IN THE HIGH COURT OF MADHYA PRADESH AT INDORE

BEFORE

HON'BLE SHRI JUSTICE ANIL VERMA

SECOND APPEAL No. 156 of 2001

(RAMPURI THR.LRS MAHENDRAPURI S/O BHABHURPURI DECEASED MAHENDRAPURI AND OTHERS

Vs

THE STATE OF M.P.THROUGH COLLECTOR AND OTHERS)

Appearance:

(APPELLANTS BY SHRI RAMLAL PATIDAR ALONGWITH SHRI VISHAL PATIDAR, ADVOCATE.)

(RESPONDENT / STATE BY SHRI AMIT RAVAL, GOVERNMENT ADVOCATE.)

Reserved on : *21.05.2024*

Delivered on : *11.07.2024*

ORDER

Appellants / plaintiffs have preferred this second apppeal under Section 100 of Code of Civil Procedure, 1908 (hereinafter referred as "CPC") being aggrieved by the impugned judgment and decree dated 08.12.2000 passed by the Third Additional District Judge, Mandsaur in First Appeal No.25-A/2000, affirming the judgment and decree dated 03.11.1998 passed by the Civil Judge Class-II Narayangarh in Civil Suit No.401-A/1997, whereby the suit for declaration of title and permanent injunction filed by the appellants has been dismissed.

02. Facts of the case in brief are that the appellants / plaintiffs have filed a civil suit before the trial Court for declaration of title and permanent injunction in regard of the suit land situated at Village Kitukhedi, Tehsil Malhargarh, District Mandsaur (M.P.) bearing survey Nos.22/1-73, 104/7-10, 21/1-15, 13/2-26, 12/2-26, 94/0-90 having total area ad-measuring 6.228 hectare. The suit land was allotted by the erstwhile Holkar State as an Inam in the year 1931 and the appellants'

forefathers performed Puja and Archana in the temple of the Nilkantheshwar Mahadev situated at Village Kitukhedi. After the death of father of the appellants, appellants have been in peaceful possession of the aforesaid disputed land and temple. On 08.05.1948 Holkar State was abolished and in the year 1950 M.P. Land Revenue and Agriculture Rights Act came into force and in the year of 1959 M.P. Land Revenue Code came into existence before this Code the appellants are in possession of the suit land as Inamdar / Bhumiswami. The respondents added the name of the Collector Mandsaur as a Manager Bhumiswami in the disputed land without giving any notice to the appellants. The respondent auctioned the suit land on 25.07.1992. Thereafter, appellants gave notice to the respondent and then, filed this civil suit before the trial Court.

03. The respondent No.1 / defendant filed a written statement and denied all the plaint allegations with the contention that the disputed temple was not constructed by the forefathers of the plaintiffs, it is not a personal temple of the plaintiffs and their forefathers, it was the temple of the Holkar State and the lease has been issued in the name of Murti / Deity. The temple was a public temple, therefore, Collector have a right to auction the land belonging to public temple. The plaintiffs did not file civil suit in compliance of the Section 57 of the M.P. Land Revenue Code. The Deity was not implicated as a party, therefore, civil suit is not maintainable and deserves to be dismissed.

04. On the basis of aforesaid pleadings, the trial Court has framed issues and after recording the evidence and hearing both the parties, dismissed the civil suit filed by the appellants / plaintiffs vide judgment and decree dated 03.11.1998. Being aggrieved by the said judgment and decree, appellants have preferred an appeal before the First Appellate Court and vide judgment and decree dated 08.12.2020, the First

Appellate Court has dismissed the appeal by affirming the judgment and decree passed by the trial Court. Thereafter, the appellants have preferred this second appeal.

05. Learned counsel for the appellants contended that judgment and decree passed by both the Courts below are contrary to the law and facts, both the Courts below have erred in holding that the appellants are not the Bhumiswami of the disputed land and temple is a private temple and same was neither constructed by the State nor maintained by the State. Therefore, the respondent No.1 had no authority to auction the land of the said temple. Both the Courts below have erred in not considering the provisions of Section 57(2) of the M.P. Land Revenue Code, 1950 (hereinafter referred as "MPLRC"). It is also argued that the appellants have preferred an application under Order 41 Rule 27 of CPC i.e. I.A. No.7019/2022 with the documents. Documents are necessary for the proper adjudication of this appeal, therefore, same may be taken on record. Hence, it is prayed that judgment and decree passed by both the Courts below be set aside and suit be decreed.

06. Per-contra, learned counsel for the respondent No.1 / State submits that the impugned judgment and decree passed by both the Courts below are based upon the cogent evidence available on record, therefore, it does not requires any interference.

07. This second appeal has been admitted on the following substantial questions of law:

> 1. Whether plaintiff's predecessor can be held or regarded as Bhumi Swami of the land and temple in question on the strength of Ex.P/1?
>
> 2. What is the true interpretation of Ex. P/1 in relation to plaintiff predecessor's rights of ownership over the suit land/temple?

3. Whether finding of Court below holding that plaintiff's predecessor is not the owner / Bhumiswami of the suit land / temple on the strength of Ex.P/1 is legally, sustainable on facts brought on record?

08. First of all, it will be appropriate to consider the application filed by the appellants under Order 41 Rule 17 of CPC i.e. I.A. No.7019/2022. Appellants want to file certain letters, two enquiry reports, some departmental proceedings, etc., but in the instant case, the appellants did not produce any proper explanation that why these documents were not produced before the trial Court and during the pendency of the first appeal also, these documents have been filed after 23 years of filing the present appeal, these documents are not issued by any Public Officer under Section 76 of the Indian Evidence Act, therefore, documents cannot be considered as Public Documents. In view of the aforesaid, this Court is of the considered opinion that the application filed under Order 41 Rule 21 of CPC does not appears to be *bonafide* and there is no sufficient ground for acceptance of these additional documents. Hence, I.A. No.7019/2022 is dismissed.

09. I have gone through the judgment and decree passed by both the Courts below and perused the entire record with due care.

10. The provisions of the MPLRC, which are relevant for the instant case are reproduced below:

> "2. Definitions:-
> *(1)* In this Code, unless there is anything repugnant to the subject or context,
>
> XXX XXX XXX
>
> (z-3) "unoccupied land' means the land in a village other than the abadi or service land, or the land held by a Bhumiswami, a tenant or a government lessee.
> 57. State ownership in all land-
> (1) All lands belong to the State Government and it is

hereby declared that all such lands, including Standing and flowing water, mines, quarries, minerals and forests reserved or not, and all rights in the sub-soil of any are the property of the State Government:
Provided that nothing in this section shall, save as otherwise provided in this Code, be deemed to affect any rights of any person subsisting at the coming into force of this Code in any such property. Bhumiswami-[(1)] Every person who at the time of coming into force of this Code, belongs to any of the following classes shall be called a Bhumiswami and shall have all the rights and be subject to all the liabilities conferred or imposed upon a Bhumiswami by or under this Code namely-
(a) every person in respect of land held by him in the Mahakoshal region in Bhumiswami or Bhumidhari rights in accordance with the provisions of the Madhya Pradesh Land Revenue Code, 1954 (II of 1955);
(b) every person in respect of land held by him in the Madhya Bharat region as a Pakka tenant or as a Muafidar, Inamdar or Concessional holder, as defined in the Madhya Bharat Land Revenue and Tenancy Act, Samwat 2007 (66 of 1950);
(c) every person in respect of land held by him in the Bhopal region as an occupant defined in the Bhopal State Land Revenue Act, 1932 (Iv of 1932);
160. Revocation of exemption from liability for land revenue (1) Every Muafi or Inam land, wherever situate, which was heretofore exempted from payment of the whole or part of the land revenue by a special grant from the Government or under the provisions of any law for the time being in force or in pursuance of any other instrument shall, notwithstanding anything contained in any such grant, law or instrument be liable from the commencement of the revenue year next following the coming into force of this Code, to the payment of full land revenue assessable thereon.
(2) Where any such Muafi or Inam land is held for the maintenance or upkeep of any public religious or charitable institution, the State Government may, on the application of such institution, in the prescribed form [and made within such time as may be prescribed] grant to it such annuity not exceeding the amount of the exemption from land revenue enjoyed by it, as may be considered reasonable for the proper maintenance or upkeep of such institution or for the continuance of service rendered by it."

11. The Madhya Pradesh Land Revenue Code, 1959 was brought into force with effect from 21.09.1959 and thereafter, the Act was brought into effect to consolidate and amend the law relating to the land revenue, the powers and jurisdiction of Revenue Officers, right and liabilities of holders of land from the State Government, agricultural tenures and any other matters relating to the land and liabilities regarding agriculture land situated in the boundaries of Madhya Pradesh.

12. The State of Madhya Pradesh has been constituted with various parts of the State of Madhya Bharat, State of Gwalior, Indore, Malwa, Bhopal and so many other territories and the law relating to the land revenue, powers of the Revenue Officers, rights and liabilities of holders of the land from the erstwhile States, State Government, agricultural tenures and other matters relating to lands and incidental thereto were regulated by various State laws, such as Qanoon Mal in the State of Gwalior and so many other State laws, but after enactment of the M.P. Land Revenue Code, 1959 all these matters have been recovered in the MPLRC.

13. The materials relating to the question, whether the temple is a public temple or a private, one may be considered under above four heads:

(i) the will, lease or licence issued by the actual owner in favour of any priest;

(ii) use of temple by the public;

(iii) ceremonies relating to the dedication of temple in question and installation of idol with special reference.

(iv) other facts relating to the character of the temple.

14. Learned counsel for the appellant firstly contended that Pujaris have been conferred Bhumiswami rights, a right which cannot be taken

away by executive instructions. It was argued that in terms of proviso of Section 57 of MPLRC, the rights granted to the Pujaris have been protected and would remain unaffected by the MPLRC. In terms of Section 158, every person, in respect of land held in Madhya Bharat region as a Pakka tenant or as Muafidar, Inamdar or concessional holder, confers Bhumiswami rights. It is also argued that the temple in question is a private temple and therefore, Collector has no jurisdiction in any matter related to the private temple.

15. Appellant Mahendrapuri (PW/1) deposed in his statement before the trial Court that disputed Neelkantheshwar Mahadev Temple has been constructed by his forefathers, the suit land was allotted to his forefather Bhabhutpuri through lease deed (Ex.P/1), but in para 6 of cross-examination he categorically admits that he is not having any relevant document for construction of the said temple and nobody has appointed him as a Pujari. After the death of his father, he himself is performing the duties of Pujari. Although, it is true that Pujari has been appointed by the SDO (Revenue), SDO (Revenue) did not appoint him as a Pujari. Categorically, appellant Mahendrapuri in para 7 of his cross-examination denied that Neelkantheshwar Mahadev Temple is the devsthan, but in the lease deed (Ex.P/1), nature of the land was specifically mentioned as devsthan. In view of the material admission of the appellant / plaintiff and lease deed (Ex.P/1) it has been proved that the disputed land belonging to the devsthan is owned by the State. Finally, the appellant / plaintiff Mahendrapuri admits that he is in possession of the temple in the capacity of Pujari.

16. Appellant has examined Phoolsingh (PW/2) has a plaintiff witness, Phoolsingh also admits in cross-examination that Rampuri is the Pujari of the Neelkantheshwar Mahadev Temple. In para 3 of the cross-examination, Phoolsingh admits that State is the owner of the

disputed temple. In view of the above, the evidence adduced by the appellant Mahendrapuri is contrary to his pleadings as per the plaint averment, the temple in question was property of Holkar State, but in the evidence the stand of the plaintiff is that his forefathers are the owner of the temple.

17. In the present case, the main question which is required to be decided is whether a priest can be treated as Bhumiswami under the Madhya Bharat Land Revenue and Tenancy Act Samvat 2007 and as a consequence under the MPLRC. The law is clear on the distinction that the Pujari is not a Kashtkar Morushi, or a Government lessee or an ordinary tenant of the Muafi lands. The Pujari is the only a person, who has appointed to manage property of deity, therefore, he cannot be treated as deity. In a Judgment reported as ***Ramchand (Dead) by Legal Representatives V. Thakur Janki Ballabhji Maharaj and Another [AIR 1970 SC 532]***, it was held that if the Pujari claims proprietary rights over the property of the temple, it is an act of mismanagement and he is not fit to remain in possession or to continue as a Pujari.

18. Hon'ble the Apex Court in the case of ***M.P. State V. Pujari Utthan Avam Kalyan Samiti 2021 (2) RN 193*** it has been held that *"the priest cannot be treated to be either a maufidar or inamdar and he cannot treated to be bhumiswami, status of pujari is only that of manager. The citation is applicable in the instant case and on the basis of aforesaid, it is clear that since the priest cannot be treated a bhumiswami, he has no right which could be protected under any of the provisions of MPLRC."*

19. After abolition of Zamindari, the proprietorship of the land vests in the State to whom the rent is payable. It is not uncommon that a person in possession of an agricultural land holding even as an owner cannot put his land to any use as he desires. The plaintiff cannot further

be equated with a proprietor or zamindar or an intermediary or jagirdar or malguzar whose proprietary rights were extinguished and vested by operation of law in the State.

20. Hon'ble the apex Court in the case of ***Mst. Kanchaniya and Others Vs. Shiv Ram and Others reported in 1992 Supp.(2) SCC 250*** held that Pujari had no other status than that of the manager functioning under the control of the Aukaf Department. The Patta having been granted for the limited period of lifetime of 'M' and therefore rejected the contention of the appellants that they acquired the 'Bhumiswami' right over the land in dispute. Para 17 is reproduced below:

> "17. Under s.185(1), every person, belonging to any of the categories specified thereunder, shall be called an occupancy tenant and shall have all the rights and be subject to all the liabilities conferred or imposed upon an occupancy tenant by or under the Code. Under s.190, Bhumis- wami rights are conferred on an occupancy tenant in cases where the Bhumiswami, whose land is held by an occupancy tenant, fails to make an application under s.189(1) within the period laid down therein The submission of Shri Shiv Dayal is that Malkhan, being in occupation of the land in dispute as a sub-tenant, became an occupancy tenant under s.185(1), and since the Bhumiswami of the land in dispute did not make an application under s.189(1), Malkhan acquired Bhumiswami rights over the same under s.190 of the Code. This contention proceeds on the assumption that Malkhan was a sub-tenant of the land in dispute on the date of coming into force of the code. But since we have found that no rights were created in favour of Malkhan under the patta granted by Vasudev Rao. Malkhan cannot claim to be a sub-tenant of the land in dispute on the date of the commencement of the Code and, therefore, the submission of Shri Shiv Dayal that Malkhan had acquired Bhumiswami rights over the land in dispute cannot be accepted."

21. The another question which arise for consideration is whether the State Government by way of executive instruction can pass an order for deletion of name of Pujari from the revenue records and insert the name of Collector as Manager. Learned counsel for the respondent has

placed reliance upon the judgment of ***Pujari Utthan Avam Kalyan Samiti*** *(supra)* in which it has been held that "name of Collector as a Manager cannot be recorded in respect of the property vested to the deity as the Collector cannot be a Manager of all the temples unless the temple vested with the State." But in the instant case, appellants did not implicate the deity or concerned Jagirdar as a party, who is the actual owner of the said temple, therefore, non-joinder of necessary and proper party, suit does not appear to be maintainable.

22. It is also to be seen that nothing is mentioned in the revenue record and all other documents exhibited by the plaintiffs that the temple in question is the personal property of the plaintiffs. Appellants / plaintiff have completely failed to prove their ownership or title over the suit property. After abolition of Jagirdari if any property or land was remained unclaimed, then its title goes with the State Government on the basis of aforesaid.

23. From perusal of the evidence of plaintiff / appellant Mahendrapuri (PW/1), it is clear that the temple has been publicly used by the villagers, name of Collector is mentioned as a Manager of the suit land and temple in question. Specific order has been issued for the appointment of the Collector and Manager of the suit premises, which was never challenged by the appellants before the competent revenue authorities having jurisdiction, therefore, appellants have failed to prove their case. Under these circumstances, this Court is in agreement with the findings of facts recorded by the First Appellate Court and uphold the judgment and decree passed by it, which are concurrent findings of the fact.

24. Accordingly, the substantial questions of law which are framed are answered in negative and are found in favour of the respondents. The second appeal is, therefore, without force and is **dismissed** while

affirming the judgments and decrees passed by the First Appellate Court as well as the trial Court.

No order as to costs.

Certified copy as per rules.

(ANIL VERMA)
JUDGE

Divyansh