Jagdish Prasad Patel(D) Thr. Lrs. vs Shivnath on 9 April, 2019

Equivalent citations: AIRONLINE 2019 SC 2298

Author: R. Banumathi

Bench: R. Subhash Reddy, R. Banumathi

REPORTABLE

IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO.2176 OF 2007

JAGDISH PRASAD PATEL (DEAD)
THR. LRS.& ANOTHER …Appellants

VERSUS

SHIVNATH & OTHERS …Respondents

JUDGMENT

R. BANUMATHI, J.

This appeal arises out of the judgment dated 05.02.2007 passed by the High Court of Madhya Pradesh at Jabalpur dismissing the Second Appeal No.174 of 1989 filed by the appellants, thereby affirming the decision of the first Appellate Court in Civil Appeal No.29-A/85 holding that in the absence of any order of abandonment or revocation of the patta given to the forefathers of the respondents-plaintiffs, grant of patta in favour of the appellants/defendants was illegal and that the appellants- defendants cannot claim any right over the suit properties.

2. Case of Respondents-plaintiffs is as under:-

> Respondents-Shiv Nath and deceased Vishwanath/predecessor in Date: 2019.04.09 17:37:26 IST Reason:
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> interest of respondents No.2 to 10 filed a suit for declaration of title over the suit lands in khasra numbers 41-1.39, 131-2.70, 162-0.17, 163-3.92 and 164-2.15 Kita 5 total area 10.33 situated in Village Bairath General No.782, Tehsil Gopad Banas and possession of all the khasra numbers except khasra No.164 against the father of the appellants-Hanuman Din. Ram Sahai and Rameshwar - fathers of the plaintiffs were the joint lessees of the lands in khasra Nos. 41, 131, 132, 136/13, 135, 134/4, 137/27, 140/11, 142/2, 143, 146, 147, 162, 163/25, 164/4 and 257 total measuring 21.45 acres and their names were included as ‘lessees’ of the above lands during the settlement

and they kept on cultivating the lands till forty years back when a partition took place between the two and both of them became owners of half part each. Hanuman Din never remained in possession of any part of the lands nor he had any right or entitlement over the suit lands; but the grandfather of the appellants-Gaya Din got a lease in disputed lands of the respondents which according to the respondents is a forged document. Based on the aforesaid lease, Gaya Din got his name entered as khatedar in respect of the khataunis of the disputed lands.

3. Respondent-deceased Vishwanath-predecessor-in-interest of respondents No.2 to 10 filed an application before the Collector in August, 1969 stating that the lease of the disputed lands was wrongly issued by illaqedar in the name of Gaya Din and the proceedings for cancellation of the records in the name of Gaya Din be initiated. The matter was sent to the Revenue Inspector for enquiry who submitted his report in favour of respondents in respect of the ownership of the lands in dispute and the Collector registered the report after approving it. In proceedings before the Sub-Divisional Magistrate in Miscellaneous Case No.351/142/69 under Section 145 Cr.P.C. initiated by Hanuman Din, the Sub-Divisional Magistrate found Hanuman Din in possession of lands in khasra Nos.162 and 163 and respondents were found in possession of land in khasra No.164. Respondents-plaintiffs alleged that pursuant to the order of the Sub-Divisional Magistrate, Hanuman Din forcibly took possession of land in khasra No.41 and therefore, the respondents filed suit for declaration and permanent injunction.

4. Hanuman Din resisted the suit contending that the respondents have never remained in ownership or possession of the disputed lands and the lands belonged to one Ram Raj Singh but he was not cultivating the lands and gave it to the predecessors of the respondents for cultivation on the basis of Batai-crop sharing and only because of this, patta was granted at the time of settlement in their names. The appellants further averred that the father of the respondents abandoned the lands and since revenue tax was not being paid, the khata of the disputed lands was cancelled. Case of the appellants-defendants is that in the auction held by Pawaidar for lease of suit lands and other lands, bid of Gaya Din was accepted and in this regard, a lease was issued in his name in Samvat 1986 (1929 A.D.). The appellants had been in continuous possession of the suit properties and the same is reflected in the khataunis and other revenue records.

5. The trial court vide judgment dated 02.07.1985 dismissed the respondents' suit by holding that Gaya Din has been holding patta- lease (Ex.D-20) in respect of the suit lands and has been in continuous possession of the disputed lands since 1950 and thereafter, Hanuman Din was in possession of the same. After referring to the orders of the Commissioner (Ex.D-1), the trial court held that the Commissioner recorded a finding of fact that the respondents got the entries made in the revenue records in their names in connivance with the Patwari. The trial court held that the lease-patta (Ex.D-20) was issued by the then iIlaqedar to Gaya Din and that the said document being more than thirty years old is a genuine one. After referring to various khasras and the entries thereon in the name of appellant's father, it was held that the appellants' father Hanuman Din has been in possession of the suit lands since 1950 or prior to that. The trial court further held that the suit was instituted on 17.10.1975 which is beyond twelve years and that the suit is barred by time.

6. In appeal, the first Appellate Court vide its judgment dated 03.04.1989 held that at the time of settlement, patta was granted in the name of father of the respondents and this has not been disputed by the appellants and the appellants could not establish abandonment of the lands by the father of the respondents and therefore, the respondents ought to be treated as owners of the suit properties. The first Appellate Court further held that the lease Ex.D-20 produced by the appellants cannot be held to be a valid one and in absence of order of revocation of the patta granted to the respondents, it cannot be held that Ex.D-20 confers right of ownership on the appellants over the disputed lands. The first Appellate Court held that merely because of production of patta- lease – Ex.D-20 by Hanuman Din, it cannot be said to have been proved and therefore, it cannot be held that Hanuman Din has a legal right of ownership on the disputed lands. The first Appellate Court noted that on the basis of Ex.D-1 – order of the Commissioner, possession of the suit properties by the appellants cannot be held to be proved, since the respondents or their ancestors were not parties to the said proceedings. On these findings, the first Appellate Court set aside the judgment of the trial court and held that the respondents are the owners of the disputed lands and held that the respondents are entitled to get possession of the lands in khasra Nos. 41, 131, 162 and 163 from the father of the appellants.

7. In the second appeal, the High Court affirmed the findings of the first Appellate Court and held that the suit lands were recorded in the name of fathers of the respondents and that there was no document on record to show that they have abandoned the possession of the lands or surrendered the same in favour of iIlaqedar. It was held that though patta-lease – Ex.D-20 was granted in favour of grandfather of the appellants, the appellants have not adduced any evidence to prove abandonment of the lands in favour of iIlaqedar and no right accrued to the appellants on the basis of the patta (Ex.D-20). Being aggrieved, the appellants have preferred this appeal.

8. We have heard Mr. Subodh Markandeya, learned senior counsel for the appellants-defendants and Mr. A.K. Shrivastava, learned senior counsel for the respondents-plaintiffs. We have considered the submissions and carefully perused the impugned judgment and the judgment of the courts below and other materials on record.

9. The point falling for consideration is whether the High Court was right in upholding the judgment of the first Appellate Court by observing that in the absence of any order of abandonment or revocation of the patta given to the respondents-plaintiffs, grant of patta (Ex.D-20) in 1929 in favour of the appellants-defendants was illegal and that the appellants-defendants cannot claim right based upon Ex.D-20 and other documents.

10. The impugned judgment of the High Court is the concurrent finding of the High Court and the first Appellate Court. We are conscious that in an appeal under Article 136 of the Constitution of India, the concurrent findings cannot be interfered with unless warranted by compelling reasons. When the finding of the first Appellate court and the High Court are shown to be perverse, this Court would certainly interfere with the findings of fact recorded by the High Court. [Vide Mahesh Dattatray Thirthkar v. State of Maharashtra (2009) 11 SCC 141]

11. The respondents-plaintiffs–Shiv Nath and deceased Vishwanath filed suit for declaration of title over the suit lands in khasra numbers 41-1.39, 131-2.70, 162-0.17, 163-3.92 and 164-2.15 total area 10.33 situated in Village Bairath General No.782, Tehsil Gopad Banas on the plea that a lease/patta was issued in favour of their fathers and that their names were included as 'lessees' of the suit lands during settlement and that they have been cultivating the lands till forty years back when partition took place between the two and both Shiv Nath and deceased Vishwanath became owners of half portion each.

12. The appellants-defendants resisted the suit contending that Ram Raj Singh was the original owner of the lands but he was not cultivating the lands and settlement patta was given in the name of the fathers of respondents namely Ram Sahai and Rameshwar on the basis of Batai-crop sharing at the time of settlement and the predecessors of respondents-plaintiffs have not cultivated the lands. The appellants-defendants further averred that the forefathers of respondents-plaintiffs abandoned the suit lands and since revenue tax was not paid, the lease of the suit lands in favour of respondents-plaintiffs was cancelled. The then illaqedar accepted the bid of the defendant's father Gaya Din in the auction held in the year 1929-Samvat 1986. The appellants-defendants have claimed ownership and possession over the lands in dispute on the basis of the patta Ex.D-20 (Ex. P-

21) that was issued in their favour in Samvat 1986 (1929 A.D.) and averred that since then they are in possession of the disputed lands.

13. The suit of the respondents-plaintiffs is for declaration of their title to the suit lands and consequential delivery of the suit lands. Having filed the suit for declaration of title, the plaintiffs could succeed in their suit only by adducing sufficient evidence to establish their title. But the plaintiffs have not produced the patta granted to their fathers. PW-1-Vishwanath, in his deposition, stated that the original patta was very old, torn and the same is not with them. The respondents-plaintiffs have produced the report of the Revenue Inspector dated 05.10.1969 (Ex. P-3) as per which on the application of Vishwanath, an enquiry was made and it was found that the name of pattedar is Gaya Din. Gaya Din and Shiv Nath are shown as lease holders. In Ex.P-3, it is further stated that in Khatauni No.58/59, it was found that names of Ram Sahai and Rameshwar Kurmi are found recorded as owners of land numbers 51/1.38, 162/0.17, 163/3.72, 164/2.65 and 131/2.70. It was further stated that the patta illaqa of the above numbers are found registered in the name of Gaya Din. Ex.P-3-report notes the entries in Ex.D-20-patta to the effect that permission to make entry in respect of the patta granted vide order No.146/1960 dated 21.11.1960 issued by the Tahsildar in the official record has been given after due inspection and entry in khasra is found made by the concerned Patwari on 10.01.1961.

14. In his evidence, PW-1 has stated that patta-lease was issued in the name of his father. In his written statement, defendant Hanuman Din also admitted that the plaintiffs- respondents' fathers were lessees and patta-lease was originally granted in their favour during the settlement period for cultivation on the basis of Batai-crop sharing. The trial court as well as the first appellate court held that the lease was granted in favour of father of respondents-plaintiffs at time of the settlement and they were held to be original lessees. The trial court while deciding issue No.2(A), observed that the grant of lease in the name of father of respondents-plaintiffs in the settlement is not rebutted by the

appellants-defendants. Drawing our attention to the findings of the trial court that patta was granted in favour of the father of the respondents-plaintiffs, the learned senior counsel for the respondents-plaintiffs submitted that this amounts to admission and in terms of Section 58 of the Evidence Act, admitted facts need not be proved. Placing reliance upon Nagindas Ramdas v. Dalpatram Iccharam alias Brijram and others (1974) 1 SCC 242 and Executive Officer, Arulmigu Chokkanatha Swamy Koil Trust, Virudhunagar v. Chandran and others (2017) 3 SCC 702, it was submitted that in view of clear admission of grant of lease in the name of father of respondents-plaintiffs, the said admitted fact need not be proved.

15. Section 58 of the Evidence Act, no doubt, postulates that the things admitted need not be proved. However, proviso to Section 58 of the Evidence Act gives full discretion to the court to require the facts admitted to be proved otherwise than by such admission. When the respondents-plaintiffs have filed the suit for declaration of their title, the respondents-plaintiffs cannot isolate few sentences in the written statement and take advantage of only those part of the written statement which are favourable to them. The written statement filed by the appellants-defendants has to be read in toto. It is pertinent to note that in para No.(2) of the written statement, the appellants-defendants averred that the lands were in the ownership of Ram Raj Singh at the time of the settlement, but because he was not in a position to cultivate the same himself, the lands were given to the father of the respondents-plaintiffs for cultivation on the basis of Batai-crop sharing. It is further averred that the then Halkedar cancelled the lease in respect of disputed lands and the same were auctioned in which the bid of the defendants' father Gaya Din was accepted and the disputed lands were transferred in his name in the sale in Samvat 1986 i.e. 1929 A.D. The lease of the lands was issued in the name of Gaya Din. The admission of the defendants as to the lease of the plaintiffs' father was the lease earlier granted in favour of the forefathers of the respondents. In the light of the pleadings and the oral and documentary evidence adduced by the defendants, notwithstanding the admission in the written statement, the burden lies upon the respondents-plaintiffs to prove that the patta-lease continues to be in their favour and that they are the holders of patta and that they are in continued possession of the suit properties.

16. In his cross-examination, PW-1 stated that his father left for Jabalpur about forty years prior to the institution of the suit. In the cross-examination, PW-1 however denied the suggestion that when his father left for Jabalpur, he handed over the disputed lands to Pawaidar and all the records at the relevant time were kept by the iIlaqedar. From the statement of PW-1-Vishwanath and PW-2-Ram Gopal, it is evident that the father of Vishwanath had started living in Jabalpur forty years back prior to institution of the suit and settled there. In the light of the evidence adduced, the trial court rightly accepted the case of the defendants that in Samvat 1986 (1929 A.D.), in the auction held by Pawaidar for lease of suit lands and other lands, bid of Gaya Din was accepted and the suit properties along with other lands were given on lease to Gaya Din. We find substance in the submission of the learned senior counsel for the appellants that if the lands were not left so abandoned by the father of respondents-plaintiffs, it would not have been possible for the Pawaidar to auction the lease of the suit lands and grant lease of the lands in favour of Gaya Din.

17. Case of the appellants-defendants that in Samvat 1986 (1929 A.D.), in the auction held by Pawaidar for lease of suit lands and other lands, the suit properties along with other lands were

given on lease to Gaya Din, is strengthened by revenue records and ample evidence. The Pawaidar sanctioned entries regarding grant of patta to Gaya Din to be made in the Government records. The appellants-defendants produced their patta-Ex. D-20 which has also been produced by the respondents-plaintiffs (Ex. P-21). Ex. D-20 is the patta kashtkari as per the order of the Hon'ble Shri Rai Saheb Churhat, Halka Patwari No.1, Region Churhat, State Rewa, Location Mauja Kother, in Samvat 1986 in the name of Gaya Din as farmer/cultivator for the suit properties granted for agricultural purpose. From Ex. D-20, it is seen that as per Tahsildar order No.146/1960 dated 21.11.1960, Pawaidar has been allowed to enter in government serial. As per the order of the Tahsildar, entry has been made accordingly in Pawai Khasra as is clear from the endorsement made by Patwari dated 10.01.1961 in Ex.D-20.

18. Ex. D-20-patta in favour of Gaya Din was validly granted by the iIIaqedar to Gaya Din in the year 1929. The said documents issued by the Tahsildar were produced from the custody of the appellants. The contents thereon show that as per the Government records, the lands had been given to Gaya Din. The documents being more than thirty years old, the trial court rightly presumed the Ex.D-20-patta of genuine. It was then up to the respondents to rebut the presumption. This has not been controverted by the respondents-plaintiffs.

19. Ex. D-20 being thirty year old document gives rise to presumption as to its genuineness. Contention of the respondents-plaintiffs is that Section 90 of the Evidence Act has no application to Ex. D-20 and the presumption cannot be raised as to the genuineness of the contents of the document. Section 90 of the Evidence Act enables the court to draw presumption about the genuineness of the document which is thirty years old. Section 90 lays down that the court "may presume" that the document is genuine. Since the patta granted in favour of Gaya Din is of Samvat 1986 (1929 A.D.) which is more than thirty years old, Section 90 raises presumption as to the authenticity of the document. Mere allegations of fraud would not be sufficient to rebut the presumption raised under Section 90 of the Evidence Act.

20. The respondents-plaintiffs have produced the copies of khasras of several years. However, only the copies of khasra for the years 1955-56 (Ex. P-9) and 1956-57 (Ex. P-10) are in the name of respondents-plaintiffs; and in the previous khasras for the years 1950-51 to 1954-55 (Ex. P-8) and subsequent khasras for 1960-61 (Ex. P-12), 1963-64 to 1965-66 (Ex. P-13), 1968-69 (Ex. P-14) and 1970-71 to 1975 (Ex. D-2), the entries are in the name of the father of the appellants-defendants. The lease was granted in favour of Gaya Din and that he and Hanuman Din had been continuously in possession of the properties is thus established by the revenue records.

21. From perusal of the Khatauni for the year 1952-53 (Ex.P-2) produced by the plaintiffs, it is seen that the appellants- defendants are in possession of the suit lands from the year 1950-51 to 1954-55 (Ex. P-8) and thereafter, the subsequent khasras 1960-61 onwards. The names of the appellants-defendants being mentioned in the khasra 1950-51 to 1954-55 is very crucial. The reason being Vindhya Pradesh Abolition of Jagirs and Land Reforms Act, 1952 (Vindhya Pradesh Act) came into force on 30.07.1953. Ex. D-20 (Ex. P-21) - lease was granted in favour of the predecessors of the appellants- defendants namely Gaya Din by Pawaidar under Section 44 of the Rewa State Malgujari and Kashtkari Act, 1935 (Rewa Land Revenue and Tenancy Act, 1935). After referring to Ex. D-20,

the trial court rightly held that the Pawaidar was empowered to issue the lease and that lease (Ex. D-20) was issued under Section 141 of the Act. It was therefore rightly held by the trial court that the lease (Ex. D-20) is valid and that the appellants- defendants have proved that the lease of the lands was legally given by illaqedar in favour of their father.

22. The revenue records produced by the appellants for several years amply strengthen the case of the appellants that patta (Ex. D-20) was granted to them and that they are in possession of the suit properties for several years. The oral and documentary evidence clearly establish that the father of the respondents- plaintiffs has abandoned the suit properties, pursuant to which, auction was held by the Pawaidar and lease was issued by illaqedar in favour of Gaya Din and that he was in continuous possession of the suit properties.

23. In the plaint, the respondents/plaintiffs have alleged that Ex. D-20-patta is a forged one. In para No.(4) of the plaint, it is alleged that without knowledge of the respondents/plaintiffs' father, defendants' father Gaya Din got the lease from Ilaqa Churhat by illegal means and Gaya Din never remained in possession of the properties. The respondents-plaintiffs have not produced any document to prove that Ex. D-20 is a forged one. The plaintiffs at one place averred that without the knowledge of the plaintiffs and their father, Gaya Din succeeded in getting the lease by illegal means of the disputed lands from iIlaqa therein; whereas in para No.(5), the respondents-plaintiffs alleged that the document is a forged one. In fact, as pointed out earlier, the respondents themselves have filed the patta granted in favour of the appellants-defendants. It is pertinent to note that Vishwanath had given an application for inspection of the area (patta) in respect of land numbers 41, 131, 162, 163 and 164 situated in Village Bairath. The Collector called for the report from the Revenue Inspector and as per the Report of the Revenue Inspector (Ex. P-3), though the names of Ram Sahai and Rameshwar are found recorded as owners of the said lands, patta illaqa of the above land numbers was found registered in the name of Gaya Din. The report of the Revenue Inspector refers to the entry in respect of patta granted vide order No.146/1960 dated 21.11.1960 issued by the Tahsildar. It also refers to entry in khasra made by the concerned Patwari on 10.01.1961 which is in possession of Hanuman Din-predecessor of the appellants. Ex. P-3-Report of Revenue Inspector states that the patta-Ex. D-20 was granted in favour of Gaya Din.

24. The entries which are consistently in favour of the appellants ought not to have been ignored in preference to the entries in favour of the respondents only for two years i.e. 1955- 56 and 1956-57. Moreover, in the light of the findings by the revenue authorities on several occasions, the said entries in the name of the respondents cannot be said to be genuine. The first Appellate Court and the High Court were not right in brushing aside Ex. P-21 (Ex.D-20) patta granted in the name of the appellants and other crucial documents like report of the Revenue Inspector (Ex. P-3) which notes that patta illaqa is in the name of Gaya Din and the several entries in the revenue records are in the name of the appellants. In the absence of the contra evidence adduced by the respondents-plaintiffs, the trial court rightly held that the appellants have been in continuous possession of the suit properties and that the respondents have failed to prove their right over the suit properties prior to filing of the suit.

25. Ex. D-1– Order of the Commissioner dated 17.07.1973:-

In the proceeding initiated by the appellants' father – Hanuman Din, an application was filed before the District Collector alleging interpolation by patwari in the gashti – khasras at the behest of the plaintiffs-respondents–Vishwanath, Shiv Nath and Jairaj Kumari in respect of khasra Nos. 131,151,161,162,163 and 411.

The order of the Commissioner refers to the order passed by Tahsildar dated 28.07.1971 upholding the entries in favour of appellants' father Hanuman Din and rejecting the plaintiffs-

respondents' claim. After personally perusing the relevant khasras, the Tahsildar held that entries for the years 1963-64 to 1968-69 made in favour of plaintiffs-respondents were subsequently made and Tahsildar directed correction of khasra entries in favour of appellant's father. In revision, the Collector upheld the said order of the Tahsildar dated 28.07.1971.

26. In revision against the order of the Collector, the Commissioner vide order dated 17.07.1973 upheld the order of Tahsildar observing that from perusal of SDO's report dated 21.10.1969 and the order of Tahsildar dated 28.07.1971, the mischief of patwari was proved beyond shadow of doubt. These orders were not challenged by the plaintiffs-respondents and are binding on them. The relevant portion of the order of the Commissioner reads as under:-

"In the Court of Shri Jagat Swarup, Commissioner Rewa Divn.

Rewa, M.P.

Case No.52/A.61/71-73: Dated 17.07.1973

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2. A perusal of the records of the lower courts reveals that N.A. Hanuman filed an application dated 19.09.1969 before Collector Sidhi alleging interpolation by Patwari in the Gashti- Khasaras in respect of Khasra Nos.131, 151, 161, 162, 163 and 41 of Village Bairath, Tehsil Gopadbanas. The application was sent to SDO for enquiry. SDO reported vide his report dated 21.10.1969 that the allegations are true and the patwari was guilty of grave misconduct. The charge of interpolation is amply proved. Collector also found the report to be true, but ordered that Tehsildar should hear the opposite party before ordering correction (Order Sheet dated 23.10.1969).

Tehsildar held the enquiry and on the basis of documents and oral evidence ordered correction of khasra entries for the year 1963-64 to 1968-69 vide his order dated 28.07.1971. The perusal of SDO's report dated 21.10.1969 and the order of Tehsildar dated 28.07.1971 reveals that the mischief of patwari was proved beyond a shadow of doubt. The order passed by the Tehsildar has to be treated as administrative in nature and cannot be set aside u/s 50 of the M.P. Land Revenue Code, 1959.

3. So far as the present proceedings u/s 50 of the M.P. Land Revenue Code, 1959 are concerned, they do not lie. Administratively, I uphold the order dated 28.07.1971 passed by the Tehsildar, because it is based on unassailable logic. After all, patwari cannot be the final arbiter of the destinies of cultivators." From the above order of the Commissioner and the report of the other revenue authorities, it is clear that the plaintiffs-respondents have made interpolation in the revenue entries in connivance with Patwari and got the revenue entries recorded in their names. The High Court and the first Appellate Court erred in not considering Ex.D-1-order of the Commissioner in its proper perspective.

27. Application filed for receiving additional evidence:- The question may arise that though the number of orders were passed in various proceedings before the Revenue Authorities, why the respondents-plaintiffs have not challenged the same then and there. The real fact is that the respondents-plaintiffs did challenge various orders passed by the revenue authorities before the concerned authorities and lost. Unfortunately, those documents have not been filed by the appellants-defendants in the courts below. Before this Court, the appellants-defendants have filed an application to receive three additional documents which are the orders passed by the Naib Tahsildar dated 01.09.1962, order of Tahsildar dated 28.07.1971 and order of Collector dated 21.11.1972. The three documents which according to the appellants are relevant are:-

S.No.	Documents	Remarks
1.	01.09.1962 – Order passed by the Naib Tahsildar, Gopad Banas in the suit filed by Shivnath, son of Ram Sahai and patta of the land was issued by the Tahsildar in favour of Gayadin – father of the appellant-defendant.	Application was dismissed holding that the Shivnath, son of Rameshwar under Section 250 of M.P. Land Revenue Code, 1959.
2.	28.07.1971 – Order of Tahsildar, Gopad Banas in Civil Suit No.26 A74/70-71 in the suit filed by Hanuman – son of Gayadin	
3.	21.11.1972 – Order of the Collector, District Siddi	

The learned senior counsel for the respondents submitted that there is a clear bar to adduce additional evidence in the appellate court subject to circumstances stated under Order XLI Rule 27 CPC and no such circumstance has been set-forth in the application filed by the appellants. It was submitted that there was no pleading to that effect in the written statement and if the application to receive additional evidence is allowed then it would amount to de novo trial of the suit which was filed nearly after forty-nine years. It was further submitted that when these documents were neither filed in the trial court nor before the first appellate court nor before the High Court, the Supreme Court cannot entertain the documents filed as additional evidence. In support of his contention, the learned senior counsel relied upon Karewwa and others v. Hussensab Khansaheb Wajantri and others (2002) 10 SCC 315 and Roop Chand v. Gopi Chand Thelia (1989) 2 SCC 383 and other decisions.

28. Under Order XLI Rule 27 CPC, production of additional evidence, whether oral or documentary, is permitted only under three circumstances which are: (I) Where the trial Court had refused to admit the evidence though it ought to have been admitted; (II) the evidence was not available to the party despite exercise of due diligence; and (III) the appellate Court required the additional evidence so as to enable it to pronounce judgment or for any other substantial cause of like nature. An application for production of additional evidence cannot be allowed if the appellant was not diligent in producing the relevant documents in the lower court. However, in the interest of justice and when satisfactory reasons are given, court can receive additional documents.

29. In Union of India v. Ibrahim Uddin & Another, (2012) 8 SCC 148, this Court held as under:-

> "36. The general principle is that the appellate court should not travel outside the record of the lower court and cannot take any evidence in appeal. However, as an exception, Order 41 Rule 27 CPC enables the appellate court to take additional evidence in exceptional circumstances. The appellate court may permit additional evidence only and only if the conditions laid down in this Rule are found to exist. The parties are not entitled, as of right, to the admission of such evidence. Thus, the provision does not apply, when on the basis of the evidence on record, the appellate court can pronounce a satisfactory judgment. The matter is entirely within the discretion of the court and is to be used sparingly. Such a discretion is only a judicial discretion circumscribed by the limitation specified in the Rule itself. (Vide K. Venkataramiah v. A. Seetharama Reddy AIR 1963 SC 1526, Municipal Corpn. of Greater Bombay v. Lala Pancham AIR 1965 SC 1008, Soonda Ram v. Rameshwarlal (1975) 3 SCC 698 and Syed Abdul Khader v. Rami Reddy (1979) 2 SCC 601.)
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> 37. The appellate court should not ordinarily allow new evidence to be adduced in order to enable a party to raise a new point in appeal. Similarly, where a party on whom the onus of proving a certain point lies fails to discharge the onus, he is not entitled to a fresh opportunity to produce evidence, as the court can, in such a case, pronounce judgment against him and does not require any additional evidence to enable it to pronounce judgment. (Vide Haji Mohammed Ishaq v. Mohd. Iqbal and Mohd. Ali and Co. (1978) 2 SCC 493) .....
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> 40. The inadvertence of the party or his inability to understand the legal issues involved or the wrong advice of a pleader or the negligence of a pleader or that the party did not realise the importance of a document does not constitute a "substantial cause" within the meaning of this Rule. The mere fact that certain evidence is important, is not in itself a sufficient ground for admitting that evidence in appeal."
> "47. Where the additional evidence sought to be adduced removes the cloud of doubt over the case and the evidence has a direct and important bearing on the main issue in the suit and interest of justice clearly renders it imperative that it may be allowed to be permitted on record, such application may be allowed."

30. The order of the Commissioner dated 17.07.1973 refers to the order of the Tahsildar dated 28.07.1971 and also the report of the SDO dated 21.10.1969. We are inclined to receive the order of Tahsildar dated 28.07.1971 as additional evidence. From the order of the Tahsildar dated 28.07.1971, in Civil Suit No.26A74/70-71 filed before Tahsildar, it is seen that Hanuman Din-applicant thereon filed an application before the Collector, Sidhi stating that he is the land owner-cultivator of the land numbers 131, 151, 161, 162, 163, 41 of the village Bairath and has been in possession of the lands and that the non-applicants (Vishwanath, Shiv Nath and Jairaj Kumari) got their names recorded in revenue entries in connivance with Shri Bansh Bahadur Singh, Patwari and prayed for rectification of the entries. A report was called from the SDO who held a detailed enquiry and submitted a report. Based upon such enquiry and report of the SDO dated 21.10.1969, the Tahsildar held that the entry in regard to possession of the non-applicants (Vishwanath, Shiv Nath, Jairaj Kumari) in respect of land numbers 41, 131, 162, 163 was found to be made subsequently and held as under:-

> "9. As far as the rectification in the Khasra entries for the years 1968-69 or prior to it is concerned, application is allowed as per para 8 and therefore, question regarding dispute in regard to subsequent years of the above years does not arise at all. I have personally perused the Khasra for the years 1963-64 to 1967-68 and I find that apart from the entries made in the column No.12 of the Khasra pertaining to the land No.41 at the time of inquiry, "Vishwanath, Shivnath Kurmi, R/o Deh 41/1.39" it specifically appears to be made subsequently..... Thus, it is proved that the entry in regard to the possession of non applicants Vishwanath, Shivnath and Jairaj Kumri in respect of land No.41, 151, 162 and 163 is found proved to be made subsequently." "10. Now, it is to be seen that who was in the possession of the disputed land prior to the disputed years. In this regard, none of the parties has produced any evidence. Hence in the interest of justice, I have called for the Khasra for the years 1961-62, 1962- 63 and gone through it and then apart from the Land No.131, non applicants are not found to be in the possession of the above land. In such circumstances, it is clear that Patwari Halqa with the intention to create dispute in respect of the disputed land has committed forgery before his retirement.

Thus, the entries for the year 1963-64 to 1968-69 in relation to possession of the applicants on the land No.41, 151, 161, 162 and 163 be recorded rectified in place of the non applicants on the basis of entries for the year 1962-63 ....."

31. The learned senior counsel appearing for the plaintiffs- respondents raised strong objections contending that the said order of the Tahsildar dated 28.07.1971 in Civil Suit No.26A74/70- 71 cannot be received as additional evidence and cannot be looked into as the said documents were not produced before the trial court nor were there reference to those documents in the written statement. We find no merit in the contention that the order of the Tahsildar dated 28.07.1971 cannot be looked into on the ground that they were not adduced as evidence before the trial court. Order of the Commissioner, Rewa in Case No.52A 61/71-73 marked as Ex. D-1 dated 17.07.1973 makes a clear reference to the order of the Tahsildar dated 28.07.1971. Since in Ex.D-1 (17.07.1973), there is reference to the order of the Tahsildar dated 28.07.1971, the same is received as additional

evidence. The order of the Tahsildar dated 28.07.1971 has a direct bearing on the main issue in the suit and in the interest of justice, the same has to be received as additional evidence. Since Ex. D-1 makes a reference to the order of the Tahsildar, in our view, there is no impediment in receiving the order of the Tahsildar dated 28.07.1971 as additional documents and considering the same. Since the order of the Tahsildar has been referred to in the order of the Commissioner dated 17.07.1973 (Ex.D-1), in our view, it will not have the effect of introducing new case necessitating remittance of the matter. So far as the other two additional documents namely, order of the Naib Tahsildar dated 01.09.1962 – order passed in the suit filed under Section 250 of the M.P. Land Revenue Code and the order of the District Collector dated 21.11.1972, they are not received as additional evidence.

32. The order of the Commissioner dated 17.07.1973 makes a reference to the order of the Tahsildar dated 28.07.1971 which in turn refers to the suit filed by the predecessors of the plaintiffs-respondents under Section 250 of the MP Code in which plaintiffs-respondents were unsuccessful in challenging the lease in favour of Gaya Din/Hanuman Din. This document was not produced before the Courts below and now only produced as additional evidence. As discussed earlier, we are not inclined to receive this document as additional evidence. In our considered view, the first Appellate Court and the High Court fell in error in not taking into consideration the categorical findings recorded in the order of the Commissioner (Ex. D-1) that the plaintiffs- respondents got the entries in the revenue records in connivance with the Patwari and that the Patwari was guilty of grave misconduct.

33. Limitation:- The respondents' suit was for the reliefs of declaration of title and consequential possession of the suit lands. The suit was instituted on 17.10.1975. The appellants contended that the suit is hopelessly time barred as according to them, the cause of action arose for the first time in the year 1929, when the patta was issued in favour of the appellants' grandfather Gaya Din and then in the year 1935, when the Act was promulgated by the Maharaja of Rewa and then in the year 1952, when Jagirdari was abolished and Hanuman Din became the tenant of the State instead of Jagirdar and lastly on 02.11.1960, when the name of Hanuman Din was entered by the Tahsildar as bhumiswami. By dismissing the suit, the trial court held that the respondents/plaintiffs must have filed the suit within twelve years of possession of the defendants or dispossession of the plaintiffs. In the plaint, the respondents have averred that they came to know about the lease of the lands in favour of Gaya Din only in the month of August, 1969 whereas the first Appellate Court held that the suit was within the period of limitation of twelve years by treating the cause of action to have arisen on 06.11.1974 i.e. on the date of order of the Sub-Divisional Magistrate in Section 145 proceedings. Since we considered the matter at length on merits, we are not inclined to go into the question of limitation.

34. Case of the respondents-plaintiffs is that as per Section 5 of the Vindhya Pradesh Abolition of Jagirs and Land Reforms Act, 1952, all the Jagir Lands were resumed by the then Vindhya Pradesh Government on 23.06.1953. On that date, illaqedar was not authorised and was not having jurisdiction to issue patta. The merit of the contention is to be considered in the light of the provisions of Rewa Land Revenue and Tenancy Act, 1935 (Rewa Act) and Vindhya Pradesh Act, 1952.

35. The learned senior counsel for the appellants stated that in 1929, there was no codified revenue law in the State of Rewa. In 1935, Maharaja of Rewa promulgated the Rewa Land Revenue and Tenancy Act, 1935. Section 2 of the Rewa Act repealed all earlier government notices, rules, circulars, orders, notifications etc. that are inconsistent to the said Act; but saved the action taken thereunder. Thus, the action taken thereunder the said Act like grant of patta etc. was saved. Case of the appellants- defendants is that by virtue of Section 2 of the Rewa Act, grant of patta to Gaya Din is saved. It is also their case that Section 3 of the Rewa Act saved the existing proceedings and the fathers of the respondents could have proceeded against the appellants under Sections 46 and 142 of the Rewa Act. However, they have not initiated any proceedings under the said provisions of the Act. In 1948, the State of Rewa acceded to India and became part of the State of Vindhya Pradesh. In 1952, the State of Vindhya Pradesh abolished the system of Jagirdari by the Vindhya Pradesh Abolition of Jagirs and Land Reforms Act, 1952. Under Section 26 of the Vindhya Pradesh Act, the appellants' father Hanuman Din became direct tenant of the State in place of Jagirdar and under Section 28 of the Act, he became a pattedar- tenant.

36. By the States Reorganization Act, 1956, the erstwhile State of Vindhya Pradesh became a part of larger Madhya Pradesh. Subsequent to which, the State of Madhya Pradesh enacted the M.P. Land Revenue Code, 1959 (M.P. Code) whereby the appellants' predecessor Hanuman Din being a pattedar-tenant in Vindhya Pradesh in possession of the lands, became their Bhumiswami under Section 158(1)(d)(i) of the M.P. Code. After following the due procedure laid down under Sections 109 and 110 of the M.P. Code, his name was entered in revenue records.

37. The trial court rightly held that the disputed lands belonged to the iIlaqa and the Pawaidar was empowered under the provisions of Section 44 of the Rewa Act to issue the said lease (Ex. D-20). Section 44 of the Rewa Land Revenue and Tenancy Act, 1935 reads as under:-

> "44. Conferment of Pattas – (1) In a kothar village, the following revenue officers are authorised to confer a patta:-
>
> .....
>
> (2) In a pawai, the following persons may confer a patta:-
>
> (a) at a revision of settlement – the Settlement Officer and Assistant Settlement Officers,
>
> (b) during the currency of Settlement – A pawaidar in pawai land not included in a sub-pawai;

A sub-pawaidar in respect of land included in his sub- pawai;

A mortgagee in possession;

A mortgagor in possession;

The Court of Wards in land under its superintendence; A widow having life interest in a pawai or sub-pawai; ……."

38. The learned senior counsel for the respondents-plaintiffs submitted that upon consideration of the evidence of Hanuman Din (DW-1), the first appellate court recorded a finding of fact that in the year 1954, patta was granted in favour of Gaya Din (defendants' father) and as per the testimony of Hanuman Din (DW-1), when patta was issued, Hanuman Din was 35 years old. It was submitted that based on the evidence of Hanuman Din, the first appellate court recorded finding that patta was granted in favour of Gaya Din in the year 1954 by which time, the tradition of Pawai has been removed and therefore, patta granted in favour of Gaya Din is not a valid one. The first appellate court arrived at such a finding without proper facts and by drawing an inference noting that when DW-1 was examined in 1984, he was aged 65 years from which the first Appellate Court inferred that DW-1 must have been born in 1919. Referring to the statement of DW-1 that when patta was issued, he was aged 35 years, the first appellate court inferred that patta must have been issued in 1954 (DW-1 born in 1919 + 35=1954) and by that time, system of Pawai had been removed. In this regard, the learned senior counsel for the respondents-plaintiffs submitted that as per Section 5 of the Vindhya Pradesh Act, all the Jagir Lands were resumed in the then Vindhya Pradesh Government on 23.06.1953, hence, on this date, Pawaidar/iIlaqedar/Jagirdar were not authorised and were not having jurisdiction to issue patta and therefore, the finding of the first appellate court that the patta issued in the name of Gaya Din in the year 1954 is not a valid one and the said findings of fact cannot be interfered with.

39. The finding of the first appellate court that the patta was granted to Gaya Din in 1954 and that illaqedar was not competent to issue patta is misconceived. As discussed earlier, patta was granted to Gaya Din not in 1954 but in Samvat 1986 (1929 A.D.) when admittedly the illaqedar had such power. That apart, the validity of patta so granted cannot be determined based on the inference drawn as to the age of DW-1-Hanuman Din. The learned senior counsel appearing for the appellants has drawn our attention to the provisions of Vindhya Pradesh Act and submitted that as per Section 5 of the said Act, the State Government by a notification appointed a date for the resumption of any class of Jagir Lands and the consequences of such resumption are set out in Section 6 of the said Act. We find substance in the submission of the learned senior counsel for the appellants that in terms of Section 28 of the said Act, the appellants who were till then the tenants of intermediary/Jagirdar shall be deemed to be pattedar tenant in respect of the said lands. Section 28 of the Vindhya Pradesh Abolition of Jagirs and Land Reforms Act, 1952 reads as under:-

> 28. Certain occupants of lands to be pattedar tenants. – (1) Subject to the provisions of sub-section (2) every person who is entered in the revenue record for a continuous period of three years as an occupant of any Jagir-land at the date of resumption, shall be deemed to be pattedar tenant in respect of such land which shall be assessed at the village rate.

(2) Nothing in sub-section (1) shall apply to any sir or khudkasht land which is allotted to the Jagirdar under Section 22 or any grove land possession of which the Jagirdar is entitled to retain under clause (c) of Section 7.

In view of the provisions of the above Act, the first appellate court erred in saying that the patta in favour of Gaya Din was granted in the year 1954 and by that time, Pawaidar/iIlaqedar was not having jurisdiction to issue patta.

40. Re: Finding of the first appellate court: Ownership of the respondents not terminated in a legal way:- The first appellate court held that the ownership of Rameshwar and Ram Sahai was not terminated in a legal way and therefore, they are to be treated as owners of the suit properties. The first Appellate Court further held that since the ownership of Rameshwar and Ram Sahai was not terminated in a legal way, the lease deed- Ex.D-20 which has been produced on behalf of defendant No.1 cannot be treated to be a proved document and on those findings, set aside the finding of the trial court that defendant No.1 is having a legal right of ownership of the disputed lands. The first Appellate Court, in our view, was not right in doubting the correctness of Ex. D-20 and not right in observing that defendant No.1 is not having a legal right of ownership on the disputed lands. The first appellate court and the High Court fell in error in not taking into consideration Ex.D-1-order of the Commissioner dated 17.07.1973 and the order of the Tahsildar dated 28.07.1971 and other documents showing grant of lease/patta in the name of Gaya Din and the continued possession of Gaya Din and his son- Hanuman Din and the appellants. The first Appellate Court and the High Court erred in brushing aside the findings recorded by the Commissioner dated 17.07.1973 as to the misconduct of the patwari in making entries in the revenue records.

41. In the suit for declaration for title and possession, the plaintiffs-respondents could succeed only on the strength of their own title and not on the weakness of the case of the defendants- appellants. The burden is on the plaintiffs-respondents to establish their title to the suit properties to show that they are entitled for a decree for declaration. The plaintiffs-respondents have neither produced the title document i.e. patta-lease which the plaintiffs-respondents are relying upon nor proved their right by adducing any other evidence. As noted above, the revenue entries relied on by them are also held to be not genuine. In any event, revenue entries for few Khataunis are not proof of title; but are mere statements for revenue purpose. They cannot confer any right or title on the party relying on them for proving their title. Observing that in a suit for declaration of title, the plaintiffs-respondents are to succeed only on the strength of their own title irrespective of whether the defendants-appellants have proved their case or not, in Union of India and others v. Vasavi Co-operative Housing Society Limited and others (2014) 2 SCC 269, it was held as under:-

> "15. It is trite law that, in a suit for declaration of title, the burden always lies on the plaintiff to make out and establish a clear case for granting such a declaration and the weakness, if any, of the case set up by the defendants would not be a ground to grant relief to the plaintiff."

42. Upon appreciation of evidence, the trial court has recorded findings on various issues which was reversed by the first Appellate Court. Since the first Appellate Court reversed the judgment of the trial court, in the second appeal, the High Court ought to have weighed and considered the evidence and materials. The order of the High Court dismissing the appellant's appeal by affirming the findings of the first Appellate Court is mainly on the ground that in the absence of any order of abandonment or revocation of the patta granted to the respondents-plaintiffs, grant of patta

(Ex.D-20) in favour of the appellants-defendants was illegal. The High Court, in our view, did not appreciate the patta (Ex.D-20) granted in favour of the forefathers of the appellants by the competent authority in 1929 and the report of the Revenue Inspector dated 05.10.1969. The first Appellate Court and the High Court did not consider Ex.D-1- Order of the Commissioner dated 17.07.1973 and the report of the SDO dated 21.10.1969 and other revenue records showing that the forefather of the appellants-defendants namely Gaya Din was given the patta (Ex.D-20) and since then, Gaya Din and Hanuman Din were in possession of the properties. The High Court has not properly appreciated the evidence and materials on record and the impugned judgment is liable to be set aside.

43. In the result, the judgment of the High Court in the Second Appeal No.174 of 1989 dated 05.02.2007 is set aside and this appeal is allowed. The Suit No.68-A/75 filed by the respondents-plaintiffs is dismissed and the judgment of the trial court shall stand restored. No order as to cost.

.....J. [R. BANUMATHI] .....J. [R. SUBHASH REDDY] New Delhi;

April 09, 2019.