(2019) 08 MP CK 0032

In the Madhya Pradesh High Court

Case No : Writ Petition No. 3200 Of 2018

Hari Prasad Tiwari APPELLANT

Vs

Board Of Revenue And Ors. RESPONDENT

Date of Decision : 01-08-2019

Acts Referred:

Madhya Pradesh Land Revenue Code, 1959 — Section 44, 115
Registration Act, 1908 — Section 17, 49

Citation : (2019) 08 MP CK 0032

Hon'ble Judges : Sanjay Dwivedi, J

Bench : Single Bench

Advocate : P.R. Bhave, Devdatt Bhave, R.K. Tripathi, A.P. Singh, Archana Nagaria

Final Decision : Dismissed

Judgement

Sanjay Dwivedi, J

1. Since the pleadings are complete and learned counsel for the parties are ready to argue the matter finally, therefore, it is heard finally.

2. The instant petition has been filed by the petitioner challenging the legality and validity of the order dated 10.01.2018 (Annexure-P/1) passed by respondent No. 1/Board of Revenue whereby, a revision preferred by respondent No. 6 has been allowed.

3. The relevant facts which are required to be taken note of for deciding the issue involved in this case are that by a document dated 15.05.1987 (Annexure-P/2) Amarnath, Varanasi, Vishnudatt, Smt. Devibai, Ambika Prasad and Ramakant jointly executed the sale document treating the same as a sale-deed in favour of the present petitioner-Hari Prasad Tiwari. By the said document, a land measuring 2.088 hectare situated over Khasra No. 451 at village Vijayraghavgarh was sold on a consideration of Rs. 5,00,000/- and its possession has also been handed over. Thereafter, another sale-deed was executed on 19.02.1996 in respect of the land measuring 1.670 hectare of Khasra No. 451 of

village Vijayraghavgarh on a consideration of Rs. 80,000/-. From the sale-deed Ex. P-4 executed in favour of respondent No. 6 it reflects that the land is a part of total land measuring 2.088 hectare which was claimed to have been purchased by the present petitioner vide document dated 15.05.1987 (Annexure-P/2). On the basis of sale-deed dated 19.02.1996, an application for mutation was filed before the Tehsildar by respondent No. 6 and that application was allowed vide order dated 09.03.2004 (Annexure-R/6) recording the name of respondent No. 6 in the revenue record. However, the petitioner got the document dated 15.05.1987 (Annexure-P/2) impounded and paid the requisite stamp duty i.e. Rs. 44,375/- with fine of Rs. 125/-. The said certificate is also available on record as Annexure-P/3. Thereafter, the said order was assailed by the present petitioner by filing an appeal before the Sub Divisional Officer, Vijayraghavgarh under Section 44 of the Madhya Pradesh Land Revenue Code, 1959 (in short the 'Code, 1959') and the Sub Divisional Officer vide order dated 27.09.2004 (Annexure-P/5) allowed the appeal setting aside the order of the Tehsildar. Again, the order of the Sub Divisional Officer was further challenged by respondent No. 6 by filing an appeal before the Commissioner, Jabalpur and vide order dated 05.09.2016 (Annexure-P/6), the said appeal was dismissed and the order passed by the Sub Divisional Officer dated 27.09.2004 was maintained. Against the order passed by the Commissioner, Jabalpur, a revision was preferred before the Board of Revenue in which, the petitioner had raised a preliminary objection regarding dismissal of revision but that application was rejected by the Board of Revenue at motion stage then a petition was preferred before this Court in which vide order dated 15.11.2017 (Annexure-P/8) a direction was issued to the Board of Revenue to decide the application of the petitioner in accordance with law before deciding the revision on merits. The said revision was decided by the Board of Revenue vide order impugned dated 10.01.2018 (Annexure-P/1). The Board of Revenue in its order has considered each and every aspect and has observed that the present petitioner has purchased the land on 15.05.1987 by unregistered sale-deed which got impounded on 23.01.2004 whereas respondent No. 6 has purchased the same by registered sale-deed dated 19.02.1996. The Board of Revenue has also taken note of the fact that unregistered sale-deed dated 15.05.1987 also contained revenue receipts of one rupee but those receipts were not in circulation in the year 1987 and came in circulation only in 1994-95. It is also observed by the Board of Revenue that the sale-deed executed in favour of respondent No. 6 on 19.02.1996 was a registered sale-deed whereas, the sale-deed dated 15.05.1987 which was executed in favour of the present petitioner was unregistered and that was impounded by paying stamp duty on 24.01.2004. It is observed by the Board of Revenue that merely because the document dated 15.05.1987 got impounded on 24.01.2004 would not be made effective from the date of its execution i.e. 15.05.1987 and, therefore, it was considered that the registered sale-deed made in favour of respondent No. 6 on 19.02.1996 was proper and a valid document. It is also observed by the Board of Revenue that both the Courts below have not taken note of this material and legal aspect that the document, i.e. registered sale-deed, executed in favour of respondent No. 6 was prior in time and, therefore, that would prevail over the subsequent sale-deed which was made in favour of the petitioner in the year 1987 by unregistered document which got impounded in the year 2004. The Board of Revenue has further observed that the mutation took place in favour of respondent No. 6 by virtue of registered document i.e. sale-deed dated 19.02.1996 cannot be said as illegal in any manner and, therefore, that mutation proceeding made in favour of respondent No. 6 by the Tehsildar vide order dated 09.03.2004 passed in revenue case No./27/ A-6/2000/2001 was held to be proper.

4. There is another set of litigation running parallel with the litigation between the petitioner and respondent No. 6. In the said litigation, an application under Section 115 of the Code, 1959 was filed by the present petitioner before the Tehsildar for getting his name mutated over the land in question and the said application dated 08.08.1997 was decided by the Tehsildar vide order dated 30.06.1998 directing that the name of the petitioner be recorded in the revenue record. This order was assailed by respondent No. 6 before the Sub Divisional Officer and vide order dated 03.02.2004, the order of Tehsildar was set aside and thereafter, a review was preferred by the present petitioner against the order dated 03.02.2004 and vide order dated 04.03.2006, the order dated 03.02.2004 was set aside and thereafter, the Additional Commissioner, Jabalpur in a revision preferred before him challenging the order dated 04.03.2006 by respondent No. 6 has dismissed the revision vide order dated 07.12.2017 (Annexure-P/12). However, in this petition, facts of this set of litigation has no relevance.

5. The learned Senior Counsel for the petitioner has contended that though the sale-deed executed in favour of the petitioner on 15.05.1987 but got impounded later on makes it valid from the date of its execution. It is also contended by him that in a proceeding initiated before the Tehsildar in revenue case No. 74-A/6/96-97 by the petitioner against Shri Neeraj Chaturvedi, the Tehsildar has given a finding that the petitioner was in possession of the land in question and accordingly, the revenue authorities rightly held that the name of the petitioner should be recorded as owner and in possession of the land in question. It is also contended by the learned Senior Counsel that the Board of Revenue has illegally held that the sale-deed executed in favour of respondent No. 6 would prevail over the sale-deed executed in favour of the petitioner and as such, the order of the Board of Revenue is liable to be set aside and the order of the Additional Commissioner, Jabalpur passed on 05.09.2016 be restored.

6. Per contra, the learned counsel for respondent No. 6 submits that the document which is claimed to be sale-deed executed in favour of the petitioner on 15.05.1987 is a forged document because the same contained revenue receipts of one rupee whereas, on the date of execution of the document, those receipts were not in circulation. The learned counsel for respondent No. 6 has filed a notification alongwith application i.e. I.A. No. 2939/2019 substantiating that the revenue receipt of one rupee came into circulation only in the year

1994-95. He further submits that in view of the said notification, it is clear that the document executed on 15.05.1987 is nothing but a forged document and got impounded by the petitioner only when registered sale-deed got executed in favour of respondent No. 6 and on the basis of the same, his name was mutated. He has also contended that in view of Section 49 of the Registration Act, 1908 (in short the 'Act, 1908') unregistered document does not give any right over the immovable property as the document of title is required to be registered under Section 17 of the Act, 1908. He submits that on the date of execution of the sale-deed in favour of respondent No. 6, the document dated 15.05.1987 had no legal sanctity and, therefore, the sale-deed registered in favour of respondent No. 6 would prevail over the sale-deed of the petitioner and has supported the order passed by the Board of Revenue. In this regard, he submits that the Board of Revenue has rightly taken note of Section 17 of the Act, 1908 and rightly held that the sale-deed of respondent No. 6 had to be considered as valid document of title and mutation that took place in pursuance to the said sale-deed in favour of respondent No. 6 cannot be in any manner held invalid. He further submits that the claim of the petitioner in respect of showing his possession by virtue of order of the Tehsildar i.e. Annexure-P/10 cannot be taken into account and any finding given therein would not be binding upon him because he was not a party and he has alleged that it was a colluded proceeding initiated between the petitioner and Shri Neeraj Chaturvedi. In support of his contention, the learned counsel for respondent No. 6 has placed reliance upon the judgments reported in MANU/SC/1498/2016 : (2017) 1 SCC 599 parties being Ghanshyam Sarda Vs Sashikant Jha, Director, M/s. J.K. Jute Mills Company Limited and others and MANU/SC/0685/2018 : (2018) 7 SCC 639 parties being Ammer Minhaj Vs. Dierdre Elizabeth (Wright) Issar and others and also a judgment of this Court reported in MANU/MP/0299/2009 : 2009 (5) MPHT 282 parties being Sakhi Gopal Dixit Vs. Boar of Revenue and another.

7. However, this Court will not enter into the field to decide the question of possession as also the title over the land in question of the parties. This Court confines itself to the extent whether the mutation done in favour of respondent No. 6 by virtue of registered sale-deed dated 19.02.1996 was valid or not?

8. In the case of Ghanshyam Sarda (supra), the Hon'ble Apex Court has held that date of registration of document is crucial since transfer is effected and title passes only upon registration since transfer on any tangible immovable property of value of rupees hundred and upwards can be made only by a registered instrument. Similar is the view taken by the Supreme Court in the case of Ammer Minhaj (supra).

9. Considering the admitted position that document dated 15.05.1987 was not a registered document and, therefore, no right and title can be considered to be transferred in favour of the present petitioner on the date of execution of the said document as the document needed to be registered as per Section 17 of the Act, 1908 and considering its effect as per Section 49 of the Act, 1908, I have no

hesitation to say that the order mutating the name of title holder in the revenue record by virtue of registered sale-deed cannot be in any manner said to be illegal. Thus, in my opinion, the order of the Board of Revenue cannot be considered to be illegal in any manner because the Board of Revenue has rightly observed that on the date of passing the order by the Tehsildar in favour of respondent No. 6 getting his name mutated was not at all illegal and the same was done on a valid foundation. Accordingly, I do not find any infirmity in the order passed by the Board of Revenue and same does not call for any interference.

10. Resultantly, the petition filed by the petitioner, being without any substance, is hereby dismissed.

