
(2009) 02 MP CK 0025
In the Madhya Pradesh High Court

Jagdish Prasad

APPELLANT

Vs

State of M.P. and Another

RESPONDENT

Date of Decision : 09-02-2009

Acts Referred:

Madhya Pradesh Land Revenue Code, 1959 — Section 124

Citation : (2009) CriLJ 1881 : (2009) 122 FLR 445 : (2009) 2 MPHT 459 :
(2009) 2 MPJR 234 : (2009) 2 MPLJ 429 : (2010) 6 RCR(Criminal) 2762

Hon'ble Judges : K.K. Lahoti, J;Brij Mohan Gupta, J

Bench : Division Bench

Judgement

Looking to the controversy involved in this case and with the consent of the parties, matter is heard finally.

This petition is directed against the order dated 21-1-2009 by the Civil Judge Class II, Mehgaon in Civil Suit No. 47- A/2007 by which petitioner's objection in respect of the Commissioner's report was rejected.

Learned Counsel for petitioner submitted that there was a dispute in respect of the boundary of petitioner's land on which respondents were intending to construct a road. Petitioner moved an application that the disputed area, where the construction was proposed, belongs to the petitioner and a commission was issued to ascertain the exact location of the disputed land. The Commissioner though demarcated the land but from one point, without ascertaining the fact that whether permanent marks/pillars were available and in case permanent marks were not available then he was under an obligation to affix three points from where he ought to have demarcated the land. Reliance is placed to a judgment of this Court in Second Appeal No. 98 of 1972, decided on 21-11-1977, Gulabsingh v. Ranchhod, reported in 1978 (II) MPWN 328, and submitted that the impugned order be set aside and the Commissioner be directed to redemarcate the land as per Rules of demarcation framed u/s 124 of the M.P. Land Revenue Code, 1959 (hereinafter referred to as "the Code").

Shri Khedkar, learned Counsel appearing for respondents supported the order passed by the Court below and submitted that after affixing a point for measurement, the Commissioner measured the land and aforesaid Commissioner report was in accordance with law.

To appreciate the aforesaid contentions, facts of the present case may be stated. Petitioner filed a suit for perpetual injunction against the respondents alleging that respondents were constructing a road by encroaching the land of petitioner. In the suit, petitioner filed an application under Order 26 Rule 9, CPC for local inspection to ascertain the location of the disputed place where the respondents were raising construction of a road. The Superintendent of Land Records, Collectorate, Bhind was appointed as a Commissioner who after local inspection submitted his report (Annexure P-3) before the Trial Court. This report was against the petitioner. On the aforesaid Commissioner's report, petitioner filed an objection that the Commissioner had not demarcated the land on the principles of demarcation. There were permanent marks available around the village and the Commissioner ought to have measured the land from the permanent marks. The Trial Court rejected the objection on the ground that the Commissioner measured the land after ascertaining the mark which was boundary of four survey numbers, from where the Commissioner measured the land which was correct and rejected the objections.

Section 124 of the M.P. Land Revenue Code, 1959 provides construction of boundary marks of villages and survey numbers or plot numbers. Aforesaid provision reads as under:

124. Construction of boundary marks of villages and survey numbers or plot numbers.- (1) Boundaries of all villages shall be fixed and demarcated by permanent boundary marks.

(2) The State Government may, in respect of any village, by notification, order that the boundaries of all survey numbers or plot numbers shall also be fixed and demarcated by boundary marks.

(3) Such boundary marks shall, subject to the provisions hereinafter contained, be of such specification and shall be constructed and maintained in such manner as may be prescribed.

(4) Where the rules prescribed boundary marks of a specification different from that prevailing in any village, the new specification shall not be enforced in such village except upon application to a Tehsildar made by not less than half the number of holders of land in the village. When such application is made, the Tehsildar shall have new boundary marks constructed throughout the village and shall distribute the cost thereof proportionately among the holders of land in the village in accordance with rules made under this Code. The share of each holder shall be recoverable as an arrear of land revenue.

(5) Every holder of land shall be responsible for the maintenance and repair of

the permanent boundary and survey marks erected thereon.

Sub-section (2) of Section 124 of the Code provides that the State Government may, in respect of any village by notification, order that the boundaries of all survey numbers or plot numbers shall be fixed and demarcated by boundary marks. Sub-section (1) of Section 124 of the Code provides that boundaries of all villages shall be fixed and demarcated by permanent boundary marks. The aforesaid provisions are specific which provide two types of boundaries, one of village and another of all survey number or plot numbers in the village. The State has also framed rules regarding boundaries and boundary marks, survey marks. Rule 2 of the aforesaid Rules provides boundaries of all villages and boundaries of survey numbers or plot numbers in villages notified under Sub-section (2) of Section 124 shall be demarcated by:

- (a) an unploughed strip 1.50 metre in width; or
- (b) a dhura .50 metre high, 1.50 metre wide at the base and 1.00 metre at the top; or
- (c) a strong fence or wall; or
- (d) boundary stones.

Rule 3 provides that near each corner of a survey number or plot number shall be erected two mounds or teelas pointing along the field boundaries. The Rule 9 provides that between the 1st November and the 15th December each year, the patel and patwari shall jointly inspect every boundary or survey mark in each survey number or plot number in the village and shall prepare a statement in Form A of defective or missing marks, and shall give a written notice in Form B to the holders concerned. Rule 13 provides how construction and maintenance of boundary marks in the village shall be regulated.

Aforesaid provisions specifically provide two types of boundary marks, one of village and another of each survey number in the village. The Revenue Officer performing work of demarcation of plot ought to have firstly ascertained whether there are permanent marks as per Section 124 of the Code or not and in absence of such boundary marks, he was required to ascertain the correct boundaries of nearby survey numbers and after ascertaining the boundaries of such lands, three sides of disputed property, he ought to have ascertained the correct location of disputed land and only thereafter he ought to have submitted his report in the Court. But in the present case, we find that the Commissioner demarcated the land only from one side, which was towards southern side of the land, but he had not tried to ascertain the correct location from other two sides which were mandatory on his part. In absence of which, the Trial Court ought to have issued a fresh commission to ascertain the correct location of the disputed land and proposed site of construction of the road. In view of the aforesaid, we are of the view that the Trial Court erred in rejecting the objection filed by the petitioner in respect of the Commissioner's report. Accordingly, objection of the

petitioner is allowed. The Commissioner's report (Annexure P-3) submitted by the Superintendent, Land Records, Bhind is hereby quashed. The matter is remanded back to the Trial Court with following directions:

(i) The Trial Court shall ascertain the exact location of the disputed land and the proposed site of construction of road, by the respondent Nos. 1 and 2, by issuing a fresh commission in this regard.

(ii) The Commissioner so appointed by the Trial Court shall ascertain whether there exists permanent marks of the village and in absence of such permanent marks he shall ascertain the boundaries of survey number of three sides around the disputed land and thereafter shall measure the location and area of the disputed land and also the place where the respondents are proposing the construction of a road. After following aforesaid procedure, the Commissioner shall furnish his report to the Trial Court.

(iii) The Commissioner while demarcating the land shall look into the provisions of Section 124 of the Code and the rules made thereunder.

(iv) The fees of newly appointed Commissioner shall be borne by the petitioner/plaintiff. After receiving the Commissioner's report, the Trial Court shall proceed in the matter in accordance with law.

With the aforesaid directions, this petition is finally disposed of.

No order as to costs.