

(1967) 01 MP CK 0006

In the Madhya Pradesh High Court

Case No : Miscellaneous Petition No. 13 of 1966

Paitram Rameshwar Patel and others

APPELLANT

Vs

Board of Revenue, M.P., Gwalior and others

RESPONDENT

Date of Decision : 20-01-1967

Acts Referred:

Constitution of India, 1950 — Article 226

Madhya Pradesh Land Revenue Code, 1959 — Section 178, 178(1)

Citation : (1970) ILR (MP) 597 : (1968) JLJ 304 : (1968) MPLJ 348

Hon'ble Judges : P.V. Dixit, C.J; R.J. Bhawe, J

Bench : Division Bench

Advocate : R.K. Verma, for the Appellant; K.K. Dubey, Govt. Advocate For respondents Nos. 1 to 4 and I.S. Mishra, for the Respondent

Judgement

R.J. Bhawe, J.

By this petition under Article 226 of the Constitution, the Petitioners seek a writ of certiorari for quashing an order dated 15th September 1965 passed by the Board of Revenue, Madhya Pradesh, in Revision No. 99-1/1964.

The Petitioners had presented an application u/s 178 of the Madhya Pradesh Land Revenue Code, 1959 (hereinafter referred to as the Code), before the Naib-Tahsildar, Gharghoda, for partition of certain property alleged to have been held by them along with Mahinga Singh (respondent No. 5) in Bhumiswami rights. It was claimed that the land belonged to the parties as members of the joint Hindu family and they had a right of partition. The Respondent No. 5, however, raised an objection that the land was recorded in his name; that he was solely entitled to the said land; and that the Petitioners were not entitled to any partition. In other words, the Respondent No. 5 raised a question of title before the Naib-Tahsildar.

The proviso to Sub-section (1) of Section 178 of the Code reads:

Provided that no such partition shall be made, if any question of title is raised,

until such question has been decided by a civil suit.

The contention of the Respondent No. 5, therefore, was that the Naib-Tahsildar could not proceed with the partition till the question of title raised by him was decided by the civil Court.

The Naib Tahsildar, after considering the evidence produced by the parties, came to the conclusion that a genuine dispute as to title was raised by the Respondent No. 5 and that the proviso to Section 178(1) of the Code was attracted. He, therefore, held that the partition could not be effected till the question of title was decided by the civil Court. In this view of the matter, he dismissed the application of the Petitioners. The Sub-Divisional Officer, Raigarh, however, set aside the order of the Naib-Tahsildar on the ground that the objection raised by the Respondent No. 5 was not genuine. The Commissioner, Bilaspur Division, also took the same view. The Board of Revenue, on consideration of the various facts on record, came to a contrary conclusion and held that a substantial question as to title was raised by the Respondent No. 5 and set aside the orders of the lower appellate Courts and restored that of the Naib-Tahsildar. The present petition is directed against the said order of the Board of Revenue.

In *Sohanlal Suryabhan v. Manoolal Suryabhan* 1965 M P L J 123 the Board of Revenue observed:

The proviso to Section 178(1) of the M.P. Land Revenue Code does not give authority to Naib-Tahsildar to make elaborate investigation of title. Where he is satisfied that an objection as to title is *prima facie* bogus, he may reject the objection and proceed with the case.

This interpretation of the proviso appears to have been followed by all the Revenue Authorities right from the Naib-Tahsildar to the Board of Revenue, and the whole attention of the authorities was concentrated on finding out whether the question of title raised by the Respondent No. 5 was genuine or bogus. Shri Verma, Learned Counsel for the Petitioners, urged that while exercising revisional powers it was not open to the Board of Revenue to set aside the concurrent findings of the lower appellate Courts. Shri Vera also urged that the facts on record did not warrant the conclusion reached by the Board.

In our opinion, the view taken by the Board of Revenue that in order to attract the proviso to Section 178(1) of the Code there must be a genuine and not a bogus question of title, is not correct. The language of the proviso is plain. What it says is that when any question of title is raised no partition shall be made until such question is decided by a civil suit. "Raise" means "to put forth as a ground or plea"; it does not mean "to put forth a ground or plea which is genuine and not bogus". In reading the word "raised" in the manner it has, the Board has read into the proviso the words "genuine" or "bogus" that are not there. There is no warrant for putting such an interpretation on the word "raised" as used in the proviso. Ordinarily, it is not the function of Revenue Courts to decide a question of title; it is exclusively the function of civil Courts. To decide the question

whether the plea of title raised is genuine or bogus is to decide virtually the question of title itself. The Legislature has, therefore, advisedly left the question of title to be determined by the civil Court. A question of title raised by a party may not appear to be genuine to the Revenue Court, but may be held to be otherwise by the civil Court.

It must, however, be pointed out that the Naib-Tahsildar was in error in dismissing the application of the Petitioners. The Naib-Tahsildar should have adjourned the case enabling the parties to raise the question of title before the civil Court. If the party raising the question of title fails to take the matter to the civil Court within a reasonable time, then the Revenue authorities can proceed to effect the partition. If the dispute is got decided, the partition can be effected in the light of the decision of the civil Court. The dismissal of the application simply on the ground that a dispute as to title has been raised is not warranted on the true interpretation of the proviso to Section 178(1) of the Code.

For the foregoing reasons, the order of the Board of Revenue, in so far as it set aside the orders of the lower appellate Courts, is upheld. But the order of the Naib-Tahsildar dismissing the Petitioners application is quashed. The Naib-Tahsildar shall adjourn the hearing of the said application for a reasonable time directing the Respondent No. 5, Mahingal Singh, who raised the question of title, to institute a civil suit within certain time that may be fixed by the Naib-Tahsildar for having the question of title adjudicated upon by the civil Court. In the circumstances of the case, there will be no order as to costs. The outstanding amount of security deposit shall be refunded to the Petitioners.