

(2018) 02 MP CK 0187
In the Madhya Pradesh High Court
Case No : 727 of 2016

Jagdish Prasad Jaiswal.

APPELLANT

Vs

Board of Revenue & others.

RESPONDENT

Date of Decision : 12-02-2018

Acts Referred:

[Code of Civil Procedure, 1908](#), [Order 1 Rule 10](#), [Order 23 Rule 1](#), [Order 26 Rule 9](#), [Order 26 Rule 4](#) -
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Citation : (2018) 02 MP CK 0187

Hon'ble Judges : Vivek Rusia

Bench : Single Bench

Advocate : Akshat Pahadiya, Swati Ukhale, Rahul Laad, Harish Tripathi

Final Decision : Dismissed

Judgement

1. The petitioner has filed the present petition being aggrieved by order dated 4.9.2013 passed by Collector, Dhar, order dated 8.8.2014 passed

by Additional Commissioner, and order dated 14.1.2016 passed by the Board of Revenue by which the order dated 30.3.2013 passed by the

Sub Divisional Magistrate (SDM), Kukshi, District Dhar in favour of the petitioner, has been set aside. By order dated 3.3.2013, the SDM passed

the order of diversion of the land bearing Survey No.223 area 0.042 Hect. Of Gram Tanda. The facts of the case, in short, are as under.

2. According to the petitioner, his grandfather Late Shri Badriprasad was Bhoomiswami of land bearing Survey No.223, 225 area 0.084 Hect. of

Gram Tanda, District Kukshi. Late Badriprasad died in the year 1983 and after his death, vide order dated 12.12.1983, the name of his sons and

daughters were recorded in the revenue record. In the year 1998-1999, the name of petitioner and Narayan Prasad were mutated in the revenue

record vide order dated 10.11.1999 passed by Nayab Tehsildar. After the settlement arrived at between the family members , the name of

Narayan Prasad has been deleted from the revenue record on 10.7.2010 and the petitioner become the absolute Bhoomiswami of the land in

question and accordingly ""Bhu-Adhikar Evam Rin Pusitika"" was also prepared in his name . On 5.10.2010, the petitioner moved an application for

diversion of the land bearing Survey No. 223 area 0.042 Hect. (for short, ""land in question"") and vide report dated 13.10.2011, the

Superintendent of Land Record recommended diversion of the land in question for commercial purpose. On 8.11.2011, respondent No.1 filed the

objection stating that they are the owner of the adjoining land bearing Survey No.220 and 221 and the petitioner has encroached over the said

land for constructing shops. The petitioner filed reply to the said objection and also filed an application for demarcation of the land bearing Survey

Nos. 223 and 225. Vide order dated 25.4.2012, the Tehsildar rejected the application for demarcation. The petitioner approached the Board of

Revenue and the Board of Revenue vide order dated 11.7.2012 has set aside the order of Tehsildar and issued direction for demarcation.

3. In the case of encroachment, order dated 5.3.2015 was passed against the petitioner. Vide order dated 30.3.2013, the SDM imposed the fine

of Rs.50,000/- on the petitioner in respect of the encroachment over land bearing Survey No.221 area 0.004 Hect. The petitioner complied with

the said order by depositing the cost.

4. The respondent No.4 being aggrieved by order dated 30.3.2013, filed an appeal u/s. 44 of the M.P. Land Revenue Code (MPLRC). Vide

order dated 4.9.2013, the appeal was allowed on the ground that the order of diversion has been passed without demarcation and the grandfather

of the petitioner had sold the land bearing Survey No. 223 area 0.042 Hect and Survey No. 225 area 0.042 Hect to Vipan Sahakari Samiti

Maryadit, Kukshi.

5. Being aggrieved by the aforesaid order, the petitioner filed an appeal before the Commissioner and the Commissioner vide order dated

8.8.2014 dismissed the appeal. Thereafter, the petitioner preferred the revision

before the Board of Revenue on 12.8.2014. Initially, stay was granted in favour of the petitioner, but vide order dated 14.1.2016, the Board of Revenue dismissed the revision, hence the present before this Court.

6. After notice, the respondents No.2 and 3 filed the reply by submitting that the land bearing Survey Nos. 220 and 221 have been recorded as

Government land and the same is in possession of respondent No.4 and the Collector has been appointed as Manager/Vyavasthapak. On

14.2.2012, a show-cause notice was issued to the petitioner alleging that he has encroached over the land bearing Survey Nos. 220 and 221.

7. The respondent No.4 filed the reply by submitting that the land bearing Survey Nos. 220 and 221 is owned by respondent No.4. The land

bearing Survey No. 223 and 225 have been sold by Badriprasad to respondent No.5 by a registered sale-deed. The petitioner filed the civil suit

seeking declaration and permanent injunction in respect of the aforesaid land and after 1 1/2 years, he withdrew the suit.

8. The respondent No.5 also filed the reply by submitting that the petitioner had filed the Civil suit No.43-A/2011 for the lan Sr No 223&224

before the Civil Court at Kukshi . In the said suit answering respondent filed an application Under order 1 rule 10 of CPC seeking implement, but

the petitioner filed an application under O.23-R.1 of CPC for withdrawal of the suit . Thereafter again he filed the civil suit No.10-A/2017 on

21.7.2015 claiming ownership over the land bearing Survey Nos. 223 and 225. That vide order dated 15.4.2017 the civil court has rejected

application for temporary injunction. In the said suit, an application under Order 26 Rule 9 of C.P.C. was filed for spot inspection, but the

petitioner filed an application under Order 23 Rule 1 of the C.P.C. seeking withdrawal of the suit. Vide order dated 29.1.2017, the

petitioner/plaintiff himself withdrew the suit without any liberty to file a fresh suit and this fact has been suppressed by him before this Court. The

grandfather of the petitioner sold the land to Adim Jati Sahkari Samiti by registered sale-deed dated 29.12.1960. In the year 1964-1965, a

godown was constructed and on the remaining part of the land, Primary Health Centre and Govt. hospital quarter have been constructed and,

therefore, the petitioner wrongly obtained the diversion of land in question. The

Board of Revenue and other authorities have rightly set aside the order of SDM. The Additional Commissioner has already directed for recording the name of respondent No.5 as owner of land bearing Survey

Nos. 223 and 225 area 0.084 Hect. and the petitioner has not challenged the said order so far, and prayed for dismissal of the writ petition.

9. I have heard the learned senior counsel for the appellant and perused the record. The Checkered history of litigation between the petitioner and respondents are arranged in chronological order as under :-

(i) The petitioner filed the C.S.43A/2011 against the Government seeking injunction that defendant be restrained to construct boundary wall of

Primary Health Center over the Survey Nos. 223 and 225 area 0.084 Hect. The suit had been withdrawn on 26.3.2012.

(ii) In the year 2012 the Tehsildar Kukshi had registered a case no. 49/A-66/2011-12 against the petitioner for his encroachment over the land Sr

No. 220,221 are 15x30 sq.fit. because his son has constructed shops .The petitioner approached the Board of Revenue against the interim order

dt 25.4.2012 passed by the Tehsildar. That vide order dated 11.07.2012 BoR has set aside the order and remanded the case to Tehsildar with

further direction of demarcation . That after remand the Tehsildar passed final order dated 5.3.2015 directing petitioner to remove encroachment

with fine of Rs. 15,000/- The petitioner preferred the Revision before the BoR . Vide order dated 3.9.2015 the revision has been allowed and the

case has been remanded to the Tehsildar for fresh adjudication.

(iii) That the petitioner applied for diversion of land Survey Nos. 223 area 0.042 Hect. Before the SDO . That vide order dt.30.03.2013 the SDO

passed the order of diversion in favour of the petitioner. That the res. No 5 filed the appeal before the Collector and the same has been allowed

vide order dt 4.9.2013 and affirmed by the Addl. Commissioner vide its order dt 8.8.2014 . Petitioner approached the BOR by way of revision

and same has been dismissed vide impugned order dated 14.01.2016.

(iv) Respondent No.5 filed an application for mutation of land Survey no. 220 & 221 before Tehsildar Kukshi . On the objection filed the

petitioner the Tehsildar has dismissed the application vide order dated 31.10.2014. Thereafter the res no.5 filed the appeal before the SDO who

has dismissed the same vide order dated 22.04.2015. Thereafter a revision was

filed before the Addl. Comm who has allowed the same by order

dated 31.01.2017. The petitioner has already filed the revision against the aforesaid order dated 31.01.2017 before the Board of Revenue in which

vide order dated 25.10.2017, the Board of Revenue has granted temporary injunction in his favour.

(v) Thereafter petitioner filed another C.S. no.10-A/2017 on 21.07.2015 against the Government for the the relief of permanent injunction for the

land Survey Nos. 223 and 225 .Vide order dated 15.4.2017, the relief of temporary injunction has been denied to him by the Id. civil court. The

petitioner filed an application for withdrawal of the suit and vide order dated 29.4.2017, the Court has permitted him to withdraw the suit without

giving any liberty to file a fresh suit.

10. According to the petitioner, Survey Nos. 223 and 225 were recorded in the name of his grandfather Badriprasad. After the death of

Badriparasad, it was recorded in the name of father and petitioner's grandmother and after their death, it was recorded in the name of the

petitioner and one Narayan Prasad. On 10.7.2010, the name of Narayan Prasad was deleted and the the petitioner alone became the sole

Bhoomiswami"". Thereafter, petitioner applied for diversion of the land bearing Survey No.223 area 0.042 Hect. before the Collector, Land

Records. The Tehsildar issued notice to the petitioner in respect of encroachment over the land bearing Survey Nos. 220 and 221 area 0.004

"Are". Vide order dated 11.7.2012, the Board of Revenue set aside the order of Tehsildar and remanded the case for demarcation. Thereafter,

vide order dated 5.3.2015, the Tehsildar has recorded the finding that the petitioner has encroached over the land bearing Survey Nos. 220 and

221 by constructing a shop and directed for removal by imposing a cost of Rs.15,000/-.

11. The petitioner is having the dispute with respondent No.4 in respect of land bearing Survey Nos. 220 and 221. As per respondent No.4, the

petitioner has encroached over the land owned by temple. The respondents No.2 and 3 are supporting the case of respondent No.4, therefore,

after the two orders of Board of Revenue, the issue in respect of demarcation is still pending before the Revenue Authorities and order of Board of

Revenue is to be complied with.

12. In the present case, the dispute is in respect of land bearing Survey Nos. 223 and 225 between the petitioner and respondent No.5. The

petitioner has obtained the order of diversion from SDM vide order dated 30.3.2013 in respect of land bearing Survey No.223 area 0.042 Hect.

The respondent No.5 claiming the ownership over the said land by virtue of registered sale-deed dated 29.12.1960. The petitioner is disputing the

said sale-deed that his grandfather had never executed the same and he is also denying the signatures of his grandfather on the said sale-deed.

According to the petitioner the said socall sale deed is in favour of Sahkari Vipnan Sanstha , not in the name of respondent no.5. The sale deed in

favour of respondent no.5 is not on record .By order dated 31.1.2017, the Additional Commissioner, Indore has set aside the order of SDM

dated 22.4.2015 and order of Tehsildar dated 3.11.2014 and directed to record the name of respondent No.5 as owner of land bearing Survey

Nos. 223 and 225 area 0.084 Hect. Para 9 of the said order is reproduced below :-

VERNACULAR MATTER OMITTED

13. The petitioner has already filed the revision against the aforesaid order dated 31.01.2017 before the Board of Revenue in which vide order

dated 25.10.2017, the Board of Revenue has granted temporary injunction in his favour and the said revision still pending and stay order is in

operation till today.

14. The petitioner filed the civil suit seeking relief of permanent injunction twice against the Government claiming himself to be the owner of the land

bearing Survey Nos. 223 and 225 area 0.084 Hect. On 20.10.2011 he filed C.S.No. 43-A/2011 The petitioner filed an application under Order

26 Rule 4 of C.P.C. for appointment of Commissioner for spot inspection. Vide order dated 20.11.2012, the Civil Court rejected the said

application. Thereafter the petitioner withdrew the suit on 26.03.2012. Thereafter he filed C.S. no.10-A/2017 on 21.07.2015.Vide order dated

15.4.2017, the relief of temporary injunction has been denied to him by the Id. civil court. The petitioner filed an application for withdrawal of the

suit and vide order dated 29.4.2017, the Court has permitted him to withdraw the suit without giving any liberty to file a fresh suit . Therefore, the

petitioner had an occasion to prove his title in both the civil suits, but he

withdrew the suit.

15. When there is a cloud over the title of the petitioner over the land bearing Survey Nos. 223 and 225, then the SDM ought not to have passed

an order of diversion in his favour. The order dated 31.1.2017 has already been passed in favour of respondent No.5 which is under challenge

before the Board of Revenue, therefore, the order of mutation cannot be sustained and has rightly been set aside by the Commissioner and Board

of Revenue. Hence, the petition has no merit and deserves to be dismissed.

16. Accordingly, this petition is hereby dismissed. However, the petitioner is having liberty to apply for diversion again after settlement of his right

and title over the land Survey No. 223 & 225 area 0.084 Hect. No order as to costs.