

SUPREME COURT OF INDIA

Rohini Prasad - Appellants

Versus

Kasturchand - Respondents

(S. Saghir Ahmad and D. P. Wadhwa, JJ.)

Civil Appeal No. 447 of 1989.

03.03.2000

JUDGMENT

D.P. Wadhwa, J. - Appellant, Rohini Prasad, is aggrieved by the judgment dated October 19, 1987 of the Madhya Pradesh High Court at Jabalpur delivered in Second Appeal. High court had set aside the findings of the first Appellate Court that appellant had acquired Bhumiswami rights under the Madhya Pradesh Land Revenue Code, 1959 (for short, the 'Code'). Appellant was defendant in civil suit filed by the respondent-plaintiff for possession of agricultural land and for mesne profits. Trial Court decreed the suit for possession but did not grant relief for mesne profits. On appeal filed by the defendant (who is now appellant before us), it was allowed and the suit of the plaintiff (now respondent before us) was dismissed. Plaintiff brought the matter to the High court in second appeal which was allowed. High Court affirmed the decree passed by the trial court and directed the defendant to hand over vacant possession of the suit land within two months from the date of the judgment and on his failure to do so, the plaintiff would be entitled to mesne profits @ Rs. 1,000\ per year.

The disputed land is agricultural land governed under the provisions of the Code. Maqsood Ali and Abid Ali were Bhumiswami of the land. They sold the same to the respondent (Kasturchand) by sale deed dated September 12, 1977. Earlier, they had granted lease for one year of this land for the agricultural year 1975-76 to the appellant (Rohini Prasad). High Court has noticed that agricultural year is from 1.7.1975 to 30.7.1976. Rohini Prasad had contended that lease which was granted for the year 1975-76 was extended for a further year 1976-77. If his contention is correct, he becomes Bhumiswami in view of Section 168 of the Code. The Section, in relevant part, we reproduce as under :

"168 Leases - (1) Except in cases provided for in sub-section (2) no Bhumiswami shall lease any land comprised in his holding for more than one year during any consecutive period of three years.

Provided that

(2).....

(3) Omitted.

(4) Where a lease is granted in pursuance of sub section (1), the lessee shall hold the land on such terms and conditions as may be agreed upon between him and the Bhumiswami and may be ejected by an order of a Sub-Divisional Officer on the application of the Bhumiswami on the ground of contravention of any material term or condition of the lease or on the lease ceasing to be in force.

(5)"

Rohini Prasad, it appears, approached the Naib Tehsildar for declaration of his right as Bhumiswami in view of Section 169 of the Code who held in his favour and by order dated March 7, 1979 conferred Bhumiswami rights on him under Section 190 of the Act. That order of the Naib Tehsildar is not on record but can be inferred from the appellate order of the Sub-Divisional Officer in appeal filed by Kasturchand against that order under the code. Sections 169 and 190, in relevant parts, are as under :

"169. Unauthorised lease etc. - If a Bhumiswami -

(i) leases out for any period any land comprised in his holding in contravention of Section 168; or

ii) by an arrangement which is not a lease under sub-section (1) of Section 168 allows any person to cultivate and land comprised in his holding otherwise than as his hired labour and under that arrangement such person is allowed to be in possession of such land for a period exceeding two years the right of an occupancy tenant shall -

(a) in the case of (i) above, thereupon accrue to the lessee in such land; and

(b) in the case of (ii) above, on the expiration of a period of two years from the date of possession, accrue to such person in that land :

Provided that"

"190. Conferral of Bhumiswami rights on occupancy tenants. - (1) Where a Bhumiswami whose land is held by an occupancy tenant belonging to any of the categories specified in sub-section (1) of Section 185 except in items (a) and (b) of clause (i) thereof fails to make in application under sub-section (1) of Section 189 within the period laid down therein, the rights of a Bhumiswami shall accrue to the occupancy tenant in respect of the land held by him from such Bhumiswami with effect from the commencement of the agricultural year next following the expiry of the aforesaid period.

(2)....."

The order of the Sub-Divisional Officer is dated July 16, 1979. Respondents therein are Rohini Prasad, the lessee and Maqsood Ali and Abid Ali recorded Bhumiswamis. Sub-Divisional Officer affirmed the order of the Naib Tehsildar and held that Rohini Prasad was the tenant of Maqsood Ali and Abid Ali and the continued to be so for two successive years and since the Bhumiswamis failed to

apply for resumption of the land leased out there was thus contravention of sub-section (1) of Section 168 of the Code. In proceedings before the Naib Tehsildar, Kasturchand was not made a party but his contention that he was interested party and that notice should have been issued to him was repelled by the Sub-Divisional Officer. Kasturchand then went in second appeal under sub-section (2) of Section 44 of the Code to the Commissioner. By order dated 27.5.1987, the Additional Commissioner, Jabalpur, dismissed the appeal. He, however, took note of the fact that Kasturchand had filed a civil suit for possession of the disputed land which though decreed was dismissed in appeal filed by Rohini Prasad and second appeal against that filed by Kasturchand was pending in the High Court. He, therefore, did not decide the appeal before him on merit.

In the civil suit filed by Kasturchand, one of the issues raised was whether the suit was maintainable in a civil court. This issue was decided in favour of Kasturchand. In the civil suit, Maqsood Ali and Abid Ali, who were the recorded Bhumiswamis, were not made parties. First Appellate Court, on appeal filed by Rohini Prasad, did not comment on this issue and rather held that Maqsood Ali and Abid Ali had admittedly granted lease of the land to Rohini Prasad for the year 1975-76 and that it was continued for another year 1976-77. That would bring the case of Rohini Prasad under Section 168 of the Code. High Court, in appeal filed by Kasturchand, also did not go into the question of the civil court had jurisdiction to try the suit. It reversed the finding of the first Appellate Court that lease was continued for the year 1976-77. High Court observed that it was misreading of the evidence by the first Appellate Court that lease was continued for the year 1976-77 as sell. It said that conclusion arrived at by the first Appellate court was perverse. It appears to us that the High Court interfered in the second appeal not because that appreciation of evidence by the first Appellate court was not correct but on account of the fact that the first Appellate Court misread the evidence which lead to miscarriage of justice.

Before us. Mr. Khanduja in support of this appeal has raised tow principal contentions : (1) High Court could not upset the finding of fact in second appeal and that no substantial question of law had arisen and that (2) Civil Court had no jurisdiction to try the suit.

The fact that Kasturchand purchased the land for Maqsood Ali and Abid Ali by registered sale deed is not disputed. It is also not disputed that Maqsood Ali and Abid Ali gave the land on lease for the year 1975-76 to Rohini Prasad. Now, either Rohini Prasad has continued in possession of the land on account of continuation of lease or renewal of the lease by Maqsood Ali and Abid Ali for the year 1976-77 or he is in unauthorised possession of the land after expiry of his lease for the year 1975-76. Under Section 250 of the Code, if a Bumiswami is disposed of the land or if any person unauthorisedly continues in possession of the land of the Bhumiswami to use of which such person has no right under the Code, he may apply to the Tehsildar for restoration of the possession, Sub-Section (1) and (2) of Section 250 which are relevant may be quoted:

"250. Reinstatement of bhumiswami improperly dispossessed. - (1) If a

Bhumiswami is dispossessed of the land otherwise than in due course of law or if any person unauthorisedly continues in possession of any land of the Bhumiswami to the use of which such person has ceased to be entitled under any provision of this code may apply to the Tehsildar for restoration of the possession :-

(a)

(b)

(2) The Tehsildar shall, after making an enquiry into the respective claims of the parties, decide the application and when he orders the restoration of the possession to the Bhumiswami, put him in possession of the land."

Now Maqsood Ali and Abid Ali have not asserted their right by filing any application under Section 250 of the Code before the Tehsildar. After selling the land, they appear to have become uninterested persons. Under Section 257 of the Code, jurisdiction of Civil Court is barred in the matter of ejection of lessee or a Bhumiswami under sub-section (4) of Section 168 (clause (k)) or in claims by occupancy tenants for conferral of the rights of Bhumiswami on him under Section 190 (clause (o)) or in any decision regarding re-instatement of a Bhumiswami improperly dispossessed under Section 250 {clause (x)}. By approaching the revenue courts, Rohini Prasad has sought conferring of right of Bhumiswami under Section 190 of the Code. Certainly, there have been two parallel proceedings one under the Code before the Revenue Court and the other under ordinary law before the Civil Court. Mr. Khanduja did contend that the Civil Court had no jurisdiction to try the suit. the question of jurisdiction was raised before the Trial Court in civil proceedings and an issue raised which was decided as preliminary issue. It was held that the Civil Court had jurisdiction in the matter. this finding of the Civil Court had not been challenged in appeal either before the lower appellate court or before the High Court. Even in the grounds of appeal in this Court, there is no challenge to the finding of the Trial Court that the Civil Court has jurisdiction in the matter. We find there have been consistent decisions of the Madhya Pradesh High Court holding that the determination of the question of title is the province of Civil Court and unless there is any express provision to the contrary, exclusion of Civil Court cannot be assumed or implied. A Full Bench of the Madhya Pradesh High Court in ***Ramgopal v. Chetu, 1976 RN 146*** was considering the question whether the Civil Court cannot take cognizance of a suit instituted by Bhumiswami on the basis of his title against the trespassers. The Full Bench replied the argument that in proceedings under Section 250 of the Code, since the Revenue Authority has no jurisdiction to go into the question of title, it would lead to anomalous results if again it is held that the Civil Court has jurisdiction to decide any question relating to the title. The Full Bench observed:

"Under the general law, a suit for possession based on title can be instituted in the Civil Court within 12 years from the date of dispossession. The principle that possession must follow title has received greater weight and sanctity when the distinction between the scope and effect of Article 142 and those of article

144 of the Limitation Act, 1908, has been watered down and simpler provisions have been substituted in Articles 64 and 65 of the Limitation Act of 1963. It will be anomalous to read section 250 as providing for a suit for possession based on title, which is to be instituted within two years only. It will entail a fantastic result that if a suit is not brought within two years under section 250, the Bhumiswami's right will be extinguished, because by virtue of section 26 of the Limitation Act, if a suit for possession is not instituted within the period of limitation prescribed therefor, not only the remedy is barred but the right is also extinguished. Section 26 is an exception to the general rule that limitation bars the remedy but does not extinguish the rights."

The Full Bench then went to hold :

"The remedy provided in section 250 of this code can be resorted to by a Bhumiswami by an application to the Tehsildar. He has to show either (1) that he was dispossessed by the non-applicant otherwise than in due course of law, or (2) that he was dispossessed within two years from the date on which the possession of such person became unauthorised (although initially the possession of that person may be authorised). Thus, clearly enough, this section provides for a remedy at the hands of the Tehsildar for restoration of possession, when a Bhumiswami is improperly dispossessed, that is, without due process of law. Clause (x) of Section 257 excludes the jurisdiction of the Civil Court to challenge "any decision regarding reinstatement of a Bhumiswami, improperly dispossessed under section 250". In both these provisions the subject matter of enquiry is possession not title.

Determination of the question of title is the province of the civil Court and unless there is any express provision to the contrary, exclusion of the jurisdiction of the civil Court cannot be assumed or implied."

In three different appeals coming to the Madhya Pradesh, Hon'ble Judges sitting singly have consistently held that the civil suit of possession based on title is triable by the Civil Court. That being the law laid by the High Court of Madhya Pradesh while interpreting the Code which applies to the State of Madhya Pradesh and held the same for all these years, it is not desirable for the Supreme Court to give a different interpretation and to upset the settled law. Merely because a different view is possible and that on that ground the decision of the High Court is erroneous, in our view, should not be a ground to interfere. Law should be certain and parties should know where they stand. We have already said that the finding of the First Appellate Court on reading of the evidence was perverse and the High Court rightly interfered to upset the same. As a matter of fact there was no evidence to come to the conclusion that Rohini Prasad was in possession of the land in continuation or renewal of the lease after expiry of the year 1975-76. _