(2012) 10 CHH CK 0014

In the Chhattisgarh High Court

Case No : Second Appeal No. 903 of 1996

Ram Shankar Singh and Others APPELLANT

Vs

State of M.P. (now C.G.) and Others RESPONDENT

Date of Decision : 04-10-2012

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 100
Madhya Pradesh Abolition of Proprietary Rights (Estates, Mahals, Alienated Lands) Act, 1950 — Section 3, 4, 4(1)(a), 5, 5(a)
Madhya Pradesh Land Revenue Code, 1959 — Section 251, 251(1), 47, 63

Citation : (2013) 1 CGBCLJ 101

Hon'ble Judges : Nawal Kishore Agarwal, J

Bench : Division Bench

Advocate : Rajeev Shrivastava, for the Appellant; G.D. Vaswani, GA for the State/respondent No. 1. Mr. Sourabh Sharma, counsel for respondent No. 2. Mr. Sanjay Patel, counsel, for the Respondent

Judgement

N.K. Agrawal, J.—This is plaintiffs Second Appeal filed u/s 100 of CPC against the judgment and decree dated 9.9.1996 passed by 7th Additional District Judge, Bilaspur, in Civil Appeal No. 7-A/96, affirming the judgment and decree dated 1.3.1996 passed by 8th Civil Judge Class II, Bilaspur, in Civil Suit No. 245-A/94. Original Plaintiff-Mahipal Singh filed a suit for declaration and permanent injunction inter alia on the ground: suit Tank was settled by the Compensation Officer vide order dated 21.11.1952 in favour of plaintiffs ancestors i.e. ex-proprietor of village Limha and accordingly he is its owner and the suit tank has been wrongly recorded in the revenue records in the name of respondent No. 1.

2. The trial Court, having found the ex-proprietor of village Limha was Madhavrao, who was a Brahmin by caste whereas the plaintiff is tribe and his ancestors were neither ex-proprietor of village Limha nor have purchased the suit Tank from the then ex-proprietor, dismissed the suit.

3. First appeal preferred there against was also dismissed. Hence, this second

appeal

4. The appeal was admitted for hearing on the following substantial questions of law:

(i) Whether on the facts and in the circumstances of the case, the courts below were justified in holding that the appellant is not the owner of the tank in dispute and the Collector was right in directing enquiry into the matter?

(ii) Whether on the facts and in the circumstances of the case, when the property was once settled in the name of ex Malquzar or his tenant, could Collector treating it to be un-occupied land direct its vesting in the State?

(iii) Whether on the facts and in the circumstances of the case, the Court below was justified in recording the findings against the appellant ?

5. During pendency of this appeal, original plaintiff and defendant No. 4 have died and their legal representatives were brought on record.

6. Shri Rajeev Shrivastava, learned counsel appearing for the appellants by referring the order of Sub Divisional Officer, Bilaspur, dated 29th September, 1967 (Ex.-1) would submit: plaintiffs ancestor-Bhanu Singh was ex-proprietor of village Limha; Compensation Officer vide order dated 21.11.1952 had settled the suit Tank u/s 5(f) of the M.P. Abolition of Proprietary Rights Act, 1950 (hereinafter referred to as ''the Act of 1950'') in his favour and the same cannot be revested in favour of State u/s of the MP. Land Revenue Code (for short'' the Code'') and both the courts below have erred in dismissing the plaintiffs suit.

For this, he placed reliance in the matter of Sub-Divisional Officer, Mandla and others v. Parma Gond and another [1969 RN 246] in which the Supreme Court has held that tank settled u/s 5(g) of the Act with ex-proprietor by Nistar Officer cannot be vested in the State u/s 251 of the Code.

7. Per contra, Shri G.D. Vaswani, Govt. Advocate for the State supported the judgment and decree and submitted: plaintiffs ancestors were neither ex-proprietor of village Limha nor have purchased the suit Tank from the then ex-proprietor; ex-proprietor of village Limha was Madhavrao, who was a Brahmin by caste whereas plaintiff was Adivasi and both the courts below have rightly dismissed the suit.

It was further contended: Section 3 and Section 4(1)(a) of the Act of 1950 provide for abolition of proprietary interest in the tanks and save certain non-proprietary or possessory or usufructuary interest in favour of ex-proprietors under sections 5(e), 5(f) and 5(g) of the Act of 1950. After the abolition of proprietary rights, certain tanks had remained with the ex-proprietors, over which the village community had the right of irrigation or Nistar, which created certain difficulties. With a view to take over non proprietary rights from the ex-proprietors, the Section 251 of the Code was enacted and after coming into force of MP. Land Revenue Code, 1959, such rights also vested in the State and the scope of Section 3, 4 & 5 of the Act of 1950 and Section 251 of the Code is altogether different.

8. I have heard learned counsel appearing for the parties and perused the material available on record.

9. Sub Section (1) of Section 3 of the Act of 1950 provides for vesting of proprietary rights in estate, mahal etc., but saves such rights as are otherwise provided for in Section 5 of the Act, which reads as under:-

S.5. Certain properties to continue in possession of proprietor or other person- Subject to the provisions in sections 47 and 63 these sections were omitted by the MP. Land Revenue Code, 1954 (No. 11 of 1955).

(e) All tanks situate on occupied land and belonging to or held by the outgoing proprietor of any other person shall continue to belong to or be held by such proprietor or other persons;

(f) All tanks, belonging to or held by the outgoing proprietor which are situate on land other than village site or occupied land and in which no person other than such proprietor has any rights of irrigation, shall belong to or be held by such proprietor;

(g) All tanks and embankments (bandhans) belonging to or held by the outgoing proprietor or any other person which are situate on land other than village site or occupied land and the beds of which are under cultivation of such proprietor or such other person and the land under such tanks and embankments, shall be settled with such proprietor or such other person on such terms and conditions as the State Government may determine.

10. As the Compensation Commissioner vide Order dated 21.11.1952 had settled the suit-Tank in favour of ex-proprietor u/s 5(f) of the Act of 1950, the present case is solely governed by Section 5(f).

Section 5(f) clearly indicates that by virtue of section 4(1)(a) read with section 3 of the Act, the proprietary rights in all tanks vests in the State. But what was saved by the legislature in favour of the ex-proprietors was non proprietary rights in respect of such tank in which no other person except the proprietor had any right of irrigation.

11. As per Section 251 of the Code: All tanks situated on unoccupied land on or before the date of coming into force of the Act, if not already vested in the State Government, vest absolutely in the State Government, with effect from 6th April, 1959.

12. Section 251 of the Code provided for abolition of certain kind of rights in tanks which had been saved in favour of ex-proprietors u/s 5(f) of the Act of 1950.

13. Division Bench of the MP. High Court in case of Seth Rishabh Kumar Vs. State

of Madhya Pradesh and others,) in a case governed by Section 5(f) of the Act of 1950 has held: After the abolition of proprietary rights, certain tanks had remained with the ex-proprietors, over which the village community had the right of irrigation or Nistar, which created certain difficulties. It was with a view to take over such tanks from the ex-proprietors that Section 251 of the Code was enacted. In enacting the Abolition Act, the intention of the legislature was to remove the intermediary between the tiller of the soil and the State and vest the proprietary title of the intermediary in the State. It would be this possessory title that was aimed at in section 251 of the Code.

14. The Full Bench of the M.P. High Court in case of Raghubar Singh Vs. The State of Madhya Pradesh and Others, to which, I am in respectful agreement, while approving the view taken by Division Bench in case of Rishabh Kumar (supra) has held in paragraph 21 & 24 as under:

21. What Section 251 of the Code, aimed at abolishing was rights in tanks situated on unoccupied lands in which villagers had either the right of irrigation or the right of Nistar. The right of Nistar of villagers was not at all relevant under sub-sections (e),(f) and (g) of section 5 of the Abolition Act, and moreover, section 251 of the Code does not affect the tanks situated on occupied lands, but it pertains to tanks situated on unoccupied lands only. That is the distinction. Thus, the argument of a second vesting would not at all be tenable as the scope of sections 3, 4 and 5 of the Abolition Act and section 251 of the Code, is altogether different and their operation is limited to the specific categories mentioned in those sections.

24. The case of Pirma Gond v. Sub-Divisional Officer, Mandla was a case governed by section 5(g) of the Act of 1950. The Tank had been settled with the ex-proprietor in Malik-makbuza rights. Thereafter, the Collector Mandla passed an Order stating that the tank vested in the State u/s 251(1) of the M.P. Land Revenue Code, 1959. In that case the annual papers indicated that the tank had vested in the State upon commencement of the Abolition Act and the same was being dealt with accordingly. The tank was ordered to be settled with the ex-proprietor, who had been cultivating Singharas. The Division Bench following the view in Thakur Ramranjansingh v. State of M.P. (1961 JLJ SN 267) quashed the notice issued by the Revenue Officer. This case went to the Supreme Court in Civil Appeal No. 446 of 1966 and their lordships affirmed the view of the High Court by judgment dated 10(3) 1969. We may observe that a case u/s 5(g) of the Act of 1950, would stand on a different footing. Section 251 of the Code, does not at all affect the tank in which right to grow Singharas may have been in existence. The said section only effects the tanks situated on unoccupied land in which the villagers have rights of irrigation or right of Nistar. Evidently, the right of Nistar will not include the right to cultivate the bed of the tank or to grow Singharas. The right of Nistar would mean the right to take water for drinking or for other use as also right of cattle to use water that purpose. In this view the case of Sub-Divisional Officer, Mandla v. Pirma Gond (supra) decided by the

Supreme Court, is clearly distinguishable. But we have not hesitation in expressing our opinion that the case of Thakur Ramranjan Singh v. State of M.P. (Supra) and Rajaram v. State of M.P. (supra) were decided on a misapprehension of the scope of section 3, 4 and 5 of the Act of 1950; and section 251 of the Code, and as such, they did not lay down the law correctly. For this reason we would over-rule those cases and we would adopt the reasoning of the subsequent Division Bench in Seth Rishabhkumar v. State of M.P. (supra) and we would approve of the same. We need not pronounce any opinion about the case of Sub-Divisional Officer,. Mandla v. Pirma Gond (supra) as the case is distinguishable.

15. Under the Act of 1950, some interest remained with the ex-proprietor or the other person and not that the entire interest including the possessory title had been wiped out, what section 251 of the Code, purported to enact was that tanks on occupied lands were not at all affected, but only tanks situated on unoccupied lands over which the villagers had right of irrigation or Nistar were to vest if not already vested in the State Government under the Act of 1950. Section 5(f) of the Act of 1950 contemplated the tanks situated on land other than village sites or occupied land and in which no person other than the proprietor had the right of irrigation. It is pertinent to note that tanks in which the villagers had right of Nistar were not at all affected by section 5(f). Section 5(g) contemplated tanks and embankments situated on lands other than the village site, occupied land and the beds of which were under cultivation. In that event the land under such tanks and embankments were liable to be settled with the ex-proprietor or the other person.

16 In case of Sub Divisional Officer, Mandla (supra): The tank was ordered to be settled with the ex-proprietor, who had been cultivating Sinaharas. A case u/s 5(a) of the Act of 1950, would stand on a different footing. Section 251 of the Code, does not at all affect the tank in which right to grow Singharas may have been in existence. The said section only effects the tanks situated on unoccupied land in which the villagers have rights of irrigation or right of Nistar. Evidently, the right of Nistar will not include the right to cultivate the bed of the tank or to grow Singharas. The right of Nistar would mean the right to take water for drinking or for other use and the decision of Supreme Court in case of Sub-Divisional Officer, Mandla v. Pirma Gond (supra) is clearly distinguishable on facts and is of no help to the appellant.

17. In view of above, since the suit Tank was earlier settled in favour of ex-proprietor u/s 5(C) of the Act of 1950 in which the villagers had a right of Nistar vested in the State u/s 251 of the Code, second substantial question of law is, thus answered against the appellant and in favour of respondent No. 1.

18. Coming to the first and third substantial questions of law, indisputably, the appellants/plaintiff are Adivasi by caste whereas ex-proprietor Madhavrao was Brahmin by caste and therefore, on the face, plaintiffs ancestors were not ex-proprietor of village Limha. Plaintiff had further failed to establish the fact of

purchase of suit Tank from ex-proprietor of village Limha. Therefore, both the courts below have not erred in holding the appellants are not the owner of the Tank in dispute and in recording the findings against the appellants. The first and third substantial questions of law are thus also answered against the appellants and in favour of respondent No. 1.

19. For the reasons mentioned hereinabove, the second appeal being devoid of merit, is liable to be and is hereby dismissed.

20. No order as to costs. Decree be drawn accordingly.