

**IN THE HIGH COURT OF MADHYA PRADESH
AT JABALPUR**

BEFORE

HON'BLE SHRI JUSTICE DWARKA DHISH BANSAL

ON THE 25th OF JULY, 2024

FIRST APPEAL No. 508 of 1998

BALBHADRA PRASAD

Versus

SARJO PRASAD AND OTHERS

Appearance:

Shri Parimal Chaturvedi alongwith Shri Puneet Chaturvedi, Advocates for appellant.

None for the respondent 1 though served.

Shri Ram Ji Pandey, Govt. Advocate for respondents 2-4-State.

JUDGMENT

This first appeal has been preferred by the appellant/plaintiff challenging the judgment & decree dtd.23.09.1998 passed by 1st Additional District Judge, Satna in Civil Suit No. 73-A/92 whereby plaintiff's suit for declaration of title, permanent injunction and for declaring the order dtd.22.08.1992 passed by Naib Tahsildar, to be null & void in respect of land khasra no. 1067/10 area 4 acre i.e. 1.619 hectare, situated in Mauja Pathar Kachhar, Tahsil Raghurajnagar, District Satna has been dismissed holding it to be not maintainable in the light of provisions contained in Section 257 (f) & (m) of the M.P. Land Revenue Code, 1959 (in short 'the Code').

2. As stated above and perusal of plaint shows that the suit had been filed for declaration of title, permanent injunction as well as for declaring the order dtd.22.08.1992 passed by Naib Tahsildar, to be null and void

and by filing written statement the defendant 1-Sarjo Prasad, denied plaintiff allegations and prayed for dismissal of the suit. However, the defendants 2-4/State did not file any written statement.

3. On basis of pleadings of the parties, trial court framed four issues. Issue no. 1 was framed in respect of maintainability of suit before civil court; issue no. 2 was framed in respect of validity of order dtd. 22.08.1992 passed by defendant 2-Naib Tahsildar and issue no. 3 was to the effect as to whether the plaintiff is entitled for relief of declaration and permanent injunction.

4. Record shows that after filing of written statement, the defendant 1 was proceeded ex parte, hence trial court recorded ex parte evidence of the plaintiff and after hearing arguments, decided the civil suit by deciding only issue no. 1 of maintainability of suit, holding the suit to be not maintainable in the light of provisions contained in Section 257(f) & (m) of the Code vide impugned judgment & decree dtd.23.09.1998 and did not decide other issues. With a view to consider the scope of aforesaid provisions, the same are reproduced as under :

“257. Exclusive jurisdiction of revenue authorities.

- Except as otherwise provided in this Code, or in any other enactment for the time being in force, no Civil Court shall entertain any suit instituted or application made to obtain a decision or order on any matter which the State Government, the Board, or any Revenue Officer is by this Code, empowered to determine, decide or dispose of, and in particular and without prejudice to the generality of this provision, no Civil Court shall exercise jurisdiction over any of the following matters :-

(a) to (e) *****

(f) any claim against the State Government to have any entry made in any land records or to have any such entry omitted or amended.

(g) to (l-1) *****

(m) ejection of a Government lessee under Section 182.”

5. Against the aforesaid judgment and decree dtd.23.09.1998, instant first appeal was filed and was admitted for final hearing on 06.11.1998 and notices were issued to the respondents but despite service of notice none is appearing for respondent 1.

6. Learned counsel for the appellant/plaintiff submits that although certain pleadings have been made in the plaint regarding change of entries in the revenue record, but in fact the suit is for declaration of title and permanent injunction and at the same time, relief of declaring the order dtd.22.08.1992 passed by defendant 2-Naib Tahsildar to be null and void, has also been claimed, therefore, the suit is maintainable before Civil Court and was rightly filed. He further submits that in the suit, relief claimed by the plaintiff is also in respect of fraud played by defendants/respondents 2-4 while mutating the name of defendant 1 in place of plaintiff, therefore, the only jurisdiction to decide such dispute is with the civil court and as such, trial court has committed illegality in dismissing the suit as not maintainable. He further submits that by not deciding the issue no. 2 & 3, trial court has committed jurisdictional error. In support of his submissions, he placed reliance on the decisions of Hon'ble Supreme Court in the case of Rohini Prasad & Ors. vs. Kasturchand & Anr. **(2000) 3 SCC 668**; Hukum Singh (dead) by LRs & Ors. vs. State of MP **(2005) 10 SCC 124**; Madho Singh & Ors. Vs. Moni Singh (dead) by LRs & Ors. **(2004) 12 SCC 214**; Ramgopal vs. Chetu **AIR 1976 MP 160 (FB)** & Rammilan vs. Khelloo & Ors. **2009 RN 314**. With these submissions, he prays for allowing the first appeal.

7. No submissions have been made by learned counsel for the respondents 2-4/State.

8. Heard learned counsel for the appellant/plaintiff and perused the record.

9. This first appeal raises following and single point for determination by this Court :-

Whether the suit filed for declaration of title and permanent injunction seeking declaration of bhumiswami rights can be said to be not maintainable before civil Court in view of provisions of section 257 (f) and (m) of the Code ?

10. Apparently, the suit has been filed for declaration of title claiming bhumiswami rights on the land khasra no. 1067/10 area 4 acre situated in Mauja Pathar Kachhar, Tahsil Raghurajnagar, District Satna as well as for permanent injunction and for declaring the order dtd.22.08.1992 passed by defendant 2-Naib Tahsildar to be null and void. In the present case, the dispute is to the effect as to whether the plaintiff is bhumiswami or the defendant 1 is bhumiswami of the land in question.

11. In the case of Ramgopal vs. Chetu (**supra**), Hon'ble full Bench of this Court has held as under:-

“10. Determination of the question of title is the province of the Civil Court and unless there is any express provision to the contrary, exclusion of the jurisdiction of the Civil Court cannot be assumed or implied, AIR 1966 SC 1718.”

12. In the case of Rohini Prasad & Ors. (**supra**); and Hukum Singh (dead) by LRs & Ors. (**supra**); Hon'ble Supreme Court has after taking into consideration the law laid down by full Bench of this Court in the case of Ramgopal vs. Chetu (**supra**), held that the suit for declaration of title and permanent injunction or for restoration of possession is maintainable before Civil Court only. Surprisingly, none of the aforesaid decisions has been taken into consideration by trial Court.

13. Apparently, while deciding the issue no. 1 holding the suit to be not maintainable, trial court has failed to consider the aforesaid legal position, which makes the position clear, that suit for declaration of title and permanent injunction is maintainable before civil Court, non-consideration of which, has vitiated impugned judgment and decree. Perusal of provisions contained in section 257 (f) & (m) of the Code makes it clear that these provisions have no relevance to the suit for declaration of title and permanent injunction.

14. Resultantly, the impugned judgment and decree passed by trial court being unsustainable is hereby **set aside** and holding the suit to be maintainable, the matter is remanded to trial court for decision of civil suit afresh, on merits.

15. Appellant is directed to remain present before trial court **on 10th of September, 2024.**

16. As the defendant/respondent 1 is not present before this court, therefore, trial court may issue summons to the respondent/defendant 1 with a view to secure his presence before the court.

17. With the aforesaid, this first appeal is **allowed and disposed off.**

18. Miscellaneous application(s), pending if any, shall stand closed.

(DWARKA DHISH BANSAL)
JUDGE