

SUPREME COURT OF INDIA

Madho Singh

Vs.

Moni Singh, Dead, Represented by His Legal Representatives

C.A.No.5555 of 2004

(Arijit Pasayat and C. K. Thakker JJ.)

30.08.2004

JUDGMENT

C.K.Thakker, J.

1. Leave granted.

2. The appellants herein have challenged the order passed by the High Court of M.P. (Indore Bench) on 23rd August, 2002 in Second Appeal No. 302 of 1982. By the said order, the High Court confirmed the order passed by the Second Additional Judge to the Court of District Judge, Shajapur dated 25th February, 1982, by which it set aside the judgment and decree dated 19th October, 1974 passed by the Civil Judge, Class II, Shajapur.

3. The case of the appellants is that at village Kanardipura Tehsil Shajapur, there was a land bearing Khasra Nos. 294/1, 317, 319, 320 and 321. It was in possession of one Kalu Singh S/o Bheru Singh. A dispute arose between Kalu Singh on the one hand and Revenue Authorities on the other about the nature of the land. The case of Kalu Singh was that his late father Bheru Singh was the owner of the land and was in possession thereof. His name was recorded as proprietor. After coming into force of the Madhya Bharat Zamindari Abolition Act, 1951 the land remained grove and hence exempted from the provisions of the Act. Kalu Singh, therefore, could possess the land. Proceedings were initiated by Kalu Singh against the State but he lost before Tehsildar, Collector as well as Commissioner. He finally approached the Board of Revenue and the Board vide its order dated 2nd December, 1959, allowed the revision and set aside the orders passed by the authorities below. A direction was issued by the Board to the Collector to determine the terms and conditions on which the land would be settled and groves would continue in possession of Kalu Singh. In pursuance of the said order, Patta was issued in favour the respondents on 14th March, 1968.

4. When the appellants came to know about the grant of land to the respondents, eight villagers of village Kanardipura filed a suit for declaration of title, permanent injunction as also for the possession of the suit land. It was a suit filed by the villagers in a representative capacity under Order 1, Rule 8 of the Code of Civil Procedure, 1908. The suit was contested

by the respondents- defendants. The trial court, after appreciating the evidence oral and documentary, held that the suit land was not grove, but it was Charnoi land i.e. grazing land for village people. In view of the said finding, the trial court held that the plaintiffs were entitled to declaration. Accordingly, the suit filed by the plaintiffs was decreed. It was declared that the defendants had got neither title over the land nor they could stop the grazing of animals of the plaintiffs and villagers of Kanardipura over the suit land. Permanent injunction was, therefore, issued against the defendants restraining them from creating obstruction of any kind in the feeding of animals of the plaintiffs and village people. Being aggrieved by the decree passed by the trial court, the respondents preferred an appeal which was allowed by the lower appellate court against which the appellants approached the High Court. The Second Appeal was admitted for final hearing on a substantial question of law framed as under:

"Whether in the facts and circumstances of the case, lower appellate Court, by upsetting the decree of the Trial Court has committed an error of law in dismissing the plaintiff's suit by not properly considering the evidence and material on record and also by not properly considering the provisions of M.B. Zamindari Abolition Act relating to the controversy in suit, especially when the respondent - defendants who are the sons of Zamindar have based their claim on the basis of the patta given by their father"?

5. The High Court after hearing the parties and perusing the record, dismissed the appeal upholding the judgment of the lower appellate court observing that the suit filed by the residents was 'misconceived'. The High Court noted that the suit was filed in a representative capacity but observed that when a judicial order was passed by the Board of Revenue under the provisions of the *M.P. Land Revenue Code, 1959* (hereinafter referred to as 'the Code') in favour of a private party, it cannot be made subject matter of a civil suit at the instance of a person or persons who had no personal interest in the matter. The High Court also held that the suit was barred by Section 257 of the Code. In the opinion of the High Court, the proceedings were exclusively governed by the Code and to be dealt with by Revenue Authorities and the orders passed by them could not be challenged by filing a substantive suit by a body of individuals who had no interest in the suit land inasmuch as their personal proprietary rights were not infringed. The High Court also observed that the proceedings had been initiated under the M.B. Zamindari Abolition Act and the final order passed by the Board of Revenue. Such issue could not be gone into in a suit particularly when the State did not challenge that order. The suit was, in the opinion of the High Court, not maintainable and it was an attempt on the part of the plaintiffs to challenge the order passed by the Board in favour of the defendants which could not have been done in the light of Section 257 of the Code. The appeal was accordingly dismissed.

6. We have heard learned counsel for the parties. The learned counsel for the appellants submitted that the order passed by the High Court is illegal and contrary to law. The counsel submitted that the High Court ought not to have held that the suit filed by the plaintiffs was barred by Section 257 of the Code. It was stated that in the revenue records, the land in question was shown to be Charnoi i.e. grazing land and village people had right to graze

cattle on the said land. A suit for declaration and permanent injunction was, therefore, filed in a competent court. Such a question can only be decided by a civil court and the bar of Section 257 of the Code would not apply. It was also submitted that the High Court has not considered the provisions of Section 111 of the Code which deals with jurisdiction of civil courts. It was also submitted that a question which was formulated by the High Court, nowhere mentioned as to jurisdiction of the court and disposal of appeal by the High Court on that ground was not legal and lawful. It was, therefore, submitted that the appeal deserves to be allowed and the order passed by the High Court deserves to be set aside.

7. Learned counsel for the respondents, on the other hand, supported the order passed by the High Court. He submitted that the court considered the provisions of the Code and also of the M.B. Zamindari Abolition Act and the High Court held that a civil court had no jurisdiction. The said order requires no interference.

8. Considering the rival submissions of the parties, in our opinion, the appeal deserves to be allowed. It is not in dispute between the parties that in the proceedings initiated by Kalu Singh against the Revenue Authorities, the appellants herein were not made parties. Three authorities rejected the claim of Kalu Singh but the Board of Revenue upheld the claim and directions were issued to the Collector. That had happened in 1959. In 1968, consequential order was passed by the Collector. Since the land was Charnoi (grazing) land and not grove, it affected the rights of the appellants as also to the village people. They, therefore, approached the civil court by instituting a suit in a representative capacity invoking Order I, Rule 8 of the Code of Civil Procedure. The suit was for declaration of title and permanent injunction as also for possession. Such a suit was maintainable and was the only remedy available to the plaintiffs. The trial court decreed the suit holding that the villagers had right to graze cattle. The High Court could not have held the suit to be barred by Section 257 of the Code nor it could have recorded a finding that the suit filed by the plaintiffs is representative capacity was not maintainable. The High Court, in our opinion, also committed an error of law in considering the merits of the matter after coming to a conclusion in the Second Appeal, albeit incorrect, that a civil court had no jurisdiction in the matter.

9. For the foregoing reasons, in our opinion, the order passed by the High Court deserves to be quashed and set aside by remitting the matter to the High Court to consider the right of the village people on the basis that a civil court has jurisdiction in the matter. The High Court will now decide the matter afresh holding the suit maintainable and will take an appropriate decision in accordance with law. The appeal is accordingly allowed. In the facts and circumstances of the case, there shall be no order as to costs.