

NON-REPORTABLE**IN THE SUPREME COURT OF INDIA****CIVIL APPELLATE JURISDICTION****CIVIL APPEAL NO. 5041 OF 2009**

Ramesh Das (Dead) Thr.Lrs.Appellant(s)

Versus

State of Madhya Pradesh & Ors. ...Respondent(s)

J U D G M E N T**A.S. Bopanna,J.**

1. The appellant herein is the plaintiff in Civil Suit No.9-A of 1996. The suit filed by the plaintiff was for the relief of declaration and perpetual injunction. The trial court through its judgment dated 14th October, 1996 decreed the suit in favour of the plaintiff. The respondent herein assailed the same before the lower appellate court in C.A.No.88-A of 1999. The lower appellate Court through its judgment dated 18th May, 2001 set aside the judgment and decree passed by the trial court. The plaintiff, therefore, claiming to be aggrieved was before the High Court of

Madhya Pradesh Bench at Indore in the Second Appeal filed under Section 100 of the Civil Procedure Code. The same was registered as S.A. No.274 of 2001. The learned Judge of the High Court having taken note of the contentions was of the opinion that the appeal does not involve any substantial question of law within the meaning of Section 100 of the Civil Procedure Code. Accordingly, the Second Appeal was dismissed. Aggrieved the plaintiff/appellant is before this Court in this appeal.

2. The factual matrix leading to the suit is the claim of the plaintiff that Shri Ram Mandir situate at Dedla Village, Dhar Tehsil is a private temple which belonged to the forefathers of the plaintiff, the temple was built out of their own funds and the idol was installed by them. It is contended that the family of the plaintiff was performing the pooja for generations. It was pleaded in the suit that the said Dedla Village was a Jagir Village of the former Jagirdar. Since he was the devotee of Shri Ram Mandir the Jagirdar gifted 25 bighas of land from his jagir village of which the land in question bears Survey No.442. Prior to

1974 the name of Shri Ram Mandir and the name of Laxmandas, Pujari of Shri Ram Mandir had been continued in the Government records. The plaintiff on tracing the family tree has contended that he has succeeded to the said temple and the land. Being the son of the said Laxmandas he claims that having thus succeeded he is performing the pooja in the temple, he is in possession of the land and is cultivating the same. The grievance that prompted the filing of the suit is that according to the plaintiff the Sub-Divisional Officer who had no manner of right over the property, on 29th April, 1992 issued a notice to auction the land in question for one year. The revision filed by the plaintiff was rejected by the Collector on 1st September, 1992. In that view the plaintiff filed the suit seeking declaration of his title and ownership over the land and to hold that the defendants cannot auction or dispossess the plaintiff.

3. The defendant having appeared in the suit filed a detailed written statement disputing the claim put forth by the plaintiff. The contention of the plaintiff that the temple

belongs to the family and the plaintiff had succeeded as the pujari was also disputed. It was contended that the pujari of the temple is appointed by the Government and the father of the plaintiff though had performed pooja in that regard the plaintiff is not the pujari of the temple as he has not been appointed nor he has any right and title to the disputed land. The manner of claim as put forth in respect of the property was disputed and the Revenue entry as stated by the plaintiff was explained that such entry was in the name of the temple and the name of the father of the plaintiff Late Laxmandas was only in the capacity of the Manager of the temple. The name of the District Collector has been recorded as Manager in the year 1974 as per the directions of the State Government. According to the respondent, Laxmandas did not make any objection during his life time on deletion of his name. When Laxmandas did not object for such deletion, Ramesh Das has no right to raise objection. The auction held on 29th April, 1992 was sought to be justified as the plaintiff had no right. It was further contended that the procedure for appointment of pujari was known to the plaintiff and he had also made an

application but since no pujari was appointed for the temple and the land was not being utilised, the auction was ordered for the benefit of the temple. In that view, the defendants had sought for dismissal of the suit.

4. Taking note of the rival contentions, the trial court framed four issues for its consideration. The plaintiff examined himself as PW-1 and relied upon the documents at Exhibits P-1 to P-13. He examined one Shri Hari Singh as PW.2. The defendants examined the witnesses DW-1 and DW-2 and also relied upon the documents at Exhibit D. Series. The trial court on analysing the evidence accepted the claim put forth by the plaintiff and on relying upon the revenue documents which were marked by the plaintiff, decreed the suit by holding that Ram Mandir as private temple. The lower appellate court in the appeal filed under Section 96 of the Civil Procedure Code while reappreciating the evidence had considered the evidence and has set aside the judgment of the trial court by holding that plaintiff has not adduced any evidence that the suit temple is a private temple. The High Court in the appeal

filed under Section 100 of the Code of Civil Procedure has accepted the finding rendered by the lower appellate court that the plaintiff failed to prove that the suit temple is a private temple.

5. In that background what arises for consideration herein is as to whether the assessment of the evidence made by the lower appellate court, which was accepted by the High Court in the Second Appeal is based upon evidence or as to whether the consideration made by the trial court is appropriate. In that regard, though the plaintiff as PW.1 has claimed that the land and the temple constructed thereon belongs to their family and in that light has not only claimed to be the owner of the property and also contends that he is the pujari of the temple, the fallacy of such claim is evident in the very pleading as put forth inasmuch as the claim at the outset is to the effect that Shri Ram Mandir Temple was built by the forefathers out of their own pocket on the land in question. The further averment is that the Jagirdar being the devotee of the Ram Mandir gifted 25 bighas of land from his jagir. If

that be the pleading, as to how the temple was built before the land as claimed was gifted would not stand answered. Be that as it may, as rightly observed by the lower appellate court and the High Court, no document of title to acquire right and title over the land has been relied upon by the plaintiff. The evidence of Shri Hari Singh PW.2 is also to the said effect and has sought to assert that the people of the village go to the temple for darshan and offer pooja. That by itself does not prove the status of the land nor the ownership as claimed by the plaintiff. Bandobasti Khasra (Ex.D-1) has been produced by the respondent-defendant as per which the disputed land had been shown as "Inam Devasthan", being of the ownership of the temple and the pujari has been shown as the Manager.

6. Though the plaintiff had relied upon the Revenue entries which were marked in Exhibit P.Series, since we have already taken note that there is no document of title relied upon by the plaintiff, the Revenue entries are of no assistance since as per the well-established position of law the revenue documents do not create title. Even otherwise

as stated in the evidence of the defendants, the entries initially were in the name of temple and none of the entries contained the name of the plaintiff. Though initially the name of the pujari in that background was indicated, the Revenue entries were changed to that of the District Collector in view of the Administrative Order dated 12th April, 1974. According to the respondent-State, the entry of the name of District Collector as Manager of the temple properties dated 12.04.1974 has been done pursuant to an order of the State Government in order to curb the mismanagement of the temple properties at the hands of the pujaris. When the name of the Collector has been recorded as Manager in the year 1974, Laxmandas did not make any objection during his life time on deletion of his name. Despite the plaintiff claiming right to the property based on the Revenue entries no grievance had been raised at any given time earlier to the filing of the present suit. Even in the suit presently filed the grievance made is with regard to the auction dated 29th April, 1992 and the suit itself was instituted in 1996.

7. As against the contentions put forth by the learned senior counsel for the plaintiff-appellant contending right of the plaintiff over the property, the learned counsel for the respondent, in addition to pointing out the conclusion reached by the lower appellate court as also the High Court has relied upon the judgment dated 27th February, 2019 (2019) 4 SCALE 302 ***Shri Ram Mandir Indore vs. State of Madhya Pradesh & Others***. This Court in the said appeal was considering a similar claim put forth in respect of the property and had negated the contention put forth therein and dismissed the appeal. What is necessary to be taken note at the outset is that in the said case the Shri Ram Mandir Indore was before this Court and the documents relied upon also referred to the status of the land and the right claimed by the Mandir. However, the claim as made to claim as a private temple was negated. In fact, in the instant case as rightly observed by the lower appellate court the claim is not even by the temple or the deity but the individual has made claim over the property as if it is privately owned. In that background, the High Court has also taken note that no document has been

relied upon by the plaintiff to claim ownership over the property.

8. The learned senior counsel on being confronted with the above aspects has contended that even if in the absence of documents of title, when the Revenue entries were to be changed to the name of the District Collector the same could not have been made based on Administrative Order dated 12th April, 1974 without giving opportunity to the person whose name is entered in the Revenue Registers. In that regard, the learned senior counsel has placed reliance on the judgment of this Court dated 6th October, 2016 passed in C.A.No.8554 of 2015 titled as ***State Government of Madhya Pradesh. & Ors. vs. Narsingh Mandir Chikhalda and Ors.*** It is no doubt seen in the said judgment that this Court had adverted to the provision as contained in Section 115 of the M.P. Land Revenue Code, 1959 and keeping in view the provision had arrived at the conclusion that any change in the Revenue entry even to make correction of a wrong entry in the Khasra and any other land records, it can only be done by

providing opportunity to the person in whose name the Revenue entry subsists and is sought to be corrected.

9. Notwithstanding the legal position in that regard cannot be disputed, the said judgment cannot be applied in abstract. We say so for the reason that in the instant case, as already noticed from the evidence as appreciated by the courts below including the High Court it is evident that no document of title was relied upon by the plaintiff herein to establish his claim. Even the Revenue entry was not individually in the name of the plaintiff but was being claimed based on the entry of his father's name with that of the temple. On the other hand, in the cited case, the temple itself was the plaintiff and was claiming the entries in their name for which the document relied upon was a registered gift deed dated 20th June, 1963. In that background, it could be assumed that the Revenue entries, if any, contained in the said case was in the background of reliance placed on the gift deed and it is in that backdrop the second substantial question of law relating to the compliance of issuing notice under Section 115 of the M.P.

Land Revenue Code, 1959 had arisen for consideration. The same was further in the background of the first substantial question of law that was raised therein relating to the status of the temple. In the instant case no substantial question in the contest of ownership has arisen. If that be the position the cited decision would not be of assistance to the appellant herein.

10. Referring to Bandobasti Khasra (Ex-D1), the First Appellate Court held that Ex.-D1 is an important document in which the disputed land has been shown as “Inam Devsthan” and being of ownership of the temple and pujari has been shown as the Manager and later, the name of the District Collector, Dhar has been recorded and the said position has been continuing. Based upon the evidence, the First Appellate Court rightly held that mere statement of the plaintiff and Hari Singh-PW-2, cannot prove the disputed temple as a private temple, the First Appellate Court held that in the Revenue record, the ancestors of the plaintiff has been shown only as Manager and this position has been shown in Ex.D-1 also. In that circumstance, in

our considered view that as rightly observed by the High Court in S.A.No.274 of 2001, no substantial question of law as contemplated under Section 100 of the Code of Civil Procedure had arisen for consideration. If that be the position no issue arises for consideration in the instant appeal as well.

11. Accordingly, the appeal being devoid of merit stands dismissed with no order as to costs.

.....J.
(R. BANUMATHI)

.....J.
(A.S. BOPANNA)

**New Delhi,
July 22, 2019**