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CHATTAR SINGH & ORS.

v.

MADHO SINGH & ORS.

(Civil Appeal No. 8718 of 2012)

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FEBRUARY 06, 2019

[ARUN MISHRA AND NAVIN SINHA, JJ.]

Madhya Bharat Zamindari Abolition Act, 1951 – s.4(1)(a), 4(2) and 5(f) – Father of defendant nos.2 & 3 claimed that the land in question be granted to him as it was recorded in his name before the abolition of Zamindari Rights – Plaintiffs filed suit inter alia for declaration pleading that the suit land was recorded as ‘Charnoi’ i.e. common land used for grazing cattle by the villagers and it was illegally given to the defendants – Trial Court decreed the suit – Appellate Court reversed the same holding that it was a grove and saved from the vesting u/s.5(f) – High Court reversing the findings of the Appellate Court held that the land was recorded as Charnoi land and as such it vested in the State and it was not khud-kasht land of the ex-proprietor – Held: In order to save the land from vesting, s.4(2) requires land to be ‘personally cultivated’ by Zamindar or through employees or hired labourers and another sine qua non is that it should be so recorded in revenue papers as “khud-kasht”, otherwise all land vest in the State as provided in s.4(1)a – Once the land is recorded as ‘Charnoi’, such common land clearly vests in the State as provided in s.4(1)(a) – s.5(f) did not confer any rights on Zamindars on such common land and did not save the same from vesting, once it was recorded as ‘Charnoi’ for public purpose before the date of vesting in the year, 1950-1951 – When land is primarily used for ‘Charnoi’ i.e. common grazing land for cattle of villagers, it would not fall into the category of ‘grove’ and s.5(f) would not save such trees from vesting – It cannot be retained by Zamindar as he had no existing right on such land even before date of vesting, it being common land, it belonged to villagers – No individual can claim that such land belongs to him exclusively – Trial Court rightly decreed the suit in favour of villagers – No ground to interfere with the judgment of the High Court – M.P. Land Revenue Code, 1959.

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Dismissing the appeal, the Court

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HELD: 1.1 Section 4, Madhya Bharat Zamindari Abolition Act, 1951 makes it clear that all lands (cultivable, barren or bir), forest, trees, village-sites, hats, bazars, mela-grounds shall vest in the State automatically free from all encumbrances. Section 4(2) provides saving of only khud-kasht land, which is so recorded in the Samvat year 2007 corresponding to the agricultural year 1950-51 before the date of vesting. The date of vesting is 2.10.1951. In order to save the land from vesting Section 4(2) requires land to be ‘personally cultivated’ by Zamindar or through employees or hired labourers and another *sine qua non* is that it should be so recorded in revenue papers as “khud-kasht”, otherwise all land vest in the State as provided in Section 4(1)(a). Once the land is recorded as ‘Charnoi’ i.e., common land reserved for grazing of cattles of villagers, such common land clearly vests in the State as provided in Section 4(1)(a) all the land, the forest, trees, village-sites, pathways etc. vest in the State absolutely. Since the land was ‘Charnoi’ i.e., common grazing land for cattle of the villagers having huge area 72 bighas 18 biswa the fruit-bearing trees of custard apple also vested in the State. The provisions contained in Section 5(f) did not confer any rights on Zamindars on such common land and did not save same from vesting, once it was recorded as ‘Charnoi’ for public purpose before the date of vesting in the year 1950-51 i.e., Samvat year 2007. [Paras 9-11] [443-B-G]

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1.2 For “grove” to be recognized as such should be of such trees when fully grown preclude land on which they are standing from being used for a purpose other than that of grove-land. When land is used for ‘Charnoi’ i.e. common grazing land for cattle of villagers, it would not fall into the category of ‘grove’ and provision of Section 5(f) would not save such trees from vesting. The village sites, comprise of common land reserved for villagers, vest in State. It cannot be retained by Zamindar as he had no existing right on such land even before date of vesting, it being common land, it belonged to villagers. No individual can claim that such land belongs to him exclusively. The fruit bearing trees irrespective of numbers have also vested in the State under Section 4(1)(a). No right can be claimed on trees on such common

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A land under Section 5(f) by a proprietor. The decision taken by the Additional Commissioner while holding that land being grazing land has vested in the State was in accordance with law. The Board of Revenue's order to the contrary was perverse and illegal. [Para 12] [444-E-H]

B 1.3 The question as to title in view of the provisions under the M.P. Land Revenue Code, 1959 is the domain of civil court, the Trial Court was absolutely right in decreeing the suit in favour of villagers. Such common land could not have been settled at all in favour of the erstwhile proprietor or his legal representatives. The approach of the First Appellate Court holding it to be grove was perverse. The First Appellate Court failed to understand the purport of 'Charnoi' which is a common land reserved for the public purpose and is not exclusively for grazing of cattle of Zamindar. Such village sites/common land clearly vests in the State automatically free from all encumbrances. There is absolutely no ground to interfere with the impugned judgment of the High Court. [Paras 13, 15] [445-A-C, E]

Shrimant Sardar Chandrojirao Angre v. State of Madhya Pradesh [1968] 1 SCR 761 – referred to.

Case Law Reference

E [1968] 1 SCR 761 referred to Para 5

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 8718 of 2012.

F From the Judgment and Order dated 17.04.2005 of the High Court of Madhya Pradesh, Bench at Indore in Second Appeal No. 302 of 1982.

G Sushil Kumar Jain, Sr. Adv., Puneet Jain, Ms. Christi Jain, Abhinav Gupta, Ms. Ankita Gupta, Ms. Pratibha Jain, Advs. for the Appellants.

B. S. Banthia, B. K. Satija, Rajesh Kandari, Advs. for the Respondents.

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The following Judgment of the Court was delivered:

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JUDGMENT

1. The issue in the present appeal is whether the land recorded as 'Charnoi' i.e. Common land for grazing of cattle of villagers vests in State on abolition of intermediaries on 02.10.1951 or it was saved from vesting in favour of proprietor being grove under section 5(f) of the Madhya Bharat Abolition of Zamindari Act.

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2. The plaintiffs/respondents filed suit for declaration and permanent injunction with respect to the suit land. They specifically pleaded that the suit land was recorded as Charnoi and it had been used for the purpose of grazing their cattle by the villagers and illegally it has been given to the defendants. Kalu Singh, father of defendant Nos.2 and 3, who was the ex-zamindar filed an application before the Tehsildar praying that the suit land be granted to him because it was recorded in his name before the abolition of Zamindari Rights. The Tehsildar rejected the application. Thereafter, he filed appeals before the Sub-Divisional Officer and Additional Commissioner both the authorities dismissed the appeals. Thereafter, the appeal was filed before the Board of Revenue by Kalusingh. The Board of Revenue vide order dated 2.12.1959 set aside the orders of Tehsildar and Sub Divisional Officer and Additional Commissioner and held that Kalusingh is entitled to get the land in his name as Bhumiswami, in view of Section 5(f) of the Madhya Bharat Zamindari Abolition Act. On the basis of the aforesaid order the father of defendant Nos.2 and 3, filed an application before the Collector and Collector vide order dated 14.3.1968 granted the suit land in area 72 Bigas and 18 Biswas to the father of defendant Nos.2 and 3 as Bhumiswami. After the death of their father, defendant Nos.2 and 3 filed an application before the Collector that their names be recorded as Bhumiswami over the aforesaid land and that application has been allowed by the Collector on 13.05.1968. As against the said orders, the plaintiffs filed the suit.

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3. In the instant case, the entries prior to the date of abolition clearly record the land to be Charnoi land and subsequent thereto also the land had been recorded continuously as Charnoi land. Apart from that, there was admission made by the defendant that villagers had been grazing their cattle in the land in question up to 1967. Relying upon the admission coupled with the khasra entries to which statutory presumption

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A of correctness is attached. The Trial Court decreed the suit. However, the Appellate Court reversed the same holding that it was a grove and saved from the vesting under the provisions of Section 5(f) of the Madhya Bharat Zamindari Abolition Act, 1951, which came into force on 2.10.1951.

B 4. The High Court has reversed the findings of the First Appellate Court. The High Court has considered and relied on the khasra entries to hold that it was recorded as Charnoi land as such vested in the State and it was not khud-kasht land of the ex-proprietor.

C 5. Shri Sushil Kumar Jain learned senior counsel appearing for the appellant(s) has vehemently argued at length. He relied upon a decision of this Court in *Shrimant Sardar Chandrojirao Angre v. State of Madhya Pradesh*, reported in (1968) 1 SCR 761, to contend that such groves are saved from vesting. He submits that there were more than one lac trees of sitafal (pumpkin) and that finding has not been reversed by the High Court. As such it should be treated as 'grove'.

D 6. Learned counsel appearing on behalf of the respondents has supported the judgment of the Trial Court and that of the High Court.

E 7. The provision contained in Section 4 of the Madhya Bharat Zamindari Abolition Act deals with the consequences of vesting. Section 4 is extracted hereunder:

F "4. Consequence by the vesting of an estate in the State. - (1) Save as otherwise provided in this Act when the notification under Section 3 in respect of any area has been published in the Gazette, then, notwithstanding anything contained in any contract, grant or document or in any other law for the time being in force, the consequences as hereinafter set forth shall from the beginning of the date specified in such notification (hereinafter referred to as the date of vesting) ensue, namely :-

G (a) all rights, title and interest of the proprietor in such area, including land (cultivable, barren or Bir), forest, trees, fisheries, wells (other than private wells), tanks, ponds, water channels, ferries, pathways village-sites, hats, and bazars and mela-grounds and in all sub-soil, including rights, if any, in mines and minerals, whether being worked or not shall cease and be vested in the State free from all encumbrances;

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(b) all grants and confirmation of the title of or to land in the property so vesting or of or to any right or privilege in respect of such property or land revenue in respect thereof shall whether liable to presumption or not, determine; A

(c) all rents and cesses in respect of any holding in the property so vesting for any period after the date of vesting which, but for such vesting would have been payable to the proprietor, shall vest in the State and be payable to the Government and any payment made in contravention of this clause shall not be a valid discharge of the person liable to pay the same; B

Explanation. - The word "Holding" shall for the purpose of this clause be deemed to include also land given, on behalf of the proprietor, to any person on rent for any purpose other than cultivation; C

(d) all arrears of revenue, cesses or other dues in respect of any property so vesting and due by the proprietor for any period prior to the date of vesting shall continue to be recoverable from such proprietor and may, without prejudice to any other mode of recovery, be realised by deducting the amount from the compensation money payable to such proprietor under Chapter V; D

(e) the interest of the proprietor so acquired shall not be liable to attachment or sale in execution of any decree or other process of any Court, civil or revenue, and any attachment existing at the date of vesting or any order for attachment passed before such date shall, subject to the provisions of Section 73 of the Transfer of Property Act, 1882, cease to be in force; E

(f) every mortgage with possession existing on the property so vesting or part thereof on the date immediately preceding the date of vesting shall, to the extent of the amount secured on such property or part thereof be deemed without prejudice to the rights of the State under Section 3, to have been substituted by a simple mortgage. F

(2) Notwithstanding anything contained in sub-section (1), the proprietor shall continue to remain in possession of his Khud-kasht land, so recorded in the annual village papers before the date of vesting. G

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A (3) Nothing contained in sub-section (1) shall operate as bar to the recovery by the outgoing proprietor of any sum which becomes due to him before the date of vesting in virtue of his proprietary rights.”

B 8. The provision contained in Section 5 of Madhya Bharat Zamindari Abolition Act deals with private wells, trees, buildings, house sites, and enclosures. Section 5(f) deals with groves. Section 5 is extracted hereunder:

C “5. Private wells, trees, buildings, house sites, and enclosures.—
(a) All open enclosures used for agricultural or domestic purposes and in continuous possession (which includes possession of a former proprietor) for twelve years immediately before the 1st of January, 1951, all open house sites purchased for consideration, all buildings, places of worship, wells, situated in and trees standing on lands included in such enclosures of house-sites or land appertaining to such buildings or places of worships within the limits of a village-site belonging to or held by the outgoing proprietor or any other person shall continue to belong to or be held by such proprietor or other person as the case may be, and the land thereof, with the areas appurtenant thereto, shall be settled with him by the Government on such terms and conditions as it may determine.

E (b) All private wells and buildings on occupied land belonging to or held by the outgoing proprietor or any other person shall continue to belong to or be held by such proprietor or other person.

F (c) All trees standing on land comprised in a Khudkasht or homestead and belonging to or held by the outgoing proprietor or any other person shall continue to belong to or be held by such proprietor or other person.

G (d) All trees standing on occupied land other than lands comprised in Khudkasht or home-stead and belonging to or held by a person other than the outgoing proprietor shall continue to belong to or be held by such person.

(e) All tanks situate on occupied land and belonging to or held by the outgoing proprietor or any other person shall continue to belong to or be held by such proprietor or other person.

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(f) All groves wherever situate and recorded in village papers in the name of the outgoing proprietor or any other person shall continue to belong to or be held by such proprietor or such other person and the land under such grove shall be settled with such proprietor or such other person by the Government on such terms and conditions as it may determine.”

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9. Section 4 makes it clear that all lands (cultivable, barren or bir), forest, trees, village-sites, hats, bazars, mela-grounds shall vest in the State automatically free from all encumbrances. Section 4(2) provides saving of only khud-kasht land, which is so recorded in the Samvat year 2007 corresponding to the agricultural year 1950-51 before the date of vesting. The date of vesting is 2.10.1951. Khud-kasht has been defined in Section 2(c) as under:

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“2(c) “Khud-kasht” means land cultivated by the Zamindar himself or through employees or hired labourers and includes sir land;”

10. In order to save the land from vesting Section 4(2) requires land to be ‘personally cultivated’ by Zamindar or through employees or hired labourers and another sine qua non in that it should be so recorded in revenue papers as “khud-kasht”, otherwise all land vest in the State as provided in Section 4(1)(a). Once the land is recorded as ‘Charnoi’ i.e., common land reserved for grazing of cattles of villagers, such common land clearly vests in the State as provided in Section 4(1)(a) all the land, the forest, trees, village-sites, pathways etc. vest in the State absolutely. Since the land was ‘Charnoi’ i.e., common grazing land for cattle of the villagers having huge area 72 bighas 18 biswa the fruit-bearing trees of custard apple also vested in the State.

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11. The provisions contained in Section 5(f) in Madhya Bharat Zamindari Abolition Act did not confer any rights on Zamindars on such common land and did not save same from vesting, once it was recorded as ‘Charnoi’ for public purpose before the date of vesting in the year 1950-51 i.e., Samvat year 2007. Samvat year used to commence from 1st July, and ended on 30th June of next Gregorian calendar year. The provision of Section 5(f) would not come into play to confer any right on such common land.

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12. In *Shrimant Sardar Chandrojirao Angre (supra)*, this Court has observed as under:

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- A “It would seem therefore that the word “grove” conveys compactness or at any rate substantial compactness to be recognized as a unit by itself which must consist of a group of trees in sufficient number to preclude the land on which they stand from being primarily used for a purpose, such as cultivation, other than as a grove-land. The language of Section 5(b)(iv) does not require however that the trees needs be fruit-bearing trees nor does it require that they should have been planted by human labour or agency. But they must be sufficient in number and so standing in a group as to give them the character of a grove and to retain that character the trees would or when fully grown preclude the land on which they stand from being primarily used for a purpose other than that of a grove-land. Cultivation of a patch here and a patch there would have no significance to deprive it of its character as a grove. Therefore, trees standing in a file on the roadside intended to furnish shade to the road would not fulfil the requirements of a grove even as understood in ordinary parlance.
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emphasis supplied”

- E It is apparent from aforesaid observations that “grove” to be recognized as such should be of such trees when fully grown preclude land on which they are standing from being primarily used for a purpose other than that of grove-land. This Court further observed that trees standing on the side of the road would not fulfil the requirement of a grove even as understood in the ordinary sense. Thus, when land is primarily used for ‘Charnoi’ i.e. common grazing land for cattle of villagers, it would not fall into the category of ‘grove’ and provision of Section 5(f) would not save such trees from vesting. The village sites, comprise of common land reserved for villagers, vest in State. It cannot be retained by Zamindar as he had no existing right on such land even before date of vesting, it being common land, it belonged to villagers. No individual can claim that such land belongs to him exclusively. The fruit bearing trees irrespective of numbers have also vested in the State under Section 4(1)(a). No right can be claimed on trees on such common land under Section 5(f) by a proprietor. The decision taken by the Additional Commissioner while holding that land being grazing land has vested in the State was in accordance with law. The Board of Revenue’s order to the contrary was perverse and illegal.
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13. The question as to title in view of the provisions under the M.P. Land Revenue Code, 1959 is the domain of civil court, the Trial Court was absolutely right in decreeing the suit in favour of villagers. Such common land could not have been settled at all in favour of the erstwhile proprietor or his legal representatives. The approach of the First Appellate Court holding it to be grove was perverse and contrary to the provisions and the law laid down by this Court in *Shrimant Sardar Chandrojirao Angre* (supra). The First Appellate Court has failed to understand the purport of 'Charnoi' which is a common land reserved for the public purpose and is not exclusively for grazing of cattle of Zamindar. Such village sites/common land clearly vests in the State automatically free from all encumbrances.

14. Thus, we have absolutely no hesitation to reject the submissions raised by the learned senior counsel appearing on behalf of the appellant and even the decision in *Shrimant Sardar Chandrojirao Angre* (supra) does not support the cause espoused that said case did not relate to "Charnoi" land. As such, decision is not at all applicable, even otherwise decision negates submission raised on behalf of appellants that it was "grove".

15. Thus, for the aforesaid reasons, we find absolutely no ground to interfere with the impugned judgment of the High Court. The appeal, being devoid of merits, is hereby dismissed. The parties are left to bear their own costs.

16. Pending application(s), if any, shall stand disposed of.