
(2014) 07 MP CK 0352
In the Madhya Pradesh High Court
Case No : S.A. No. 285 of 2013

State of M.P.

APPELLANT

Vs

Najmuddin and Others

RESPONDENT

Date of Decision : 18-07-2014

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 7 Rule 11, 100
Limitation Act, 1963 — Section 14
Madhya Pradesh Land Revenue Code, 1959 — Section 182, 257(m)

Citation : (2015) 1 MPLJ 376

Hon'ble Judges : J.K. Maheshwari, J

Bench : Single Bench

Advocate : Pramod Mitha, Government Advocate, Advocates for the Appellant;
S.C. Bagadia, Senior Counsel assisted by Dharmendra Jain, Advocates for the Respondent

Judgement

J.K. Maheshwari, J.—Shri Pramod Mitha, learned Government Advocate for the appellant/State.

Shri S.C. Bagadia, learned senior counsel assisted by Shri Dharmendra Jain, learned counsel for the respondent.

Heard on the question of admission.

Plaintiff after losing from two Courts filed this appeal under section 100 of Code of Civil Procedure, being aggrieved by the judgment and decree dated 9-1-2013 passed by III ADJ, Mandsaur in Civil Regular Appeal No. 26-A/2012 confirming the finding recorded vide judgment and decree dated 15-5-2012 passed by Civil Judge, Class-I, Sitamau in Civil Suit No. 8-A/2012 whereby on an application filed by the defendant under Order VII, Rule 11 of Civil Procedure Code, the suit filed by the plaintiff/appellant has been dismissed.

2. The facts of the case are that land of Village and Tehsil-Suwasara, District-Mandsaur of Survey Nos. 912, 913, 914, 915, 916, 917 and 911/1492, 11 Bigha

and 3 Biswa of old Survey No. 520 was of the Gwalior State which was given to the father of defendant/Walid Mullah Hussain for the purpose of starting the Industry as per the rules of Gwalior State and in this regard lease-deed was executed with the signature of Patwari and Revenue Officer. The proceedings were initiated before Revenue Officer inter alia contending that this land was given for Ginning Factory and not for any other purpose, however, its use for other purpose is not permissible. As per order passed by Collector, Mandsaur patta was cancelled and said order was confirmed by Commissioner in appeal. On filing a revision bearing No. 973/PVR/98 by the respondent, the Board of Revenue vide order dated 1-11-2000 set-aside the order passed by Collector, Mandsaur and Commissioner, Ujjain. Against the order of Board of Revenue writ petition bearing No. 1580/2000 was filed, by State Government which was dismissed on 29-7-2009, thereafter Special Leave Petition bearing No. CC-11360/2010 was also dismissed on 6-8-2013 on the ground of delay with a liberty to the State Government to pursue its own remedy under the law. Thereafter civil suit has been filed seeking declaration on the ground that the order passed by Board of Revenue on 1-11-2000 be declared as null and void and defendant be restrained to not to change nature of the land by alienation or otherwise. On service of summon in a suit, the defendants tendered their appearance and moved an application under Order VII, Rule 11 of Civil Procedure Code inter alia raising the grounds that the suit filed by the plaintiff is barred by limitation. It is said that against cancellation of lease and for eviction proceedings civil suit cannot be maintained under section 257(m) of the M.P. Land Revenue Code (which shall be referred hereinafter as "Code"), and civil suit is barred by limitation.

3. After considering the averments of the plaint, objection so raised by defendant, suit was dismissed mainly on three grounds, however, on filing an appeal by the plaintiff/appellant it was dismissed upholding the finding on the point of limitation, and the suit is not maintainable as per section 257(m) of the Code. On the point of res judicata it is said that said issue cannot be decided at the threshold without taking evidence on record. Being aggrieved by the same, this appeal has been preferred.

4. Shri Pramod Mitha, learned Government Advocate appearing on behalf of the appellant/State submits that suit is not barred by limitation because order passed by Board of Revenue was assailed before the High Court and thereafter before Hon"ble the Supreme Court, however, immediately after dismissal of SLP granting liberty to take recourse of law, civil suit has been filed seeking condonation under section 14 of Limitation Act which should not be dismissed as barred by time. It is further contended that on the land in dispute lease cannot be granted, however, provisions of section 257(m) of the Code do not attract in this case. In view of the aforesaid, it is urged that substantial question of law arises for determination in this appeal, however, it may be admitted for final hearing.

5. Per contra Shri S.C. Bagadia, learned senior counsel appearing, referring the order of Board of Revenue, and the order of this Court in writ petition, order passed in SLP, submits that looking to the contents of plaint, relief asked for setting aside the order of Board of Revenue dated 1-11-2000, even on exclusion of the period spent in other proceedings suit was filed after one year. As per Article 100 of Limitation Act, such suit ought to be filed within one year from the date of final order of government authority. In such circumstances, the appellant is not entitled to seek condonation of delay as per section 14 of Limitation Act. It is his contention that no such application is filed before the trial Court while maintaining the suit but in any case the suit is filed after more than one year from the date of dismissal of SLP, therefore, it is barred by limitation which has rightly been dismissed by the Courts below. It is submitted that looking to the nature of relief as prayed in suit it is barred under section 257(m) of the Code, therefore, Courts below has rightly uphold the objection while passing the impugned judgment which do not warrant interference in this appeal. However, prayed for dismissal of the appeal having no substantial question of law involved.

6. After hearing learned counsel for both the parties and on perusal of the pleadings of suit, it is apparent that the plaintiff has filed a suit seeking declaration to set aside the order passed by Board of Revenue on 1-11-2000 and injunction to restrain the defendant to not to change the nature of land. In the said suit application under Order VII, Rule 11 of Civil Procedure Code was filed inter alia contending that the suit is barred by limitation and Civil Court is having no jurisdiction to entertain the suit under section 257(m) of the Code. It is to be observed that with respect to adjudication on the application under Order VII, Rule 11 of Civil Procedure Code, the averments of plaint and objection ought to be considered. However, considering the aforesaid first objection raised by defendant to dismiss the suit as barred by limitation which is upheld by two Courts requires consideration.

7. On perusal of the record, it is seen that suit seeking declaration to set aside the order of Board of Revenue dated 1-11-2000 has been filed further making prayer of injunction. The Board of Revenue passed the order on 1-11-2000 against which a writ petition bearing No. 1580/2000 was filed decided on 29-7-2009 upholding the same. On filing the Special Leave Petition bearing No. CC-11360/2010 before Hon"ble the Supreme Court it was dismissed on 6-8-2010 as barred by limitation but liberty was granted to appellant to pursue its remedy as is available under the law. Admittedly present suit has been filed after lapse of more than one year from the date of dismissal of SLP. As per Article 100 of Limitation Act to alter or set aside any decision or order of a Civil Court in any proceeding other than a suit or any act or order of an Officer of Government in his official capacity ought to" be filed within one year from the date of final decision or order by the Court or the date of the act or order of the Officer, as the case may be.

8. It is to be noted here that from the date of dismissal of SLP which attained

finality, to challenge it in a suit the limitation of one year expires on 5-8-2011. The present suit has been filed on 1-11-2011 after about three months from the date of expiry of period of limitation as prescribed under the law. In such circumstance, two Courts have rightly allowed the application under Order VII, Rule 11 of Civil Procedure Code filed by the defendant dismissing the suit as barred by limitation which do not warrant any interference in this appeal.

9. So far as maintainability of the suit before Civil Court having no jurisdiction in view of section 257(m) of the Code is concerned, it is suffice to observe here that exclusive power has been conferred on the Revenue Authorities in certain matters. Clause (m) deals the ejectment of government lessee under section 182 of the Code section 182 specify the right and liability of government lessee on found violation and contradiction on the terms and conditions of the lease. However, looking to the relief as prayed in the suit, the said objection raised by defendant do not appears to be justifiable, in absence of cogent material, therefore, I am having no hesitation to hold that the finding recorded on the said issue by two Courts is not in accordance with law but in any case because one of the objections to dismiss the suit as barred by limitation is hereby maintained, however, there is no substance to admit this appeal. In view of the aforesaid discussion, in my considered opinion, no substantial question of law is involved for determination in this appeal, hence, it is dismissed at admission stage.