
(2000) 11 MP CK 0024
In the Madhya Pradesh High Court
Case No : Second Appeal No. 242/96

Jaswant Singh and others	Vs	APPELLANT
Chief Municipal Officer and others		RESPONDENT

Date of Decision : 15-11-2000

Acts Referred:

Madhya Pradesh Land Revenue Code, 1959 — Section 248
Specific Relief Act, 1963 — Section 38

Citation : (2002) 1 JLJ 156 : (2001) 1 MPHT 146 : (2001) 1 MPJR 66 : (2001) 2 MPLJ 138

Hon'ble Judges : Mr. R.B. Dixit, J

Bench : Single Bench

Advocate : Shri A.K. Srivastava, for the Appellant; Shri D.D. Bansal, for the Respondent

Final Decision : Dismissed

Judgement

R.B. Dixit, J.

The appellants had filed a Civil Suit No. 44-A/86, in the Court of IIIrd Civil Judge, Class II, Bhind for declaration of title and permanent injunction on the ground that he is in adverse possession of the disputed land and also on the strength of a lease deed, granted by erstwhile Gram Panchayat of village in his favour. The respondent contested the suit on the ground that the disputed land is a Govt. land and therefore, the Panchayat had no right to transfer the land in favour of appellants. The suit was dismissed by judgment dated 9-1-92, by the Trial Court against which, a Civil Appeal No. 18-A/92 was filed which was also decided by the impugned order.

This second appeal has been admitted on the following substantial question of law:

(i) Whether, the plaintiffs who are in possession of the suit property can on their strength of possession, resist interference from the defendant who has no better

title than the plaintiff ?

Before advertng to consider substantial question of law, it is necessary to look into the nature of the property and the evidence regarding possession thereof. Plaintiff Sughar Singh (P.W. 1), in para 11 of this cross-examination, has admitted that previously, the State land was under the management of Panchayat and now Municipality has succeeded in place of Panchayat as managing agency for the purpose of the suit land which is in the nature of Govt. Gadhi (State fortress). Jagannath (P.W. 2) confirmed that municipality had come into existence some five to seven years before. He has also admitted that the disputed land is part of Govt. Gadhi.

The learned counsel for the appellants has failed to point out any provision, under which, Govt. land or Govt. building can be leased out or transferred by the Gram Panchayat for the purpose of permanent nature. In the circumstances, even if it is held that Gram Panchayat by it's resolution dated 15-1 -65, had allowed father of appellant for the purpose of permanent use on the disputed land, they are not entitled to claim title on the basis of such a document. It is further to be seen that the appellants had admitted that Naib Tehsildar in an enquiry u/s 248 of M.P. Land Revenue Code, had imposed fine of Rs. 1500/- by order dated 4-10-83 on the basis of encroachment on the suit land. By way of subsequent amendment, in the plaint, where the appellants claiming possession over the land for the last 100 years, their possession cannot be deemed to be based on the plea of adverse possession against the State when the State found such possession unlawful and initiated the proceeding for eviction. That apart, there is no evidence of adverse possession for more than 30 years on the Govt. land.

Learned counsel for the appellants has submitted that the respondent Municipality had no power to evict appellant from the Govt. land as it cannot be deemed to be a successor of the Govt. in respect of the suit property. Reliance is placed on a decision of Apex Court in case of M. Kallappa Setty Vs. M.V. Lakshminarayana Rao, , wherein, it has been observed that the plaintiff can on the strength of his possession, resist interference from the persons who have no better title than himself to the suit property. Once it is accepted that the plaintiff was in possession, of the property, ever since 1947, then his possession has to be protected as against the interference by someone, who is not proved to have better title than himself to the suit property. However, the learned counsel for the respondent has resisted this line of argument on the ground that the decision of the Hon''ble Apex Court was in Respect of the dispute between two private parties, whereas, in the present case, the Municipality if found managing Govt. land falling under it's management, is competent body to evict unlawful or unauthorised possession on the suit property, then the question of appellants'' having better title than that of the respondent, does not arise. In such a case, plaintiff/appellants are not entitled to resist eviction from the suit land on the ground of having better title than that of the Municipality.

The learned counsel for the respondent relied upon the Division Bench's decision of this Court in the case of *Sindh Mahajan Exchange Vs. State of M.P.*, reported in 1980 J.L.J. 581, wherein, it has been laid down that the change in law, since in the Gwalior Municipal Act of Samvat 1969 upto the enactment of the M.P. Municipal Corporation Act, makes it clear that the property which vested in the municipality is now vested in Municipal Corporation and the property is to be utilized and used for the purpose mentioned in M.P. Corporation Act. To make it clear, the above provisions of law and changes therein go to show that open lands which were not assessed to land revenue and which fall within the municipal limits were transferred to the municipal committee during the times of Gwalior State by the Circular No. 3. Those properties continued to vest in the municipal committee under the Gwalior Act. It cannot be disputed now that as this land is within the municipal area, the municipal Corporation is the only competent person to raise objection regarding the use to which, the property should be put. The Nazul rule cannot affect the property vested in the Corporation.

A contrary decision in the case of *Ramswaroop Tripathi Vs. City Administration* 1987 (1) MPWN 158, relied upon by the learned counsel for the appellants, is not applicable in the present case, because, the dispute of Chabutra was not found covered by definition of "vacant space". Similarly, the case of *Administrator, Municipal Corporation, Indore Vs. S.P. Irani and another*, reported in 1993 (1) Vibha 69, is not attracted to the present case, where the question of service or reasonable notice was involved.

The Hon'ble Supreme Court in the case of *Premji Ratansey Shah and Others Vs. Union of India (UOI) and Others*, , has made it clear that the injunction would not be issued against true owner. Now here in this case, the State and Municipality, in its area whereunder the disputed land is situated, is the true owner. Unless and until possessory title of appellants is proved, it cannot be claimed to be protected from being evicted by the Municipality by due process of law.

In another decision relied upon by the learned counsel for the appellants, in the case of *Prataprai N. Kothari Vs. John Braganza*, . Again the dispute was between two private parties, where, it was held that a person who has been in long continuous possession of an immovable property and protected the same by seeking injunction against any person in the world other than the true owner.

A recent Division Bench's decision of this Court in the case of *Gajendra Singh Vs. Man Singh and others*, reported in 2000 (2) MPLJ 316, it has been held that the plaintiff in settled possession even without title can be protected as against a true owner till he is evicted by a lawful order or by due process of law. Since in the present case, the plaintiff is also claiming title over the suit property, he is not entitled to be protected unless, he proves his title in a proceeding where, Municipality wants to evict him by due process of law.

For the reasons stated hereinabove, the substantial question of law as

formulated in the present appeal is answered as follows:

"The question of protecting possession of the plaintiff on the basis of his better title than the defendant, does not arise in facts and circumstances of this case, particularly, where it is a Govt. land and the long adverse possession required to be proved against the State, is not available to him."

Consequently, the appeal fails and is dismissed accordingly.

Second Appeal dismissed.