

Ramjilal Vs. State of M.P.

28.03.2014.

Appellant/plaintiff by Shri P.C.Chandil Advocate.

Respondent/state by Shri R.P.Rathi Government Advocate.

Heard on the question of admission.

1. The appellant/plaintiff has filed this appeal under Section 100 of the Code of Civil Procedure, being aggrieved by the judgment and decree dated 12.12.2009 passed by the Court of I Additional District Judge Shivpuri in Civil Appeal No.12A of 2009 affirming the judgment and decree dated 20.7.2009 passed by the Court of Civil Judge Class II, Pohri in Civil Suit No.22A of 2008 whereby, the suit filed by the plaintiff for declaration of title and permanent injunction pertaining to the land bearing Survey No.705 Min area 0.80 Hectares situated at Village Vamanpura Tehsil Pohri District Shivpuri (which hereinafter would be referred to as the “disputed land”), against the defendant was dismissed. In this appeal, the appellant is referred to as “plaintiff” and the respondent as “defendant”.

2. As per pleadings of both the parties and recorded evidence, the following facts have come out indisputably -

the land in dispute was granted by Tehsildar Pohri on patta to the appellant/plaintiff vide order dated 16.9.1996 passed in Case No.50/95-96-A-19 under the provisions of Revenue Book Circular. Thereafter, SDO Pohri entertaining

a Revenue Appeal No.71/96-97 exercising appellate powers under Section 44 of the M.P. Land Revenue Code ordered to cancel the patta granted in favour of the appellant holding that while allotting the land in dispute, provisions of Cooperative Act, M.P. Land Revenue Code 1959 and Revenue Book Circular Rule (3) have not been taken into consideration. The said order of SDO was challenged by filing revision before the Commissioner which was also dismissed vide order dated 25.4.2005. Against the order of Commissioner, appellant preferred a further revision before the Board of Revenue which was also dismissed vide order dated 31.5.2006. Thereafter, on the basis of the order of Board of Revenue, the respondent dispossessed the plaintiff from the disputed land and allotted it to some other person. Hence, the suit for the relief as stated above was filed which was dismissed by both the courts below.

3. Learned counsel for the appellant has raised only one legal issue that the Sub Division Officer has no power to cancel the patta which was granted under revenue book circular in favour of the plaintiff as there is no provision of appeal in the said RBC. The counsel further pleaded that both the learned courts have not considered this aspect properly, owing to which, the findings recorded by both the courts are contrary to law and against the provisions of RBC, hence, deserve to be set-aside.

4. Controverting the submissions made on behalf of the appellant, the learned Government Advocate for the respondent contended that the lease granted in favour of the plaintiff being against the provisions of the Acts stated earlier was cancelled by the SDO who is competent to entertain the appeal under clause 30 of the Revenue Book Circular. The order of SDO has been affirmed by the authorities up to the Revenue Board. In view of the facts, the finding recorded by both the learned courts are absolutely justified and no interference is required in them.

5. The arguments were considered.

6. Clause 30 of the Revenue Book Circular reads as under :

“(पूर्व असंशोधित) कण्डिका 30. (1) इस परिपत्र के अन्तर्गत केवल एक ही अपील की जा सकेगी । आबंटन अधिकारी जहाँ तहसीलदार/नायब तहसीलदार ही उनके आदेश के विरुद्ध – अनुविभागीय अधिकारी को एवं जहाँ आबंटन अधिकारी – कलेक्टर हो उनको आदेश के विरुद्ध – कमीशनर को आदेश की तारीख से 45 दिन के अन्दर अपील की जा सकेगी ।

अपील में पारित आदेश अन्तिम होगा ।

अपील करने का अधिकार – प्रश्नाधीन भूमि से लगी हुई भूमि के काश्तकार संबंधित ग्राम पंचायत तथा ऐसे व्यक्ति जिनका भू-आबंटन के लिये आवेदन पत्र, प्रश्नाधीन भूमि का आबंटन होने के समय लम्बित रहा होगा इसके अतिरिक्त अपीलीय अधिकारी की अनुमति से वे व्यक्ति भी अपील कर सकेंगे जो किन्हीं अपिहरार्य कारणोंवश समय पर आवेदन नहीं दे सके ।

कंडिका 30. (2) इस परिपत्र के अन्तर्गत पारित किये गये किसी भी मूल आबंटन अथवा आदेश – जो जिलाध्यक्ष द्वारा पारित किया गया हो – को स्वमेव अथवा संबंधित व्यक्ति के आवेदन पत्र पर निगरानी संभागीय कमिशनर द्वारा की जा सकेगी । परन्तु यदि आबंटन आदेश के विरुद्ध कण्डिका 30. (1) के अन्तर्गत अपील की जा सकती थी परन्तु नहीं की गई तो ऐसे आदेश के विरुद्ध कोई पक्ष निगरानी आवेदन पत्र प्रस्तुत नहीं कर सकेगा ।

कंडिका 30. (3) आयुक्त द्वारा अपील में पारित किये

गये आदेश के विरुद्ध निगरानी राज्य शासन को की जा सकेगी ।
भूमि आबंटन के प्रकरणों में राजस्व अधिकारी के द्वारा किसी
परिस्थिति में कोई स्थगन आदेश जारी नहीं किया जायेगा ।”

7. From reading of the said clause, it is crystal clear that the SDO has power to hear the appeal against the order passed by Tehsildar under RBC. In the instant case, the lease was granted by Tehsildar to the plaintiff against the provisions of law owing to which, the said lease was cancelled by the competent authority I.e. SDO. Plaintiff's source of title is based on the aforesaid lease which is not in existence. Due to that, the relief sought by the appellant/ plaintiff for declaration of Bhumi Swami rights cannot be granted.

8. In view of the facts, the findings of both the courts below are justified. Since the findings of both the courts are concurrent and no substantial question of law is involved in this appeal. Hence, it being merit-less and devoid of substance, is hereby dismissed.

9. No order as to the cost.

(M.K.Mudgal)
Judge.