
(2012) 01 MP CK 0147
In the Madhya Pradesh High Court
Case No : S.A. No. 419 of 2011

Kala Devi alias Kamla Devi	Vs	APPELLANT
State of M.P. and others		RESPONDENT

Date of Decision : 27-01-2012

Acts Referred:

Citation : AIR 2012 MP 153

Hon'ble Judges : N.K. Mody, J

Bench : Single Bench

Advocate : Swati Mehta, for the Appellant; Bhuwan Deshmukh, for the Respondent

Judgement

N.K. Mody, J.—This appeal was admitted for final hearing on the following substantial question of law:-

Whether in the facts and circumstances of the case learned Courts below committed error in dismissing the suit filed by the appellant?

Being aggrieved by the judgment dated 19/04/11 passed by II ADJ, Shajapur in Civil Appeal No. 20-A/10 whereby judgment dated 30/09/10 passed by II Civil Judge, Class-I, Shajapur in Civil Suit No. 38-A/10 whereby suit filed by the appellant for declaration and permanent injunction was dismissed, was maintained, present appeal has been filed.

2. Short facts of the case are that the appellant filed a suit before the learned Trial Court for declaration and permanent injunction on 18/12/09 alleging that the appellant is in occupation of land bearing survey No. 600 measuring 0.40 Are situated at village Dilodari. It was alleged that the appellant has inherited the suit land from her husband Jagdishchandra after his death. It was alleged that prior to 1997-98 the land was bearing survey No. 612 measuring 4.11 Biswa. In the year 1925-26 the land was recorded in the name of Gendaji and the name of Pura Gir S/o Kalu Gir was recorded as occupier. It was alleged that the Shajapur was in Gwalior State and the Law of Gwalior State was prevailing prior to

independence. It was alleged that prior to enforcement of Jamindari Abolition Act name of Premsingh was recorded as Bhumiswami and the name of Sawaisingh S/o Daulatsingh was recorded as occupier and this position continued right from Samvat 2007 to 2025. It was alleged that in Samvat 2008 after abolition of Jamindari name of Sawaisingh was recorded as Bhumiswami and right of Pakka tenant was given to him in Samvat 2014. It was alleged that after the death of Sawaisingh husband of the appellant became Bhumiswami as Sawaisingh was having no issue and the husband of the appellant was the real brother. It was alleged that the suit land was never the Muafi land. It was alleged that Tehsildar Shajapur issued a notice on 13/03/06 alleging that in the year 1909-10 the land was recorded in the name of Muafi Hanuman Chabutra, therefore, why the suit land should not be recorded in the name of Hanuman platform. It was alleged that the case was fixed for hearing on 27/04/06 and on that day the order was passed and the name of the appellant was deleted. In the suit it was prayed that it be declared that the appellant is Bhumiswami and the permanent injunction be issued against the respondents to the effect not to interfere into the possession of the suit property.

3. The suit was contested by the respondents. After framing of issues and recording of evidence the suit was dismissed, against which an appeal was filed, which was also dismissed, hence this appeal.

4. Learned counsel for the appellant argued at length and submits that judgments passed by the learned Courts below are illegal, incorrect and deserves to be set aside. It is submitted that since the name of appellant was recorded as Bhumiswami in the revenue record, therefore, both the Courts below committed error in not granting decree of permanent injunction when admittedly the appellant is in possession from the time of his predecessor-in-title. It is submitted that learned Courts below overlooked the principles of law laid down by the Apex Court that a person in settled peaceful, effective and undisturbed possession cannot be evicted without following due process of law. It is submitted that right from the year 1950-51 appellant is in continuous, peaceful possession of the suit land. It is submitted that appeal be allowed and impugned judgment be set aside.

5. Learned counsel for respondents submit that no illegality has been committed by the learned Courts below in dismissing the suit filed by the appellant. It is submitted that the findings recorded are concurrent finding of facts, which requires no interference. It is submitted that appeal be dismissed.

6. From perusal of the record it is evident that to prove the case appellant has examined herself as PW-1, while respondents have examined Mahesh Sharma, Patwari as DW-1. Apart from this appellant has filed the documents Ex. P/1 to P/20. Ex. P/1 is the revenue record for the year 1925-26, wherein name of Gendaji was recorded as Bhumiswami, Ex. P/2 is the revenue record for the year 1950-51, wherein name of Premsingh was recorded as Bhumiswami, Ex. P/3 is the revenue record for the year 1952-53, wherein name of Sawaisingh was

recorded as Bhumiswami, Ex. P/4 is the revenue record for Samvat 2009 i.e. of the year 1953, Ex. P/5 is the revenue record for Samvat 2010-13, Ex. P/6 is the revenue record for the Samvat 2014-18, Ex. P/7 is the revenue record for Samvat 2019, Ex. P/8 is the revenue record for Samvat 2025, Ex. P/9 is the revenue record for Samvat 2025, Ex. P/10 is the revenue record for the 2031-32, Ex. P/11 is the revenue record for the year 1977-81. Thus in the revenue record for the aforesaid years name of Sawaisingh was recorded as Bhumiswami. Ex. P/12 is the revenue record for the year 1982-86, wherein name of Baldevsingh S/o Bhagirathsingh was recorded as Bhumiswami, which continued in Ex. P/13 which is the revenue record for the year 1987-91, Ex. P/14 which is the revenue record for the year 1992-96, Ex. P/15 is the revenue record for the year 1997-98, Ex. P/16 is the revenue record for the year 1997, wherein name of Kalabai Wd/o Jagdish and Vishnuprasad S/o Baldevsingh were recorded as Bhumiswami, Ex. P/17 is the record of rights in the name of Kalabai Wd/o Jagdish, Ex. P/18 is the land record in the name of Kalabai. The documents, which have been filed by respondents are Ex. D/1 to D/3. As per Ex. D/1 name of Maufi Shri Hanumanji is recorded as Bhumiswami in Samvat 1966 i.e. year 1909-10. In the year 1981-82 name of Pura Gir S/o Kalu Gir was recorded as Bhumiswami. In the year 2009-10 name of Muafi Shri Hanuman Mandir was recorded as occupier.

7. From perusal of the record it is evident that right from 1925-26 onwards name of predecessor in title of appellant was recorded and after the death of husband of the appellant name of appellant was recorded. Respondents have filed the revenue record for the year 1909-10 Ex. D/1 wherein name of Shri Hanumanji is recorded on the land bearing survey No. 384, while in Ex. D/2 which is for the year 1982 name of Pura Gir has been recorded as Bhumiswami and as per the order Ex. P/20 dated 19/04/06 name of temple has been recorded of which revenue record is Ex. D/3.

8. Therefore, in the facts and circumstances of the case this Court is of the view that learned Courts below were not justified in dismissing the suit filed by the appellant. Since the name of appellant was recorded in revenue record, therefore, learned Courts below were not justified in refusing the decree of permanent injunction. In view of this appeal filed by the appellant is allowed. Judgment and decree passed by learned Courts below is set aside. Substantial question is answered in favour of appellant. The order passed by Tehsildar is set aside with a direction to the appellant to appear before respondent No. 2 and explain his status and also explain how her name was recorded in the year 1998. Appellant is also directed to submit her family tree. After submission of the reply and also after going through the entire record and also after recording of evidence, if any, respondent No. 2 shall pass an appropriate order keeping in view the record for the relevant years and if the respondent No. 2 is of the view that the name of the appellant was wrongly recorded as the property was belonging to the temple, then the respondent No. 2 shall proceed with the case for taking possession of the suit land in accordance with law. Appellant is

directed to remain present before respondent No. 2 on 8.4.2012. With the aforesaid observations appeal stands disposed of. No order as to costs.