

SUPREME COURT OF INDIA

Chandra Bhan

Vs.

Pamma Bai

C.A.No.2523 of 1993

(S. Saghir Ahmad and S. N. Phukan, JJ.)

10.02.2000

ORDER

1. Ram Nihore, who has since died and who is now represented by the present respondents, had instituted suit for permanent injunction against the appellant pleading, inter alia, that he was the bhumiswami of the land in question which was earlier in the cultivatory possession of his father and that the defendant was liable to be restrained from interfering with his possession. It was also pleaded in the alternative that if he was found to be not in possession of the land in question, a decree for possession may also be passed in his favour.

2. The appellant who was defendant in the suit denied the title of Ram Nihore and pleaded that the land in question was given on patta by the Pawaidar and that he was in continuous possession over that land and had acquired "bhumiswami" rights under the provisions of M.P. Land Revenue Code.

3. On the basis of the evidence adduced by the parties, the trial Court came to the conclusion that plaintiff was not the land owner nor was he in possession over that land. In recording this finding the trial Court relied upon the statement of Ram Nihore himself who stated in the cross-examination

that on the death of his father, he left the village at the age of 13 years and came to Jabalpur for schooling and returned from there after 16-17 years in 1978. It was therefore, concluded by the trial Court that Ram Nihore, admittedly, was not in possession over the land in dispute. The suit filed by him was, therefore, dismissed.

4. Lower appellate Court affirmed the order of the trial Court. In appeal, under Section 100 of the Code of Civil Procedure the High Court again scrutinised the entire oral and documentary evidence and reversed the concurrent findings of fact recorded by the trial Court and the lower appellate Court and decreed the suit by the impugned judgment against which the present appeal has been preferred.

5. Mr. U. N. Bachawat, learned senior counsel appearing on behalf of the appellant has contended that Section 100 of the Civil Procedure Code was not available to reverse the concurrent findings of fact recorded by the lower Courts unless the High Court was of the opinion that the findings were perverse. Since the High Court has not indicated that the findings recorded by the Courts below were perverse, it was not within its jurisdiction to interfere with those findings or to reverse them. It is also pointed out that the High Court had not framed any substantial question of law as required by the mandatory provisions of Section 100, C.P.C. and disposed of the second appeal without framing the question of law which by itself was sufficient to vitiate the judgment of the High Court.

6. We have heard learned counsel for the parties and we have also gone through the judgments passed by the lower Courts as also by the High Court. Since the trial Court and the lower appellate Court had recorded concurrent findings of fact that Ram Nihore was not in possession at any time over the land in question and that the defendant had acquired the bhumiswami rights under the M.P. Land Revenue Code on account of the long uninterrupted possession, it was not open to the High Court to reverse those findings, particularly when the findings were supported by the own admission of Ram Nihore that at the age of 13 he had left the village and returned after 16-17 years which indicated that he was not in possession over the land in question. The appeal is, accordingly, allowed. The judgment passed by the High Court is set aside and those of the lower Courts are restored. There shall be no order as to costs.

Appeal allowed.