

(2013) 04 MP CK 0093
In the Madhya Pradesh High Court
Case No : S.A. No. 508 of 2005

Murti Shri Pandharinath Mandir and Others

APPELLANT

Vs

Collector and Another

RESPONDENT

Date of Decision : 09-04-2013

Acts Referred:

Evidence Act, 1872 — Section 90

Madhya Pradesh Land Revenue Code, 1959 — Section 114, 115, 158(l)(b), 57(2)

Citation : (2013) 4 MPJR 191 : (2013) 2 MPLJ 691

Hon'ble Judges : A.K. Shrivastava, J

Bench : Single Bench

Advocate : C.L. Yadav, with Manish Yadav, for the Appellant; Sanjay Guha, Panel Lawyer for State, for the Respondent

Final Decision : Allowed

Judgement

A.K. Shrivastava, J.—Feeling aggrieved by the judgment and decree dated 15-3-2005 passed by learned Third Additional District Judge, Indore in Civil Appeal No. 22/2004 whereby the judgment and decree dated 10-4-2003 passed by learned Civil Judge, Class-II, Depalpur in Civil Suit No. 44-A/2002 decreeing the suit of plaintiffs, has been reversed and set aside. No exhaustive statements of fact are required to be narrated for the purposes of disposal of this appeal since they have been elaborately mentioned in the impugned judgment passed by learned First Appellate Court. For ready reference it would be sufficient to mention here that plaintiffs sought following relief in the plaint:--

The case of the plaintiffs is that the land in question was given to second plaintiffs forefather in Inam, therefore, on coming into force of the M.P. Land Revenue Code, 1959 (in short "the Code") the plaintiffs became Bhumiswami of the land in question. The name of the Collector has been wrongly endorsed as Vyavasthapak (Manager) as per the direction of the State Government, but, that circular is applicable only for the temples which are government temples and not for private temple. It is also pleaded that the plaintiff is the Bhumiswami of the

land and the temple in question is not a government temple or public temple. It is the further case of the plaintiffs that the order dated 3-6-2000 passed by the Sub-Divisional Officer dismissing the application of the plaintiffs u/s 57(2) of the Code be declared null and void and the name of the Collector be removed from the revenue record from the column of Vyavasthapak (Manager).

2. The defendants-State Government filed written statement and refuted the plaint averments and pleaded that rightly the name of the Collector has been endorsed as Vyavasthapak (Manager) in the revenue record. It has been further pleaded that the application u/s 57(2) of the plaintiffs has been rightly dismissed and thus, prayed that the suit be dismissed.

3. Learned trial Court framed necessary issues and after recording the evidence of the parties decreed the suit. However, the judgment and decree of learned trial Court has been reversed by the learned First Appellate Court and dismissed the suit of plaintiffs. In this manner this second appeal has been filed by the plaintiffs which was admitted on 9-5-2006 on the following substantial questions of law:--

i) Whether the land in question after the application of M.P. Land Revenue Code is to be considered falling within the Bhumiswami rights of the plaintiffs since it was an Inam land bestowed upon the ancestors of the plaintiffs?

ii) Whether the judgment and decree passed by the learned first Appellate Court is not justified by law?

4. The contention of learned senior counsel for the appellants is that looking to the material documents Ex.P-1 to P-4 which go to the root of the matter it is clear that the land in question was given to ancestor of second plaintiff Prahladdas in Inam for Devsthan. Learned senior counsel by placing reliance upon the decision of this Court State of M.P. Vs. Vijaya Bai and Others, has submitted that this decision is squarely applicable in the present case. The documents (Ex.P-1 to P-4) which are the foundation stone of the case and are verbatim identical to the document in question in the case of Vijaya Bai (supra) wherein this Court has held that the land was given in Inam by the Holkar State and not to the deity and therefore, firstly the second plaintiffs forefather and after his death the plaintiff became the Bhumiswami on coming into force of the Code.

5. On the other hand, Shri Guha, learned Panel Lawyer appearing for the respondents-State argued in support of the impugned judgment and submitted that cogent reasons have been assigned by learned First Appellate Court dismissing the suit of plaintiffs and by allowing the appeal of the State and therefore, no interference is called for. Hence, it has been prayed that this appeal be dismissed.

6. Having heard learned counsel for the parties, I am of the view that this appeal deserves to be allowed.

Regarding Substantial Question of Law No. (a)

7. Learned senior counsel for the appellants by placing reliance upon documents Ex.P-1 to P-4 which are the basic document of Inam (Sanad) dated 24-12-1930 has submitted that the name of second plaintiffs ancestor Ramratan Das has been mentioned as Inamdar and nowhere the Inamdar has been shown to be the deity and therefore, the suit land was given to second plaintiffs forefather in Inam by the then Holkar State. For ready reference, it would be relevant to quote the document Ex.P-1 in verbatim which is the foundation stone of the case, which reads thus:--

The contents of this document Ex.P-1 on the rear side are also being reproduced hereunder:--

On bare perusal of the column No. 1 which is the column of Inamdar to whom the land is given, the name of second plaintiffs forefather Ramratan Das is mentioned. In column No. 2 the Khasra number of the field has been given, column No. 3 pertains to the area of the field. Column No. 4 is in respect of what kind of Inam land is and in this column Devsthan has been endorsed. Column Nos. 5 and 6 are very important. In column No. 5 which is in respect of conditions, if any, it has been mentioned to "offer Pooja of Murti Shri Pandharinath". In column No. 6 it has been mentioned that Inam land has been given in terms of Rule 20 of the Inam Inquiry Rules and land revenue has been exempted. On the rear side of this document it has been mentioned that the land is given to Inamdar i.e. second plaintiffs forefather by the Settlement Officer in terms of Rule 20. The signature of the Settlement Officer is also there on this document. Similar type of the documents are Ex.P-2, P-3 and P-4 and except the area of the land and the survey numbers, all these four documents are verbatim similar. According to me, if the land would have been given to the deity Shri Pandharinathji then certainly the name of deity would have been mentioned in column No. 1 but in the said column the name of Ramratan who is the forefather of second plaintiff has been mentioned and therefore, I am of the view that land was given to forefather of second plaintiff in Inam by the then Holkar State to offer pooja of temple of Shri Pandharinathji and thus, it cannot be said that the land was given to deity.

8. Since the land in question was given to plaintiffs ancestor in Inam on coming into force of the Code on 2-10-1959, u/s 158(I)(b) of the Code the plaintiff became Bhumiswami. That apart, the plaintiff has examined himself as PW-1 and he has proved this document. No document in rebuttal has been filed and proved by the State of M.P. - defendants. Although two witnesses have been examined Harinarayan (DW-1) and Rajendra Kumar (DW-2), both are Patwaris. These two witnesses have stated that because subsequently the name of the Collector has been endorsed as Vyavasthapak (Manager) therefore, they are saying that the land is government land. Both of them have admitted that they have not seen the old revenue record and whose name has been entered as owner and Bhumiswami they cannot say. Further they have put their ignorance that if the

land in question was given in Inam to the ancestor of the second plaintiff by the then Holkar State, they cannot say.

9. Thus, looking to these very old documents, which are more than 30 years old, u/s 90 of Indian Evidence Act it is presumed that signature and every other part of such documents which purports to be in the hand-writing of any particular person is in that person's hand-writing. Needless to say from the proper custody of plaintiffs this document has been produced in evidence and proved. Hence the genuineness of these documents cannot be doubted specially when there is no document of rebuttal in this regard. On this point I may place reliance upon the decision of the Privy Council, AIR 1947 15 (Privy Council) wherein the Will in question of that case was found to be duly attested on the basis of statutory presumption u/s 90 of the Evidence Act.

10. That apart, the name of the Collector as Vyavasthapak (Manager) cannot be endorsed in the revenue record without holding any inquiry and affording opportunity of hearing to the plaintiffs. Section 115 of the Code contemplates about the wrong entry in Khasra and any other land records by superior officers. According to this provision, if any Tehsildar finds that a wrong or incorrect entry has been made in the land records prepared u/s 114 by an officer subordinate to him, he shall direct necessary changes to be made therein in red ink after making such enquiry from the person concerned as he may deem fit after due written notice. Admittedly, in the present case, no enquiry was conducted and notice of hearing was not given to the plaintiffs. Hence, I am of the view that merely the State Government has directed to mention the name of Collector as Vyavasthapak (Manager) it would not jeopardise the right of the plaintiffs and the revenue record cannot be corrected without holding any inquiry and giving opportunity of hearing to the plaintiffs. Hence, I am of the view that learned First Appellate Court erred in reversing the judgment and decree passed by learned trial Court.

11. The substantial question of law No. (a) is thus, answered in favour of the appellants that the suit land after coming into force of the Code is to be considered to be in the Bhumiswami right of the plaintiffs since the land in question was given as Inam land to the ancestor of the second plaintiff.

Regarding Substantial Question of Law No. (b)

12. For the reasons stated herein-above, the impugned judgment and decree passed by learned First Appellate allowing the appeal and thereby dismissing the suit is not found to be justified and in accordance with law and therefore, the said judgment is hereby set aside. Resultantly, this appeal succeeds and is hereby allowed. The impugned judgment and decree passed by learned First Appellate Court is hereby set aside and the judgment and decree passed by learned trial Court is hereby restored. No costs.