

(2014) 11 MP CK 0042
In the Madhya Pradesh High Court
Case No : S.A. No. 870 of 2002

Jwala Prasad and Others

APPELLANT

Vs

State of M.P. and Others

RESPONDENT

Date of Decision : 10-11-2014

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 100
Madhya Pradesh Land Revenue Code, 1959 — Section 248, 37, 38

Citation : (2015) 1 MPLJ 368

Hon'ble Judges : U.C. Maheshwari, J

Bench : Single Bench

Advocate : O.P. Mishra, Advocates for the Appellant; Akhilesh Singh, Panel Lawyer, Advocates for the Respondent

Judgement

U.C. Maheshwari, J.—Shri O.P. Mishra, learned counsel for the appellants.

Shri Akhilesh Singh, learned Panel Lawyer for the respondent No. 1.

Heard on the question of admission.

On behalf of the plaintiffs, this appeal is preferred under section 100 of the Civil Procedure Code being aggrieved by the judgment and decree dated 19-8-2002 passed by the 3rd Additional District Judge, Satna in Civil Regular Appeal No. 73-A/2001 affirming the judgment and decree dated 31-7-2001 passed by the 3rd Civil Judge Class-II, Satna in Civil Original Suit No. 127-A/1999 whereby the suit of the appellants filed for declaration and perpetual injunction with respect of the land in dispute stated in the plaint, on the ground of perfecting their title by adverse possession was dismissed.

Facts giving rise to this appeal in short are that the appellants filed the impugned suit contending that the disputed land described in plaint situated in village Deori, Tahsil Rampur Baghelan, District Satna is coming in possession of their family from the time of their forefathers as on earlier occasion such land was given on Patta to their forefathers under the provisions of the M.P. Kanoon Mal.

Subsequent to such Patta by the time under operation of law, they have become the Bhoomiswami of the land in dispute, but contrary to their rights and without giving any intimation or opportunity of hearing to them, the land was recorded in the name of the respondent No. 1/State and thereafter the proceeding under section 248 of the M.P. Land Revenue Code for removing their possession from the land was initiated on 27-3-1984. It is a further case of the appellants that in any case they being coming in uninterrupted possession as Bhoomiswami of the disputed land in the knowledge of its the then Bhoomiswami for more then 12 years had perfected the right of ownership and Bhoomiswami of the same by adverse possession. With these averments, prayed to declare the disputed land, recorded in the name of State of M.P., to be the land of the appellants with further reliefs for perpetual injunction to protect their possession over the disputed land. It is also the case of the appellants that the respondents No. 2 to 7 did not have any right or title over the disputed land against the aforesaid perfected right and title of the appellants, but under some conspiracy with the officials of revenue department, such respondents had got mutated such land as Bhoomiswami in their name, while mere on account of such mutation, such respondents had not got any right, title and possession over the disputed land, as such, such mutation in the name of the respondents No. 2 to 7 being ab initio void deserves to be quashed and such prayer is also made in the suit. Pursuant to such reliefs, the prayer for restoration of the possession of the appellants was also made.

2. On behalf of the private respondents by filing their written statement, the averments of the plaint regarding perfected title and possession of the appellants over the disputed land are denied. In addition, it is stated that long before under the provisions of Jagir Abolition Act, 1952, the disputed land was declared to be the Government land and in such premises, the appellants or their forefathers were not entitled to keep such land in their name as Bhoomiswami. It is also stated that such land or any part of it was never allotted to the appellants on Patta or otherwise and such land is recorded in the name of the State since 1954 in the knowledge of the appellants/plaintiffs. In spite such knowledge to the appellants, none of them had taken any steps to challenge the aforesaid mutation or the title of the State within prescribed period of limitation and therefore, the question of perfecting the right and title of the appellants over the land by adverse possession did/does not arise. It is further stated that in view of the provisions of section 38 of the aforesaid Jagir Abolition Act, the appellants' suit being beyond the jurisdiction of the Civil Court is not entertainable and in such premises, prayer for dismissal of the suit was made.

3. In view of the pleadings of the parties, after framing the issues, the trial was held, after recording the evidence of the parties, on appreciation of the same, it was held that the appellants had not remained in possession of the disputed land or any part of it either on the basis of any Patta or otherwise. It was also held that the appellants had not perfected right and title over the disputed property by adverse possession. Besides aforesaid finding on merits, the suit was also

dismissed by holding that in view of the provisions of sections 37 and 38 of the aforesaid Jagir Abolition Act, the suit is not entertainable and also by holding the suit to be barred by time, the same was dismissed by the trial Court.

4. On challenging such judgment and decree of the trial Court by the appellants before the appellate Court, on consideration by affirming such judgment and decree of the trial Court, such appeal of the appellants was dismissed, on which the appellants have come to this Court with this appeal.

5. Having heard the appellants' counsel at length, keeping in view the arguments, I have carefully gone through the record of both the Courts below. It is apparent from the impugned judgments of the Courts below that there is concurrent findings of facts based on the appreciation of the evidence holding that such land was recorded in the name of State of M.P. in the year 1954 by virtue of the provisions of the Jagir Abolition Act and subsequently it was never allotted to any of the appellants or their forefathers and in such premises, they or any of them were, not remained in possession of such land or any part of it at any point of time. Besides this, they or any of them have not taken any steps within prescribed period to quash the aforesaid mutation of the State and its right over the land. In such premises by holding that the appellants or any of them did not remain in possession of the disputed land or any part of it, the suit was dismissed by the trial Court. Subsequently on filing the appeal by the appellants, on consideration the same was dismissed by the appellate Court. Even otherwise concurrently it was held by both the Courts below that the appellants could not prove their title over the disputed property either by adverse possession or otherwise by admissible evidence and documents. In the lack of possession of the appellants over the disputed land on the date of filing the suit, the necessary ingredients of the adverse possession like continuity of the uninterrupted possession for more than 12 years as Bhoomiswami under the hostile title of the then recorded Bhoomiswami, have also not been proved on the record. It is also apparent that appellants could not prove the source of their possession over the land. Apart this, in view of the provisions of sections 37 and 38 of the Jagir Abolition Act, after vesting the land in the State under the provisions of such Act, such proceedings could not be challenged by way of civil suit and in such premises the impugned civil suit itself was not entertainable and was barred by law. In such premises, I am of the considered view that the findings on the question of possession and title of the property against the appellants being concurrent findings of facts could not be interfered by this Court at this stage under section 100 of the Civil Procedure Code by framing any proposed substantial question of law. It is a settled proposition of law that the concurrent findings based on appreciation of the evidence on the question of the possession of the property being findings of facts could not be interfered under section 100 of the Civil Procedure Code. So in such premises, this appeal being devoid of any merits deserves to be dismissed.

6. Apart the aforesaid, I am of the view that persons like the appellants/plaintiffs

did not have any right to file the suit for declaration and perpetual injunction on the ground of adverse possession. Such ground can be used by the persons like appellants as a shield to defend their right and possession but by entertaining the impugned suit, they could not be permitted to use the same as a sword, as such the appellants/plaintiffs did not have any right to file the suit for declaration on the basis of adverse possession unless they are having the title over the property on the basis of some source or documents. My such approach is fully fortified by the decision of the Apex Court in the matter of Gurudwara Sahib Vs. Gram Panchayat Village Sirthala and Another, in which it was held as under:--

"7. In the Second Appeal, the relief of ownership by adverse possession is again denied holding that such a suit is not maintainable. There cannot be any quarrel to this extent the judgments of the Courts below are correct and without any blemish. Even if the plaintiff is found to be in adverse possession, it cannot seek a declaration to the effect that such adverse possession has matured into ownership. Only if proceedings filed against the appellant and appellant is arrayed as defendant that it can use this adverse possession as a shield/defence."

In view of aforesaid discussion, I have not found any circumstances or material in the case at hand giving rise to any question of law rather than substantial question of law requiring any interference at this stage under section 100 of the Civil Procedure Code by framing any substantial question of law. Consequently, this appeal being devoid of merits deserves to be and is hereby dismissed at the stage of motion hearing.

There shall be no order as to the costs.