SUPREME COURT OF INDIA

Municipal Corporation, Gwalior

Vs.

Puran Singh Alias Puran Chand

C.A.No.8605 of 2013

(Sudhansu Jyoti Mukhopadhaya and A.K.Sikri JJ.)

02.07.2014

JUDGMENT

SUDHANSU JYOTI MUKHOPADHAYA, J.

1. This appeal is directed against the judgment and decree dated 15th April, 1998 passed by the High Court of Madhya Pradesh, Jabalpur, Bench at Gwalior in Civil First Appeal No.1 of 1995. By the impugned judgment and decree the High Court allowed the appeal, preferred by plaintiffs- respondents, set aside the judgment and decree passed by the Trial Court and decreed the suit of plaintiffs-respondents.

2. The factual matrix of the case is as follows: The respondents were plaintiffs and the appellant- Municipal Corporation, Gwalior was a defendant in the original suit. The Original Civil Suit No.44-A/1985 was filed by plaintiff-respondents against the defendant- the Municipal Corporation, Gwalior seeking declaration that land bearing Original Survey No.486/19 (old) (New Survey No.619) measuring 1 Bigha is owned and possessed by them. They also sought for permanent injunction against the defendant on the ground that Municipal authorities tried to interfere with their possession by dismantling the fencing standing on their land.

3. The case of the plaintiffs was that their ancestors were the owners of the suit land. One Ram Nath was the original tenure-holder (Mool Krishak) and thereafter they became joint Bhumiswami. They claimed to be in possession on the ground that they

constructed fencing, Hauda (pond) and Latrine (toilet) on the suit land.

4. By way of an amendment of paragraph 2 of the plaint the plaintiffs had shown their pedigree.

5. Defendant " Municipal Corporation filed a written statement, denied the allegations and asserted that the suit land is an open piece of land belonging to the Corporation and is in its possession. It is reserved for developing park and is used as a parking place and a sign Board to this effect is placed at the spot and the fencing by wire too has been done by Municipal Corporation. It was alleged that the plaintiffs manipulated Khasara entries by committing fraud to include their names.

6. The Trial Court on the basis of the pleadings of the parties framed the following issues :-

1. Whether the plaintiffs are Bhumiswamis of the disputed land?

2. Whether the Court fee paid by the plaintiffs is insufficient?

3. Whether the defendants can get Rs.3000/- as compensatory cost?

4. Whether the disputed land belongs to the defendant No.2 being Nazul land?

5. Whether the defendant can get Rs. 5,000/- as compensatory cost?

6. (a) Whether the disputed land belongs to the Nazul department?

(b) If so, whether the land being open belongs to the Municipal Corporation and the same is not owned by the plaintiffs?

7. Reliefs and costs.

7. On hearing the counsel for the parties and on considering the entire evidence, by judgment and decree dated 29th September, 1994, the Trial Court dismissed the suit and held as follows:-

Issues 1,4 6(a) and 6(b):

In absence of notice under Section 401 of the M.P. Municipality Act, 1956 the suit is not maintainable. The plaintiffs are not the owners of the disputed land and the disputed land is the property within the continued ownership and possession and management of the Municipality. Issue No.2:

The Court fee paid is sufficient.

Issue No.3 and 5:

Even though the suit of the plaintiffs failed but the defendants are not entitled to get the special damages.

Issue No.7:

On the basis of above findings the suit of the plaintiffs for all the said reliefs is liable to be dismissed with costs.

8. Against the Trial Court's decision, the plaintiffs-respondents preferred a Civil First Appeal No.1 of 1995 in the High Court. After hearing the parties, the High Court by impugned judgment allowed the appeal and set aside the judgment passed by the Trial Court with the following observation:

38. That is the position in this case as well, when the respondents- defendants did not produce property register to show that this property was ever recorded as property of the Municipal Corporation. At one stage it was recorded as Nazul land belonging to the State when the area had not come within the municipal limits. When the area came within the municipal limits it was mentioned to be Behatnam (under management) of the Municipal Corporation. But the possession and title of the plaintiffs has been recorded throughout even thereafter and to have established Abadi over this land, and therefore, the defendants-respondents could not object to the title and possession of the plaintiffs and the suit for declaration of title and injunction ought to have been decreed.

9. Aggrieved appellant preferred a Letters Patent Appeal under Clause 10 of the Letters Patent Appeal Rules before the Division Bench of High Court. The LPA No. 150 of 1998 was admitted and the order of stay was passed by the High Court. Subsequently, in the light of a Constitution Bench decision in Jamshed N. Guzdar vs. State of Maharashtra & Ors., (2005) 2 SCC 591, the Letters Patent Appeal was dismissed on 17th August, 2005 as not maintainable.

10. Learned counsel for the defendant-appellant made the following submissions:

(a) The High Court committed a grave and manifest error of law in reversing the well reasoned judgment and decree passed by the Trial Court.

(b) The High Court has failed to consider that as there is no prior service of notice before institution of the suit either under Section 80 of C.P.C. or under Section 401 of the M.P. Municipal Corporation Act, 1956, therefore, suit was not maintainable and as such it was rightly dismissed by the Trial Court.

(c) The High Court has gravely erred in decreeing the suit without properly considering the oral evidence led by the plaintiffs and on the contrary the plaintiffs witnesses admitted in their evidence that in Khasaras the Municipality is recorded as owner and even in some Khasaras the plaintiffs are recorded as tresspassers.

11. On the other hand, according to learned counsel for the plaintiffs- respondents, the First Appellate Court rightly decreed the suit as predecessors-in-interest of plaintiffs were recorded to be in possession of the land.

12. After giving our careful consideration to the facts and circumstances of the case, evidence on record and the submission made by the learned counsel for the parties, we find ourselves in complete agreement with the submission made on behalf of the defendant-appellant and the judgment and decree passed by the Trial Court.

13. The plaintiffs-respondents claimed ownership, title and possession over the land. They are supposed to plead the fact and prove their case by placing evidence. The plaintiffs have shown their possession in the capacity of Pukhta Maurusi Kashtakar and that the land was meant for agriculture purposes.

14. Further the case of the plaintiffs was that there was no partition between them and the land continued to be joint family property (Shamil Shareek). The plaintiffs have given the detail of their predecessor-in- title as under:

Table of Puran Singh, Plaintiff No.1:

Chhutti Ram, widow Manko

?

Mishrilal

?

Puran Singh (adopted son)

Table of Shyam Babu, Plaintiff No.2:

Reoti Prasad, widow Rajwati

?

Bhagwati alias Bhagwati Prasad

?

Shyam Babu

Table of Har Narain;

Mangal Singh

?

Gopi Ram

?

Harnarain

15. Referring to the tables of the predecessor-of-interest, the Trial Court doubted the joint-ownership of the family and rejected the claim of the plaintiffs in view of the following facts:

16. Plaintiff no. 1, Puran Chand belongs to Shiva Hare Caste whereas plaintiff No. 2, Sham Babu, is a ˜Kayastha (Shrivastava). Harinarain is a Thakur. The plaintiff has not made clear how they claim joint ownership and joint possession of the land if they belong to three different castes. Neither any pleadings were made nor any evidence was placed by the plaintiff to show how the land in dispute came under their ownership and when they have taken possession of the land.

17. The High Court gravely erred in law as well as on facts in connecting Ram Nath with the plaintiffs-respondents even though they have utterly failed to prove any connection with him and the pleadings are lacking regarding their particulars and even their names do not appear in Ext.P.11.

18. It is settled that for joint possession and ownership over any property, firstly the plaintiffs are required to plead the same and the said fact should be reflected in the plaint itself. There is a concept of joint family amongst the Hindus but that is required to be pleaded and proved. As the ancestors of the plaintiffs do not belong to one family, but three different family having three different castes, the joint possession of the plaintiff cannot be accepted. The High Court failed to notice the aforesaid fact while allowing the appeal of the plaintiffs.

19. Smt. Chandra Kala widow of Shyam Babu (PW-1) and Puran Singh (PW-2) stated that they are joint owners and are in joint possession based on revenue records. The names of Mishrilal, Gopilal and Shyam Babu were shown. However, the name of ancestors of Plaintiff No.2, Shyam Babu is not recorded, but the name of Shyam Babu himself is recorded therein. In the original plaint, it was not pleaded as to how Shyam Babu along with Mishri Lal and Gopiram were in joint possession over the land in dispute. In this background, we hold that the Trial Court rightly held that the plaintiffs

failed to give necessary details of their origin and ownership rights.

20. The High Court has failed to appreciate that there was no document of title/ownership on record placed by the plaintiffs-respondents and there are no pleadings in this regard as such no finding of title or ownership can be given in favour of plaintiff-respondents.

21. The evidence of Chander Kala PW-1 and other evidence on record including map were enclosed in the plaint. Nothing was shown to suggest that Shyam Babu was in actual possession of the land in the plaint or in the map and no pleading as the existence of a pataur, toilet and pond (Haudi) in the suit land was made. Therefore, the Trial Court was correct in holding that the plaintiff- Shyam Babu was not in possession of land.

22. The Khasara entry of Samvat 1966 is exhibit P-11. The name of the owner of Khasara No.486 (Vasarash Sadar), Rakam Tehsil Khewat 1 is recorded whereas Kashtakar Dakhilkar in column No.7 (Basrah Sadar) Ram Chander s/o Kashi Ram resident of Deh Dakhilkar is mentioned. Further in column No.8 the following entry is given as Skikmi Kashtakar and Muddat Kashta:- Manko widow Khushi Ram and Arjun-

> Rajawati widow of Reoti Prasad Kayastha,
>
> Mangal Singh and Ram Prasad.
>
> In the further columns the vegetables, crop and makka, channa etc. is mentioned.

23. In second old Khasara entry Exhibit P-10 for Samvat 1992 with respect to Khasara No.486/19 in the column No.5 for the name of the owner ˜Municipality No.1 is mentioned and further Warelal Gopi Ram Mauru- Mangal Singh- Bhagwati s/o Reoti Prasad Ka.Sa.Deh.Mu.Maurusi is mentioned and in column No.20 ˜Kisam Abadi is mentioned. In column No.9 Chita Lagani has been shown.

24. According to plaintiffs, the old Account No.486/19 of the land is in dispute, and therefore, in this Khasara entry this land is reflected as Bila Lagani Abadi under the

ownership of Municipality.

25. The Trial Court on appreciation of the entries and its genuineness which is to be presumed under the provisions of Section 117 of the Madhya Pradesh Land Revenue Code, came to a definite conclusion that the entries were made with different ink and hand-writing and the compliance of the order by any competent officer is not mentioned in the Khasara. In this regard when cross-examined, Gita Ram Verma (PW-3), Abhilekha Pal of Rajasava Abhilekhagar Gwalior made certain statements at paragraph 5,6, and 7 of cross-examination which raised doubt about the entries in some of the khasara placed by the plaintiff.

26. Gita Ram Verma-(PW-3) in her statement stated the record of samvat 1977 to samvat 1992 in the ˜Abhilekha Gar (record room) of Director Land Record. The plaintiffs could not correspond how they could get Exhibit P-10 and P-11 which were available in the record room and could not prove the correctness of those exhibits. Errors and omissions have been also found in the Khasara entries produced by the plaintiffs. Hence the Trial Court doubted the correctness of those khasaras..

27. The aforesaid fact has not been dealt with by the High Court in proper perspective. Merely on the basis of Khasara of the year Samvat 1992 Ex.P/10, Khasara of the year Samvat 1996 Ex.P/11, Khasara of the year Samvat 2003 Ex.P/2 declaration has been given in favour of the plaintiffs. The High Court also noticed the Khasara of the year Samvat 2004 Ex.P/3, Samvat 2005 Ex.P/4 and Samvat 2006 Ex.P/5, and then Khasara of the years Samvat 2010 to 2014 Ex.P/6, Khasara of the years Samvat 2013 to 2017 Ex.P/7 and Khasara of the years Samvat 2035 to 2038 Ex.P/8.

28. In the Khasara of the years Samvat 2035 to 2038 Ex.P/8 the nature of the land was mentioned as Nazul Abadi. In such exhibit the Municipality has been mentioned in column No.3. On the basis of aforesaid Khasaras, the learned Single Judge decided the title in favour of the appellant-Municipal Corporation.

29. Mutation entries do not confer title. In Smt. Sawarni v. Smt.Inder Kaur & others, 1996 (6) SCC 223, this Court held : 7.Mutation of a property in the revenue record does not create or extinguish title nor has it any presumptive value on title. It only enables the person in whose favour mutation is ordered to pay the land revenue in question. The learned Additional District Judge was wholly in error in coming to a

conclusion that mutation in favour of Inder Kaur conveys title in her favour. This erroneous conclusion has vitiated the entire judgment.

30. The High Court committed a grave and manifest error of law in reversing the well reasoned judgment and decree passed by the Trial Court by simply placing reliance upon Khasaras entries even without properly appreciating the settled law that Khasara entries do not convey title of the suit property as the same is only relevant for the purposes of paying land revenue and it has nothing to do with ownership.

31. For the reasons aforesaid, we set aside the impugned judgment and decree passed by the learned Single Judge in Civil First Appeal No.1 of 1995 and confirm the judgment and decree passed by the Trial Court. The appeal is allowed. No costs.