

(1989) 04 MP CK 0031

In the Madhya Pradesh High Court

Case No : Second Appeal No. 189 of 1985

Union of India (UOI)

APPELLANT

Vs

Shivnath Singh (d) through L.Rs.

RESPONDENT

Date of Decision : 04-04-1989

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 9 Rule 7, 100
Constitution of India, 1950 — Article 19, 299, 31
Evidence Act, 1872 — Section 65, 66

Citation : (2009) 3 JLJ 216

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

Bench : Single Bench

Advocate : N.P. Mittal, for the Appellant; M.M. Kaushik, for the Respondent

Final Decision : Dismissed

Judgement

N.K. Singh, J.—This is an appeal u/s 100 of the Code of Civil Procedure, directed against the judgment and decree dated 26.4.1985 of the II Additional District Judge, Gwalior in C.A. No. 12-A/79, whereby the judgment and decree of the trial Court dated 19.4.1979 in C.S. No. 382-A/ 79 have been confirmed.

2. The undisputed facts of the case are, that Devisingh was posted as a Lt. Col. in the erstwhile Gwalior State Army. Prior to that, Devisingh was posted as a Major in the said Army, stationed at Morar. He died on 28.3.1966. Prior to his retirement, Lt. Col. Devisingh made an application on 16.11.1940 to the Adjutant and Quarter Master General of the Army to allow him some piece of land near the Military area, so that he could construct a house thereon for the residence of himself and his family. It is stated that on 2.6.1941, the said authority inspected the plot in question and on 12.11.1941 intimated Devisingh that the said plot was close to the Union Military Lines in Morar and informed Devisingh to choose Anr. plot. It was alleged that the said authority, by an order dated 30.12.1941, conveyed the acceptance of Devisingh as an allottee of dilapidated Khandhar of the Military Engineering Stores. As such, Devisingh remained in continuous

possession of the said plot, but due to certain unavoidable reasons, could not make the construction thereon. It was alleged that the said plot, allotted to Devisingh, measured 50 yards x 54 yards on one side, and 27 yards x 40 yards on the Eastern side.

3. In the written statement, filed by the Appellant-Defendant Union of India, through Secretary, Defence and Military Department, the claim of the Respondent-Plaintiff was denied. It was also contended that the suit, as framed, was not maintainable.

4. While the proceedings were on in the trial Court, the statement of Plaintiff's witnesses Laxmanrao Sambhajirao Awad, aged 74 years, who was at the relevant time posted as Adjutant and Quarter Master General in the Gwalior Army, was recorded on 3.3.1975 on commission through Commissioner Shri J.P. Tiwari. The statements of Plaintiff's witnesses Nathuram (P.W. 1) was recorded on 17.10.1974, and those of Kartar Singh (P.W. 2) on 20.12.1974, Shivnath Singh (P.W. 3) and Badri Prasad (P.W. 4) on 20.3.1978. Thereafter, it appears that later in the day at 3:15 p.m., Shri Gaur, Government Pleader, appealing on behalf of the Defendant, absented himself and the Court allowed secondary evidence to be led under Sections 65 and 66 of the Evidence Act, on an application made by the Plaintiff's counsel. Therefore, the last witness for the Plaintiff, by name Badri Prasad (P.W. 4) went un-cross examined. It appears that on 31.3.1978, an application was filed on behalf of the Defendant Union of India, purporting to be under Order 9 Rule 7, Code of Civil Procedure, which was dismissed by the trial Court on 29.8.1978. No appeal or revision was filed against this order by the Defendant Union of India.

5. In response to the Plaintiff's representation, Shri P.K. Kumaran, Military Estates Officer, Jabalpur Cantt. sent a note dated 18.2.1957 affirming the Plaintiff's title to the land in suit and observed in the last paragraph of the report that under the circumstances, it will not be chivalry or charity but removal of a cruelty perpetrated over two decades on a poor family and a delayed justice if we allow the successors of late Lt. Col. Devisingh to occupy their rightful land of 17,955 sq. ft., as demarcated in the plan at Appendix VI. Orders may please be got passed accordingly. It also appears that during his stay at Morar from 14.2.1967 to 16.2.1967, Shri Kumaran had a thorough, detailed and full look into the case of the Respondent-Plaintiff or his successor.

6. This appeal was admitted by Dr. T.N. Singh, J. on 25.10.1986 on the following points of law:

(1) Whether the Plaintiff's suit was rightly decreed by the two Courts below without considering that the Plaintiff was not entitled to any relief in view of the provisions of Article 299 of the Constitution?

(2) Whether the judgments and decrees passed by the two Courts below are vitiated as a result of Defendant being prejudiced in trial of the case pleaded by it?

However, while admitting the appeal, the learned Judge also granted liberty to the Appellant Union of India to urge more points, if taken in memo of appeal, albeit with the leave of the Court, at the time of hearing.

7. Applications made by Respondent-Plaintiff Lt. Col. Devisingh to the Station Commandant, Army Estate, Morar, are Ex.P-1 dated 12.11.1941, Ex.P-2 dated 30.12.1941, Ex.P-5 dated 16.11.1940 and Ex.P-7 dated 31.1.1942. Alongwith the last application dated 31.1.1942, Respondent Devisingh had also annexed the plan of the house, proposed to be built by him in the site in suit. There is no reason to doubt the authenticity of these documents and particularly so in view of the applications made by the Respondent-Plaintiff purporting to be under Sections 65 and 66 of the Evidence Act.

8. While in course of the arguments, the learned Counsel for the Respondent-Plaintiff also produced the Constitution, Manual of Gwalior State of Samvat 1976. In this Manual, the powers as regards the officers and servants of the Secretariate Department have been clearly specified. A chart relating to the powers of the Army member and home member of the Secretariate of the then Gwalior State Administration have been specified. While in course of the arguments the learned Counsel for the Appellant-Defendant Union of India Shri N.P. Mittal referred to Article 299 of the Constitution of India, stating that the Plaintiff-Respondent was not entitled to any relief. In this connection, he cited the case *The State of M.P. v. The Gwalior Forest Products Ltd.* 1984 J.L.J. 403:1984 C.C.I.J (MP) 115, decided on 5.1.1984 by a Division Bench constituting of Sarvashri U.N. Bhachawat and R.C. Shrivastava, JJ. However, a reference to this case is out of place, in so far as it specifies that the rights in a reserved forest cannot be acquired except by way of inheritance or grant by the Darbar. That the sanction of the Darbar should be in writing. However, the present case does not relate to any right in respect of the reserved forests. The case specifically refers to the grant of land in suit for construction of a house and had nothing to do with any rights in the forest area. The provisions of Article 299 of the Constitution are not, at all, attracted in this case. However, the learned Counsel for the Respondent cited the cases *Virendra Singh and Others Vs. The State of Uttar Pradesh*, , and *Madhorao Phalke v. State of M.S. (M.P.)* [1960 J.L.J 1064], which appear to be to the point. The earlier case, i.e., *Virendra Singh and Others Vs. The State of Uttar Pradesh*, , relates to the case of Union Estates acceding to the Union of India, wherein it has been observed that the Government of India cannot, after constitution, revoke the grant, as act of State. The present case is one of the grant of Military land in lieu of services rendered faithfully by Respondent-Plaintiff Devi Singh to Gwalior State. Reference has been made to Articles 31 and 19 of the Constitution of India, wherein it has: been stated that "however disputable the proposition may be that an act of State can be exercised against a citizen who was once an alien the right being only in abeyance till exercised, there has never been any doubt that it can never be exercised against one who has always been a citizen from the beginning in territory which has from its inception belonged to the State seeking to exercise the right". In the later case, i.e., 1960

JLJ 1064, the question was of Kalambandi Intzam Mahakme, whether the orders of the Rulers of Gwalior State, known as Kalambandi, could be extinguished by an executive order. In this connection, it has been observed by His Lordship Gajendra Gudhkar, J. that all orders issued by the absolute monarch had the force of law. That, "having regard to the contents of the two orders and the character of the provisions made by them in such a detailed manner, it is difficult to distinguish them from statutes or laws; in any event they must be treated as rules or regulations having the force of law. That is the finding recorded by Abdul Hakim Khan and Nevaskar, JJ., and we think that the said finding is correct".

9. So far as the second point is concerned, it relates to "whether the judgments and decrees passed by the two Courts below were vitiated as a result of Defendant being prejudiced in trial of the cause pleaded by it". In this connection, the learned Counsel for the Appellant Union of India, with the leave of the Court also urged the second point to the effect as to whether the alleged gift of the land in suit has no force and nor it can convey any rights in favour of late Devisingh. In this connection, the learned Counsel for the Respondent cited the case Ram Nath and Ors. v. Deputy Director of Consolidation and Ors. , wherein it has been held that the dismissal in default of a case for non-appearance of a counsel on the plea that the counsel was busy somewhere could not be held to be tenable and permissible under the law, and there was no jurisdiction for re-calling the order impugned. The learned Counsel for the Respondent further cited the case R. Ramachandran Ayyar Vs. Ramalingam Chettiar, , wherein it has been observed that the finding of fact, arrived at by the trial Court, having been reversed by the lower appellate Court, the High Court was not entitled to interfere merely because the judgment of the lower appellate Court was not as elaborate as of the trial Court, or that some of the reasons given by the trial Court are not expressly reversed. In this case. His Lordship Gajendragadhkar, J. also reversed the finding of Madras High Court in AIR 1941 Madras 393. The learned Counsel for the Respondent further cited the case M. Kallappa Setty Vs. M.V. Lakshminarayana Rao, , wherein it has been observed by their Lordships of the Supreme Court that on the very strength of his possession, the Plaintiff could resist interference from the Defendant, who has no better title than that of the Plaintiff and could secure an injunction, restraining the Defendant from interfering with the Plaintiff's possession. This is what is loosely described as the "possessory title". In the instant case, it is uncontroverted by the Appellant Union of India that the Respondent-Plaintiff was in possession of the disputed plot in suit (Plot No. 4 in Morar) at the time of his suit being decreed and was placed in possession of the land. That, the Courts below have hold that Plaintiff Shivnath Singh was placed in possession of the disputed land and was throughout in its possession. That, during his possession, Lt. Col. Devisingh built walls around the disputed land and was obtaining "Chari" crop from the land. In the circumstances of the case, the fact of the Plaintiff being throughout in possession of the disputed land is itself sufficient to warrant "possessory title" to the disputed land.

10. Thus, I find no substance, whatever, in the present appeal, which is, accordingly, dismissed with costs. The judgments and decrees of the lower appellate Court and the trial Court are, hereby, confirmed. The Appellant shall bear the costs incurred by the Respondents in the present case, in addition to its own. Pleader's fee as per schedule or certificate, if certified.

11. decree shall be drawn up accordingly.