

(2020) 01 CHH CK 0165
In the Chhattisgarh High Court
Case No : Second Appeal No. 96 Of 2007

Lakhan Lal (Dead) Through His Lr's And Ors	APPELLANT
Vs	
Dhan Singh Kanwar And Ors	RESPONDENT

Date of Decision : 27-01-2020

Acts Referred:

Madhya Pradesh Land Revenue Code, 1959 — Section 170(B)
Code Of Civil Procedure, 1908 — Section 96, 100
Limitation Act, 1963 — Section 58
Specific Relief Act, 1877 — Section 42
Specific Relief Act, 1963 — Section 34

Citation : (2020) 01 CHH CK 0165

Hon'ble Judges : Sanjay K. Agrawal, J

Bench : Single Bench

Advocate : R.K. Pali, Vivek Tripathi, Sanjeev Kr Agrawal

Final Decision : Dismissed

Judgement

1. The substantial questions of law involved, formulated and to be answered in this plaintiff's second appeal are as under:Â?

â??(i) Whether finding regarding possession by appellate Court is perverse ?

(ii) Whether suit filed on behalf of the respondent No.1 in absence of relief of possession was not maintainable ?

(iii) Whether appellate Court has committed illegality in holding that suit was within limitation ?â??

[For the sake of convenience, the parties would be referred hereinafter as per their status shown and nomenclature in the suit before the trial Court].

2. The plaintiff filed a suit only for declaration that receipt dated 7.5.53 executed by the plaintiff's father Shivilal in favour of defendant No.1's father

Samaylal is forged and fabricated and mutation entry dated 5.4.56 (Ex.DÂ6) is

illegal & void and the defendants be restrained from interfering with his peaceful possession stating interÂalia that entry made by Shivilal, father of the plaintiff on 5.4.56 in favour of Samaylal, father of defendant No.1 is void as his father has never executed any receipt in favour of father of defendant No.1. It was further pleaded that when in July 1997 notice was served in his father's name from the SubÂDivisional Officer, Kota regarding proceedings under Section 170B of the Madhya Pradesh Land Revenue Code, 1959 (hereinafter called as 'the Code') and passed an order on 3.1.98 holding that proceedings under Section 170B of the Code are not attracted, then only he came to know about the order dated 5.4.56, alleged receipt dated 7.5.53 and then filed the suit on 14.7.98 and prayed for decree of declaration of title.

3. The defendants have filed their written statement and denied the averments made in the plaint stating interÂalia that the suit property bearing part of Khasra No.63 area 4.03 acres was received by the plaintiff's father which he sold in favour of father of defendant No.1, as such, the plaintiff is not possession of the suit land. Receipt dated 7.5.53 is not forged, mutation is not void and the suit is not within limitation and as such, prayed for dismissal of the suit.

4. The trial Court upon evaluation and after appreciation of oral and documentary evidence available on record, by its judgment dated 25.1.2005, dismissed the suit holding that the suit is beyond the period of limitation and the defendants have perfected their title by way of adverse possession. On appeal being preferred by the plaintiff under Section 96 of the CPC before the first appellate Court, the said appeal Court set aside the judgment and decree of the trial Court and held that mutation entry as contained in Ex.DÂ6 is void, by which no title is conferred to the defendants. Questioning legality and validity of the judgment and decree of the first appellate Court, this second appeal under Section 100 of the CPC has been filed by the appellants/defendants, in which substantial questions of law have been formulated by this Court, which have been setÂout in the opening paragraph of this judgment.

5. Mr.R.K.Pali, learned counsel for the appellants/defendants, would submit that the suit was apparently barred by limitation as mutation was done on 5.4.56 on the basis of receipt dated 7.5.53 and the suit was filed on 14.7.98, as

such, the suit was barred by Section 58 of the Limitation Act, 1963 and the plaintiff being not in possession of the suit land was not entitled for declaration of title, as such, the second appeal deserves to be allowed by setting aside the judgment and decree of the first appellate Court.

6. Mr.Vivek Tripathi, learned counsel for respondent No.1/plaintiff, would submit that the plaintiff only came to know about the mutation entry and

receipt when he received notice from the Sub-Divisional Officer, Kota in proceeding under Section 170B of the Code, in which order was passed on

3.1.98 (Ex.D-2), as such, the suit is within limitation and no interference is called for.

7. I have heard learned counsel appearing for the parties and considered their rival submissions made hereinabove and also went through the records

with utmost circumspection.

Answer to substantial questions of law Nos.1 and 2:—

8. The plaintiff only filed a suit for declaration that receipt dated 7.5.53 executed by the plaintiff's father Shivilal in favour of defendant No.1's father is

forged and mutation entry dated 5.4.56 (Ex.D-6) is illegal and void, which was dismissed by the trial Court, but the judgment and decree of the trial

Court was reversed by the first appellate Court in appeal preferred by the plaintiff.

9. The question for consideration would be whether the suit for bare declaration that mutation entry dated 5.4.56 (Ex.D-6) is illegal and void was

maintainable in view of the fact that the plaintiff did not ask for relief of possession and whether in absence of relief of possession, the suit was

maintainable ?

10. In order to answer the plea raised at the Bar, it would be appropriate to notice Section 34 of the Act of 1963 which states as under:—

34. Discretion of court as to declaration of status or right.—"Any person entitled to any legal character, or to any right as to any property,

may institute a suit against any person denying, or interested to deny, his title to such character or right, and the court may in its discretion make

therein a declaration that he is so entitled, and the plaintiff need not in such suit ask for any further relief:

Provided that no court shall make any such declaration where the plaintiff, being able to seek further relief than a mere declaration of title, omits to do

so.

Explanation.â?"A trustee of property is a â??person interested to denyâ? a title adverse to the title of some one who is not in existence, and whom, if in existence, he would be a trustee.â??

A careful perusal of proviso to Section 34 of the Act of 1963 would show that the plaintiff otherwise entitled to declaration may be refused the relief

where, being able to seek further relief than mere declaration, he omits to do so.

11. This provision aims at avoiding multiplicity of proceedings. The plaintiff must seek the relief where it is such as he can ask for, and he need ask

for. The proviso is also stated to aim at protecting the revenue from having a suit brought without paying ad valorem court fee. This bar in the proviso

applies only to a suit for declaration and not any other suit. The expression 'further relief' would mean the relief which would complete the claim of the

plaintiff, and not lead to multiplicity of suits. Further, relief must flow necessarily from the relief of declaration and a relief appropriate to and

necessarily consequent on the right or claim asserted. It is such relief as flows necessarily from the relief of declaration. It must be a relief ancillary to

the main relief, and not one in the alternative. It is such relief which cannot be granted without the declaration. If the further relief is remote and is not

connected in any way with the cause of action accrued in favour of the plaintiff, it need not be claimed and would not be barred by this section.

12. Thus, from the aboveâ?stated, it is quite vivid that proviso to Section 34 of the Act of 1963 refers to a relief which the plaintiff must seek. It is a

relief which the plaintiff will have to seek by means of some subsequent suit for application in order to make the declaratory relief fruitful. Where the

plaintiff is not in need of any other consequential relief, suit for mere declaration is competent and the Court should grant necessary relief.

13. In the instant case, the question for consideration would be whether a suit for a mere declaration that order passed by the revenue officer is

without jurisdiction can be claimed.

14. In the matter of Sachindra Kumar Roy and others v. Nabendra Kisore Roy AIR 1934 Cal 15 5the Division Bench of the Calcutta High Court has

held that a suit for a mere declaration without any consequential relief that certain order passed by the Revenue Court was without jurisdiction and

'ultra vires' of the Statute under which it was passed is competent.

15. The Pepsu High Court in the matter of Government of Pepsu v. Pratap Sing AIR 1952 PEPSU 11 9 while following the decision of the Calcutta

High Court in Sachindra Kumar Roy (supra) held that a suit for declaration without any consequential relief that the orders passed by the Revenue

Commissioner in appeal and by the Revenue Minister in revision were without jurisdiction and 'ultra vires' of the Patiala Land Acquisition Act under

which they were passed is competent under Section 42 of the Specific Relief Act, 1877 (pari materia provision to Section 34 of the Specific Relief

Act, 1963).

16. Following the principle of law laid down in the above stated judgments (supra) to the facts of the present case, it is vivid that the plaintiff has only

sought for relief that order passed by the revenue officer mutating the name of Samaylal, father of defendant No.1 on 5.4.56 is without jurisdiction and

void. The plaintiff was not required to ask for further relief of possession etc. as the suit for declaration that mutation entry dated 5.4.56 is illegal and

void was maintainable, as such, these questions of law are answered against the defendants and in favour of the plaintiff. Even otherwise, the first

appellate Court has recorded the finding of possession against the appellant/defendant, which is finding of fact based on evidence available on record.

Answer to substantial question of law No.3:Â?

17. The first appellate Court has held that the suit is within the period of limitation as the plaintiff came to know about the order of mutation when he

received notice of proceeding under Section 170B of the Code from the Sub-Divisional Officer, Kota in July, 1997 and he filed the instant suit on

19.7.1998, as such, finding recorded by the first appellate Court on the question of limitation is finding of fact based on evidence available on record

and binding to this Court under Section 100 of the CPC. I do not find any illegality or perversity in finding recorded by the first appellate Court, as

such, this substantial question of law is also answered in favour of the plaintiff and against the defendants.

18. Accordingly, the second appeal being devoid of merit is liable to be and is hereby dismissed leaving the parties to bear their own cost(s).

19. Decree be drawn up accordingly.