

(2018) 08 MP CK 0180
In the Madhya Pradesh High Court
Case No : Second Appeal No.441 Of 1997

State Of Madhya Pradesh

APPELLANT

Vs

Rameshchandra (Deceased) Through Lrs Smt. Gomati &
Others)

RESPONDENT

Date of Decision : 23-08-2018

Acts Referred:

Code Of Civil Procedure, 1908 — Order 6 Rule 17, Order 47 Rule 27
Constitution of India, 1950 — Article 12(3), 363

Citation : (2018) 08 MP CK 0180

Hon'ble Judges : S.C. Sharma, J

Bench : Single Bench

Advocate : A. K. Sethi, Avadhesh Polekar, R. T. Thanewala, Kamlesh Mandloi,
Anuj Lahoti, A. S. Kutumble, S. C. Bagadiya, B. S. Gandhi

Final Decision : Allowed

Judgement

Sr. No.,Issues,Conclusion

1., "Whether, the plaintiff No.1 has purchased
the suit property i.e. Plot No.8-A for a sum
of Rs.12,000/- from the plaintiff No.2 and
whether, he is in possession of the property
or not?", Yes

2., "Whether, on account of unlawful
proceedings by defendant No.1, plaintiff
has suffered loss of Rs.300/- per month
and whether, he is entitled for mesne profit
@ Rs.300/- per month?", Yes

3., "Whether, the suit is barred by limitation?", No

4., "Whether, the defendants are having

adverse possession of the property in

question for more than 100 years?", No

5., "Whether, the plaintiff has served a legal

notice dated 12/09/1975 to the

Commissioner informing the Commissioner

that in case land is vested with the State

Government the plaintiff is ready to forego

his claim ?", Not proved

private property of the Maharaja and by no documentary evidence nor by any oral evidence it was established before the trial Court that property,,

which is the subject matter of civil suit was the personal property of the Maharaja and once the title of the Maharaja was not established i.e. the title,,

of the vendor, all subsequent sales have got no meaning.",,

10- The factum of title in respect of the suit property in favour of Maharaja, was not established and sale by Maharaja, does not confer any right in",,,

favour of the plaintiff No.2 so far as the title is concerned and also it does not confer any right in favour of the plaintiff No.1 so far as the title is,,

concerned.,,,

11- The documents on the basis of which the learned Judge of the trial Court has allowed the civil suit are certainly not the documents on the basis of,,

which the title of the Maharaja was established. Exhibit-P/1-A is the sale deed by which the land was sold by plaintiff No.2 to plaintiff No.1. Exhibit-,,,

P/2 is a receipt given by Indore Municipal Corporation in favour of Rameshchandra Narayandas Agrawal sanctioning the site plan. Exhibit-P/3 is a,,

sanction site plan in respect of plot No.8-A. In the considered opinion of this Court, sanction of some map in respect of plot No.8-A does not confer",,,

any right in respect of title. Similarly, sanction of plot map No.8-A does not decide the issue of title. Exhibit-P/4 is again a sanction of building plan",,,

with certain conditions dated 03/05/1976 and it does not decide the issue of title. Exhibit-P/6 is an application dated 06/09/1975, it also does not decide",,,

the title. Exhibit-P/7 is a report by the Pujari and it also does not decide the title.

Exhibit-P/8 note-sheet dated 14/06/1977 of Commissioner is also not a,,
title document in favour of the Maharaja. Exhibit-P/9 is a registered notice by Rameshchandra Agrawal to the Commissioner also does not decide the,,
title. Reply to the legal notice (Exhibit-P/11) is a reply given by the Mafi Officer, also does not decide the title dispute. The plaintiff has again proved",,,
Exhibit-P/12 which is notice by the counsel to the State Government. A notice by the counsel to the State Government also does not decide the title,,
suit. Exhibit-P/13 and P/14 are again notices, they do not decide the title dispute. Exhibit-P/15 is receipt in respect of supply of certain materials to",,,
Rameshchandra, it also does not decide the title. The other documents photographs (Exhibit-P/19-A) also are not the documents on the basis of which",,,
the title of the Maharaja can be established.,,,

12- Exhibit-D/1 is a Covenant in respect of Ratlam State and Bhagwan Shankar temple with adjoining lands does not fall in the list of the properties of,,
Maharaja Lokendra Singh Bahadur of Ratlam. Exhibit-D/2-A is a letter of appointment of Pujari by the State Government. Exhibit-D/3-A is a letter of,,
Household Officer of Ratlam State in respect of government temple. Other documents as Exhibit-D/4-A, D/5, D/5-A to D/12 makes it very clear that",,,
in respect of temple in question, the State Government was maintaining the temple. Salary of the Pujari was being paid by the Government and as the",,,
property was not included in the Covenant as personal property of Maharaja on account of merger of Ratlam State with Union of India, the State of",,,
Madhya Pradesh became the successor of the property.,,,

13- This Court really finds it very strange that without their being any document to establish the title of erstwhile Maharaja Lokendra Singh in respect,,
of the property in question, the trial Court has given a finding that plaintiff No.1 and 2 are the title holder of the property. The findings of fact arrived",,,
at by the trial Court in respect of title are certainly perverse findings.,,,

14- It is true that there is a judgment on record over which heavy reliance has been placed upon by the respondent before this Court and who are the,,
plaintiffs. The judgment was delivered in First Appeal No.4/1967 (Indore Municipal Corporation Vs. Madanlal Kimti). In the aforesaid case, Indore",,,
Municipal Corporation was claiming ownership of the property in question and the suit of the Indore Municipal Corporation was dismissed. Thereafter",,,
the Indore Municipal Corporation preferred a first appeal i.e. First Appeal

No.4/1967 and this Court has dismissed the first appeal.,,

15- The factual aspect regarding suit by Indore Municipal Corporation and dismissal of first appeal preferred by Indore Municipal Corporation cannot,,

be disputed, but the fact remains that the State of Madhya Pradesh was not party to the litigation. The State of Madhya Pradesh, on account of",,

merger of Ratlam State with Union of India, is undisputedly the title holder as the property in question i.e. Bhagwan Shankar temple and the land",,

adjoining to the Bhagwan Shankar temple has not been included in the list of personal properties of Maharaja in the Covenant.,,

16- A similar problem arose in respect of properties over which the descendants of Holkar State were claiming ownership and the matter has travelled,,

to the apex Court. The apex Court in paragraph No.29 to 34 in the case of State of Madhya Pradesh Vs. Maharani Ushadevi reported in AIR 2015,,

SC 2699 has held as under:-,,

â??29. The Suit scheduled properties which are in possession of the plaintiff finds no mention in the entire list of properties, but the plaintiff derives his",,

title to the property from Clause 14 of the list of properties which speaks about all properties under the control of the Household Department. The,,

plaintiff to substantiate her case that the Suit schedule properties are private properties is relying upon clause 14 of the list of properties, the taxes paid",,

by her and her father in respect of these properties, the communication dated 07-05-1948 and letter dated 30-01- 1956 wherein the Suit scheduled",,

properties were retransferred to the Household Department. Though lot of evidence was adduced on behalf of the plaintiff about paying taxes to,,

substantiate her case that the Suit scheduled properties are the private properties of the Ruler, the core issue that requires to be adjudicated is whether",,

it is the personal property of the Ruler or the property was belonging to the State. To give any finding with regard to the ownership of the property,,

invariably we have to look at the Covenant for the reason the Covenant is the source of title for the plaintiff. At any stretch of imagination, we cannot",,

agree with the finding of the appellate Court that the right of the plaintiff is a pre- existing right. By all means the right of the plaintiff flows from the,,

Covenant by virtue of which the plaintiff claims title over these properties, which according to her are declared as private properties of the Ruler.",,

30. A bare perusal of Article 363 and the relief sought by the plaintiff in the Suit in unequivocal terms attracts the bar contained in Article 363 of the,,

Constitution of India. The Court below distinguished the judgment in Draupadi Devi's case that it is not applicable to the facts of the present case.,,

We are of the considered opinion that the rule of law laid down in that case applies to the case on hand. This Court in the case of Draupadi Devi held:,,

44. "The Covenant is a political document resulting from an act of State. Once the Government of India decides to take over all the,,

properties of the Ruler, except the properties which it recognises as private properties, there is no question of implied recognition of any property as",,

private property. On the other hand, this clause of the Covenant merely means that, if the Ruler of the Covenanting State claimed property to be his",,

private property and the Government of India did not agree, it was open to the Ruler to have this issue decided in the manner contemplated by clause",,

(3). Clause (3) of Article XII does not mean that the Government was obliged to refer to the dispute upon its failure to recognise it as private property.,,

Secondly, the dispute as to whether a particular property was or was not recognised as private property of the Ruler was itself a dispute arising out of",,

the terms of the Covenant and, therefore, not adjudicable by municipal courts as being beyond the jurisdiction of the municipal courts by reason of",,

Article 363 of the Constitution",,

31. The above ratio laid down by this Court makes one to understand that prior to Covenant, the ownership of all the properties remain vested with the",,

Ruler, but once the Covenant is entered into, the Government takes over all the properties except those which the Government recognises as private",,

properties of the Ruler. This court had categorically held that there cannot be any implied recognition of the property as private property at any later,,

stages when an opportunity had already been granted to raise this issue in terms of clause (3) of Article 12 before defined period. In the case on hand,,

also, similar clause existed where a dispute to recognise a property as private property could be raised only before 1st July, 1949. A dispute whether a",,

property was recognised as private property or not was held to be a dispute arising out of the terms of Covenant, thereby barring the Courts to",,

adjudicate the same in view of Article 363 of Constitution.,,

32. Also in Madhav Rao Jivaji Rao Scindia (supra), this Court while interpreting

Article 363 of the Constitution, observed that a dispute relating to the",,, enforcement, interpretation or breach of any treaty etc., is barred from the Courtsâ?? jurisdiction. The bar comes into play only when the dispute is",,, arising out of the provisions of a treaty, Covenant etc., as in the present case. This Court held that Article 363 has two parts. The first part relates to",,, disputes arising out of Agreements and Covenants etc. The jurisdiction of this Court as well as of other Courts is clearly barred in respect of disputes,, falling within that part. Then comes the second part of Article 363 which refers to disputes in respect of any right accruing under or any liability or,, obligation arising out of any of the provisions of the Constitution relating to any agreement, Covenant etc. It was specifically mentioned that right as",,, mentioned in Article 363 signifies property.,,,

33. In yet another case, Karan Singh (Dr.) vs. State of J&K, (2004) 5 SCC 698, while examining the applicability of Article 363 of the Constitution to",,, the disputes arising out of a treaty, Covenant etc., this Court observed that all Courts including the Supreme Court is barred to determine any right",,, arising out of a Covenant. The correspondence exchanged between the Ruler and the Government would amount to agreement within the meaning of,, Article 363.,,,

34. In view of our above discussion and as settled by this Court in the above judgments, Covenant was an act of State and any dispute arising out of",,, its terms cannot form the subject matter in any Court including the Supreme Court, and there cannot be any implied recognition of the property as",,, private property at any later stages when an opportunity had already been granted to raise issue in terms of clause 3 of Article 12 before defined,, period; above all, the properties do not find place in the Covenant. The plaintiff is trying to interpret the Covenant that all properties which are in the",,, custody of the Household Department are the personal properties of the Ruler. We feel that such interpretation and implied recognition is,, impermissible as held by this Court in Draupadi Devi. Hence the Court below erred in entertaining the Suit without properly taking into consideration,, the judgments and the proposition of law laid down by this Court in catena of cases. Hence we are of the view that the relief in the Suit falls within the,, ambit of Article 363 of the Constitution of India and the Suit is not maintainable. Accordingly first issue is answered in favour of the appellant/State,,

and against respondent/plaintiff.â??,,

17- In the present case, the suit scheduled property does not find mention in the entire list of properties and if the property does not find place in the",,,

list of properties in the Covenant, by no stretch of imagination it can be held that the erstwhile Maharaja was the title holder of the property. The right",,,

of Maharaja flows from the Covenant by virtue of which he could have sold the property, however, as the property was not declared as private",,,

property of the Ruler, the Maharaja himself was not having any right over the property and therefore, all the transactions done in the matter are void",,,

ab initio. Not only this, in light of specific bar under Article 363 of the Constitution of India, at this stage it cannot be disputed that the property is the",,,

State property.,,,

18- In the case of Maharani Ushadevi (Supra) the High of Madhya Pradesh has allowed the second appeal and the judgment was delivered in favour,,

of descendants of Holkars and the apex Court by taking in to account the Article 363 has reversed the judgment and has allowed the appeal preferred,,

by the State of Madhya Pradesh and the suit preferred by the descendants of Holkar Maharaja was also dismissed.,,,

19- The present case is an open and shut case. The findings arrived at by the trial Court are totally perverse findings. The State of Madhya Pradesh,,

while filing an appeal before the learned District Judge has also filed an application under Order XLVII Rule 27 as well as an application under Order,,

VI Rule 17 of the Code of Civil Procedure, 1908 and an attempt was made to bring large number of documents on record to establish that property in",,,

question is not the property of Maharaja, but the applications were rejected by the appellate Court and thereafter, the present second appeal has been",,,

preferred. The following four Substantial Questions of Law were framed by this Court while admitting the appeal:-,,

1) Whether, the findings as to the owner of of the property having vested in plaintiff-respondent No.1 is perverse?",,,

2) Whether, the court has illegally rejected the application for taking documents on record as evidence showing the ownership having vested in",,,

defendant State?,,

3) Whether, rejection of application for amendment in pleading is illegal?",,,

4) Whether, the decree for declaration simplicitor could not be granted without

the relief of possession (in view of Sec.34 of the Specific Relief Act,",,
1963)?,,

20- This Court after careful consideration of the entire record, is of the opinion that the findings as to the ownership of the property having vested in",,,
plaintiff, are certainly perverse findings and therefore, once this Court has arrived at a conclusion that finding in respect of ownership of property is",,,
perverse finding and the plaintiffs were not able to establish their title based upon the documents and as they are not the title holder of the property",,,
the other questions of law need not to be answered as it is going to be a futile exercise.,,

21- Once the title of Maharaja was not established, who has sold the property to plaintiff No.2, the subsequent sale by plaintiff No.2 to plaintiff No.1 is",,,
also void ab initio. The person not having title in respect of the property cannot transfer title to the purchaser and it is the purchaser who has to,,
establish and prove the title of the vendor.,,

22- In light of the aforesaid, this Court is of the opinion that the judgment delivered by the trial Court dated 15/04/1987 and the judgment delivered by",,,
the appellate Court dated 09/08/1997 deserves to be set aside and are accordingly set aside. A decree be drawn accordingly.,,

23- Before parting, this Court would like to observe that record of the present case, while the appeal was pending before this Court, was not traceable",,,
and this Court vide order dated 11/01/2018 has directed the office to examine the matter and Hon'ble The Chief Justice has granted permission on,,
20/07/2016 for reconstruction of the missing record.,,

24- The Registry of this Court was taken to task and after issuance of letter to counsel for the parties, the entire record was traced out. Now the",,,
entire record is available on the basis of which the judgment has been delivered by this Court.,,

25- As the matter relates to a dispute in respect of prime land in the township of Indore and there is a history of misplacement of record, the Principal",,,
Registrar is directed to ensure that the entire record is scanned. One duplicate set duly certified by the Principal Registrar be also kept with the,,

Registry of this Court and in case an appeal is preferred before the Hon'ble Supreme Court, the record be transmitted through a special messenger",,,
only after preserving a copy of the same and only after scanning the entire

record.,,

26- With the aforesaid, second appeal stands allowed. No order as to costs.",,

Certified copy as per rules.,,