

HIGH COURT OF MADHYA PRADESHBENCH AT GWALIORJUSTICE SUJOY PAUL.**Writ Petition No. 6949/2014**

Ramgopal Sharma

Vs.

Kamla Bai

Shri Abhishek Bhadoriya, Advocate for the petitioner.
Shri S.K. Shrivastava, Advocate for the respondent.

ORDER**(28 / 10 /2015)**

Challenge in this petition is made to the order dated 02.07.2014 (Annexure P/1), order dated 31.01.2005 (Annexure P/4) and order dated 06.06.2009 (Annexure P/6) passed by Board of Revenue, Additional Collector and Additional Commissioner respectively.

2. The parties have fought long drawn battle before the Revenue Courts. Shri Abhishek Bhadoriya, learned counsel for the petitioner, contends that Halkibai was the original owner of the land. The respondent No.1 is the daughter of Halkibai whereas petitioner is son of Parmanand who was brother of Halkibai. Kamlabai's name was mutated in the land record on 26.12.1991. The petitioner, feeling aggrieved by said mutation, decided to challenge it because no notice was issued to petitioner before mutating the name of Kamlabai in the revenue record. On 28.07.1992 petitioner's name was mutated. Respondent filed an appeal against the said mutation order dated 28.07.1992 before the Sub-Divisional Officer (SDO). The SDO dismissed the appeal on 28.03.1995. The respondent then preferred an appeal against the said order dated 28.03.1995 before Additional Commissioner, which was decided on 30.04.1997 (Annexure P/2). The Additional Commissioner remanded the matter back to

the authority below to take a decision afresh.

3. In turn, on 06.12.1999, the Tehsildar passed an order in favour of respondent and accordingly, respondent's name was directed to be mutated. Feeling aggrieved by this order of Tehsildar, petitioner preferred an appeal before SDO. This appeal was decided by order dated 24.03.2000 (Annexure P/3). The appeal was allowed and case was remanded back to Tehsildar. Feeling aggrieved by this order, the respondent preferred revision before the Additional Collector. Said authority by order dated 31.05.2005 (Annexure P/4) set aside the remand order and confirmed the order of Tehsildar dated 06.12.1999 (filed in this case along with list of documents). The present petitioner then preferred a revision against the order dated 31.01.2005 before the Additional Commissioner which was dismissed on 06.06.2009 (Annexure P/6). The second revision of petitioner against this order was also dismissed by the Board of Revenue by order dated 02.07.2014. These orders Annexures P/1, P/4 and P/6 are called in question in this petition filed under Article 227 of the Constitution.

4. Shri Abhishek Bhadoriya, learned counsel for the petitioner, submits that petitioner preferred a detailed appeal against the order dated 06.12.1999. The learned SDO did not decide the appeal on merits and remanded the matter back to Tehsildar to decide it afresh. This order of remand must be treated as interlocutory order because merits of the matter were not touched upon by the SDO. Hence, if revisional authority found any illegality in such remand order of SDO (Annexure P/3), in the fitness of things, the revisional authority should have set aside the order Annexure P/3 and remanded the matter back for adjudication on merits by the SDO. The revisional authority has erred in confirming the order dated 06.12.1999. In the result, the petitioner's right to prefer appeal and get adjudication on the points raised in the

appeal were taken away. He contends that appeal is a statutory remedy provided under M.P. Land Revenue Code (Code) and such right could not have been taken away by revisional authority. In support of his contention, he relied on 2013 MPRN 398 (*Shakuntala Devi & Ors. Vs. Board of Revenue and Ors.*); Judgment of Kerala High court in (*Klurian Vs. Jose*) decided on 17th March, 2006; AIR 1962 Calcutta 417 (*Dilip Kumar Ghosh Vs. State*); AIR 1969 Mad. 248 (*Kaluvaroya Pillai and Ors. Vs. Ganesa Pandithan and Ors.*); (2004) 4 SCC 26 (*Narayan Vs. Kumaran and Ors.*); 2012 AIR (SCW) 2523 (*Jegannathan Vs. Raju Sigamani and Anr.*). He submits that if impugned orders are not set aside, his objections and grounds raised in appeal will remain undecided and unadjudicated.

5. Shri S.K. Shrivastava, learned counsel for the respondent, on the other hand, relied on factual history of the matter. He submits that respondent is contesting this matter for mutation only since 1991. She has fought a long drawn battle before the Revenue Courts and in view of this chequered history, this matter should not be remanded back for any further adjudication. More so when detailed adjudication has already been made in the order dated 06.12.1999 by the Tehsildar. He submits that revisional authorities have not committed any error of law or jurisdiction which warrants interference by this court under Article 227 of the Constitution. In support of his contention, he relied on following judgments:-

- (i) (*Maya Devi Vs. Rajkumari Batra*) reported in 2011 (1) MPLJ 326
- (ii) (*Kirat Singh Vs. Trilok (Tilak) Singh and Ors.*) reported in AIR 1984 Allahabad 155.
- (iii) (*Bazuddin Vs. Dr. Brij Mohan Pathak*) reported in 1992 (II) MPWN 30.
- (iv) (*K. Krishna Reddy and Ors. Vs. The Special Dy. Collector, Land Acquisition Unit II*) reported in AIR 1988 SC 2123 .
- (v) (*Rajesh Sahu Vs. Jagannath*) reported in 2013 RN 263.

6. Shri Shrivastava further submits that in the present case, the revenue court of competent jurisdiction

(Tehsildar) on the earlier remand has already considered the factual matrix of the matter and passed a detailed order dated 06.12.1999. The SDO by order dated 24.03.2000 mechanically disturbed it. Taking into account the earlier adjudication, the revisional authorities have not committed any error and rightly upheld the order dated 06.12.1999. He submits that in view of aforesaid factual backdrop, no interference is warranted by this Court.

7. Shri Abhishek Bhadoriya submits that scope of interference in appeal and in revision are different. Under the garb of exercising revisional jurisdictional, it was not open for the revenue authorities to pass order dated 31.01.2005 (Annexure P/4) whereby order of Tehsildar dated 06.12.1999 was confirmed.

8. Parties confined their arguments to the extent indicated above.

9. I have heard the parties at length and perused the record.

10. Before dealing with the rival contentions advanced at the bar, it is profitable to examine the scope of appellate and revisional powers as per the Code. Section 44 of the Code provides about appeal and appellate authorities. Section 49(3) of the Code makes it clear that appellate authority may pass one of the following orders :-

- (i) It may confirm the order of the lower court; or
- (ii) It may vary or reverse the order appealed against; or
- (iii) It may direct certain further investigation to be made; or
- (iv) It may direct that such other additional evidence may be taken; or
- (v) It may itself take such additional evidence, as it may think proper; or
- (vi) It may remand the case for disposal with such directions, as it thinks fit.

11. Section 50 of the Code deals with revision. The

revisional authority for the purpose of satisfying itself as to legality or propriety of any order passed by or as to the regularity of the proceedings of any Revenue Officer subordinate to it call for, and examine the record of any case pending before, or disposed of by such officer. He is equipped with the power to pass such order in reference thereto as he thinks fit. Justice Gulab Gupta in *1985 RN 181 (Ghurwa Ram & Ors. Vs. State of M.P. & Ors.)* opined that there is distinction between appellate powers and revisional powers. It is held that appeal is considered to be a continuation of the proceedings and the entire proceedings are before the appellate authority which has the power of reviewing evidence. There is no such power with the revisional authority. Indeed the revisional powers vested in an authority are similar to the power of issuing *certiorari* vested in the High Court and is limited to keeping the subordinate court within the bounds of their jurisdiction. It is apposite to mention here that in *Ghurwa Ram* (supra) this Court opined that the propriety that has to be considered is the propriety of the order challenged in revision and not of the original order.

12. I respectfully agree with the aforesaid dictum. The parties have relied on the judgments which are relating to appellate and revisional powers arising out of Civil Procedure Code. Since Section 44, 49 and 50 of M.P. Land Revenue Code are differently worded, judgments based on different statute (C.P.C.) cannot be pressed into service. The judgment of *Ghurwa Ram* which is based on the MPLR Code holds the field.

13. Shri S.K. Shrivastava relied on *K. Krishna Reddy* (supra). In the peculiar facts of the said case, the Apex Court did not remand the matter and decided the matter itself. However, in the said case, the matter was relating to compensation. The parties gave some proposal before the Supreme Court which was accepted. The said judgment has no application in the peculiar facts of this

case. The judgment of *(Maya Devi) & (Kirat Singh)* (supra) are based on certain provisions of C.P.C. The same is the case with *Jagannath* (supra). Thus, these judgments are of no assistance in the present case. In *Bazuddin* (supra) the Court examined the provisions of C.P.C. and in the peculiar facts and circumstances of that case passed an order in an appeal. The said judgment cannot be pressed into service in the present case.

14. In the present case, as noticed, the petitioner's appeal is decided by a short and cryptic order dated 24.03.2000. The appellate authority did not deal with the merits of the matter and opined that court below without minutely examining the registered Will disbelieved it which is incorrect. The SDO while passing Annexure P/3 did not deal with the points raised in the appeal nor gave any finding on the merits of the matter. In revisional jurisdiction, the revisional authorities have upheld the order of Tehsildar whereas the legality, validity and propriety of appellate order (Annexure P/3) alone was called in question. In *Ghurwa Ram* (supra) this Court in no uncertain terms made it clear that appellate powers and revisional powers are distinct and different. The revisional powers are almost analogous to the power of this Court under Article 227 of the Constitution. Re-appreciation of evidence and examining the evidence as an appellate authority is not permissible. While exercising revisional jurisdiction, mainly decision making process needs to be examined. In appeal, the entire matter on merits can be re-examined, evidence can be re-appreciated and normally appellate authority can undertake the same exercise which is permissible for a court of first instance / original jurisdiction.

15. As per forgoing analysis, in my view, the revisional authorities after setting aside the order (Annexure P/3) should have remitted the matter back to the SDO to decide the appeal of petitioner on merits. In exercise of

revisonal jurisdiction, it was not open to the revisonal court to examine the legality, validity and propriety of the order dated 06.12.1999. More so when there was no adjudication on merits on the said order by the appellate authority. Thus, following the judgment of *Ghurwa Ram* (supra), I deem it apposite to set aside the order dated 02.07.2014 (Annexure P/1), order dated 31.01.2005 (Annexure P/4) and order dated 06.06.2009 (Annexure P/6) to the extent revisonal authorities have not remitted the matter back before the appellate authority (SDO) for adjudication on merits. The said orders to the extent indicated above are set aside. The matter is remitted back before the SDO to decide it on merits. I am not oblivious of the fact that parties are litigating since 1991. Considering the aforesaid, the SDO is directed to expedite the hearing and decide the appeal on merits in accordance with law expeditiously, preferably within 90 days.

16. Petition is allowed to the extent mentioned herein above. No costs.

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(Sujoy Paul)
Judge