

IN THE HIGH COURT OF MADHYA PRADESH

AT INDORE

BEFORE

HON'BLE SHRI JUSTICE SUBODH ABHYANKAR

ON THE 16th OF MAY, 2024

MISC. PETITION No. 1872 of 2021

BETWEEN:-

- GAJRAJ S/O LAXMINARAYAN MALI
OCCUPATION: AGRICULTURIST
1. KHATYAKHEDI, TAHSIL MALHARGARH,
DISTRICT MANDSAUR (MADHYA PRADESH)
MADANLAL S/O LAXMINARAYAN MALI
OCCUPATION: AGRICULTURIST
2. KHATYAKHEDI, TAHSIL MALHARGARH,
DISTRICT MANDSAUR (MADHYA PRADESH)
SALAGRAM S/O ONKARLAL MALI
OCCUPATION: AGRICULTURIST
3. KHATYAKHEDI, TAHSIL MALHARGARH,
DISTRICT MANDSAUR (MADHYA PRADESH)
PREMCHANDRA S/O SUNDARLAL MALI
OCCUPATION: AGRICULTURIST
4. KHATYAKHEDI, TAHSIL MALHARGARH,
DISTRICT MANDSAUR (MADHYA PRADESH)
RAJESH S/O SUNDARLAL MALI
OCCUPATION: AGRICULTURIST
5. KHATYAKHEDI, TAHSIL MALHARGARH,
DISTRICT MANDSAUR (MADHYA PRADESH)
DILIP S/O DHANNALAL MALI
OCCUPATION: AGRICULTURIST
6. KHATYAKHEDI, TAHSIL MALHARGARH,
DISTRICT MANDSAUR (MADHYA PRADESH)
AMARCHANDRA S/O DHANNALAL MALI
OCCUPATION: AGRICULTURIST
7. KHATYAKHEDI, TAHSIL MALHARGARH,
DISTRICT MANDSAUR (MADHYA PRADESH)

.....PETITIONERS

(BY SHRI NITIN PHADKE, ADVOCATE)

AND

- ASHWIN KUMAR S/O ASHOK JAIN
1. PIPLYMANDI TEH. MALHARGARH
(MADHYA PRADESH)
SMT. TRISHALA W/O ASHOK KUMAR JAIN
2. PIPLIYAMANDI, TAHSIL MALHARGARH,
DISTRICT MANDSAUR (MADHYA
PRADESH)

.....RESPONDENTS

(BY SHRI SANJAY KUMAR SHARMA, ADVOCATE)

This petition coming on for admission this day, the court passed the following:

ORDER

1] This misc. petition has been filed by the petitioners under Article 227 of the Constitution of India against the order dated 31/03/2021 passed by the Additional Collector, Mandsaur in Revision No.68/2020-21 whereby the order passed by the Tehsildar Malhargarh, District Mandsaur in case No.16/A-13/2019-20 dated 15/01/2021 has been affirmed, and the application filed by respondents for stay and dismissal of the proceedings on account of pending of civil suit has been rejected.

2] In brief, the facts of the case are that the petitioners hold a land at village Piplyapanth, Tehsil Malhargarh, District Mandsaur and adjacent to the petitioners' land, the land of respondents is situated. The petitioners filed an application under Section 131, 132 and 134 of the M.P. Land Revenue Code, 1959 for demarcation of their land and in the aforesaid proceedings, the application was filed by the respondents that since a civil suit No.18-A/2020 is already pending between the parties in the Court of Civil Judge, Class-II,

Narayangarh, District Mandsaur, hence, the proceedings before the Tehsildar is not maintainable. The application has been rejected and it is directed by the Tehsildar that the proceedings shall continue. The aforesaid order was challenged by the respondents in a revision under Section 50 of the Land Revenue Code before the Additional Collector, Mandsaur, who, vide its order dated 31/03/2021 has allowed the revision holding that since in the civil Court also, the rights of the parties are to be adjudicated, no purpose would be served to allow a parallel proceeding to continue before the Tehsildar under Section 133 of the Code of 1959. The reliance has also been placed on Section 275 of M.P. Land Revenue Code and Section 10 of CPC which relates to stay.

3] Shri Nitin Phadke, counsel for the petitioners has submitted that the impugned order is contrary to law, hence, liable to be quashed. Counsel has drawn the attention of this Court to Section 257 of the Code of 1959 which provides for exclusive jurisdiction of the revenue authorities and that no civil Court shall exercise jurisdiction over any of the matters contained therein. It is submitted that the proceedings under Section 131 of the Code are not mentioned under Section 257 and thus, the civil Court shall not have jurisdiction to exercise its powers. It is also submitted that otherwise also, the aforesaid section is in respect of jurisdiction of the civil Court pertaining to certain provisions of MPLRC, and if the proceedings are pending in the revenue Court as provided under Section 257 of the Code of 1959 and not vice versa. It is also submitted that similarly, Section 10 of the CPC would not be

application in the present case as it relates to the proceedings pending in two civil Courts only and revenue Court being not a civil Court is not affected by the provisions of Section 10 of CPC. Thus, it is submitted that the order of both the Court is bad in law and is liable to be quashed. In support of his submissions, counsel for the petitioners has relied upon the decision passed by the ***Gwalior Bench in WP No.2418/2015 dated 05/08/2015 in the case of Manish Sharma Vs. Sarvapriya Enterprises and WP No.15515/2019 dated 13/04/2023 in the case of Pravin Kumar Vs. Arvind Kumar and others.***

4] On the other hand, Shri Sanjay Kumar Sharma, learned counsel appearing for the respondents has opposed the prayer and it is submitted that no case for interference is made out as even though Section 131 is not one of the provisions which is mentioned under Section 257, however, going by the judicial analogy, no purpose would be served if the demarcation proceedings takes place in respect of a property which is subject matter of a civil dispute as ultimately the parties shall be governed by the decree passed by the civil Court only, and not by the demarcation proceedings. In support of his submissions, counsel has relied upon the decision rendered by the Supreme Court in the case of ***Ramkanya Bai and another vs. Jagdish and others reported as 2011 RN 361***. It is submitted that in the aforesaid case also, section 131 was involved.

5] Heard learned counsel for the parties and perused the documents filed on record.

6] Since the controversy involves the application of Section 257 of the Code, it would be apt to refer to the same at this juncture only, which 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 the purpose to which land is appropriated under Section 59;

(b) any question as to the validity or effect of the notification of a revenue survey or any question as to the term of a settlement;

(c) any claim to modify a decision determining abadi made by a Settlement 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 bhumiswami under subsection (1) of Section 170 and clauses (a) and (b) of sub-section (2) of Section 170-A;] [Substituted by M.P. Act No. 18 of 1984.]”

(emphasis supplied)

7] A perusal of the aforesaid section clearly reveals that it provides for the exclusive jurisdiction of Revenue Authorities in

certain revenue matters, and also provides that the civil Court shall not exercise its jurisdiction in respect of certain matters which exclusively fall within the jurisdiction of the Revenue Authorities. It is also found that in the aforesaid s.257, ss. 131, 132 and 134 are not provided, meaning thereby, that the Civil Court can exercise its jurisdiction over the subject matter for which a Land Revenue Officer can also exercise its jurisdiction. The Division Bench of this Court in the case of *Ramkanya Bai* (supra) has also held that a dispute relating to way can be decided by the Tehsildar in summary enquiry, however, the remedy of civil suit is not barred and the decision rendered by the Tehsildar in summary enquiry is open to challenge in Civil Court. The relevant para 16 of the same reads as under:-

“16. In the circumstances, we reject the contention that Tahsildar alone has the jurisdiction, and not the civil court, to decide upon the existence or otherwise of a customary easement (relating to right of way or right to take water, to a person's land). The decision of the Tahsildar after a summary enquiry with reference to the 'previous custom' and with due regard to the conveniences of all parties, under section 131(1) of the Code, is open to challenge in a civil suit and subject to the decision of the civil court. The jurisdiction of the civil court to try any suit relating to easements is not affected by section 131, 242 or section 257 of the Code. In view of the above, this appeal is allowed and the judgments and decrees of the courts below are set aside and it is declared that the civil court has the jurisdiction to try the suit filed by the appellants. The trial court is requested to dispose of the suit expeditiously.”

(emphasis supplied)

8] The contention of the counsel for the petitioners is that the suit was filed in respect of different issue and that the application submitted by the petitioners under Section 131 of the Code would remain unaffected despite the pendency of the suit as the revenue Courts have been conferred exclusive jurisdiction under Section 257

of the Code to adjudicate upon the issue regarding customary right to way.

9] In the considered opinion of this Court, the aforesaid issue whether a proceeding under Section 131 can be challenged in a civil suit has already been clarified by the Supreme Court in the case of ***Ramkanya Bai*** (supra), that an order of easementary right passed by the Tehsildar is a summary procedure which is always open to challenge in the subsequent civil suit, and considering the fact that in the present case, the civil suit filed by the petitioners is for mandatory and permanent injunction, in respect of same land for which applications under Section 131, 132 and 134 are also filed, thus, this Court is of the considered opinion that no purpose would be served to allow the Revenue Authorities to proceed further in the matter in respect of which the issue is already seized by the Civil Court.

10] In such circumstances, this Court does not find any substance in this petition and is of the considered opinion that the Additional Collector has committed no error in holding that the proceedings of the Revenue Authorities under Section 131 of the Code is liable to be stayed.

11] In view of the same, the petition being devoid of merits is hereby ***dismissed***.

Sd/-

(SUBODH ABHYANKAR)
JUDGE

krjoshi