
(2012) 02 MP CK 0092
In the Madhya Pradesh High Court
Case No : S.A. No. 384 of 2010

Rukhamani Bai Patidar

APPELLANT

Vs

State of M.P. and others

RESPONDENT

Date of Decision : 03-02-2012

Acts Referred:

Citation : (2012) 02 MP CK 0092

Hon'ble Judges : N.K. Mody, J

Bench : Single Bench

Judgement

Hon"ble Shri N.K. Mody, J.—This appeal was admitted for final hearing on the following substantial question of law:

Whether in the facts and circumstances of the case learned Courts below committed error in dismissing the suit filed by the appellant?

2. Being aggrieved by the judgment dated 25/02/10 passed by II ADJ, Shajapur in Civil Appeal No.50-A/09 whereby judgment dated 24/11/09 passed by I Additional Civil Judge, Class-I, Shajapur in Civil Suit No.22-A/09 whereby suit filed by the appellant for declaration and permanent injunction was dismissed, was maintained, present appeal has been filed.

3. Short facts of the case are that the appellant filed a suit for declaration and permanent injunction on 18/06/07 alleging that the appellant is in occupation of the land bearing survey No.252 measuring 19 Biswa situated at village Kheriya Nayta, Tehsil & District Shajapur. It was alleged that the new survey number after the settlement in the year 1996-97 is 38 measuring 0.15 Aare. It was alleged that in the revenue record in Samvat 1982 i.e. 1925-26 the suit land was recorded in the name of Baldev S/o Lalu. It was alleged that the Jamindari system came to an end in Samvat 2007 i.e. 1951-52. It was alleged that in the family partition the suit property came into the share of father-in-law of the appellant and after the husband of the appellant, appellant became Bhumiswami of the land. It was alleged that the suit land was never Muafi land and was never owned

by Chabutara Dev Dharmraj. It was alleged that even if it is assumed that it was recorded in the name of Chabutara Dev Dharmraj, then after the settlement earlier entries is of no value. It was alleged that inspite of the fact that the suit land was never belonging to Chabutara Dev Dharmraj, respondent No.3 issued notice and vide order dated 16/10/06 passed an order to delete the name of appellant and recorded the name of Chabutara Dev Dharmraj. In the suit it was prayed that it be declared that the appellant is Bhumiswami and respondents be restrained not to interfere into the possession of the appellant.

4. The suit was contested by the respondents by filing written statement, wherein allegation made in the plaint were denied. It was alleged that since the suit property belonging to the temple which cannot be transferred, therefore, the entry was got corrected. It was prayed that the suit be dismissed. After framing of issues and recording of evidence learned trial Court dismissed the suit, against which an appeal was filed which was also dismissed, hence this appeal.

5. Learned counsel for the appellant argued at length and submits that judgments passed by the learned Courts below are illegal, incorrect and deserves to be set aside. It is submitted that since the name of appellant was recorded as Bhumiswami in the revenue record, therefore, both the Courts below committed error in not granting decree of permanent injunction when admittedly the appellant is in possession from the time of his predecessor-in-title. It is submitted that learned Courts below overlooked the principles of law laid down by the Apex Court that a person in settled peaceful, effective and undisturbed possession cannot be evicted without following due process of law. It is submitted that right from the year 1950-51 predecessor-in-title of appellant and thereafter appellant is in continuous, peaceful possession of the suit land. It is submitted that appeal be allowed and impugned judgment be set aside.

6. Learned counsel for respondents submit that no illegality has been committed by the learned Courts below in dismissing the suit filed by the appellant. It is submitted that the findings recorded are concurrent finding of facts, which requires no interference. It is submitted that appeal be dismissed.

7. To prove the case appellant has filed the documents Ex.P/1 to Ex.P/10. Ex.P/1 is the revenue record for the year 1909-10 wherein the name of Dev Dharmraj was recorded. In Ex.P/2 in the year 1925-26 name of Baldev was recorded, in Ex.P/3 which is recorded in the year 1950-51 name of Baldev continued. Ex.P/4 is the revenue record for the year 1968-69 in which same position continued, Ex.P/5 is the revenue record for the year 1978-79 in which name of appellant was recorded as Bhumiswami. Ex.P/10 is the order of Tehsildar in ex-parte whereby name of appellant was deleted. Appellant has examined herself as PW/1 and Chandraprakash as PW/2. While respondents have examined Nathulal (Patwari). No documentary evidence was produced by the respondents.

8. From perusal of the record it is evident that except in the year 1909-10 there is nothing on record to show that the suit property was recorded in the name of

Dev Dharmraj Chabutara and thereafter the suit property was recorded in the name of ancestors of the appellant and thereafter in the name of the appellant. It is also evident from the record that no documentary evidence was produced by the respondents that how the name of predecessor-in-title of appellant and thereafter appellant was recorded in the revenue record. No responsible Officer was examined by the appellant. In the facts and circumstances of the case this Court is of the view that learned Courts below were not justified in dismissing the suit filed by the appellant. Since the name of appellant was recorded in revenue record, therefore, learned Courts below were not justified in refusing the decree of permanent injunction. In view of this appeal filed by the appellant is allowed. Judgment and decree passed by learned Courts below is set aside. Substantial question is answered in favour of appellant. The order passed by Tehsildar is set aside with a direction to the appellant to appear before respondent No.2 and explain his status and also explain how her name was recorded. After submission of the reply and also after going through the entire record and also after recording of evidence, if any, respondent No.2 shall pass an appropriate order keeping in view the record for the relevant years and if the respondent No.2 is of the view that the name of the appellant was wrongly recorded as the property was belonging to the temple, then the respondent No.2 shall proceed with the case for taking possession of the suit land in accordance with law. Appellant is directed to remain present before respondent No.2 on 8.4.2012.

9. With the aforesaid observations appeal stands disposed of. No order as to costs.