

**IN THE HIGH COURT OF MADHYA PRADESH
AT GWALIOR**

BEFORE

HON'BLE SHRI JUSTICE G. S. AHLUWALIA

ON THE 22nd OF NOVEMBER, 2024

SECOND APPEAL No. 1742 of 2022

CHANDRA KUMAR

Versus

JAGANNATH PRASAD AND OTHERS

Appearance:

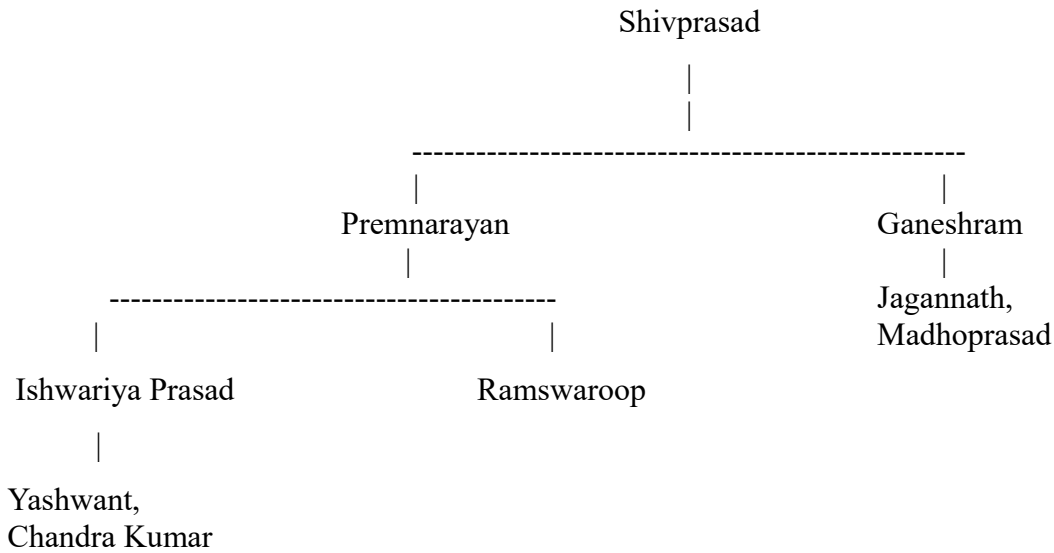
Shri Dharmendra Singh Chauhan, Advocate for appellant.

None for respondents.

JUDGEMENT

This second appeal, under Section 100 of CPC, has been filed against judgment and decree dated 27/04/2022 passed by I Additional District Judge, Ganjbasoda, District Vidisha, in Regular Civil Appeal No. 32/2019, thereby reversing the judgement and decree dated 22/8/2019 passed by Additonal Judge to the Court of Civil Judge Class I, Ganjasoda, District Vidisha in RCSA No. 500040/2016.

2. Facts necessary for disposal of present appeal, in short, are that plaintiffs/appellants filed a suit for declaration of title. As per plaint, family tree is as under:-



3. It is the case of appellants/plaintiffs that appellants are also having equal share in Khasra No. 163 area 0.178 hectare, 164 area 0.010 hectare, 165 area 0.178 hectare, total area 0.366 hectare situated in Village Hatoda, Tahsil Basoda, District Vidisha. It was alleged that defendants Jagannath and Madhoprasad, without giving information to appellants/plaintiffs filed an application for partition. *Fard* partition was prepared by Patwari and Panchnama was also prepared, according to which plaintiffs were shown to be in possession of Khasra No.165. However, contrary to possession of plaintiffs, it was shown by Patwari in *Fard* that Khasra No. 165/1 area 0.089 hectare is in possession of plaintiff, whereas Khasra No. 165/2 was shown to be in possession of defendants Jagannath and Madhoprasad. It was alleged that Khasra No.165/2 was shown horizontal to the main road and not vertical and thus it was pleaded that entire valuable land has been given to Jagannath and Madhoprasad.

4. An objection was raised by appellants. However, the said objection was set aside by Tahsildar. Appellants preferred an appeal before SDO. The SDO also dismissed the appeal. Thus, a civil suit was filed alleging

that order passed under section 178 of the M.P. Land Revenue Code, 1959 was bad in law.

5. Defendants filed their written statements and denied plaint averments.

6. The trial Court, after recording evidence and hearing both the parties decreed the suit and set aside the order of partition dated 31/1/2013 passed by Tahsildar in Revenue Case No. 114-A-27/11-12. Being aggrieved by the said judgement and decree, defendants Jagannath Prasad and Madho Prasad preferred an appeal, which was registered as RCA No.32/2019 and I Additional District Judge Ganjbasoda, District Vidisha, by judgment and decree dated 27/4/2022, has allowed the appeal and has held that the suit against the order of partition was not maintainable and, thus, the judgment and decree passed by the trial Court has been set aside.

7. Challenging the judgment and decree passed by the appellate Court, it is submitted by counsel for appellants that since the Tahsildar should have partitioned the land vertically but in order to give undue advantage to defendants had partitioned it horizontally, therefore, the trial Court committed no mistake by setting aside the order of partition, and proposed the following substantial questions of law:-

I क्या योग्य अधीनस्थ न्यायालयों ने विचारण न्यायालय के निर्णय को अपास्त करने में कानूनी भूल की है ? जबकि अधीनस्थ न्यायालय द्वारा पारित आदेश न्याय संगत एवं उचित था ।

II. क्या अपीलीय न्यायालय द्वारा पारित आदेश रिकार्ड से भिन्न होने से स्थिर रखे जाने योग्य है ?

III. क्या अधीनस्थ न्यायालय द्वारा विधि मान्य सिद्धान्त कि सिविल न्यायालय का निर्णय राजस्व न्यायालय पर बंधनकारी प्रभाव रखता है, के प्रभाव को नकार कर विधिक भूल की है ?

IV. क्या अपीलीय न्यायालय द्वारा अधीनस्थ न्यायालय द्वारा पारित निर्णय को इस आधार पर अपास्त करने में कानूनी भूल कारित की है, घोषणा संबंधी वाद सुनने की अधिकारिता सिविल न्यायालय को नहीं है ?

8. The moot question for consideration is as to whether civil suit filed by appellants was maintainable in the light of section 257 of the M.P. Land Revenue Code, 1959 (*for short 'the Code'*) or not?

9. Section 257 of the Code reads as under:-

"257. Exclusive jurisdiction of revenue authorities.— Except as otherwise provided in this Code, or in any other enactment for the time being in force, no Civil Court shall entertain any suit instituted or application made to obtain a decision or order on any matter which the State Government, the Board, or any Revenue Officer is by this Code, empowered to determine, decide or dispose of, and in particular and without prejudice to the generality of this provision, no Civil Court shall exercise jurisdiction over any of the following matters : —

(a) any decision regarding any right under sub-section (1) of Section 57 between the State Government and any person;

(a-1) any decision regarding the purpose to which land is appropriated under Section 59;

- (b) any question as to the validity or affect of the notification of a land survey;
- (c) any claim to modify a decision determining abadi made by a District Survey Officer or Collector;
- (d) any claim against the State Government to hold land free of land revenue, or at less than the fair assessment, or to be assigned in whole or in part the land revenue assessed on any land;
- (e) the amount of land revenue assessed or reassessed under this Code or any other enactment for the time being in force;
- (f) any claim against the State Government to have any entry made in any land records or to have any such entry omitted or amended.
- (g) any question regarding the demarcation of boundaries or fixing of boundary marks under Chapter X;
- (h) any claim against the State Government connected with or arising out of, the collection of land revenue or the recovery of any sum which is recoverable as land revenue under this Code or any other enactment;
- (i) any claim against the State Government or against a Revenue Officer for remission or suspension of land revenue, or for a declaration that crops have failed in any year;
- (j) any decision regarding forfeiture in cases of certain transfers under Section 166;

(k) ejectment of a lesser of a Bhumiswami under sub-section (4) of Section 168;

(l) any claim to set aside transfer by a Bhumiswarni under sub-section (1) of Section 170 and clauses (a) and (b) of sub-section (2) of Section 170-A; (l-1) any matter covered under Section 170-B.

(m) ejectment of a Government lessee under Section 182;

(n) xxx

(o) xxx

(p) xxx

(q) xxx

(r) xxx

(s) xxx

(t) xxx

(u) xxx

(v) amount payable as compensation under sub-section (3) of Section 209, confirmation of the scheme for consolidation of holdings under Section 210, transfers of rights in carrying out the scheme under Section 213 and assessment and apportionment of costs of consolidation of holdings under Section 215;

(w) any claim to modify any entry in the Nistar Patrak;

(w-1) any decision regarding penalty under Section 248, for unauthorisedly taking possession of land;

(x) any decision regarding reinstatement of a Bhumiswami improperly dispossessed and confinement in civil prison under Section 250;

(x-i) xxx

(x-ii) any decision regarding delivery of actual possession of land to the Bhumiswami or the Government Lessee under Section 250-B.

(y) any decision regarding vesting of tanks in State Government under Section 251 and any claim against the State Government arising thereunder;

(z) any claim against the State Government to set aside or modify any premium, penalty, cess or rate imposed or assessed under the provisions of this Code or any other enactment for the time being in force;

(z-1) xxx

(z-2) any claim to compel the performance of any duty imposed by this Code on any Revenue officer or other officer appointed under this Code."

10. Therefore, it is clear that if the appellants were aggrieved by the order passed by Tahsildar, as well as, by dismissal of their appeal, then instead of filing civil suit, they should have preferred further appeal, but order passed by the Revenue Court cannot be challenged on merits.

11. The Supreme Court in the case of **Dhulabhai & Ors. Vs. State of Madhya Pradesh and another reported in AIR 1969 SC 78** has held as under:-

“**32.** Neither of the two cases of Firm of Illuri Subayya, 1964-1 SCR 752 = (AIR 1964 SC 322) or Kamla Mills, 1966 1 SCR 64 = (AIR 1965 SC 1942) can be said to run counter to the series of cases earlier noticed. The result of this inquiry into the diverse views expressed in this Court may be stated as follows :-

(1) Where the statute gives a finality to the orders of the special tribunals the civil courts'

jurisdiction must be held to be excluded if there is adequate remedy to do what the civil courts would normally do in a suit. Such provision, however, does not exclude those cases where the provisions of the particular Act have not been complied with or the statutory tribunal has not acted in conformity with the fundamental principles of judicial procedure.

(2) Where there is an express bar of the jurisdiction of the court, an examination of the scheme of the particular Act to find the adequacy or the sufficiency of the remedies provided may be relevant but is not decisive to sustain the jurisdiction of the civil court.

Where there is no express exclusion the examination of the remedies and the scheme of the particular Act to find out the intendment becomes necessary and the result of the inquiry may be decisive. In the latter case it is necessary to see if the statute creates a special right or a liability and provides for the determination of the right or liability and further lays down that all questions about the said right and liability shall be determined by the tribunals so constituted, and whether remedies normally associated with actions in Civil Courts are prescribed by the said statute or not.

(3) Challenge to the provisions of the particular Act as ultra vires cannot be brought before Tribunals constituted under that Act. Even the High Court cannot go into that question on a revision or reference from the decision of the Tribunals.

(4) When a provision is already declared unconstitutional or the constitutionality of any provision is to be challenged, a suit is open. A writ of certiorari may include a direction for refund if the claim is clearly within the time

prescribed by the Limitation Act but it is not a compulsory remedy to replace a suit.

(5) Where the particular Act contains no machinery for refund of tax collected in excess of constitutional limits or illegally collected a suit lies.

(6) Questions of the correctness of the assessment apart from its constitutionality are for the decision of the authorities and a civil suit does not lie if the orders of the authorities are declared to be final or there is an express prohibition in the particular Act. In either case the scheme of the particular Act must be examined because it is a relevant enquiry.

(7) An exclusion of the jurisdiction of the civil court is not readily to be inferred unless the conditions above set down apply.”

12. Although, appellants/plaintiffs have claimed in the plaint that order of partition was passed behind their back, but appellants have filed copy of order dated 30/8/2013 passed by SDO, Basoda in Case No. 77/Apeal/2012-2013 (Ex.P/1) by which order dated 31/01/2013 passed by Tahsildar, Basoda in Case No. 114/A-27/11-12 was affirmed. In the said appeal, a specific ground was raised by plaintiffs that order of partition was passed without giving them opportunity of hearing. The appellate Court held that Tahsildar after registering the case had issued public notice. Patwari report was received. Thereafter, Premnarayan S/o Shivprasad, as well as, Chandra Kumar and Yashwant Kumar (appellants/plaintiffs) filed an objection before the Tahsildar that *Fard* partition has been prepared without giving any information to them and the *Fard* partition does not bear their signatures. Accordingly, Tahsildar carried out spot inspection on 12/1/2013 and thereafter decided the partition proceedings. Thus, it is clear that it is incorrect to say that order

of partition was passed behind the back of appellants. Furthermore, the appellants have also stated in the plaint that they had filed objections before Tahsildar.

13. In view of the bar as contained in S.257 of the Code, this Court is of the considered opinion that although civil suit is maintainable against order of revenue Court, but the same is maintainable only on limited issues i.e. competency of Authority, violation of principles of natural justice or non compliance of provisions of law. None of the grounds which can be entertained by civil Court against the order of revenue Court were proved by appellants.

14. Under these circumstances, this Court is of the considered opinion that appellate Court did not commit any mistake by holding that civil suit filed by appellants was barred under section 257 of the Code. As no substantial question of law arises in the present appeal, accordingly judgment and decree dated 27/04/2022 passed by I Additional District Judge, Ganjbasoda, District Vidisha, in Regular Civil Appeal No. 32/2019 is affirmed.

15. Appeal fails and is, hereby, dismissed.

(G.S. AHLUWALIA)
JUDGE

(and)