
(1991) 10 MP CK 0032
In the Madhya Pradesh High Court
Case No : F.A. No. 86 of 1987

State of Madhya Pradesh and Others	Vs	APPELLANT
Kaushlesh		RESPONDENT

Date of Decision : 08-10-1991

Acts Referred:

Madhya Pradesh Gramo Me Ki Dakhalrahit Bhoomi (Vishesh Upabandh) Adhiniyam,
1970 — Section 3
Madhya Pradesh Land Revenue Code, 1959 — Section 2

Citation : (1992) 37 MPLJ 55 : (1992) MPLJ 55

Hon'ble Judges : K.M. Agrawal, J

Bench : Single Bench

Advocate : S.S. Tiwari, for the Appellant; N.D. Tiwari, for the Respondent

Final Decision : Allowed

Judgement

K.M. Agarwal, J.

This first appeal by the defendants is directed against the impugned judgment and decree of the Court below, declaring the plaintiff to have become Bhumiswami of the suit land and injuncting the defendants from interfering with his alleged possession over the suit land.

The respondent claimed that 60" x 40" land forming part of Survey No. 474 situated at village Teothar, district Rewa (in short, the "suit land") was gifted to his father Banshidhar Dwivedi by the then Pattedar in 1955. In 1955 the land came in Abadi. In 1978-79 he constructed 2 rooms over 30" x 15" of land and took actual physical possession of the entire suit land. His father could not get the land mutated in his name during his life time and by mistake the land was recorded as Government land. By notice dated 2-1-1986 the appellant No. 4 Tahsildar asked him to stop construction over the suit land, although the construction was made long before the date of notice. It was further alleged that on 17-1-1986 the appellant No. 2, Additional Collector, Rewa, came on the spot and gave oral directions to the appellants 3 and 4, i.e., Sub-Divisional Officer and

the Tahsildar, to demolish the construction by 22-1-1986. It was asserted that the aforesaid notice and order for evicting the respondent from the suit land was illegal because by virtue of the provisions contained in M. P. Gramo Me Ki Dakhalrahit Bhoomi (Vishesh Upabandh) Adhiniyam, 1970 (in short, the "Act") he had acquired the right of a Bhumiswami over the suit land. Accordingly, a declaration was sought and consequential relief of injunction restraining the appellants from interfering with his alleged possession over the suit land was claimed. The suit was resisted by the appellants on the ground that the construction was subsequent to 23-6-1980 and that the land was reserved for construction of certain Government quarters and, therefore, it could not be settled with the respondent in accordance with the provisions of the said Act. By its impugned judgment and decree, the Court below was pleased to hold that the respondent failed to prove the alleged oral gift to his father, but decreed the suit by holding that the construction was made by the respondent prior to 23-6-1980 and, therefore, by virtue of Section 3 of the Act, he had acquired the status of a Bhumiswami. Being aggrieved, the defendants have preferred this first appeal.

Having heard the learned counsel for the parties, I am of the view that the impugned judgment and decree of the trial Court are ex facie bad in law and, therefore, liable to be set aside. Section 3 of the Act makes a provision for allotment and settlement of unoccupied land in certain circumstances. "Unoccupied land" has not been defined in Section 2 of the Act, but clause (c) of Section 2 says that the words and expressions used in this Act but not defined shall have the meaning assigned to them in the M. P. Land Revenue Code, 1959 (in short, the "Code"). Section 2(z-3) of the Code defines unoccupied land as follows : -

" "Unoccupied land", means the land in a village other than the Abadi or service land or the land held by a Bhumiswami, a tenant or a Government lessee".

A bare perusal of this definition of "unoccupied land" would show that the Abadi land is excluded from being called an unoccupied land. In plaint paragraph 3 it was specifically pleaded by the plaintiff that since 1955 the suit land formed part of the village Abadi. Thus, on plaintiffs own showing, the suit land was not an unoccupied land and, therefore, it could not be allotted to him u/s 3 of the Act. It is also worthy to note that any villager who has constructed any building on unoccupied land before 23-6-1980 does not automatically get Bhumiswami right over the land occupied by him by virtue of Section 3 of the Act. He was required to make an application for settlement of the land in accordance with Section 4 of the Act within the prescribed form. Rule 3 of the Rules framed under the Act specified 31-12-1981 as the last date for filing such application. The plaintiff did not make any application in time for settlement of the land and, therefore, his application for settlement of the land made in or about the year 1986 was dismissed by the Tahsildar by his order dated 12-3-1986 (Ex.P.2) as barred by time. The appeal preferred against it was also said to have been dismissed by the appellate authority. For all these reasons, this appeal deserves to be allowed.

The learned counsel for the respondent submitted that the plaintiff had spent huge amount in constructing the building on the suit land. The market value of the suit land was shown to be Rs. 24,000/- at the relevant time and, therefore, the plaintiff may be allowed to continue in possession of the land on payment of the said market price of the land. However, no such direction can be made to the appellants for selling the land to the plaintiff but the plaintiff shall be at liberty to move to the Government for settlement of the land on payment of Rs. 24,000/- or more and if such an application is made, I hope that it will be sympathetically considered by the Government.

In the result, this first appeal succeeds and it is hereby allowed. The impugned judgment and decree of the Court below are set aside and the suit of the plaintiff-respondent is dismissed with the observations aforesaid. In the facts and circumstances of the case, the parties are directed to bear their own costs as incurred throughout.