

(1985) 02 MP CK 0030
In the Madhya Pradesh High Court
Case No : Second Appeal No. 37 of 1973

Mishrilal Sundarlal

APPELLANT

Vs

State of Madhya Pradesh and another

RESPONDENT

Date of Decision : 15-02-1985

Acts Referred:

Madhya Pradesh Land Revenue Code, 1959 — Section 185, 190, 248

Citation : (1986) JLJ 451 : (1986) MPLJ 179

Hon'ble Judges : K.M. Agarwal, J

Bench : Single Bench

Advocate : Lokendra Gupta, for the Appellant; K.S. Shrivastava and P.D. Agarwal, Panel Lawyer, for the Respondent

Final Decision : Dismissed

Judgement

K.M. Agarwal, J.

This second appeal is by the plaintiff, who has lost his suit for declaration and injunction from the two Courts below.

Briefly stated, the appellant's case was that the respondent No. 2 was the recorded Bhumiswami of the suit land, but he being the occupancy tenant thereof within the meaning of section 185 of the M.P. Land Revenue Code, 1959, (hereafter called the "Code"), had acquired the status of a Bhumiswami by virtue of section 190 of the Code. He claimed to be in a continuous actual physical possession of the suit land as a sub-tenant since Samvat year 2007. Subsequently on the basis of an application made by the respondent No. 2 an order of ejectment u/s 248 of the Code was passed against him on 9-9-1968 by the Tahsildar, Kolaras, which was maintained upto the Board of Revenue and hence he was required to file the said civil suit for declaration of his title as the Bhumiswami of the land and for the consequential relief of injunction.

The respondents contested the suit by filing two separate written statements. They submitted that the land was a "Maufi" land, which was given to the idol of

Jayeshwar Mahadeo for the purpose of meeting the expenses of its "Sewa-Puja". According to the respondent No. 2, the land, thus belonged to "a person subject to physical or mental disability within the meaning of section 168(2)(v) of the Code and, therefore, the appellant could not derive the status of a Bhumiswami by virtue of a lease granted to him by the "Pujari" of the temple. The respondent No. 1 tried to justify the ejectment order by contending that the land continued to be the "Milkiyat Sarkar" and as the "Pujari" of the temple had no authority to grant lease of the land, the status of the appellant was only that of an encroacher over the suit land.

At the very outset, the learned counsel for the appellant gave up the appellant's claim for declaration by conceding to the legal effect of the provisions of section 168 of the Code, which does not prohibit leasing of the land for a period of more than one year during any consecutive period of 3 years by or on behalf of the respondent No. 2, which admittedly belonged to the category of "a person subject to physical or mental disability", and, therefore, no question of automatic conferral of Bhumiswami rights over the suit land arose by virtue of section 190 of the Code. However, he vehemently argued that even after giving up the claim for declaration of title, the appellant was entitled to the consequential relief of injunction as prayed for in the suit. It was contended that the respondent No. 2 being "Maufidar" of the suit land, had become Bhumiswami thereof by virtue of the provisions of section 158(b) of the Code, and, therefore, the "Pujari" of the respondent No. 2 as manager of the idol was competent to give the suit land on lease. In support of his contention, he relied on a decision of this Court reported in Fatehchand vs. Jagannath Prasad 1966 R.N. 62. He further contended that as the appellant was a lessee of the respondent No. 2, he could not be ejected from the suit land by resorting to the provisions of section 248(1) of the Code, because that section was applicable only in cases of encroachments over Government land and because section 168(4) of the Code made specific provisions for ejectment of a lessee from a Bhumiswami on the ground of contravention of any material term or condition of a lease or on the lease having ceased to be in force. It was further submitted by the learned counsel for the appellant that the power u/s 168(4) of the Code could be exercised only by a Sub-Divisional Officer, whereas powers u/s 248(1) of the Code, are exercisable by a Tahasildar. Since the order of ejectment in the present case was passed by the Tahasildar u/s 248(1) of the Code, the same could not be treated to be one u/s 168(4) of the Code. In other words, his contention was that the appellant continued to be the lessee of the respondent No. 2 in respect of the suit land and he was, therefore, not liable to be ejected there from in pursuance of an illegal order of ejectment made against him in accordance with the provision of section 248(1) of the Code.

After giving thoughtful consideration to the above submissions of the learned counsel for the appellant, I am of the view that although his submissions are attractive, they hold no waters. It is to be noticed that the relief claimed by way of an injunction was only consequential in nature. It was based on the main relief

of declaration of title as Bhumiswami of the suit land, which was given up by the appellant. Under these circumstances, I am of the view that if the appellant is not entitled to the main relief, he would also be disentitled to any consequential relief of the nature claimed by him.

It is well settled that the decision of a case cannot be based on grounds outside the pleadings of the parties and it is the case pleaded that has to be found: *Trojan and Co. Ltd. Vs. Rm. N.N. Nagappa Chettiar*, , *Bhagwati Prasad Vs. Shri Chandramaul*, . In the present case, it has not been pleaded that the ejectment order was illegal or without jurisdiction or that the appellant's lease subsisted and, therefore he was not liable to be ejected from the suit land. Hence, he cannot now be allowed to urge that the order of ejectment not being u/s 168(4) of the Code by a competent authority was non est and he was not liable to be ejected from the suit land.

By pointing out certain infirmities in the pleadings of the respondents, the learned counsel for the appellant further tried to make out some case in support of his aforesaid contention. However, he cannot be allowed to do so in view of the settled principle of law that a plaintiff can succeed only on the strength of his own title and not on the weakness of defence: AIR 1946 59 (Privy Council) .

In the result, this appeal fails and is hereby dismissed. The decree passed by the lower appellate Court is maintained. In the circumstances of the case, there shall be no orders as to costs of this second appeal.