SUPREME COURT OF INDIA

State of MP

Vs.

Nomi Singh & Anr.

C.A.No.3050 of 2015

(Dipak Misra and Prafulla C. Pant, JJ.)

24.03.2015

JUDGMENT

Prafulla C. Pant, J.

1. This appeal is directed against judgment and order dated 30.5.2011, passed by the High Court of Madhya Pradesh, Gwalior Bench, in Second Appeal No. 256 of 2005 whereby said court allowed the second appeal and set aside the decree passed by VIII Additional District Judge, Gwalior, in Civil Appeal No. 5A of 2005, and the one dated 30.11.2004 passed by the trial court (V Civil Judge Class II, Gwalior, in Civil Suit No. 189 A of 2004).

2. Heard learned counsel for the parties and perused the papers on record.

3. Briefly stated, case of the appellant (defendant) is that land in question bearing survey Nos. 376 to 400 and 401 to 411, measuring 45 bigha 10 biswa situated at village Dinapur, Tehsil and District Gwalior, was acquired by the State Government for setting up industrial area, in the year 1946. However, the industrial area could not be set up and a part of the land appears to have been given on lease to plaintiff-respondent Nomi Singh on 11.5.1951 for a period of one year. In the year 1978 Tehsildar (Nazul), Gwalior, vide order dated 21.11.1978, passed in case No. 560A/68-74-75, declared the respondents as encroachers over the land in question.

4. On the other hand, the case of the respondents (plaintiffs) is that the above mentioned land belonged to one Zamindar Srilal, who granted oral patta to Surjan Singh (father of respondent No. 1 Nomi Singh), and he was recorded as 'Maurusi Kashtkar' (hereditary tenant) in the revenue record. As such, on death of Surjan Singh, name of plaintiff Nomi Singh was entered in the revenue record as 'pakka krishak'. But, later it was found that the names of the plaintiffs were recorded in the column No. 12 of Khasra, i.e. in the column relating to entry of the encroachers. Hence, they filed suit in 1991 numbered as Suit No. 144A of 1991.

5. The trial court (in the first round before remand) dismissed the suit vide judgment dated 17.7.1998. However, said decree, passed by X Civil Judge Class-II, Gwalior, in suit No. 144A of 1991, was set aside by the first appellate court, i.e., X Additional District Judge, Fast Trek Court, Gwalior, vide its judgment and decree dated 25.2.2002 who remanded the matter back to the trial court, after allowing application for amendment in the plaint moved by the plaintiffs at the first appellate stage.

6. After the matter was remanded by the first appellate court, as above, the plaint was re-numbered as suit No. 189A of 2004. Again, after trial, the suit was dismissed by the trial court (this time by V Civil Judge Class-II, Gwalior) vide its judgment and decree dated 30.11.2004. Once again the plaintiffs approached to the first appellate court and filed Civil Appeal No. 5A of 2005 challenging the decree dated 30.11.2004. The first appellate court (this time VIII Additional District Judge, Ashok Nagar, Gwalior), after hearing the parties, dismissed the appeal.

7. Aggrieved by the orders of the trial court and that of the first appellate court, Second Appeal No. 256 of 2005 was instituted by the plaintiffs (present respondents) before the High Court. After hearing the parties the High Court held that the courts below should have taken adverse inference against the defendant as it has failed to produce original khasra entries from Samvat 2005 onwards. It further held that the courts below should have presumed that the plaintiffs have automatically become 'Bhumiswamis' after enforcement of Madhya Pradesh Land Revenue Code, 1959, and as such allowed the second appeal, and set aside the judgment and decree passed by the first appellate court, and that of the trial court.

8. On behalf of the appellant (defendant), i.e., State of Madhya Pradesh, it is argued before us that the High Court has committed grave error of law in setting aside the concurrent decree passed by the trial court and the first appellate court. It is contended that the plaintiffs failed to establish the requisites of adverse possession pleaded in the amended plaint and they cannot be said to have acquired the title of 'Bhumiswami' by virtue of Madhya Pradesh Land Revenue Code.

9. Per contra, learned counsel for the plaintiffs submitted that the land in question belonged to the then Zamindar, before Zamindari Abolition, who granted oral patta in favour of Surjan Singh (father of plaintiff Nomi Singh). It is further pointed out that there was an entry of 'Pukhta Maurusi' in favour of Surjan Singh. On these grounds, on behalf of the respondents, an attempt was made to defend the impugned decree.

10. We have considered the submissions of learned counsel for the parties. It is settled principle of law that in respect of relief claimed by a plaintiff, he has to stand on his own legs by proving his case. On perusal of the impugned order passed by the High Court, this Court finds that the High Court has wrongly shifted burden of proof on the defendants. In the middle of paragraph 12, while giving its reasons to disagree with the decree passed by the courts below, the High Court has observed as under: -

"It was respondent-defendant who has challenged the possession of plaintiff and his father on the ground of khasra entries, therefore, burden of proving the fact that allegations made by the defendant are correct, is on the defendant, in which defendant has failed. Further it has been admitted before the Court that entry of plaintiffs in the khasra record is as encroacher, but no such khasra entries have been produced by them...."

11. In the middle of paragraph 15 of the impugned decree, again the High Court observes: -
"Further the defendant has failed to prove the possession of plaintiff and his father was that of an encroacher. Defendant has further failed to prove the khasra Nos. 1950 to 1952 to be wrong or that patta given to the plaintiffs, was only for one year,...."

12. The above observations made by the High Court, show that it has erroneously placed onus of proof of title and possession of the plaintiffs, on defendant. The High Court has completely ignored the fact that the plaintiff after losing case in the first round from trial court, got amended the plaint and took plea of adverse possession, on which matter was remanded to the trial court, and after hearing parties suit was again dismissed, which was upheld by the first appellate court. The above approach of the High Court is against the law laid down by this Court, and in our opinion, it erred in law in reversing the decree passed by the trial court and that of the first appellate court by shifting burden of proof on the defendant.

13. From the perusal of the papers on record, it appears that though the plaintiffs have pleaded that Surjan Singh was granted oral patta by erstwhile Zamindar Srilal, but it has not been averred in the plaint as to in which year or Samvat such an oral patta was given to Surjan Singh (father of plaintiff Nomi Singh). First appellate court has rightly taken note of the fact that if the respondents (plaintiffs) were Bhumiswamis, they could have filed the receipts of payments of land revenue (Lagaan), or the receipts of crop profits paid to the Zamindar. Though the plaintiffs did file some documentary proof in the form of khasra entry in respect of some of the plots in question, for the period of 1950-1952 (i.e. when admittedly land was allotted for one year to father of the plaintiff), but the subsequent entries for period Samvat 2013 to Samvat 2018 disclosed that the land in question was part of industrial area and recorded in favour of the Commercial Department of the State.

14. Apart from this, the trial court and the first appellate court have rightly found that to succeed on the plea of adverse possession, the plaintiffs should have disclosed and proved as to when the adverse possession started and when it was perfected by them, particularly when they were declared encroachers way back in the year 1978 by the Tehsildar. As such, in our opinion, the plaintiffs have failed to prove their case on the grounds taken by them in the plaint.

15. For the reasons, as discussed above, we find that the High Court has erred in law in allowing the second appeal and setting aside the decree passed by the first appellate court. Accordingly, this appeal is allowed. The impugned judgment and decree dated 30.5.2011,

passed by the High Court in Second Appeal No. 256 of 2005 is set aside and the judgment and decree passed by the first appellate court (VIII Additional District Judge, Gwalior, in Civil Appeal No. 5A of 2004), affirming judgment and decree passed by the V Civil Judge Class II, Gwalior, in Suit No. 189A of 2004, is restored. There shall be no order as to costs.