SUPREME COURT OF INDIA

Babu Lal Sharma

Vs.

State of Madhya Pradesh

C.A.No.2434 of 2006

(Dr. Mukundakam Sharma and Dr. B.S. Chauhan JJ.)

07.07.2009

JUDGMENT

Dr.Mukundakam Sharma, J.

1. By this judgment and order we propose to dispose of this appeal which has been filed by the appellant-plaintiff being aggrieved by the judgment and order passed in the second appeal by the High Court of Madhya Pradesh.

2. The appellant-plaintiff filed a suit seeking for a decree for declaration of his title in respect of the suit property comprising Khasra No. 1709, Rakba No. 1.84 situated at village Bagota, Tehsil Narsinghgarh Purva, District Chhattarpur, Madhya Pradesh. The case as pleaded in the plaint was that the aforesaid land earlier comprised of an area of 1.84 acres of land which was under the title and possession of Mahadev Prasad Richharia, the father of the appellant-plaintiff out of which some portion was under the physical use of Mahadev Prasad Richharia on which a house was constructed and some other portion was surrounded by `Bari'. It was also alleged that from the aforesaid Khasra No. 1709 consisting of 1.84 acres of area, 0.53 decimal of land was sold to one Chhedilal Gupta in the year 1945 and that Mahadev Prasad Richharia, the father of the appellant-plaintiff had executed a sale deed to that effect in favour of Chhedilal Gupta and had also handed over the possession to him on the date of sale of the land. It was further alleged that after the aforesaid sale of land the remaining portion of disputed land i.e. 1.31 acres of land remained under the title and possession of Mahadev Prasad Richharia, the father of the appellant- plaintiff. After the death of Mahadev Prasad Richharia, Babu Lal Sharma, the appellant-plaintiff became his successor and, therefore, owned and possessed the said disputed area of 1.31 acres. Subsequently, however, it came to his knowledge that the Patwari of village Bagota without any order of the competent authority entered the disputed land as Government land in the revenue records somewhere in the year 1953-54 although the said land was being shown in the name of Mahadev Prasad Richharia, the father of the appellant-plaintiff in the revenue records for the year 1953-54.

3. Consequently, an application for rectification was moved by the appellant- plaintiff in the revenue court alleging that since the entry with respect to the disputed land was entered in

the revenue record as Government land by Patwari of village Bagota without the order of the competent authority which fact became known to the appellant-plaintiff only in the year 1984, the said record ought to be rectified. The said application filed by the appellant-plaintiff was, however, rejected by the revenue court on 20.04.1984.

4. An appeal against the aforesaid order was filed by the appellant-plaintiff in the court of Sub-Divisional Officer which was allowed by an order dated 26.06.1988 and the matter was remanded back to the court of Tehsildar, Chhattarpur for fresh consideration. The Tehsildar, Chhattarpur reconsidered the matter but, however, passed an order on 10.11.1995 against the appellant-plaintiff.

5. Being aggrieved by the aforesaid order of Tehsildar, Chhattarpur an appeal was filed in the court of Sub-Divisional Officer which was dismissed by the Sub-Divisional Officer.

6. Consequently, the appellant-plaintiff filed a suit in the court of 2nd Civil Judge, Class-I, Chhattarpur, Madhya Pradesh bearing Civil Suit No. 96-A of 1998 seeking for a decree of declaration of title, ownership and possession. In the said suit it was alleged that 0.53 decimal of land was sold to one Chhedilal Gupta by Mahadev Prasad Richharia, the father of the appellant-plaintiff in the year 1945 from Khasra No. 1709 consisting of 1.84 acres of land. A notice under Section 248 of the Madhya Pradesh State Revenue Code was issued to Chhedilal Gupta when he started construction of a house on the aforesaid land. In the said case an order was passed imposing a fine of Rs. 1500/- along with an order of eviction from the land against Chhedilal Gupta.

7. As against the aforesaid order of fine and eviction Dr. Pannalal Gupta, the son of Chhedilal Gupta filed a civil suit for declaration of title in the civil court. Although the trial court dismissed the aforesaid civil suit, the first appellate court granted a decree in favour of Dr. Pannalal Gupta in respect of said 0.53 decimal of land.

8. It was stated that the aforesaid case ultimately came to the Supreme Court whereupon the Supreme Court dismissed the appeal filed by the State of Madhya Pradesh. Accordingly, the decree passed by the first appellate court in favour of Dr. Pannalal Gupta was affirmed. In view of the same, it was alleged that the remaining portion of the land measuring 1.31 acres could not have been entered into the revenue records as Government land by the Patwari.

9. The aforesaid suit was contested by the respondent herein and upon framing of the issues on the pleadings of the parties, the parties led their evidence. On completion of the trial of the suit, the trial court dismissed the suit filed by the plaintiff-appellant.

10. The appellant being aggrieved by the aforesaid judgment and order preferred an appeal. The first appellate court after hearing the appeal reversed the judgment and order passed by the trial court and passed a decree in favour of the plaintiff-appellant. The respondent-State being aggrieved by the aforesaid judgment and order filed a second appeal bearing No. 372 of 2002 in the High Court of Madhya Pradesh which was admitted on 08.10.2003. After admitting the appeal the High Court heard the appeal and by a detailed judgment and decree

passed on 19.10.2005 allowed the appeal and set aside the decision of the first appellate court.

11. The present appeal is filed by the appellant-plaintiff against the aforesaid judgment and decree passed by the High Court.

12. The learned counsel appearing for the appellant-plaintiff relied upon the judgment and decree passed by the first appellate court in respect of 0.53 decimal of land which was allegedly a part of the disputed land initially. It was submitted that the said land being a part of the suit land in the present case and a decree having already been passed in favour of the appellant- plaintiff and the said land having been transferred by Mahadev Prasad Richharia, the father of the appellant-plaintiff only in favour of Chhedilal Gupta, the predecessor-in-interest of Dr. Pannalal Gupta, the said decree should have been relied upon and referred to in the present case since the said decision had relevance and bearing while deciding the present case. Counsel for the respondent however refuted the submission contradicting inter alia that the judgment in respect of 0.53 decimal of land has no relevance at all as the said judgment was passed in respect of another piece of land and the parties were also different.

13. In the light of the aforesaid submissions of the learned counsel appearing for the parties we have perused the records including the judgments passed by all the three courts below. Our attention was drawn to the various documents placed on record which were exhibited in the suit.

14. In our considered opinion reliance placed on the judgment of the various courts including the Supreme Court in respect of the land measuring 0.53 decimal which was allegedly sold by Mahadev Prasad Richharia, the father of the appellant-plaintiff to Chhedilal Gupta is totally misplaced. The said land was transferred way back in the year 1945. We are here concerned with an area of land measuring 1.31 acres only. The said land is entered in the revenue records in the name of the Government of Madhya Pradesh. The revenue courts have given a finding against the appellant-plaintiff.

15. In the documents which are exhibited it is clearly mentioned that these are not cultivable lands but originally they were `Khadans' (mines) and the same land was declared as Nazool lands. Therefore, the revenue records which are referred to in the present case clearly depict that the land has all along been the Government land. The land was also said to be in a ruinous state and, therefore, there was no possession of the appellant-plaintiff with respect to the said land. No argument for claiming a right by way of adverse possession was made before us which although was a plea taken in the courts below. The appellant-plaintiff has also admitted in his evidence that he has been residing outside the suit land. Therefore, it is clearly established that the appellant-plaintiff did not even have the possession of the suit land. Furthermore, there is no document to prove his title. He has not been able to prove and establish as to how Mahadev Prasad Richharia, his father came to own the said property which was a Government land. The oldest khasra entry which is available on record is Exhibit P-11 which pertains to the period of 1943-44. In the said khasra entry names of the appellant-plaintiff are not recorded in any capacity whatsoever in the relevant colums. Rather

in the column meant for the name of `Kastkar' (Cultivator) and his status, cross sign is shown whereas the nature of the land is shown as `BA AR RASTA'. In khasra corresponding to year 1951- 52 (Exhibit P-12) the name of the appellant-plaintiff is not mentioned at all in any capacity. The name of appellante-plaintiff was recorded in the next year i.e. 1953-54 which is Exhibit P-4 but there also the name of the appellant-plaintiff is recorded in column No. 7 whereas column No. 8 was meant to show the name of the cultivator occupying them. The nature of the land is not shown to be cultivable but is shown to be as `Khadan' i.e. mines. The name of the appellant-plaintiff is not shown in any capacity in the revenue records but clearly the name of Dr. Pannalal Gupta is shown to be entered in respect of the land namely 0.53 acres. However, the name of the appellant-plaintiff is not recorded at all in respect of the remaining land i.e. 1.31 acres which is the subject matter of the present case. It is, therefore, clearly established that the disputed property is in no way connected with that of the subject matter of the proceedings measuring 0.53 acres of land. We also find from the record that the case pertaining to 0.53 acres of land was fought out between different parties. Therefore, the decision rendered in the said case has no relevance to the facts of the present case which is to be decided on the basis of the facts proved herein.

16. In view of the aforesaid observations, we find no merit in the present appeal which is accordingly dismissed.