

(2002) 02 GUJ CK 0041

In the Gujarat High Court

Case No : Special Civil Application No. 8506 of 1990

Mohanlal K. Patel and Another

APPELLANT

Vs

Ukkabhai L. Patel and Another

RESPONDENT

Date of Decision : 01-02-2002

Acts Referred:

Bombay Land Revenue Code, 1879 — Section 121(2)

Citation : (2002) 3 GLR 574

Hon'ble Judges : Jayant M. Patel, J

Bench : Single Bench

Advocate : Utpal Panchal, for D.D. Vyas, for the Appellant; Mukesh R. Shah and Premal Joshi, Asstt. G.P., for the Respondent

Judgement

Jayant Patel, J.—The present Special Civil Application is preferred against the order, dated 15-7-1986 passed by the State Government in exercise of its revisional jurisdiction whereby the order of the District Collector dated 30-10-1986 so far as it relates to setting aside the order for removing the encroachment is quashed.

2. The short facts of the case are that the respondent No. 1 moved an application before the Deputy Collector alleging that the petitioner herein has made encroachment over the lands belonging to him admeasuring 55 sq. mtrs., and therefore, he requested the Deputy Collector to get the land vacated and give the possession to him. The Deputy Collector ultimately after hearing both the sides passed an order on 15-7-1986 whereby he demarcated the boundaries and he further directed the present petitioner to vacate the said land. The present petitioner preferred appeal against the order of the Deputy Collector before the District Collector u/s 203 of the Bombay Land Revenue Code and the District Collector after hearing both the sides partly allowed the appeal whereby he confirmed the order of the Deputy Collector for fixation of boundaries u/s 119 of the Bombay Land Revenue Code, but he reversed the order of the Deputy Collector giving direction to vacate the same and further observed that for the

purpose of removal of encroachment the appellant would be required to approach the Civil Court. Against the said order dated 30-10-1986 passed by the Collector, the respondent No. 1 herein preferred revision before the State Government. It is worthwhile to note that the present petitioners have not preferred any revision against the order dated 30-10-1986 passed by the Collector, Valsad and they have accepted the same. The Special Secretary exercising the powers of the State Government ultimately heard the revision and found that in view of Section 121(2) of the Bombay Land Revenue Code the revenue authority has the power to direct for eviction from the said land over which there was encroachment on account of measurement or re-measurement of the land in question. The Special Secretary, ultimately, allowed the revision and restored the order passed by the Deputy Collector, dated 15-7-1986 against which the present petition is preferred.

3. I have heard Mr. Utpal Panchal for Mr. D.D. Vyas appearing for the petitioners and Mr. M.R. Shah for respondent No. 1 and Mr. Premal Joshi, learned A.G.P., for respondent No. 2 and I also have perused the record of the Special Civil Application.

4. Mr. Panchal raised the contention that in a case of private dispute amongst two landlords even if the measurement made by the revenue authority is accepted to be correct, then also the revenue authority has no power to adjudicate the rights of the private parties and it is only the Civil Court which has jurisdiction to entertain such dispute. In support of his said submission, he has relied upon the decision of the Bombay High Court in the matter of The Secretary of State for India in Council Vs. Javerchand Panaji, and also in the matter of Chauhan Ranchhodbhai Fatehsinh Vs. Valand Keshavlal Nathalal, . In furtherance of his submission he also contended that the rights of the private persons can only be decided by the Civil Court and if the person is in unauthorised occupation of the land belonging to another private person, the occupier may have the defence of adverse possession or otherwise and the same can only be adjudicated by the competent Civil Court.

5. However, Mr. M.R. Shah and Mr. Premal Joshi, learned A.G.P., contended that u/s 121(2) the Collector has power to summarily evict any landlord who is wrongfully in possession of any land which has been re-measured in the submission of Mr. Shah when the boundaries have been fixed under a settlement it is open to the Government to pass the order for summary eviction, and therefore, the order of the State Government is perfectly legal and valid. Mr. Shah also contended that by way of abundant caution his client had also preferred Regular Civil Suit No. 65 of 1989 before the Civil Court for appropriate relief for removal of encroachment made by the petitioner herein over the land in question. However, the learned Civil Judge has passed the judgment and decree on 14-11-1994 whereby the suit is dismissed and the Civil Court has rather not decided the question of title on account of pendency of this petition. It is the case of the respondent No. 1 herein that he has preferred appeal against the said

judgment of the Civil Court, but the said appeal is still not finally decided.

6. Considering the rival submissions of the parties it will be worthwhile to refer to the provisions of Section 121 of the Bombay Land Revenue Code which reads as under :

""121. Effect of the settlement of a boundary :

(1) The settlement of a boundary under any of the foregoing provisions of this chapter shall be determinative-

(a) of the proper position of the boundary line or boundary marks, and

(b) of the rights of the land holders on either side of the boundary fixed in respect of the land adjudged to appertain, or not to appertain to either respective holdings;

(2) Where a boundary has been so fixed, the Collector may, at any time, summarily evict any land holder who is wrongfully in possession of any land which has been adjudged in the settlement of boundary not to appertain to his holding or to the holding of any person through or under whom he claims."

7. The aforesaid provisions of Section 121 came up for interpretation before the Bombay High Court in the case of the Secretary of State for India in Council v. Javerchand Panaji, reported in 35 Bom. LR 583 : AIR 1933 Bom. 314 it was observed by the Bombay High Court that "the decision of the Collector u/s 121 amounts to nothing more than the determination of the position where the boundary line lies, and the title of the parties is determined according to the position of the boundary line. The Collector's decision, however, does not preclude any one of the disputing parties from invoking the aid of a Civil Court on the ground that he had acquired a portion of his neighbour's survey number by adverse possession". The aforesaid decision is based on the earlier decision of the Bombay High Court in the matter of Kanhailal Badridas Vs. Ismailbhai Kasambhai, . Even this Court had an occasion to consider the interpretation of provisions of Section 121 of Bombay Land Revenue Code in the case of Chauhan Ranchhodbhai Fatehsinh Vs. Valand Keshavlal Nathalal, , wherein, the Court, inter alia, observed that "the plea of adverse possession put forth by the defendant, of course, alternatively also will fall within the exclusive jurisdiction of the Civil Court and to that extent it can be said that the Civil Court certainly had jurisdiction."

8. In the case before this Court, it is the case of the petitioner that they are in possession of the land in question since their forefathers and they have also contended that they are the owners of the land by adverse possession. The said statement is mentioned at Para 4 of the petition. A perusal of the judgment of civil suit shows that it was contended by the petitioner hereinbefore the Civil Court also that they have acquired the title by virtue of adverse possession, and therefore, they are not required to be evicted. This Court is not expressing any opinion on the point that whether the petitioner herein has acquired the title over

the land in question by virtue of adverse possession or not. The fact remains that there is a claim of the petitioner herein of adverse possession. Under the circumstances, it can be said that the Collector had no power u/s 121(2) of the Bombay Land Revenue Code for directing them to summarily evict.

9. In view of the aforesaid decision, it is apparent that when the measurement has been made of the boundaries of the land by the revenue authorities and when claim of adverse possession is made by the occupier of the land, then in those circumstances, only the Civil Court will have jurisdiction to decide the issue and after said issue is decided the final order can be passed by the competent Civil Court for eviction. Therefore, there is no question of any summary eviction at the stage of conclusion of measurements. The aforesaid important aspect of the case goes to the root of the matter and is not considered by the State Government while considering the revision application. In my view, therefore, there is jurisdictional error committed by the State Government while deciding the revision application. Under the circumstances, the order dated 17-1-1990 passed by the State Government is quashed and the petition is allowed. However, it is made clear that the present petitioner has not challenged the order dated 30-10-1986 passed by the Collector, Valsad, and therefore, the parties will be at liberty to agitate their rights and title in accordance with law before the competent Civil Court in appropriate proceedings. Petition is accordingly allowed. Rule is made absolute with no order as to costs.