SUPREME COURT OF INDIA

State of Gujarat and Another

Vs

Mahendrakumar Parshottambhai Desai (Dead)By L.Rs

Appeal (Civil) 7898-7900 of 2002

(B. P. Singh and Arun Kumar, JJ)

10.04.2006

JUDGMENT

B. P. SINGH, J.

The State of Gujarat has preferred these appeals by special leave impugning the judgment and order of the High Court of Gujarat at Ahmedabad dated May 7, 2002 in First Appeal No.969 of 1994. The High Court dismissed the appeal preferred by the State and affirmed the judgment and decree of the 3rd Joint Civil Judge, Vadodara in Special Civil Suit No. 776 of 1992 dismissing the suit preferred by the State for declaration of its right, title and interest over the lands in dispute. The State has also impugned the judgment and order of the same date whereby two Civil Application Nos. 964 and 1150 of 2002 in First Appeal No.969 of 1994 moved by the appellants for adducing additional evidence were dismissed. All the three appeals are being disposed of by this judgment.

Before adverting to the facts of the case it is necessary to briefly notice the facts and the proceedings which preceded the filing of the suit by the State of Gujarat.

The respondents claimed to be the owners of 138 Vighas 19 Vasas of land recorded under various zerif numbers in the Fesal Patrak of the year 1892. According to the respondents out of the aforesaid lands, lands admeasuring 85 Vighas 1 vasa wwere acquired by the then State of Baroda. Thus an area of 53 Vighas and 18 vasas remained in the ownership and possession of the respondents.

On September 23, 1960 one J. Patel applied to the Commissioner of Baroda Municipal Corporation for grant of a plot out of the lands which were in possession of the respondents. The respondents objected and filed an application before the Commissioner claiming ownership of the aforesaid lands. Ultimately the application of the respondents was referred to the City Survey Officer, Baroda for enquiry. By his report of February 19, 1963 the City Survey Officer reported that the lands belonged to the Government and that the respondents had no claim over the said lands. The Collector of Baroda, however, ordered an enquiry under Section 37(2) of the Bombay Land Revenue Code in respect of the claim of the respondents and ultimately the matter was enquired into by the Assistant Collector, who reported that the lands in question belonged to the respondents. This report was submitted on June 1, 1964. However, the Collector suo motu exercising revisional jurisdiction set aside the order of the Assistant Collector and directed fresh enquiry. The Assistant Collector submitted his report on November 30, 1966 and found that the respondents had failed to establish their title and that the lands in question were Government lands. An appeal filed by the respondents was dismissed by the Collector whereafter the respondents preferred an appeal to the Tribunal. The Tribunal remanded the matter to the Assistant Collector, Vadodara. By order dated April 7, 1980 the Deputy Collector, Vadodara again dismissed the application filed by the respondents. The respondents appealed to the Tribunal but the same was not entertained and they were directed to prefer an appeal before the appropriate authority. Accordingly the respondents preferred an appeal before the Collector, Vadodara which was dismissed by order dated May 14, 1983. Thereafter in the year 1990, the respondents preferred an appeal before the Tribunal and prayed for condonation of delay. The Tribunal condoned the delay, having regard to the cause shown, and after hearing the parties by his order dated November 29, 1991 held that the lands in question measuring 53 Vighas 17 Vasas were in the ownership and possession of the respondents.

In August 1992, the respondents herein filed a suit praying that they should not be prevented from raising construction on the lands in dispute. They also obtained an ad interim injunction but the same was vacated against which the respondents moved the High Court. When the stay matter was pending before the High Court, the State of Gujarat filed the instant suit which ultimately came to be disposed of by the 3rd Joint Civil Judge (SD) Vadodara being Civil Suit No. 776 of 1992.

In the aforesaid suit the State of Gujarat prayed for a declaration that the order of the Tribunal dated November 29, 1991 was illegal and without jurisdiction. It also prayed for declaration that the suit lands were in the ownership of the Government and that the defendants/respondents herein had no right in respect of the suit lands.

The suit was contested by the respondents herein and ultimately by judgment and decree of March 21, 1994 the learned Civil Judge dismissed the suit of the State. The State thereafter preferred First Appeal No. 969 of 1994 in the High Court against the judgment and decree of the Civil Judge dismissing its suit. The appeal was filed on May 12, 1994. In the appeal, an application was filed on June 21, 2000 being CA No. 4849 of 2000 for leave to lead additional evidence. The said application was dismissed by the High Court by its order dated June 22, 2000.

A special leave petition filed against the order of the High Court dismissing the application to lead additional evidence was withdrawn by the State on July 19, 2001 since learned counsel for the petitioners submitted that he would advise the petitioners to withdraw the special leave petition with

liberty to raise the point in the appeal at the appropriate stage, should it become necessary.

On February 6, 2002 the appellants filed two applications being CA Nos. 964 of 2002 and 1150 of 2002 seeking permission to bring on record certain documents. These applications were also dismissed by the High Court on May 7, 2002. On the same date the High Court also dismissed the first appeal preferred by the State of Gujarat. The three appeals before this Court by special leave are directed against the dismissal of the first appeal as well as the dismissal of the two civil applications filed by the State of Gujarat.

We shall first deal with the appeals preferred against the judgment and order of the High Court rejecting Civil Application Nos. 964 and 1150 of 2002 filed by the appellants herein for adducing additional evidence under Order XLI Rule 27 of the Code of Civil Procedure. The documents sought to be produced were contained in Annexure I to the applications. The applications were opposed by the respondents. It was submitted on behalf of the appellants that the applications may be treated as one under Order XLI Rule 27(1)(b) of the Code of Civil Procedure, apparently because the other provisions or the rule did not apply to the facts and circumstances of the case. The High Court noticed that a similar Civil Application being No. 4849 of 2000 had been filed earlier when this appeal had been placed for hearing before another Division Bench of the High Court, but the said application was rejected by order dated June 22, 2000. The High Court further found that Rule 27(1)(b) of Order XLI can be invoked only if the Court requires any document to be produced or any witness to be examined to enable it to pronounce judgment, or for any other substantial cause. In the instant case it was not as if the additional evidence was required by the Court to enable it to pronounce judgment and, therefore, additional evidence was sought to be adduced for "substantial cause" since serious prejudice would be caused to the appellants if the additional evidence was not permitted to be adduced. Reliance was placed on the judgment of this Court in Municipal Corporation of Greater Bombay vs. Lala Pancham and others : wherein this Court held that though the appellate Court has the power to allow a document to be produced and a witness to be examined under Order XLI Rule 27 CPC, the requirement of the said Court must be limited to those cases where it found it necessary to obtain such evidence for enabling it to pronounce judgment. This provision did not entitle the appellate court to let in fresh evidence at the appellate stage where even without such evidence it can pronounce judgment in the case. It does not entitle the appellate court to let in fresh evidence only for purposes of pronouncement of judgment in a particular way. The High Court referred to the earlier proceedings before various authorities and came to the conclusion that though the appellants had sufficient opportunity to bring the evidence on record, , for reasons best known to it, the State did not produce the entire evidence before the trial court and it was only 8 years after the dismissal of the suit that the applications were filed for adducing additional evidence in the appeal. The High Court, therefore, dismissed the applications for adducing additional evidence.

We find no error in the approach of the High Court. We have earlier noticed the long history of litigation which preceded the filing of the suit. The documents sought to be brought on record are not documents which were discovered later or came into existence after the filing of the suit. The documents are part of the Government records and they could have been produced in the suit.

Mr. Sorabjee appearing on behalf of the respondents rightly submitted that Order XLI Rule 27 of the Code of Civil Procedure cannot be invoked by a party to fill up the lacunae in his case. The

State found itself in a dilemma when confronted with two sets of documents conflicting with each other. There was no plea that the documents sought to be produced by way of additional evidence could not be produced earlier despite efforts diligently made by the State or that such evidence was not within its knowledge. In fact no ground whatsoever was made out for adducing additional evidence, and the sole purpose for which the State insisted upon adducing additional evidence was to persuade the Court to accept the point of view urged on behalf of the State, since the evidence on record did not support the case of the appellants/State. Having considered all aspects of the matter we are satisfied that the High Court rightly rejected the applications filed by the State for adducing additional evidence at the stage of appeal which was intended only to fill up the lacunae in its case.

In the suit the following issues were framed :-

(1) Whether the plaintiff proves that the suit land is of their ownership?

(2) Whether the plaintiff proves that the suit land admeasuring 53 vighas 17 vasas has been acquired during the time of erstwhile Baroda State and possession thereof was handed over to Fatesinh Regiment?

(3) Whether the plaintiff proves that the plaintiff is having legal possession of the disputed land by way of ownership right thereof?

(4) Whether the plaintiff proves that the order dated 29.11.1991 passed by the Gujarat Revenue Tribunal is illegal, without jurisdiction and, therefore, null and void?

(5) Whether the defendant proves that out of 138 vighas and 19 vasas of land, the erstwhile Baroda State had acquired 85 vighas and 01 vasa of land and remaining 53 vighas and 18 vasas of land was in possession of the defendant as stated by the defendant in para 5-3 of his reply?

(6) Whether the defendant proves that survey No. 371 consists of 25 vighas 12 vasas of land and survey No. 372 consists of 28 vighas and 6 vasas of land as stated in para 5(3) of the written reply of the defendant?

(7) Whether the defendant proves that the suit of the plaintiff for decision on the ownership of the suit property in favour of the plaintiff, is barred by period of limitation? and further whether the same is without jurisdiction with respect to the order passed by the Revenue Tribunal?

Issue Nos. 1, 2, 3 and 4 were decided against the plaintiffs while issue Nos. 5, 6 and 7 were decided in favour of the defendants.

Shri Lalit, appearing on behalf of the appellants/State, submitted that the total lands in occupation of the Fatehsinh Regiment and later by the State Reserve Police since 1960 had an area of 138 vighas 19 vasas. Out of this, the lands claimed by the respondents was 53 vighas 18 vasas comprised in Survey No. 371 admeasuring 25 vighas 12 vasas and Survey No.372 admeasuring 28 vighas 6 vasas. It is also not in dispute that lands to the extent of 85 vighas 1 vasa was earlier acquired by the then State of Baorda in three acquisition proceedings under three Notifications dated November 12, 1894; November 22, 1894 and January 25, 1895. If this area is excluded from the total area of 138 vighas 19 vasas the remaining lands comprised in Survey Nos. 371 and 372 would be 53 vighas 18 vasas approximately. Mr. Lalit submitted that in fact the correct area of land comprised in Survey No. 371 is only 2 vighas 12 vasas and in Survey No.372 only 2 vighas. It was really a case of interpolation and tampering whereby the area was increased. He fairly submitted that Fesal Patrak of the year 1892 produced as Ext. 391 from the District Land Revenue office supported the case of the respondents since the lands shown against these two survey numbers have an area of 53 vighas 18 vasas. He, however, submitted that another copy of the Fesal Patrak is maintained in the office of Mamlatdar which has not been produced, and if that document was allowed to be produced, it would have shown that these Survey numbers related to lands measuring only 4 vighas 12 vasas.

He further referred to the Agna Patrika of October 14, 1915 and Agna Patrika of April 27, 1939 and submitted that these records supported the case of the appellants. He also relied upon the Pahani Patrak for the period 1901- 1903 and Khalsa Patrak of the year 1908 (Ext. 488); Hali-maji Patrika of 1912 (Ext. 489) ; the Inquiry Register of 1925 (Ext. 408); Pahani Patrak (Ext. 487) and submitted that these documents would support the case of the State. On the other hand the respondents had not produced any Sanad or other document of title.

Mr. Sorabjee, replying to the submissions urged on behalf of the appellants submitted that the plaintiffs having filed the suit for declaration of its title and interest in the lands in question, had to prove its ownership by adducing evidence before the Court. Having taken upon itself the onus to prove its title, it could not be allowed to prove that by finding holes in the case of the defendants. In this regard he submitted that there is nothing in the plaint even to suggest that there was any tampering of the revenue records maintained by the State and such an argument was advanced only to create a suspicion in the mind of the Court. He further submitted that in this appeal the appellants challenge the concurrent findings of fact recorded by the Tribunal, the trial court and the High Court. It has been concurrently held that the State has not been able to establish its ownership of the lands in question. The courts below have considered the documentary evidence produced by the appellants as well as the oral evidence and have come to the conclusion that the appellants/plaintiffs have failed to prove their title to the lands in dispute. The courts below have not found any evidence of interpolation or tampering of Government records. The State has also produced no evidence of its title, and the suit has been rightly dismissed because the State must succeed on the strength of its own title.

He submitted that the basic document is the Fesal Patrak which proves beyond doubt that Survey Nos. 371 and 372 comprised of lands measuring 53 vighas 17 vasas. There is no dispute that some other lands owned by the respondents were acquired by the then State of Baroda. There is nothing to show that the lands comprised in Survey Nos. 371 and 372 were acquired. No evidence was produced before the trial court which could prove to the satisfaction of the court that any part of the lands comprised in these two survey numbers was acquired. He drew our attention to the findings

recorded by the Tribunal wherein the Tribunal found that the State Government was guilty of keeping back important documents in its possession and neither produced the same before the Deputy Collector nor did it give to the respondents certified copies thereof when they applied for the same. It recorded a finding that Survey Nos. 371 and 372 admeasuring 25 vighas 12 vasas and 28 vighas 6 vasas respectively were in the ownership of the respondents and possessed by them as was obvious from the Fesal Patrak of the year 1892. The other Survey numbers mentioned in the aforesaid Fesal Patrak at Sl. Nos. 360, 361, 363 and 364 pertained to the lands which were acquired under three different notifications. The Tribunal also recorded a finding that respondent No.1 and his father had given the suit lands to other persons under different agreements which proved their possession over the lands in question. As against this, the State Government was unable to produce any satisfactory evidence to prove that any other Survey number was acquired for purposes of Fatehsinh Regiment. It also found that there was no evidence to prove that the name of respondent No.1 had been subsequently added in Col. No. 12 and that there was interpolation in the revenue records.

The trial court has also considered the evidence exhaustively and recorded a categoric finding that there was no evidence to prove that the records were tampered with. In fact there was no pleading to this effect in the suit. It considered Ext. 385 Hali maji register and found that the witness examined on behalf of the plaintiffs at Ext.25, himself stated that Ext. 385 was prepared from disposal/settlement register and that if it did not tally with the original, it ought to be duly corrected. Thus, as between the Fesal Patrak and the Hali maji register, the entries in the Fesal Patrak had to be accepted since Hali maji register is prepared on the basis of the Fesal Patrak. Having considered the entire documentary evidence on record, it reached the conclusion that 53 vighas 18 vasas of land bearing Survey Nos. 371 and 372 belonged to the defendants as owners.

The trial court in the concluding part of its judgment summarized its conclusions as under :-

"Defendant has relied on Exh 40 record of rights. In this record the Jeriff No. of Defendant is mentioned. The sum total of all these Jeriff comes to 91 Kumbha 7 Mukavela and 15 Hani. In the files produced by Govt. on Exh 150, Defendant has done his own calculation and in the Gayakwad State Kumbha - Barehati were existing which is mentioned on page 5 of Order in Exh 154. To covert these Kumbha in Bigha the calculation is made on last page of the file thus as per Order land of Exb 197, 180 and 199 went to Fathesinh Regiment so remaining 53 Vighas also Plaintiff could not state that / prove that the disputed land is owned by them. Whereas as discussed above the overall facts of the case, documents produced by both the plaintiff and defendant, maps, oral evidences, arguments etc. if considered and also considering the Order of Gujarat Rev Tribunal dated 29.11.1991, the disputed land 53 Bigha and 17 Vasa which is in part B Tika No.27/15, 27/16, 27/17 bearing Survey No.1/A/2 of City Survey Map of Vadodara, admeasuring 53 Vigha 17 Vasa is owned and possessed and enjoyed by the Defendant is proved. In such circumstances plaintiffs are not entitled for relief as prayed for by them. Hence order as below is passed."

The High Court has also appreciated the entire evidence on record and concurred with the findings recorded by the trial court. The High Court has noticed the evidence of Gulamnabi Rasul Shaikh, Ex. 25, who was examined as a witness on behalf of the appellants/plaintiffs to the effect that prior to the acquisition of lands for Fatehsinh Regiment, the total lands admeasuring 138 vighas 19 vasas

was of private ownership. It, therefore, followed that if 85 vighas 1 vasa of lands, which were acquired under three notifications, were excluded from the total extent of the lands, the remaining lands admeasuring 53 vighas 18 vasas, which was never acquired, must belong to the respondents. Gulamnabi Rasul Shaikh, Ex.25, in his deposition admitted that except the land mentioned in Mark 189 there was no endorsement in respect of any other land that the same had been acquired. He admitted this fact after referring to the original Fesal Patrak of which the appellants had produced certified copy, Ext. 458. The High Court, therefore, concurred with the finding of the trial court and held that it had rightly relied upon the Fesal Patrak and was justified in not placing any reliance on Pahani Patrak Ext. 486; Hali maji Patrak Ext. 489 and Notification dated October 14, 1915 mark 28/3. The High Court also noticed the finding recorded by the Tribunal and affirmed the finding holding that there was no evidence to prove that the entries in the Fesal Patrak has been interpolated, or that any fraud had been committed. It also affirmed the finding of the trial court that Hali maji Patrak, Ext. 489 was prepared on the basis of the Fesal Patrak and that Hali maji Patrak was prepared for the use of the Government as stated by Gulamnabi Rasul Shaikh, witness for the plaintiffs. He had further stated that if there was any mistake in the Fesal Patrak then it is required to be corrected in accordance with law. Any mistake in the Hali maji Patrak is required to be corrected as per Fesal Patrak. Considering these admissions made by the witness for the State, the High Court concluded that no reliance could be placed on the Hali maji Patrak. The High Court in the pen-ultimate paragraph of the judgment concluded as follows :-

"We find lot of substance in the aforesaid submission made by Shri Vakharia. On one hand there is a documentary evidence viz. map Exh. 392 for which there is a detailed cross-examination of witness Mr. Shaikh, who produced the same and on the other hand there is Fesal Patrak Exh. 458, agreements Exh. 192 to 196 and inquiry register Exhs. 408 and 409. They are part of Government records, therefore, when the learned Judge has preferred to rely upon one set of evidence, which is in favour of the defendants, then it would be difficult for this court to take a different view of the matter in the appeal because the Trial Judge had the opportunity to mark the demeanor of the witnesses and after considering their oral evidence coupled with documentary evidence if the learned Judge has thought it fit to rely upon one set of evidence, which is in favour of the defendants then this court would not take different view of the matter in appeal".

Learned counsel appearing on behalf of the respondents submitted that the concurrent findings recorded by the trial court as well as by the High Court, after an exhaustive considerations of the evidence on record, should not be interfered with by this Court. Even though this objection was raised before us, we permitted the parties to take us through the entire evidence on record only to satisfy ourselves as to whether there was any infirmity or illegality in the findings recorded by the Courts below justifying interference by this Court. Having considered the evidence on record and the findings recorded by the trial court as well as by the High Court we are of the view that no ground has been made out for interference with the concurrent findings of fact recorded by the courts below. The courts below have exhaustively considered the evidence on record. It is not as if they have failed to consider any material evidence which has a bearing on the findings recorded by them, nor is it contended that the findings are perverse. What was contended before us was that on a re-appraisal of the evidence on record it is possible to take a view in favour of the appellants. Having gone through the entire evidence placed before us, we are satisfied that the findings recorded by the trial court as well as by the High Court are based on the evidence on record, are reasonable and suffer from no illegality. They do not deserve to be interfered with in exercise of jurisdiction under Article 136 of the Constitution of India.

However, one aspect of the mater requires our consideration, namely that one of the documents sought to be produced by way of additional evidence is the Notification issued in the Government Gazettee of the Baroda State dated April 27, 1939 which relates to acquisition of lands appertaining to Survey Nos. 398/1 and 398/2 admeasuring 1 vigha 12 vasas and 13 vasas respectively, totaling 2 vighas 5 vasas. Mr. Lalit appearing on behalf of the appellants placed considerable reliance on this Notification and submitted that the said Notification leaves no room of doubt that lands admeasuring 2 vighas 5 vasas pertaining to Survey Nos. 398/1 and 398/2 were acquired by the State in terms of the aforesaid Notification of April 27, 1939. Mr. Lalit stated that Survey No. 371 was later re-numbered as Survey Nos. 398/1 and 398/2. These lands were acquired by the Sate and the Notification clearly proves this fact.

Mr. Sorabjee appearing on behalf of the respondents on the other hand contended that even if it is so, the Notification relates only to 2 vighas 5 vasas of land. He submitted that if the Court is satisfied on the basis of the material produced before it that the lands out of Survey Nos. 398/1 and 398/2 were, acquired as is evident from the Notification sought to be produced by the State by way of additional evidence, in the special facts of the case, this Court may suitably mould the relief.

Having regard to the facts and circumstances of the case we are satisfied that lands admeasuring 2 vighas 5 vasas were in fact acquired, though the State authorities were remiss in not producing the Notification before the trial court by way of evidence and sought to do so only at the stage of the appeal. We are, on considerations of justice and equity, of the view that the declaration sought for by the appellants should be granted in respect of 2 vighas 5 vasas of land appertaining to Survey Nos. 398/1 and 398/2 only. We accordingly partly decree the suit of the State to this extent only and declare that the State of Gujarat is the owner of the lands so acquired to the extent of 2 vighas 5 vasas only appertaining to new Survey Nos. 398/1 and 398/2.

In the result the appeals against the judgment and order dated May 7, 2002 in Civil Application Nos. 964 and 1150 of 2002 are dismissed.

The appeal against the judgment and order dated May 7, 2002 in First Appeal No. 969 of 1994 is partly allowed to the extent aforesaid. In all other respects the judgment and decree of the High Court under appeal is affirmed. There shall be no order as to costs.