iznku fd;k x;k Fkk\\

2- rks D;k mDr Hkwfe ij oknh ds firk rRi"pkr~ oknh vuojr fufoZ/ku :i ls dkfct djrs gS\\

3- D;k Jh ,l0,l0 flag nso fo"ks"k ;kstuk ds varxZr O;oLFkkiu vf/kdkjh }kjk O;oLFkkiu izdj.k dza0 111&v@3@88&89 ds lwph [kkrk 2 esa oknh ds dCts dh Hkwfe ij o"kZ 1948 ls oknh dk dCtk ikrs gq, mldk O;oLFkkiu iw.kZ dj 13-25 :i;s yxku fu/kkZfjr fd;k x;k Fkk\\

4- D;k oknh oknHkwfe ij Hkwfe Lokeh gd ckcr~ iV~Vk izkIr djus dk gdnkj gS\\

5- D;k oknh fojks/kh vkf/kiR; ds vk/kkj ij fookfnr Hkwfe dk Hkw&Lokeh cu x;k gS\\

6- D;k oknh LFkk;h fu"ks/kkKk dh vKfIr izkIr djus dk gdnkj gS\\

7- D;k okn dk ewY;kadu de dj] de U;k; "kqYd p"ik fd;k x;k gS\\

8- D;k okn e0iz0Hkw0jk0 la0 1959 dh /kkjk 57 ds v/khu oftZr gksus ds dkj.k nhokuh U;k;ky; esa pyus ;ksX; ugha gS\\

9- lgk;rk ,oa okn O;A"

6. Questioning legality, validity and correctness of the judgment and decree passed by the trial Court, the plaintiff preferred first appeal before the first appellate court. The first appellate Court by its impugned judgment and decree partly allowed the appeal and held that the suit for declaration of title and permanent injunction is not barred by Section 57 of the Chhattisgarh Land Revenue Code, 1959, and the plaintiff is in possession of the suit land since 1948 and therefore entitled for grant of lease in his favour and also granted permanent injunction in favour of the plaintiff.

7. Feeling aggrieved against the judgment and decree of the first appellate Court, the defendants preferred the instant second appeal under Section 100 of the CPC with an application for condonation of delay in filing the second appeal. A coordinate Bench of this Court by its order dated 9-1-2015 rejected the application for condonation of delay in filing the second appeal finding no sufficient cause and consequently, the second appeal was also dismissed summarily.

8. The appellants/State preferred Civil Appeal No.5865/2016 (Government of Madhya Pradesh (presently State of Chhattisgarh) and others v. Ishwar Chandra) before the Supreme Court and the Hon"ble Supreme Court by its order dated 5-7-2016 set aside the order of this Court and condoned the delay in filing the second appeal and remitted the matter to decide the appeal on merits as expeditiously as possible. Thereafter, the second appeal was heard on admission on 24-8-2016 and three substantial questions of law were framed and the opposite side i.e. the respondent was put to notice of appeal along with the substantial questions of law.

9. Mr. Prafull N. Bharat, learned Additional Advocate General appearing on behalf

of the State/appellants (defendants), would submit as under :-

1. That, the first appellate Court is absolutely unjustified in reversing the finding of the trial Court holding that the suit is not barred by Section 57(2) of the Chhattisgarh Land Revenue Code, 1959. Since the Collector had already referred the dispute under Section 57(2) of the Land Revenue Code to the Sub-Divisional Officer for adjudication which is duly pleaded in the plaint and in view of that the suit ought not to have been filed and ought not to have been entertained, as the jurisdiction of the civil court was barred in view of the pendency of dispute under Section 57(2) of the Land Revenue Code before the Sub-Divisional Officer.

2. That, the first appellate Court is also unjustified in holding that the plaintiff and his father are in possession of the suit land for last 40-50 years therefore, the plaintiff is entitled for grant of lease in his favour.

3. That, the suit land has admittedly been declared as Nazul land by order dated 16-12-1973 duly recorded in Ex.P-1 coupled with the fact that in the plaint itself (paragraphs 21 & 23) the land has been shown to be Nazul land. The Singhdeo Special Scheme under which the land is claimed by the petitioner has neither been placed on record nor it has been proved. Even otherwise, such a scheme is a kind of executive instructions which is merely a guideline and is not enforceable in law and that will not entitle the plaintiff to claim a decree for declaration of title in his favour. The plaintiff is not entitled for a direction to the defendants to grant a lease in his favour, such kind of relief is impermissible in law.

4. That, the respondent/plaintiff cannot maintain a suit for declaration of title on the ground of adverse possession and therefore the plaintiff's suit is liable to be dismissed.

10. Mr. B.P. Sharma, learned counsel appearing for the respondent herein/plaintiff, would submit that the suit for declaration of title and permanent injunction was rightly held to be maintainable by the first appellate Court, as declaration of title and grant of permanent injunction are the province of the civil court and the revenue court has no jurisdiction in this regard and he would place reliance upon the decision of the Supreme Court in the matter of Hukam Singh (Dead) by LRs. and others v. State of M.P. (2005) 10 SCC 124 to buttress his submission. He would further submit that since the Tahsildar has made recommendation to the Collector for grant of lease and the plaintiff is in possession for last 30 years, the plaintiff is entitled for declaration of title and permanent injunction and placed reliance in the matter of Kailashchand S/o Sitabchand v. State of M.P. and others 2011(2) M.P.L.J. 554 and would also rely upon the decision of the Supreme Court in the matter of Collector, District Gwalior and another v. Cine Exhibitors Private Limited and another (2012) 4 SCC 441 and would submit that therefore, the first appellate Court is absolutely justified in reversing the judgment and decree of the trial Court and granting decree in favour of the plaintiff. He would also submit that the substantial

questions of law be answered against the defendants, in favour of the plaintiff and the second appeal be dismissed.

11. I have heard learned counsel for the parties and considered their submissions made therein and also gone through the records of the two Courts below extensively and thoroughly. Answer to substantial question of law No.2:

12. It would be appropriate to take-up and consider substantial question of law No.2 first, which relates to jurisdiction of civil court as to whether jurisdiction of civil court was barred by virtue of the provision contained in Section 57(2) of the Chhattisgarh Land Revenue Code, 1959.

13. In order to have a proper comprehension of the attack made to the decree, it would be profitable to have a look of Section 57 of the Chhattisgarh Land Revenue Code, 1959, which runs as under :-

"57. State ownership in all lands-(1) All lands belong to the State Government and it is hereby declared that all such lands, including standing and flowing water, mines, quarries, minerals and forests reserved or not, and all rights in the sub-soil of any land are the property of the State Government :

Provided that nothing in this section shall, save as otherwise provided in this Code, be deemed to affect any rights of any person subsisting at the coming into force of this Code in any such property.

(2) Where a dispute arises between the State Government and any person in respect of any right under sub-section (1) such dispute shall be decided by the Sub-divisional Officer.

(3) Any person aggrieved by any order passed under sub-section (2) may institute a civil suit to contest the validity of the order within a period of one year from the date of such order."

14. From a careful and close perusal of sub-section (2) of Section 57 of the Code, it would appear that where a dispute arises between the State Government and any person in respect of any right under sub-section (1), such dispute shall be considered and decided by the Sub-Divisional Officer.

15. The short question that needs consideration is whether claim of Bhumiswami rights over the suit land would be right under Section 57(1) of the Code, by which, the plaintiff is required to raise a dispute before the Sub-Divisional Officer under subsection (2) of Section 57 of the Code and can institute the suit only after adjudication by Sub Divisional Officer.

16. The question posed for consideration is no longer res integra. The Full Bench of the Madhya Pradesh High Court in the matter of Ramgopal Kanhaiyalal v. Chetu Batte AIR 1976 Madhya Pradesh 160(1), has held that determination of the question of title is the province of the Civil Court and unless there is any express provision to the contrary, exclusion of the jurisdiction of the Civil Court cannot be assumed or implied and held as under :-

"12. The scheme of the Code consistently preserves the jurisdiction of the civil Court to decide questions of title and that jurisdiction is not excluded. For instance, in the Chapter relating to mutation and record of rights (Chapter IX), Section 111 enacts :-

"The Civil Court shall have jurisdiction to decide any dispute to which the State Government is not a party relating to any right which is recorded in the record-of-rights."

Again, in a proceeding for partition, under Section 178, if any question of title is raised, the Tahsildar shall not make any partition until the question of title has been decided by the Civil Court.

14. It must be remembered that a Bhumiswami has a title though he is not the "Swami" of the "Bhumi" which he holds, in the sense of absolute ownership, because as declared in Section 257 of the Revenue Code, ownership of land vests in the State Government, yet, he is a Bhumiswami. He is not a mere lessee. His rights are higher and superior. They reakin to those of a proprietor in the sense that they are transferable and heritable, and, he cannot be deprived of his possession, except by due process of law and under statutory provisions, and his rights cannot be curtailed except by legislation."

17. The Full Bench finally answered the reference by holding that a party aggrieved is entitled to maintain civil suit to establish his title and held as under :-

"17. We, therefore, hold that a Bhumiswami is not bound to avail himself of the speedy remedy provided in Section 250 of the Code. It is open to him to take recourse to the summary remedy under Section 250, or even without it straightway bring a suit in the Civil Court for declaration of his title and possession. Even if there has been a decision under Section 250 by a revenue Court, the party aggrieved may institute a civil suit to establish his title to the disputed land. We further hold that Nathu v. Dilbande Hussain, AIR 1967 M.P. 14 : 1964 Jab LJ 707 was correctly decided. The Civil Court can take cognizance of a suit. This is our answer to the questions referred to us."

18. Thereafter, the Supreme Court in the matter of Rohini Prasad and others v. Kasturchand and another (2000) 3 SCC 668 noticed the Full Bench decision of Madhya Pradesh High Court with approval in Ramgopal (supra) and held that the civil suit for possession based on title is triable by the Civil Court and held as under :-

"8. ??? In three different appeals coming to the Madhya Pradesh High Court, Hon"ble Judges sitting singly have consistently held that the civil suit of possession based on title is triable by the Civil Court. That being the law laid by the High Court of Madhya Pradesh while interpreting the code which applies to the State of Madhya Pradesh and having held the field for all these years, it is not desirable for the Supreme Court to give a different interpretation and to

upset the settled law. Merely because a different view is possible and that on that ground the decision of the High Court is erroneous, in our view, should not be a ground to interfere. Law should be certain and parties should know where they stand."

19. Thereafter, in the matter of Hukam Singh (supra), the Supreme Court noticed Full Bench decision of Madhya Pradesh High Court rendered in Ramgopal Kanhaiyalal (supra) with reference to Section 57(2) of the Code and did not approve the judgment and decree of High Court by holding that suit for declaration of title sought by plaintiff therein in relation to his rights as a Bhumiswami was maintainable directly before Civil Court and followed the decision of Rohini Prasad (supra). Paragraphs 6 & 8 of the report state as under:

"6. A reading of the judgment of the trial court shows as if the suit was for declaration of title. We have seen the original plaint, which is in Hindi. The learned counsel for the State, on seeing the averments made in the plaint and the relief sought for, could not dispute that in the said suit, declaration was sought by the appellant in relation to his rights as a Bhumiswami.

8. The view taken by the Full Bench of the Madhya Pradesh High Court is affirmed by the Court in Rohini Prasad v. Kasturchand [(2000) 3 SCC 668]. This being the position, the first substantial question of law is wrongly decided by the High Court. Under the circumstances, the impugned order cannot be sustained. Consequently, the civil appeal is allowed and the judgment and decree passed by the High Court is set aside. The second appeal is remitted to the High Court for disposal afresh on merits accepting that the suit is maintainable, having regard to the law laid down by the Full Bench of the Madhya Pradesh High Court in Ramgopal as affirmed by this Court in Rohini Prasad."

20. Apart from this, in the matter of State of Madhya Pradesh etc. v. Balveer Singh etc. AIR 2001 MP 268, the Full Bench of Madhya Pradesh High Court has held that the determination of question of Bhumiswami rights is within the province of the Civil Court excepting the cases falling within the ambit of those specified under Section 257 of the Code and held as under :-

"66. In view of what has been discussed and noticed herein above, the question referred to for consideration are answered as follows -

Question No. (1)-

The "right" contemplated under Section 57 (2) of the Madhya Pradesh Land Revenue Code, 1959 is a right other than the cultivatory right in respect of the land as defined under Section 2(1)(k) which stands secured in favour of a Bhumiswami, occupancy tenants or a Government lessee as defined under the said Code and this right has to be taken to be confined to the proprietary rights including those rights which are vested in the State by operation of law under the enactments in force prior to the coming into effect of the aforesaid Code.

Question No. (2)-

There can be no distinction as to the forum with respect of the rights of Bhumiswami acquired after coming into force of the Madhya Pradesh Land Revenue Code, 1959 and the Bhumiswami rights acquired on the basis of pre-existing rights.

Question No. (3)-

The determination of question of Bhumiswami rights is within the province of the Civil Court excepting the cases falling within the ambit of those specified under Section 257 of the Code."

21. Thus, upon examination of the relevant statutory provisions and following the principles laid down by Their Lordships of the Supreme Court in the aforesaid cases and Full Bench decision of Madhya Pradesh High Court, it would appear that the instant civil suit for declaration of title and permanent injunction, claiming Bhumiswami rights over the suit land filed by the plaintiff in relation to his rights as a Bhumiswami, the civil suit was maintainable and cognisable by Civil Court and there is no bar under Section 57(2) of the Code, as Full Bench decision of the Madhya Pradesh High Court in Ramgopal Kanhaiyalal (supra) has been approved by the Supreme Court in Rohini Prasad (supra) and further in Hukum Singh (supra) it has been held that aggrieved Bhumiswami has remedy of filing a civil suit for establishing his title on the suit land of his Bhumiswami rights and for recovery of possession. In the present case, the suit for declaration of his title on the basis of adverse possession and permanent injunction is maintainable and civil Court was having jurisdiction to decide the civil suit. Therefore, the first appellate Court is absolutely justified in holding that civil suit as framed and filed seeking declaration of title and permanent injunction was not barred by Section 57(2) of the Chhattisgarh Land Revenue Code, 1959 and further justified in reversing the finding of the trial Court in this regard. This substantial question of law is answered accordingly and finding recorded by the first appellate Court is hereby affirmed.

Answer to substantial questions of law No.1 and 3 :

22. The aforesaid answer to question No.2 would bring me to the other two substantial questions of law i.e. question Nos.1 & 3. Since both the substantial questions of law are interconnected, they are taken-up for consideration jointly.

23. It is admitted position on record that the suit land was declared as Nazul land by the order of the competent authority and said fact is duly recorded in the report Ex.P-1 submitted by the Naib Tahsildar to the Collector holding that the suit land has been recorded as Nazul land on 16-12-1973 by the order of the Collector. But it has further been held that the plaintiff is in possession of the suit land since 1948 therefore, lease be granted in favour of the plaintiff, as he is member of Scheduled Tribe and is in possession of the land in dispute under the order of the Ruler of Sarguja State. The suit was filed by the plaintiff on 3-5-1990. In the plaint it has been claimed that under the Singhdeo Vishesh Yojana, the plaintiff be declared as Bhumi Swami of the suit land and lease be

granted by directing the defendants. On the basis of facts as brought on record, it is the case of the plaintiff that he is in possession of the suit land since 1948 and the Tahsildar has recommended for grant of patta in his favour vide Ex.P-1, but the Collector did not grant patta and referred the matter to the Sub-Divisional Officer for deciding the said dispute under Section 57(2) of the Chhattisgarh Land Revenue Code, 1959, however, the Sub-Divisional Officer referred the matter back to the Collector holding that the land is Nazul land and it has to be decided by the Nazul Officer. The said Singhdeo Vishesh Yojana is said to be in the shape of a circular issued for allotment of land by the erstwhile State of Madhya Pradesh, but the said Singhdeo Vishesh Yojana has neither been placed on record nor it has been proved by adducing legal evidence. So the trial Court as well as this Court is not in advantage of looking into the contents of the said Vishesh Yojana under which the land is to be granted to the plaintiff. However, the trial Court dismissed the suit holding that it has not been proved that the said land was given to the plaintiff's father by ex-Ruler and is in possession since 1948, and the plaintiff is not entitled for lease on said land and has not perfected his title by way of adverse possession. However, the first appellate Court reversed the said finding holding that the plaintiff's father was in possession over the suit land since 1948 and after his death the plaintiff is in possession; the suit land is declared as Nazul land; the plaintiff is entitled for lease of the said land on account of his possession; and decreed the suit. It is not in dispute that the said land has been declared Nazul land by the order of the Collector and the plaintiff's suit is based on the fact that he is in possession of suit land since 1948 and he has perfected his title by way of adverse possession and also that he is entitled for grant of lease.

24. The short question is whether the plaintiff can maintain a suit for declaration of his title on the basis of adverse possession is no longer res integra in view of the recent pronouncement of the Supreme Court.

25. Recently, it has been held by Their Lordships of the Supreme Court in the matter of Gurudwara Sahib v. Gram Panchayat, Village Sirthala and another (2014) 1 SCC 669 that plaintiff cannot maintain suit for declaration of title based on adverse possession and it can use his adverse possession as a shield/defence. Paragraph 8 of the report succinctly held as under :-

"8. There cannot be any quarrel to this extent that the judgments of the courts below are correct and without any blemish. Even if the plaintiff is found to be in adverse possession has matured into ownership. Only if proceedings are filed against the appellant and the appellant is arrayed as defendant that it can use this adverse possession as a shield/defence."

26. Following the principle laid down by the Supreme Court in aforesaid case namely Gurudwara Sahib (supra), it is held that the plaintiff is not entitled to seek declaration that he has perfected his adverse possession into title.

27. There is an additional reason for not upholding the decree granted by the

first appellate Court in favour of the plaintiff. The document Ex.P-1 is the report of the Tahsildar dated 18-2-1985 recommending allotment in favour of the plaintiff stating that the plaintiff is in possession since 1948. Ex.P-1 also records that the Tahsildar, Ambikapur in Revenue Case No.16A-52-59-60 by order dated 16-9-1960 finding encroachment on the suit land bearing Khasra No.243/1, area 7.70 acres (part of suit land), imposed a fine of Rs.200/- upon the plaintiff and it has also been recorded that he has also been fined earlier. At this stage, it would be appropriate to notice the following finding recorded by the Naib Tahsildar in his report dated 18-2-1985 vide Ex.P-1 :-

"uk;c rglhynkj vfEcdkiqj ds jktLo izdj.k dzekad 16 v&52&59&60 ds vkns"k fnukad 16-09-1960 ds vuqlkj vkosnd dks Hkw[k.M dz0 243@1 dk VqdM+k 7-70 ,dM+ ds vfrdze.k ds vkjksi esa 200@& vFkZn.M vkjksfir dh xbZ gSA blh vkns"k esa mfYyf[kr gS fd vkosnd us ml frfFk 16-09-1950 ls 12 o"kZ iwoZ dCtk fd;k gSA ftlds fy;s mls iwoZ esa 5@& vFkZn.M gks pqdk gSA bl izdkj vkosnd dk dCtk 1948 ls nLrkosth lk{; ds }kjk fl) gksrk gSA

xzke iapk;r ueukdyk us vius izLrko fnukad 09-12-1984 esa vkosnd dk dCtk 1949-50 ls gksuk izekf.kr fd;k gSA O;oLFkkiu dh flQkfj"k fd;k gSA

mijksDr rF;ksa ds vk/kkj ij vkosnd dk dCtk 1948 ls gksuk fufoZokn :i ls fl) gksrk gSA"

28. The question would be whether in such a fact situation, the plaintiff can be said to have perfected his title when his possession was interrupted by a proceeding initiated under Section 248 of the Chhattisgarh Land Revenue Code, 1959.

29. In the matter of Mst. Sultan Jehan Begum and others v. Gul Mohd. and others AIR 1973 MP 72, a Division Bench of the M.P. High Court considered in detail the law on the subject and held as under in paragraph 12 :-

"12. In our view the law is clearly this:

(1) When a person entitled to possession does not bring a suit against the person in adverse possession within the time prescribed by law his right to possession is extinguished. From this it only follows that if the former brings a suit against the latter within the prescribed period of limitation his right will not be extinguished.

(2) If a decree for possession is passed in that suit in his favour he will be entitled to possession irrespective of the time spent in the suit and the execution and other proceedings.

(3) The very institution of the suit arrests the period of adverse possession of the defendant and when a decree for possession is passed against the defendant the plaintiff's right to be put in possession relates back to the date of the suit.

(4) Section 28 of the Limitation Act merely declares when the right of the person out of possession is extinguished. It is not correct to say that section confers title on the person who has been in adverse possession for a certain period. There is

no law which provides for "conferral of title" as such on a person who has been in adverse possession for whatever length of time.

(5) When it is said that the person in adverse possession "has perfected his title", it only means this. Since the person who had the right of possession but allowed his right to be extinguished by his inaction, he cannot obtain the possession from the person in adverse possession, and, as its necessary corollary the person who is in adverse possession will be entitled to hold his possession against the other not in possession, on the well settled rule of law that possession of one person cannot be disturbed by any person except one who has a better title."

30. The aforesaid proposition of law rendered by the Division Bench of the M.P. High Court has been followed later in the matter of Sultan Khan S/o Jugge Khan v. State of Madhya Pradesh and another 1991 M.P.L.J. 81 in which the M.P. High Court has clearly held that the adverse possession of the appellant (therein) since 1944 of the suit land was interrupted and arrested on 11-8-1972 when proceedings under Section 248 of the Code were initiated against him, as he had not completed 30 years of possession before 11-8-1972 and it was observed as under :-

"It must, therefore, be accepted that filing of the suit for recovery of possession, by itself, is sufficient to arrest the period of adverse possession and a decree for possession could be passed irrespective of the time taken in deciding the suit. If this principle is applied to the proceedings under Section 248 of the Code, it must be held that in case a person has not perfected his title by adverse possession before start of the proceedings, he cannot perfect his title during the pendency of the proceedings. Adverse possession of the person in possession must be deemed to have been arrested by initiation of these proceedings. This Court has, therefore, no hesitation in holding that adverse possession of the appellant was interrupted and arrested on 11-8-1972 when proceedings under Section 248 of the Code were initiated against him. Since he has not completed 30 years of possession before 11-8-1972, his possession even if adverse cannot confer any right or title on him."

31. In the instant case, the plaintiff in his plaint in paragraph 7 has clearly stated that in Revenue Case No.16 A 58-59 for encroachment on the suit land bearing Khasra No.243/1, area 7.70 acres, he was fined of Rs.200/- and he has also stated that prior to 16-9-1950, he was in possession and he was also fined of Rs.5/-. Since as per showing of the plaintiff vide Ex.P-1 and the plaint averment, the plaintiff was fined on 16-9-1960, upon institution and conclusion of the proceeding under Section 248 of the Land Revenue Code his adverse possession was interrupted and since as on that date, he had not completed 30 years possession over the said land and instant suit was filed on 3-5-1990, again he has not completed 30 years as on filing of suit from 16-9-1960, the date of order imposing fine upon the plaintiff, even on facts, the plaintiff has no ground for grant of decree based on adverse possession.

32. The question is now, whether the plaintiff is entitled for grant of lease by way of decree under the Singhdeo Vishesh Yojana under which the plaintiff seeks declaration that he is entitled for grant of lease, though the said Yojana has not been proved by producing copy of the same. Although it has not been placed on record, but it is claimed that the circular is in the form of an administrative/executive instruction commonly called as Revenue Book Circular.

33. It is well settled law that the Revenue Book Circular is a compilation of executive orders and not law, these are the guidelines per se do not partake of the character of statute, such guidelines in absence of the statutory backdrop are advisory in nature and they per se do not confer any legal right. (See State of U.P. v. Rakesh Kumar Keshari (2011) 5 SCC 341 and Poonam Verma v. DDA (2007) 13 SCC 154.) The M.P. High Court in the matter of Ramcharan and others v. State of M.P. and others 1997 RN 141 has held that Revenue Book Circulars have not been framed under the authority of any statute.

34. In the matter of Joint Action Committee of Air Line Pilots' Association of India (ALPAI) and others v. Director General of Civil Aviation and others (2011) 5 SCC 435 it has been held by Their Lordships of the Supreme Court that an executive order is to be issued keeping in view the rules and executive business, though the executive order may not have the force of law but it is issued to provide guidelines to all concerned, and it has further been held in paragraph 22 as under :-

"22. Thus, it is evident from the above that executive instructions which are issued for guidance and to implement the scheme of the Act and do not have the force of law, can be issued by the competent authority and altered, replaced and substituted at any time. The law merely prohibits the issuance of a direction, which is not in consonance with the Act or the statutory rules applicable thereunder."

35. Similar is the law laid down by the Supreme Court in the matter of Syndicate Bank v. Ramachandran Pillai (2011) 15 SCC 398 in which it has been held as under :-

"Guidelines/executive instructions not statutory in character, are not law. They confer no legal right to seek a direction in a court of law for compliance with such guidelines even if there has been any violation or breach of such non-statutory guidelines. An order validly made in accordance with a statute cannot be interfered with, even if there has been any transgression of any guidelines, except where it is arbitrary or mala fide or in violation of any statutory provision."

36. The plaintiff has not shown any legal right in his favour existing for grant of allotment/lease of such a huge land of 11.37 acres in his favour merely claiming to be possession, as the distribution of largesse like allotment of land, grant of quota, lease, permit licence, etc., by the State and its agencies/instrumentalities should always be done in a fair and equitable manner. Therefore, in absence of legal right, no such decree can be passed granting such land in favour of the

plaintiff without any legal right. (See *Akhil Bhartiya Upbhokta Congress v. State of Madhya Pradesh and others* (2011) 5 SCC 29 and *City Industrial Development Corporation Through its Managing Director v. Platinum Entertainment and others* (2015) 1 SCC 558.)

37. (i) The judgment relied upon by Mr. Sharma, learned counsel for the respondent/plaintiff, i.e. Collector, District Gwalior (*supra*) is clearly distinguishable, in which the Supreme Court has held that Nazul land earmarked for Public Works Department has not been transferred to Gwalior Development Authority, therefore, the said GDA could not have put the land to auction for any other purpose whatsoever, as fact situation in the present case is totally different.

(ii) The judgment relied upon by Mr. Sharma rendered by the M.P. High Court in *Kailashchand* (*supra*) is also inapplicable to the fact situation of the present case. In that case, the High Court found that the land in dispute was not useful for any other person except the applicant who had applied for obtaining the patta. This is not the position here.

38. Thus, it is held that the respondent/plaintiff is not entitled for allotment/lease of land on the basis of alleged Singhdeo Vishesh Yojana which has neither been pleaded fully nor proved in accordance with law. Even otherwise, executive instructions are merely for guidance of officers, they do not have the force of law and they do not confer any legal right to enforce through court of law and these two substantial questions are answered against the plaintiff accordingly.

39. Concludingly, substantial question of law No.2 is answered in favour of the plaintiff holding the suit to be maintainable, but while answering the substantial questions of law No.1 and 3, it is held that the plaintiff is not entitled for decree as prayed for.

40. Consequently, judgment and decree of the first appellate Court holding that the plaintiff is entitled for decree, is contrary to well settled law in this regard and deserves to be and is hereby set aside. Subsequently, judgment and decree passed by the first appellate Court is set aside and that of the trial Court is restored, and suit of the plaintiff would stand dismissed.

41. The appeal is allowed in part. No order as to costs.

42. Decree be drawn accordingly.