

(2000) 09 MP CK 0030

In the Madhya Pradesh High Court

Case No : Miscellaneous Civil Case No. 548/97

Veer Singh

APPELLANT

Vs

State of M.P. and Another

RESPONDENT

Date of Decision : 21-09-2000

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 41 Rule 11, Order 47 Rule 1, 100

Citation : (2000) 4 MPHT 425 : (2001) 2 MPLJ 184

Hon'ble Judges : S.P. Srivastava, J;N.G. Karambelkar, J

Bench : Division Bench

Advocate : H.D. Gupta, for the Appellant;

Final Decision : Dismissed

Judgement

S.P. Srivastava, J.

The plaintiff-appellant/applicant has filed this application under Order 47 Rule 1 of the CPC seeking a review of the judgment and order passed by a learned Single Judge of this Court dismissing his second appeal under Order 41 Rule 11 of the Civil Procedure Code.

This application seeking review of the aforesaid judgment and order dismissing the second appeal has been placed for disposal before the Division Bench as the learned Single Judge, whose order is sought to be reviewed, has since demitted the office.

We have heard the learned counsel for the applicant at some length and have carefully perused the record.

The plaintiff-applicant had filed the suit giving rise to the second appeal praying for a decree declaring him to be the Bhumiswami of the land in dispute and a decree for prohibitory injunction restraining the defendants from interfering in his possession over the same. The plaintiff had set up a claim that the land in dispute having an area of 12.417 hectares had been let out to him by the then

Zamindar Jawaharsingh on a patta. It was asserted that the land in dispute pertained to the Zamindari patti of the Zamindars Pyarelal and Jawahar Singh. In Samvat 2006, the aforesaid Jawaharlal had executed the written patta vesting maurusi rights in favour of the plaintiff. At that time, the plaintiff was a minor and therefore the patta had been accepted on his behalf by his guardian Subhash Singh, his elder brother, and since the date of the execution of the patta he was continuing to be in exclusive possession of the land in dispute. But, in the khasra records, the name of the father of the plaintiff Pyarelal had been recorded as the plaintiff had joint cultivation with his father and at the time of the filing of the suit a partition having been effected the plaintiff was in exclusive possession of the land in dispute, but it had been wrongly recorded by the Patwari in the revenue records to be government land. It was claimed that since on the strength of the incorrect entry in the revenue records of rights showing the land in dispute to be government land, the defendant-State was threatening to dispossess him, hence the suit for declaration and injunction.

The aforesaid suit had been contested by the Madhya Pradesh Shasan denying the plaint allegations asserting that the land in dispute was of the nature of ^{^^}vykok tksr iM+r Hkwfe**

of the father of the plaintiff, who was the Zamindar, and in view of the nature of the land with the enforcement of the Zamindari Abolition Act, the said land had vested in the State. The patta relied upon by the plaintiff was claimed to be collusive, fictitious and illegal. It was also asserted that the plaintiff's father had filed the suit claiming independent rights in the land in dispute but that suit had been dismissed on 4-10-68. After having failed, the plaintiff acting in collusion had filed the suit to usufruct the government land. It was also claimed that in the year 1979-80 and also in the year 1974-75 the plaintiff himself had taken a part of the land in dispute in an auction accepting the title of the State therein.

The first Appellate Court on an appraisal of the evidence had come to the conclusion that the alleged patta relied upon by the plaintiff was a manufactured and fargi document which was brought into existence somewhere subsequent to the year 1967. It was further found that the plaintiff had never been in possession of the land in dispute. In the extracts of the revenue record of possession, Exs. P-3 and P-5, the land in dispute was shown to be in possession of Pyarelal as a trespasser.

On an appraisal of the oral and documentary evidence, the first Appellate Court had found that the plaintiff had neither been able to prove his title in respect of the land in dispute nor his possession over the same. It was further noticed that the land in dispute was recorded in the revenue record of rights as ^{^^}vykok tksr dh chM+**]

which was interpolated and altered to ^{^^}"kkfey tksr esa chM+**]

which entry appeared to be fargi.

The first Appellate Court had found that the plaintiff could not establish and prove that the land in dispute had been let out in his favour under a patta in Samvat 2006 by the Zamindar. The patta, Ex. P-7, was found to be fargi and manufactured document. The plaintiffs claim that he had been in possession over the land in dispute in Samvat 2006 was also disbelieved. On the findings recorded, the suit was dismissed.

The learned Single Judge of this Court while dismissing the second appeal had referred to the various decisions of this Court holding that the land had necessarily to be fit for cultivation and the Beed land on which no cultivation takes place cannot be said to be covered by the term "khudkasht". The learned Single Judge was further of the view that the plaintiff himself had placed reliance on the revenue record pertaining to Samvat 2007, Ex. P-1, wherein Pyarelal i.e., the father of the plaintiff had been shown as owner of the land in dispute and the nature of the land was described as beed.

In the judgment sought to be reviewed, it has been indicated that in that situation the reasoning given by the first Appellate Court in Paragraph 16 of its judgment required no interference.

The learned counsel for the applicant has strenuously urged that the findings of the Courts below stand vitiated as the decision in the suit filed by the father of the plaintiff claiming independent rights in the land in dispute which were negated have been erroneously taken to operate as res judicata against the plaintiff and further that after taking the certified copy of the judgment in that suit as additional evidence, the first Appellate Court ought to have afforded an opportunity to the plaintiff to lead evidence in rebuttal.

The aforesaid aspect of the case was also considered by the learned Single Judge. The learned Single Judge had observed that this was not the only factor on which the suit had been dismissed observing that the position in this case was entirely different. It may be emphasised that the decree passed by the Civil Court is not based on a subjective satisfaction. The findings recorded by the Civil Court are based on an objective satisfaction after considering various questions which are determined on an appraisal of the evidence and the materials on the record. In the present case, the decree is sustainable on other grounds independent of the ground of res judicata. Such a decree is not liable to be interfered with, unless the other findings justifying the decree are not demonstrated to be vitiated in law so as to warrant an interference while exercising the jurisdiction envisaged u/s 100 of the Civil Procedure Code.

In the aforesaid connection, it may be noticed that the Apex Court in its decision in the case of Zora Singh, at page 1540, had clarified that in a case where the decision is based on subjective satisfaction if some of the reasons turn out to be irrelevant or invalid, it would be impossible for a superior Court to find out which of the reasons, relevant or irrelevant, valid or invalid, had brought about such satisfaction. But in a case where the conclusion is based on objective facts and

evidence, such a difficulty would not arise. If it is found that there was legal evidence before the Tribunal even if some of it was irrelevant, a superior Court would not interfere if the finding can be sustained on the rest of the evidence.

In its another decision in the case of *The State of Maharashtra and Another Vs. B.K. Takkamore and Others*, a distinction was drawn in respect of the findings based on subjective satisfaction and the findings based on objective satisfaction. It was pointed out that an order based on several grounds, all taken together, cannot be sustained if it be found that some of the grounds are non-existent or irrelevant, and there is nothing to show that the authority would have passed the order on the basis of the other relevant and existing grounds. On the other hand, an order based on several grounds some of which are found to be non-existent or irrelevant, can be sustained if the Court is satisfied that the authority would have passed the order on the basis of the other relevant and existing grounds, and the exclusion of the irrelevant or non-existent grounds could not have affected the ultimate opinion or decision.

After having heard the learned counsel for the plaintiff-applicant, we are not satisfied that the findings on the crucial aspects negating the plaintiffs claim in regard to the title and possession returned by the first Appellate Court, specially in regard to the nature of the land in dispute, the legality and non-implementation of the patta relied upon by the plaintiff as well as negating his claim in regard to his being in possession over the land in dispute, can be said to be vitiated by any error, much less manifest error, which may justify an interference while exercising the jurisdiction envisaged under Order 47 Rule 1 of the Civil Procedure Code.

This application for review is totally devoid of merit which deserves to be and is hereby dismissed.