
(2008) 09 CHH CK 0013
In the Chhattisgarh High Court

Kaliram Sahu

APPELLANT

Vs

State of Chhattisgarh and Others

RESPONDENT

Date of Decision : 08-09-2008

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 5
Constitution of India, 1950 — Article 14

Citation : (2009) 2 MPHT 1

Hon'ble Judges : Satish K. Agnihotri, J

Bench : Division Bench

Final Decision : Allowed

Judgement

Satish K. Agnihotri, J.—By this petition, the petitioner challenges the order dated 31-5-2005 (Annexure P-1) passed by the Board of Revenue in Revenue Appeal No. 65-A/ 27/2003-04, whereby the appeal filed by the petitioner was dismissed, maintaining the order dated 24-12-2003 (Annexure P-4) passed by the Sub Divisional Officer, Dhamtari as well as the order dated 14-7-2003 (Annexure P-3) passed by the Naib Tehsildar, Kurud.

2. The brief facts, in nutshell, as projected by the petitioner are, that the petitioner was an agriculturist. On 8-4-1970, the petitioner purchased the land under the registered sale deed bearing Khasra No. 177/2 (new No. 178) admeasuring 9.40 decimal at Village Thua, Circle Kurud, Tehsil Dhamtari, District Raipur. The petitioner was in possession of the said land. The fact that the land "was purchased in the name of Kaliram Sahu (petitioner) was not in dispute. However, ownership was disputed by the respondent No. 4-brother of the petitioner, that such transaction was a benami transaction because on the date of purchase of the said land the respondent No. 4 was a minor, therefore, their father had purchased the land in the name of the petitioner as he was major at the relevant time. The father of the petitioner and the respondent No. 4 had two more agricultural lands bearing Khasra No. 910 measuring 3.28 hectare and 9.62 measuring 2.42 hectare which were recorded in his name. The respondent No. 4

moved an application for partition of the said property u/s 178 of the C.G. Land Revenue Code, 1959 (for short, "LRC") before the Court of Naib Tehsildar, Kurud. The said case was registered as Revenue Case No. 03-A/ 27-2002-03 wherein the petitioner was ex parte. During preparation of "fard batwar" under the provisions of the LRC by the Patwari, no objection was raised by the respondent No. 4 with regard to inclusion of land bearing Khasra No. 178, but after completion of the said proceedings, the respondent No. 4 raised an objection before the Naib Tehsildar and prayed for inclusion of land bearing No. 178 in the partition also on the ground that the said land was purchased benami by the father of the petitioner and the respondent No. 4 and that too is a joint property. However, the petitioner has already sold the land bearing Khasra No. 178 to some other persons by a registered sale: deed and the respondent No. 4 did not raise any objection with regard to the execution of such sale deed in respect of the disputed land.

3. The Naib Tehsildar, Kurud, on the basis of the objection raised by the respondent No. 4 stating that the land was purchased benami by the father of the petitioner and the respondent No. 4 in the name of the petitioner and believing the oral evidences produced by the respondent No. 4 before the said Court, held that the land bearing Khasra No. 178 as a benami purchase which was purchased by the father of the petitioner and the respondent No. 4 in the name of the petitioner. Being aggrieved, the petitioner preferred an appeal being Revenue Appeal No. 03-A/27-2002-03 before the Court of Sub Divisional Officer, Dhamtari, the Sub Divisional Officer, Dhamtari by order dated 24-12-2003 (Annexure P-4) dismissed the said appeal, maintaining the order dated 14-7-2003 (Annexure P-3) passed by the Naib Tehsildar, Kurud. Again, being aggrieved, the petitioner filed an appeal being Revenue Appeal No. 65/A-27/2003-04 before the Board of Revenue, Raipur. The Board of Revenue, Raipur, by order dated 31-5-2005 (Annexure P-1) dismissed the appeal filed by the petitioner, maintaining the orders passed by the Courts below. Thus, this petition.

4. Mr. Soni, learned Counsel appearing for the petitioner would submit that the entire action of the Tehsildar is contrary to Section 178 of the LRC as he has no jurisdiction to decide the title of any property including land. Learned Counsel further submits that as per the provisions as enshrined in the LRC, the Tehsildar ought to have referred the dispute with regard to title of the petition scheduled land to the Competent Civil Court. The Tehsildar decided the matter in favour of the respondent No. 4 and partitioned the property giving the half share to the respondent No. 4. Mr. Soni would further submit that the action of the Courts below is violative of the Article 14 of the Constitution of India and without jurisdiction.

5. Per contra, Mr. Raja Sharma, learned Counsel appearing for the respondent No. 4 would submit that the question of title was not raised before the Tehsildar. The petitioner was obliged to seek appropriate remedy as per Section 178 of the

LRC from the Competent Civil Court. The petitioner has failed to examine any witness or produce any evidence to rebut the presumption that the land in dispute was Hindu Undivided Family (for short, "HUF") property. The disputed land was purchased by the father of the petitioner and the respondent No. 4 in the name of the petitioner as the petitioner alone was major at the relevant point of time. Thus, the petitioner has waived his right of seeking appropriate remedy under the provisions of the CPC as prescribed u/s 178 of the LRC.

6. I have heard learned Counsel appearing for the parties, perused the pleadings and documents appended thereto.

7. Section 178 of the CG Land Revenue Code, 1959 reads as under:

178. Partition of holding.- (1) If any holding, which has been assessed for impose of agriculture u/s 59, there are more than one Bhumiswami any such Bhumiswami may apply to a Tehsildar for a partition of his share in the holding:

Provided that if any question of title is raised the Tehsildar shall stay the proceeding before him for a period of three months to facilitate the institution of a civil suit for determination of the question of title.

(1-A) If a civil suit is filed within the period specified in the proviso to Sub-section (1), and stay order is obtained from the Civil Court, the Tehsildar shall stay his proceedings pending the decision of the Civil Court. If no civil suit is filed within the said period, he shall vacate the stay order and proceed to partition the holding in accordance with the entries in the record of rights.

(2) The Tehsildar, may, after hearing the co-tenure holders, divide the holding and apportion the assessment of the holding in accordance with the rules made under this Code.

(3) (Omitted.)

(4) (Omitted.)

(5) (Omitted.)

Explanation I:- For purposes of this section any co-sharer of the holding of a Bhumiswami who has obtained a declaration of his title in such holding from a Competent Civil Court shall be deemed to be a co-tenure holder of such holding.

Explanation II:- (Omitted.)

8. Bare reading of provisions of Section 178 of the LRC provides for making an application for a partition of his share in the holding of agricultural land. Proviso makes it clear that if any question of title is raised, the Tehsildar shall stay the proceedings before him for a period of three months to facilitate the institution of a civil suit for determination of the question of title.

9. In the present case, admittedly the ownership of title of the petition scheduled land is in dispute as the property stands in the name of the petitioner by virtue

of purchase. However, the respondent No. 4 - brother of the petitioner disputes the title on the ground that it was a joint HUF property as the same was purchased by the father of the petitioner and the respondent No. 4 in the name of the petitioner as the petitioner alone was major at the relevant time. On perusal of the order dated 31-5-2005 (Annexure P-1) passed by the Board of Revenue as well as the orders dated 14-7-2003 (Annexure P-3) and 24-12-2003 (Annexure P-4) passed by the Courts below, it appears that the authorities have decided the dispute with regard to the title also which is beyond their jurisdiction.

10. Section 5(2) of the Code of Civil Procedure, 1908 provides that the "Revenue Court" under any local law may entertain suits or other proceedings relating to the rent, revenue or profits of land used for agricultural purposes, but does not include a Civil Court having original jurisdiction under this Code to try such suits or proceedings as being suits or proceedings of a civil nature and the Revenue Court has no jurisdiction to try and pass a decree on the issue.

11. It is well settled principles of law that by agreement or by waiver, jurisdiction cannot be conferred upon such authority/Court which lack jurisdiction under the provisions of law.

12. In Principles of Statutory Interpretation by Shri G. P. Singh, former Chief Justice, M.P. High Court, Tenth Edition, Page 681, which reads:

There is a strong presumption that Civil Courts have jurisdiction to decide all questions of civil nature. The exclusion of jurisdiction of Civil Courts is therefore not to be readily inferred and such exclusion must either be "explicitly expressed or clearly implied". "It is a principle by no means to be whittled down" and has been referred to as a "fundamental rule". As a necessary corollary of this rule provisions excluding jurisdiction of Civil Courts and provisions conferring jurisdiction on authorities and Tribunals other than Civil Courts are strictly construed. The existence of jurisdiction in Civil Courts to decide questions of civil nature being the general rule and exclusion being an exception, the burden of proof to show that jurisdiction is excluded in any particular case is on the party raising such a contention.

13. In the matter of Swamy Atmananda and Others Vs. Sri Ramakrishna Tapovanam and Others, , Their Lordships observed as under:

49. ...A party to a dispute may not join the other in referring the same to the Civil Court. The party may agree or may not agree therefor. A person having a grievance as against another must have a remedy. The maxim "ubi jus, ibi remedium" is not an empty formality. The jurisdiction of the Civil Court exemplifies the said doctrine. The jurisdiction of the Civil Court cannot be held to have been ousted unless it is so, expressly or by necessary implication, stated in the statute.

14. In the identical situation, a Division Bench of the Madhya Pradesh High Court in the matter of Bibi Bai (Mst.) v. Habib Khan and Ors. 1991 RN 97 (High Court),

held that "the Tehsildar has to retain seisin of the application presented u/s 178 of the Code and direct the applicant to approach the Civil Court within three months to get the question of title decided".

15. For the reasons mentioned hereinabove, the petition is allowed. It is ordered that:

(i) the Revenue Courts have no jurisdiction to decide the title of the petition scheduled land.

(ii) the order dated 31-5-2005 (Annexure P-1) passed by the Board of Revenue as well as the orders dated 14-7-2003 (Annexure P-3) and 24-12-2003 (Annexure P-4) passed by the Courts below are quashed and set aside.

(iii) the parties are at liberty to get the dispute with regard to the title of the petition scheduled land settled through jurisdictional Civil Court, if so advised.

(iv) no order as to costs.