
(1961) 07 MP CK 0047
In the Madhya Pradesh High Court
Case No : L.P.A. No. 63 of 1958

Sukhiram

APPELLANT

Vs

Tarachand

RESPONDENT

Date of Decision : 18-07-1961

Acts Referred:

Central Provinces Land Revenue Act, 1881 — Section 30(3)
Central Provinces Tenancy Act, 1920 — Section 12A

Citation : (1961) J LJ 1451

Hon'ble Judges : P.V. Dixit, C.J; K.L. Pandey, J

Bench : Division Bench

Advocate : N.N. Pandey, for the Appellant; J.N. Sinha, for the Respondent

Final Decision : Allowed

Judgement

K.L. Pandey, J.—This appeal under Clause 10 of the Letters Patent arises out of the reversing decree of the learned Single Judge, who restored the first Court's decree for possession of khasra no. 271/2 situate in patti No. 1 of village Akalsara in Bilaspur district in favour of the plaintiff.

2. The plaintiff's case, briefly stated, was as follows. While the plaintiff was the lambardar of patti No. 2 of village Akalsara, the defendants, who were members of a Hindu joint family, were co-sharers of patti No. 1 of that village. One Chindhu Banjara, who held khasra No. 2230 in patti No. 2, sold it, by means of an unregistered deed executed early in 1943, to the defendant 2 without giving any notice. The plaintiff learnt about that sale and made an application u/s 12-A of the Central Provinces Tenancy Act, 1920 (I of 1920) for pre-emption. The defendants, who were duly noticed, did not contest those proceedings. Eventually, by an order dated 3 November 1943, the Revenue Court accepted the plaintiff's application, required him to deposit Rs. 170/-, executed a registered sale deed in his favour in respect of the plot khasra No. 2230 and placed him in possession of that plot. In the year 1943, proceedings for consolidation of holdings in the village under the provisions of the Central Provinces Consolidation

of Holdings Act, 1928 (VIII of 1928) were in progress. The defendant 2 suppressed the fact that the pre-emption proceedings were pending in respect of the plot khasra No. 2230 and secured from the Consolidation Authorities an order for recording the disputed khasra No. 281/2, which was obtained in exchange for khasra No. 2230, in the name of all the defendants. In the altered situation, when the plaintiff found that he ceased to be entitled to khasra No. 2230 which had been allotted to one Atbal Gond, he moved the Superintendent of Land Records, Bilaspur, who, by an order dated 21 November 1944, ordered that the name of the plaintiff be recorded as a tenant of khasra No. 271/2 in dispute. The plaintiff averred that in June 1945, he cultivated khasra No. 271/2 but that, in November of the same year, he was forcibly dispossessed by the defendants.

3. The defence of the defendants was this. The defendant 2 purchased khasra No. 2230 for himself with his own funds by an unregistered sale deed. Since the consideration for the sale was Rs. 170/-, title to the plot khasra No. 2230 could only be transferred by a registered sale deed. There being no valid sale, the plot could not be legally pre-empted. That being so, the proceedings taken by the plaintiff for pre-emption were not maintainable and did not confer on the plaintiff any title to that plot. Moreover, by 3 November 1943, that plot had already been allotted to Atbal Gond and could not, therefore, be conveyed to the plaintiff. Actually the defendants abandoned the plot khasra No. 2230 and did not obtain any plot in exchange for it. The action of the Superintendent of Land Records, Bilaspur, in getting the name of the plaintiff recorded as a tenant of khasra No. 271/2 was also without any authority. Finally, the plaintiff was not in possession of khasra No. 271/2 at any time within three years of the suit and his claim was, therefore, barred by time.

4. The Court of first instance repelled the defence and passed a decree for possession in favour of the plaintiff. The learned Judge of the first appeal Court (Shri H. C. Daga) reversed the decree and dismissed the suit. In Second Appeal No. 633 of 1947, Sinha C. J. (as he then was) held, that the entire basis of the decision of the first appeal Court was misconceived and remanded the case for a fresh decision in accordance with law. Thereupon, deciding the case afresh, the first appeal Court (Shri M. V. Gokhale) held that the unregistered sale deed in favour of the defendant 2 did not convey any title to him and the invalid sale thereby made could not be pre-empted. This was the more so because, by 3 November 1943, the plot purported to be sold, namely khasra No. 2230, had already been allotted to Atbal Gond. It was further held that the order of the Superintendent of Land Records directing that the name of the plaintiff be recorded as a tenant of khasra No. 271/2 was invalid because it was passed without any notice to the defendants and without any enquiry. Finally, the plaintiff was out of possession for more than three years next before the suit and his claim was barred by time.

5. The learned Single Judge, in reversing the decree of the first appeal Court, took a different view on the questions decided by it.

6. Only three points were argued before us, and we will deal with them one by one. The first appeal Court relied upon *Chindhu Sukal vs. Dadu Ambar I. L. R. 1945 Nag. 433* to hold that transfer of an occupancy holding of the value of Rs. 100 or more by an unregistered sale deed, being null and void, did not contravene Section 12 of the Tenancy Act. That decision should be regarded as overruled by *Mhabir Prasad vs. Sumaroo Kaliram 1960 J LJ 280 F. B.* As pointed out by the learned Single Judge, the word "sale" in Section 12-A of the Tenancy Act should not be construed in the narrow sense in which it is used in the Transfer of Property Act. Besides the three cases relied upon by the learned Single Judge, we may also refer to the principle underlying the decision of the Full Bench in *Mahabir Prasad vs. Samaroo Kaliram (cit. sup.)*. In our opinion, the view taken by the learned Single Judge is correct.

7. The second point urged before us is that, in view of the abolition of proprietary rights by the Madhya Pradesh Abolition of Proprietary Rights (Estates, Mahals, Alienated Lands) Act, 1950 (1 of 1951), the plaintiff ceased to be entitled to the disputed plot khasra No. 271/2, because it was not recorded as his khudkasht in the year 1948-49. The contention is clearly untenable in view of the decision of a Division Bench of this Court in *Rahmatulla Khan vs. Mahabir Singh 1956 NLJ 1*.

8. The only other question raised before us relates to limitation. In considering whether the 12 years' rule under the general rule or the 3 years' rule under Article 1 of the second Schedule to the Central Provinces Tenancy Act, 1920, applies to this case, we are required to ascertain the title of the plaintiff to the plot khasra No. 271/2. It is clear from the warrant of possession Ex. P-2 and the sale deed Ex. P-5 dated 18 November 1943 that the plaintiff pre-empted khasra No. 2230 and took possession of that plot on 24 January 1944. It is also in the evidence of Maheshram P. W. 1, a brother of the plaintiff, that he unsuccessfully objected to the consolidation scheme by which khasra No. 2230 was allotted to Atbal Gond. In this situation, assuming that the plaintiff was entitled to pre-empt khasra No. 271/2 of which he was not the landlord, since he failed to ask for or secure pre-emption of khasra No. 271/2 which was obtained by defendant 2 in exchange for khasra No. 2230, the cannot claim title to that plot, especially when, as Ex. P-4 shows, the defendant 2 was in its possession in the whole of the year 1943-44. It is hardly necessary to point out that, apart from the right of pre-emption, the plaintiff, who was not the landlord of khasra No. 271/2 of patti No. 2, could not treat the defendants as trespassers.

9. The learned Single Judge in considering this aspect of the matter observed:

The plaintiff got a valid title on the basis of the order granting pre-emption. At any rate, he would have a valid and tenable claim in the Civil Court so far as khasra No. 2230 was concerned. But, if the plaintiff gave up his claim to the said field as it was beyond his reach due to the order of the Consolidation Officer, he could elect to lay claim to the exchanged khasra No. 271/2. In fact, he did so. In equity, justice and good conscience, his claim would be upheld by the Civil Court. There may not be any specific provision of law permitting the plaintiff to elect

khasra No. 271/2. In the absence of such provision, I feel that the Civil Court could invoke Section 6 of the C. P. Laws Act No. XX of 1875.

we are unable to accept the view taken by the learned Single Judge. In view of clause (a) of Section 105 of the Tenancy Act, any matter as to the enforcement of the right of pre-emption u/s 12-A of the Tenancy Act is expressly excluded from the jurisdiction of the Civil Court. That being so, the Civil Court could not permit the plaintiff to pre-empt khasra No. 271/2 in place of khasra No. 2230. As we have shown even if the plaintiff could move the revenue Court to permit him to pre-empt khasra No. 271/2 in place of khasra No. 2230 he failed to do so and can no longer lay claim to that plot. The learned Single Judge has himself observed that the action of the Superintendent of Land Records in directing that the name of the plaintiff be recorded as an occupancy tenant of the plot khasra No. 271/2 was unauthorised and did not confer any title on the plaintiff to the plot. We may also add that in view of sub-section (2) of Section 12 of the Central Provinces Consolidation of Holdings Act, 1928, and sub-Section (3) of Section 30 of the Central Provinces Land Revenue Act, 1917, the entries in the record prepared by the Consolidation Authorities, which showed the defendants to be occupancy tenants of the whole of khasra No. 271, have to be presumed to be correct. In the circumstances, we must hold that the plaintiff has no title to the plot khasra No. 271/2. In view of that finding it is unnecessary for us to consider the question of limitation.

10. It was assumed by the learned Single Judge that the defendant 2 had withdrawn Rs. 170/- which was deposited by the plaintiff in the revenue Court. Counsel for the defendant stated that the amount was still lying in that Court. That being so, it will be open to the plaintiff to withdraw that amount.

11. The result is that this appeal succeeds and is allowed. The decree of the learned Single Judge is set aside and the one passed by the first appeal Court dismissing the suit is restored. The plaintiff shall bear his own costs and pay those of the defendants throughout. Counsel's fee according to schedule.