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WP-504-2013

IN THE HIGH COURT OF MADHYA PRADESH
AT JABALPUR

BEFORE

HON'BLE SHRI JUSTICE DEEPAK KHOT

ON THE 11th OF MAY, 2026WRIT PETITION No. 504 of 2013*SHIV KUMAR VAISHYA**Versus**SHUBHKARAN VAISHYA*

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Appearance:

Shri Shiv Kumar Dubey - Advocate for the petitioner.

Shri Shreyas Pandit - Advocate and Shri Archit Diwakar - Advocate

for the respondent.

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ORDER

The present petition under Article 226 of the Constitution of India has been filed seeking following reliefs :

7.1 To call for the entire records of the learned Courts below for kind perusal of this Hon'ble Court.

7.2 To issue an appropriate writ/direction to set aside the orders dated 7/12/2012 (Ann.P-4) passed by the Learned Revenue Board Gwalior and 15/5/2008 (Annexure P-1) passed by the Learned Naib Tehsildar and further be pleased to restore the order of the Learned SDO dated 31/7/2008 (Ann.P-2) and order dated 19/6/2009 (Annexure P-3) passed by the Additional Commissioner Rewa, Division Rewa (M.P.), in the interest of justice.

7.3 Any other suitable relief deemed fit in the facts and circumstances of the case may also kindly be granted together with the cost of the present case.

2. It is submitted by learned counsel for the petitioner that the respondent had applied for partition under Section 178 of the MPLRC (hereinafter referred to as 'the Code of 1959', for the sake of brevity). On the



said application, the petitioner had taken objection that the respondent is not recorded as a Bhumiswami in the revenue records, therefore, he cannot file such an application. On that objection, the Tehsildar had stayed the proceedings for three months, as per the proviso of Section 178 of the Code of 1959 directing the petitioner to file a Civil Suit before the competent Civil Court of law. Thereafter, he resumed the proceedings after three months and passed an order under Section 178 of the Code of 1959 vide order dated 15.05.2008 Annexure P/1. The petitioner had preferred an appeal against the said order which was allowed vide order dated 31.07.2008 Annexure P/2 against which second appeal was filed by the respondent which was dismissed vide order dated 19.06.2009 Annexure P/3. Being aggrieved by the said order dated 19.06.2009 Annexure P/3, respondent had preferred a revision which was decided by the impugned order dated 07.12.2012 Annexure P/4 allowing the revision and affirming the order of the Tehsildar. Being aggrieved, the petitioner has filed the present petition.

3. It is submitted by learned counsel for the petitioner that from bare perusal of the provision of Section 178, it is clear that if on any holding there are more than one Bhumiswami, then any such Bhumiswami may apply to the Tehsildar for partition of his share in the holding. If any question of title is raised before the Tehsildar, then the Tehsildar shall stay the proceedings before him for a period of three months to facilitate institution of civil suit for determination of the question of title.

4. It is submitted that the Tehsildar did not have any jurisdiction to stay the proceedings when there was admitted entries in the revenue records in



regard to the petitioner, in fact, the respondent who has raised the question that he is one of the co-sharer or joint Bhumiswami/co-tenure holder in the holdings, then it was for the respondent to file a suit for his declaration. The Tehsildar assuming that as the objection has been raised by the petitioner that the respondent is not a Bhumiswami, the petitioner ought to have filed a suit, accordingly, stayed the proceedings for three months and thereafter, resumed and passed an order, therefore, the impugned order is without jurisdiction.

5. Per contra, learned counsel for the respondent submits that the word 'Bhumiswami' has been used in the provision of Section 178 of the Code of 1959 but, the word 'Recorded Bhumiswami' is not used in the statute with an object that any Bhumiswami who is claiming to be Bhumiswami, can apply under Section 178 of the Code of 1959. Therefore, if the person who is objecting to a partition, he should be directed to file a civil suit for declaration that such a person who has applied is not a Bhumiswami, therefore, the Tehsildar has rightly passed the order.

6. It is submitted that the appellate authority without considering the true spirit of the law has allowed the appeal and thereafter, the second appellate authority has affirmed that order. However, the Board of Revenue considering the law on the point has rightly allowed the revision of the respondent, therefore, prayed for dismissal of the petition. Learned counsel has relied on the orders of Coordinate Bench of this Court in the case of *Virendra Singh vs. Krishnapal Singh (2020) 3 MPLJ 348* and *Baiju vs. Mulayam Bai 1965 RN 465 (CN 132)*.

7. Heard learned counsel for the parties and perused the record.



8. The sole question which has been raised by the petitioner, in the present petition, is that the person who is not recorded as a Bhumiswami in the revenue records can apply for partition on the basis that he is also having the share which can be determined by the Tehsildar.

9. The question is no more res integra that the revenue authorities are not having any jurisdiction to decide the title. It is only the civil Court which has got the jurisdiction to decide the title in favour of any person. The person who is claiming as one of the Bhumiswami is asserting his title against the other Bhumiswami, therefore, it was a declaration, which is positive in nature, is to be sought by the person who is claiming his rights in the joint holdings. If the person is not recorded as a Bhumiswami, then he has no right to file an application under Section 178 of the Code of 1959.

10. For ready reference, the provision of Section 178 of the Code of 1959 is reproduced hereunder :

178. Partition of holding.— (1) If in any holding, which has been assessed for purpose of agriculture under Section 59, there are more than one bhumiswami any such bhumiswami may apply to a Tahsildar for a partition of his share in the holding : Provided that if any question of title is raised the Tahsildar shall stay the proceeding before him for a period of three months to facilitate the institution of a civil suit for determination of the question of title.

10(1-A) If a civil suit is filed within the period specified in the proviso to sub-section (1), and stay order is obtained from the Civil Court, the Tahsildar shall stay his proceedings pending the decision of the Civil Court. If no civil suit is filed within the said period, he shall vacate the stay order and proceed to partition the holding in accordance with the entries in the record of rights.

(2) The Tahsildar, may, after hearing the co-tenure holders, divide the holding and apportion the assessment of the holding in accordance with the rules made under this Code.

11. This Court in the case of **Virendra Singh (supra)** has held as under :

7. From the plain reading of the Section, it is clear that if the civil suit is filed and the



order is obtained from the civil court, then the further proceedings before the revenue authorities for partition of the holding shall be kept in abeyance, therefore, the pendency of the civil suit as well as temporary injunction are two necessary ingredients for staying the further proceedings of the partition proceedings.

8. In the present case, according to the petitioner, the second appeal filed by him which has been registered as SA No.1214/2018 is still pending before the court. However, it is fairly conceded by the counsel for the petitioner that there is no interim order in the said second appeal. Thus, it is clear that the second ingredient of stay by the civil court is not satisfied.

12. Further, it has been held in the case of ***Baiju (supra)*** :

"4. I have considered these arguments of the learned counsel. It seems to me that the question of possession is not very relevant in this case as it is admitted by all the parties that the land in question was the joint holding of Gajadhar and his two brothers. The possession of one of the co-tenants of joint holding is to be treated as the possession on behalf of all the co-tenants. During his lifetime, Gajadhar alone was apparently cultivating the land as both the applicant and Mst. Rambharosi were minors. This, however, could not affect the claims of the applicant and Mst. Rambharosi to title over the land. Similarly, if after the death of Gajadhar the applicant was cultivating the land either by himself or along with Mst. Chatariwali, this could not affect the title of Mst. Rambharosi. Their possession shall be treated to be in behalf not only of themselves but also of Mst. Rambharosi, the third co-tenant. Rambharosi being a woman, though not a minor, could not cultivate the land herself, and the fact that she had married also would not make any difference to her rights over the land. Under her personal law she inherits her father's rights over the holding and these rights are not affected by her marriage. Thus, so long as her rights subsist and the holding is not partitioned, the applicant cannot be said to be in exclusive possession of the land either by himself or along with the legal heirs of the deceased Gajadhar. In such a case therefore the question of title is more important than the question of possession for the purpose of mutation u/s 110 of the Code. Nothing has been urged by the applicant before me to throw any genuine doubt on Mst. Rambharosi's claim to title over the land as the daughter of one of the deceased co-tenants. There is thus no proper ground for interfering with the decision of the Addl. Commissioner.

13. From reading of aforesaid orders passed by the Court, it is discernible that in first case, it is held that when disputed question of facts are to be adjudicated then matter should be referred to the Civil Court and in present case, it is found that joint holding was admitted by the parties,



therefore, the Court had opined that one of the holder was having permission for all co-tenure holders.

14. It has further been held in the case of *Jitendra Singh vs. State of Madhya Pradesh 2021 SCC OnLine 802* :

7. Right from 1997, the law is very clear. In the case of Balwant Singh v. Daulat Singh (D) By Lrs., reported in (1997) 7 SCC 137, this Court had an occasion to consider the effect of mutation and it is observed and held that mutation of property in revenue records neither creates nor extinguishes title to the property nor has it any presumptive value on title. Such entries are relevant only for the purpose of collecting land revenue. Similar view has been expressed in the series of decisions thereafter.

8. In the case of Suraj Bhan v. Financial Commissioner, (2007) 6 SCC 186, it is observed and held by this Court that an entry in revenue records does not confer title on a person whose name appears in record-of-rights. Entries in the revenue records or jamabandi have only “fiscal purpose”, i.e., payment of land revenue, and no ownership is conferred on the basis of such entries. It is further observed that so far as the title of the property is concerned, it can only be decided by a competent civil court. Similar view has been expressed in the cases of Suman Verma v. Union of India, (2004) 12 SCC 58; Faquddin v. Tajuddin, (2008) 8 SCC 12; Rajinder Singh v. State of J&K, (2008) 9 SCC 368; Municipal Corporation, Aurangabad v. State of Maharashtra, (2015) 16 SCC 689; T. Ravi v. B. Chinna Narasimha, (2017) 7 SCC 342; Bhimabai Mahadeo Kambekar v. Arthur Import & Export Co., (2019) 3 SCC 191; Prahlad Pradhan v. Sonu Kumhar, (2019) 10 SCC 259; and Ajit Kaur v. Darshan Singh, (2019) 13 SCC 70.

15. From bare perusal of the law laid down by this Court, it is clear that when the person has to assert his title for claiming his share in the land by getting it partitioned, then the revenue authority has no jurisdiction because it requires evidence and proof which is not permissible and cannot be adjudicated by the revenue authorities and that is only the civil Court



which can adjudicate the question of title on the basis of the available evidence. Any person who is not recorded as a Bhumiswami, if the Tehsildar has to adjudicate the matter that he is having title and interest as a joint owner or a Bhumiswami, then he has to relegate the matter to the Civil Court, as per the proviso. It is not the person who is objecting that the person is not Bhumiswami and is not recorded as a Bhumiswami to be directed to file a civil suit for negative declaration that the person who is claiming to be Bhumiswami, is not a Bhumiswami.

16. Therefore, in the considered opinion of this Court, the Tehsildar has exceeded its jurisdiction in allowing the application as well as the Board of Revenue in confirming the order passed by the Tehsildar. Therefore, the order dated 15.05.2008 Annexure P/1 and order dated 07.12.2012 Annexure P/4 are hereby quashed. The order passed by the appellate authority is hereby affirmed.

17. The respondent is at liberty to file a civil suit before the competent Civil Court of law for asserting his right and share in the property.

18. With the aforesaid, the petition is disposed of.

(DEEPAK KHOT)
JUDGE