

**IN THE HIGH COURT OF MADHYA PRADESH**  
**AT JABALPUR**  
**BEFORE**  
**HON'BLE SHRI JUSTICE DWARKA DHISH BANSAL**  
**SECOND APPEAL NO.901 OF 2002**

**Between:-**

**BRIJENDRA PRASAD, AGED 52 YEARS, SON OF  
MAKSUDAN PRASAD AGNIHOTRI, RESIDENT  
OF VILLAGE MAMDAR, TAHSIL RAMPUR  
NAIKIN, DISTRICT SIDHI (M.P.)**

**.....APPELLANT**

***(BY SHRI MOHD. ADIL USMANI - ADVOCATE)***

**AND**

- 1. STATE OF M.P. THROUGH COLLECTOR, SIDHI DISTRICT  
SIDHI (M.P.)**
- 2. PARASNATH (DEAD) THROUGH L.RS.:**
  - a) DEVENDRA, AGED 50 YEARS,**
  - b) MADHAV, AGED 45 YEARS,**
  - c) VIYAS, AGED 40 YEARS,**

**ALL SONS OF LATE PARASNATH AGNIHOTRI,  
ALL R/O VILLAGE MAMDAR, TEHSIL RAMPUR  
NAIKIN, DISTRICT SIDHI (M.P.)**

- d) SMT. DEVBATI, W/O SHRI RAMNARESH PANDEY,  
D/O LATE PARASNATH AGNIHOTRI, R/O VILLAGE  
KATHERI, POST BELWA PAIKAN, DISTRICT REWA**
- e) SMT. LALTI, W/O SHRI BAMDEV PATHAK,  
D/O LATE PARASNATH AGNIHOTRI, R/O VILLAGE  
AND POST DHANGA, TEHSIL DEVSAR,**

**THANA JIYAWAN, DISTRICT SINGRAULI (M.P.)**

**f) SMT. KUSUM DEVI, D/O LATE SHRI PARASNATH  
AGNIHOTRI, R/O VILLAGE AND POST  
MUMDAR, TEHSIL RAMPUR NAIKIN,  
DISTRICT SIDHI (M.P.)**

**g) PRAVEEN KUMARI, W/O SHRI RAVENDRA DUBEY,  
D/O LATE SHRI PARASNATH AGNIHOTRI,  
R/O JHAKHRAWAL, POST DHANHA, THANA JIYAWAN  
DISTRICT SINGRAULI (M.P.)**

- 3. RAMANUJ, AGED 57 YEARS  
BOTH SONS OF LATE VISHWANATH AGNIHOTRI,**
- 4. RAMSUSHIL, AGED 40 YEARS,**
- 5. RAMHIT, AGED 38 YEARS,  
BOTH SONS OF NEELKANTH AGNIHOTRI,**
- 6. NARAYAN PRASAD, AGED 70 YEARS,**
- 7. SITA PRASAD, AGED 65 YEARS,**
- 8. CHANDRAMOULI PRASAD, AGED 63 YEARS,**
- 9. DIWAKAR PRASAD, AGED 60 YEARS  
NOS. 6 TO 9 ALL SONS OF JAGDEO PRASAD**

**ALL CULTIVATORS AND RESIDENT OF VILLAGE  
MAMDAR, TAHSIL RAMPUR NAIKIN, DISTRICT  
SIDHI (M.P.)**

**....RESPONDENTS**

**(BY SHRI HIMANSHU TIWARI, PANEL LAWYER-STATE)**

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Reserved on : 22.09.2022

Delivered on : 26.09.2022

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### **J U D G M E N T**

This second appeal has been preferred by appellant/plaintiff challenging the judgment and decree dated 07.10.2002 passed by Second Additional Judge to the Court of 1st Additional District Judge, Sidhi in civil appeal no.58-A/2002, confirming the judgment and decree dated 31.01.1995 passed by 2nd Civil Judge Class I, Sidhi in civil suit no.239-A/89 whereby, dismissing the suit of the appellant/plaintiff filed for declaration of title and for recovery of possession over the land in question as described in the plaint.

2. In short the facts are that, the plaintiff instituted a suit with the allegations that the disputed lands are ancestral lands of sir pawai of which, he is bhoomiswami. Grand father of plaintiff namely Kuber Prasad Agnihotri was Pawaidar of Rampur region of Rewa Riyasat which after death of Kuber Prasad was received by his sons namely Raghunandan Prasad, Maksudan Prasad and Chandrashekhar Prasad. Raghunandan Prasad died issue-less, who executed a Will with regard to his share. Maksudan Prasad is also dead and the plaintiff is his son whereas Chandrashekhar Prasad is alive. It is alleged that the plaintiff has filed this suit in the capacity of 'Karta Khandan'. On 14.06.1944, father of plaintiffs mortgaged the land with defendants 2-3's father Vishwanath in lieu of loan on condition to get back the land after repayment of mortgage amount of Rs.500/- and on that basis, the defendants 2-3's father came in possession

with effect from 14.06.1944 and after his death the land is in possession of defendants 2, 4 & 9.

3. It is alleged that Abolition of Jagirs and Land Reforms Act, 1952 (Vindhya Pradesh) (hereinafter referred to '*the Act of 1952*') came into effect from 01.07.1953 and as per Section 20, an application for allotment was filed before Naib Tahsildar, Gopad Banas by which rest of the lands were allotted except the disputed land, which was not allotted on the premise that plaintiff was not in possession in the year 1950 to 1953. Thereafter, as per order of State Government, the Tahsildar, Gopad Banas vide its order dated 19.04.1962 allotted the disputed land in the name of plaintiff but in the appeal, Collector Sidhi, vide its order dated 22.09.1964 (Ex.P-9) cancelled the order of allotment but the name of plaintiff remained continued and possession of defendant 2 was recorded. Later on, the defendant-State's officials recorded the disputed land in the name of State by deleting the entry of the name of the plaintiff whereas, as per Section 22(1) of the Act of 1952, fresh application for allotment was pending but as the land was recorded as Government land, therefore, SDO remanded the matter back. In the meantime, the defendant 2 alleging himself to be "Gair Haqdar Kashtkar" filed an application for grant of '*Patta*' which was referred for decision to the Tahsildar Rampur, who vide order dated 31.07.1989 dismissed the application of both the parties with the further direction to get the title decided from the civil Court. On inter alia allegations the suit was filed.

4. The defendants 2-3 appeared and filed written statement denying the plaint allegations and contended that the plaintiff is not entitled for sir allotment and has no right which has already vested in the State. The civil suit is barred by limitation and as per Section 37 of the Act of 1952, the civil Court has no jurisdiction. The defendants 2-3 having acquired status of “Gair Haqdar Kashtkar” have acquired bhoomiswami rights in view of the provisions of Madhya Pradesh Land Revenue Code, 1959. On *inter alia* contentions, the suit was prayed to be dismissed.

5. The defendants 1 & 4-9 did not file written statement and were proceeded *exparte*.

6. Leaned trial Court on the basis of allegations of the parties framed as many as 11 issues and recorded evidence led by the parties and after due consideration of the same, dismissed the suit vide judgment and decree dated 31.01.1995, which in appeal filed by the appellant/plaintiff has been upheld vide impugned judgment and decree dated 07.10.2002.

7. This Court vide order dated 23.06.2003 admitted the second appeal on the following substantial questions of law:

“(1) What is the effect of Section 6(1)(g)(i) V.P. Abolition of Jagirs and Land Reforms Act, 1952 ?

(2) Whether an order of allotment under Section 20/22 Act 1952 is sine qua non conferring title upon plaintiff ?

(3) Whether the suit is barred under Section 37 of the Act 1952

?”

8. Learned counsel for the appellant submits that although he did not prefer revision against the order dated 22.09.1964 (Ex.P-9) but in the light of subsequent order dated 31.07.1989 (Ex.P-14) passed by Tahsildar, the plaintiff had cause of action to file the civil suit and learned Courts below have gravely erred in holding the suit to be barred by provision of Section 37 of the Act of 1952. He submits that because the defendants 2-3's father were mortgagee, therefore, lands in question shall be deemed in possession of the plaintiff and same being sir land of the plaintiff, would not vest in the State Government. With the aforesaid submissions he prays for allowing the second appeal.

9. Shri Himanshu Tiwari, learned Panel Layer appearing on behalf of the State supports the judgment and decree passed by learned Courts below and he submits that the disputed land has already vested in the State and there is no illegality or perversity in the impugned judgment and decree passed by learned Courts below.

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

**Substantial question of law no.1:**

11. As the plaintiff has come with the case that his ascendant was Pawaidar, therefore, the definition of *Jagirdar* is relevant to quote as :

“Section 2(c) ‘Jagirdar’ means any person recognized as a Jagirdar under any law, rules, regulations, or orders governing Jagirdar in force in any part of the State and includes an Illakedar, a Pawaidar, a Sub-Pawaidar (in direct relation with the Government or otherwise), an Ijaredar, an Ubaridar, a Zamindar, a Muafidar and a Grantee of Jagir-land from a Jagirdar;”

12. Learned trial Court framed issue no.3(a) to the effect as to whether father of the plaintiff created usufructuary mortgage on 14.06.1944 in favour of defendants 2-3's father ? and after taking into consideration the evidence available on record, decided this issue in affirmative. However, while deciding the issue no.3(b) and 7 it has been held by learned trial Court that the land in question is in possession of defendants 2,4&9 but neither the plaintiff is bhoomiswami nor the defendants 2-3 have acquired any title by adverse possession because the land has already vested in the State. Relevant Section 6(1)(g)(i) of the Act of 1952 is quoted as under:-

**“6. Consequences of resumption of Jagir-lands. -**

(1) As from the date of resumption notwithstanding anything contained in any contract, grant or document or in any other law, rule, regulation or order for the time being in force, but save as otherwise provided in this Act-

(a) the right, title and interest of every Jagirdar and of every other person claiming through him [\* \* \*] in his Jagir-lands, including [rights in respect of any excise revenue and] forests, trees, fisheries, wells, tanks, ponds, water channels, ferries, pathways, village-sites, Hats, bazars and mela-grounds and mines and minerals whether being worked or not, shall stand resumed to the State Government free from all encumbrances;

(b) all rights, titles and interests created in or over the Jagir-land by the Jagirdar or his [predecessors-in-interest] shall, as against the State Government, cease and determine.

(c) all rents and cesses in respect of any holding (including any land leased by or on behalf of the Jagirdar for any purpose other than agriculture) in the Jagir-land for any period after the date of resumption which, but for such resumption, would have been payable to the Jagirdar shall be payable to the State Government;

(d) all revenues, rents, cesses or other dues for the agricultural year in which the date of resumption falls recovered by the Jagirdar before the said date or by the State Government after the said date shall, after deducting therefrom the expenses of collection at the rate of 10 per cent be rate ably distributed between the Jagirdar and the State Government, the amount to be distributed bearing to the total amount recovered during the agricultural year the same proportion which the period before the date of resumption or [the] said date, bears to the whole of the agricultural year;

(e) all arrears of revenue, cesses or other dues in respect of any Jagir-land due from the Jagirdar for any period prior to the date of resumption including any sum due from him under clause (d) and all loans advanced by the State Government or the Court of Wards to the Jagirdar shall continue to be recoverable from such Jagirdar;

(f) the right, title and interest of the Jagirdar or any other person in the Jagir-land resumed under clause (a) shall not be liable to attachment to sale in execution of any decree or other process of any Court, civil or revenue, and any attachment existing on the date of resumption or any order for attachment passed before such date shall, subject to the provisions of Section 73 of the Transfer of Property Act, 1882 (Act IV of 1882) cease to be in force;

***(g) (i) a mortgage in possession of the Jagir-land or any part thereof shall cease to have any right to possess such land or part thereof;***

(ii) every such mortgage with possession, shall to the extent of the amount secured on the Jagir-land or part thereof, be deemed to have been substituted by a simple mortgage;

(iii) notwithstanding anything contained in the mortgage deed or any other agreement relating to such mortgage the rate of interest payable on such mortgage debt shall, as from the date of resumption, be such as may be prescribed;

(h) subject to any rule made in this behalf, all suits and proceedings relating to the Jagir-land pending in any Court and all proceedings consequent upon any decree or order passed in any such suit or proceeding before the date of resumption shall be stayed.

(2) Nothing contained in sub-section (1) shall :

(a) render the State Government liable for the payment of debts incurred by the Jagirdar before the date of resumption;



(b) operate as a bar to the recovery by the Jagirdar of any sum which becomes due to him by virtue of his rights in the Jagir-land in respect of any period prior to the commencement of the agricultural year in which the date of resumption falls.

13. As such, in the light of unchallenged findings recorded against the defendants 2-3, even in presence of the said provision contained in Section 6(1)(g)(i) of the Act of 1952, the plaintiff does not get any right over the land in question because the same has already vested in the State. Accordingly, substantial question of law no.1 is decided against the plaintiff.

**Substantial question of law no.2 :**

14. With a view to understand the requirement of the law under Section 20, 21 and 22 of the Act of 1952, the same are quoted as under:-

**“20. Application by Jagirdar for allotment of land for personal cultivation :**

- (1) Any Jagirdar whose Jagir-land has been resumed under this Act may, within ninety days from the date of resumption, apply to the Tahsildar within whose jurisdiction such land is situated for the allotment to him of land for personal cultivation.
- (2) An application under sub-section (1) shall be in such form as may be prescribed and shall contain the following particulars :-
  - (a) the description of the Jagir-land;
  - (b) the date of resumption of the Jagir-land;
  - (c) the names of the co-sharers, if any, in the Jagir-land and the extent of their shares;
  - (d) the area of sir and Khudkasht land, if any, under the personal cultivation of the Jagirdar for a continuous period of three years immediately preceding the date of resumption;
  - (e) the area of cultivable waste land;
  - (f) such other particulars as may be prescribed.

**21. Enquiry by Tahsildar :**

- (1) On receipt of an application under section 20, the Tahsildar shall issue notice to the applicant and other interested persons, if any, and after giving the parties an opportunity of being heard, shall make an enquiry in the prescribed manner.
- (2) After making the enquiry referred to in sub-suction (1), the Tahsildar may, having due regard to the provisions hereinafter contained in this Chapter, pass an order making an allotment to the Jagirdar of such land for personal cultivation as may be

specified in the order.

(3) Where any land is allotted to a Jagirdar for personal cultivation under sub-section (2) the Tahsildar shall issue a patta to the Jagirs in such form as may be prescribed in respect of the land so allotted.

**"22 Allotment of sir or khudkasht land :**

(1) A 'jagirdar shall be allotted all sir and khudkasht land which he was cultivating personally for a continuous period of three years immediately preceding the date of resumption.

"(2) A jagirdar whose jagir-lands have been resumed under this Act-

(a) who is not allotted any sir or khudkasht land under sub-section (1), or

(b) who had been allotted any such land which is less than the minimum area,

may if he applies in this behalf, be allotted any other sir or khudkasht land in his personal cultivation at the date of resumption or where there is no such land or sufficient area of such land any unoccupied cultivatable waste land in the jagir-land subject to availability of such land, so that-

(i) in a case falling under cl. (a), the total area allotted to him under this sub-section is equal to the minimum area, and

(ii) in a case falling under cl. (b), the area allotted to him under this sub-section together with the area allotted under sub-sec. (1) is equal to the minimum area.

**Explanation** - In this sub-section, the expression 'minimum' means ten per cent. of the total cultivated land in the jagir-land at the date of resumption or 30 acres which ever is greater :

Provided that in no case the minimum area shall exceed 250 acres.'

**15.** Aforesaid Section 20 provides filing of an application by Jagirdar for allotment of land for personal cultivation and Section 22 provides allotment of sir or khudkasht land. From the language of Sections 20 and 22 of the Act of 1952, it is clear that the aforesaid provisions are in mandatory form and the land can be allotted to the Bhoomiswami only upon filing of the application within 90 days from the date of resumption

of jagir-land. No doubt but admittedly in the present case, necessary application was filed by the ascendants of plaintiff, which was duly considered by learned Tahsildar and the land was allotted vide order dated 19.4.1962 which in appeal was set aside by Collector Sidhi vide order dated 22.09.1964 (Ex.P-9). Undisputedly, this order of Collector dated 22.09.1964 was not challenged by the plaintiff's ascendants and attained finality. It is well settled that if, any order passed by any competent authority/court is not challenged by the aggrieved party, the same attains finality.

**16.** The Supreme Court has in the case of **UNION OF INDIA AND OTHERS VERSUS MAJOR S.P. SHARMA AND OTHERS** (2014) 6 SCC 351, held as under :

*"76. A decision rendered by a competent court cannot be challenged in collateral proceedings for the reason that if it is permitted to do so there would be "confusion and chaos and the finality of proceedings would cease to have any meaning".*

**17.** Also in the case of **J. KODANDA RAMI REDDY VERSUS STATE OF A.P. & ORS.** (2011) 1 SCC 197 the Supreme Court held that :

*"31. The order dated 25.3.1991 appointing an Arbitrator was also not a nullity, even though it may be erroneous. It is well settled that a decree will be a nullity only if it is passed by a court usurping a jurisdiction it did not have. But a mere wrong exercise of jurisdiction or an erroneous decision by a court having jurisdiction, will not result in a nullity. An order by a competent court, even if erroneous, is binding, unless it is challenged and set aside by a higher forum. Be that as it may."*

**18.** Accordingly, it is held that for conferring title upon the plaintiff, allotment of the land in question as per Section 20 to 22 of the Act of 1952, is *sine qua non*.

**Substantial question of law no.3:**

**19.** Learned Court below has while deciding the issue no.8, held that in the light of provision contained in Section 37 of the Act of 1952, the civil Court has no jurisdiction to settle, decide or deal with any question which is, by order under this Act required to be settled, decided or dealt with by Tahsildar. Relevant Sections 31 and 37 are quoted as under:-

“31. **Appeals against the orders of Tahsildar.** – (1) Any person aggrieved by an order of the Tahsildar under (sub section(2) ) of Section 21 or Section 8 may within thirty days from the date of communication of such order to him appeal to the (Collector), whose decision thereon shall be final.

(2) The court-fee payable on a memorandum of appeal under sub-section (1) shall be one rupee.

**37. Bar of jurisdiction of Civil Courts.** - (1) No civil Court shall have jurisdiction to settle, decide or deal with any question which is, by or under this Act, required to be settled, decided or dealt with by the Tahsildar, the [Collector], Land Reform Commissioner, or the Board of Revenue.

(2) Except otherwise provided in this Act, no order of a Tahsildar, a Collector, the Land Reform Commissioner, or the Board of Revenue under this Act, shall be called in question in any Court.”

**20.** Even prima facie, aforesaid sub-section (1) of Section 31 provides finality to the order of Collector and sub-section (1) of Section 37 takes away the jurisdiction of the civil court to decide any matter which under the Act is to be decided by the Tahsildar, the Collector, the Land Reform Commissioner or the Board of Revenue. Sub-section (2) provides that no order passed by any of these authorities shall be called in question in any court.

**21.** Section 9 of CPC lays down that the civil courts shall have jurisdiction to try all suits of a civil nature excepting suits of which their cognizance is either expressly or impliedly barred. Section 9 therefore gives jurisdiction to civil courts to try all suits of a civil nature excepting those which are expressly or impliedly barred by any other law. Apparently, the provision of S. 37 is an express bar to the matter dealt with in the Act being agitated in civil courts.

**22.** In the present case, as per requirement of the law, the plaintiff's ascendants moved an application for allotment of the disputed land which was decided/allowed by Tahsildar vide order dated 19.4.1962 whereby, allotting the land in favour of the plaintiff's ascendants but upon appeal the order of the Tahsildar was set aside by the Collector Sidhi vide order dated 22.09.1964 (Ex.P-9). For the reasons best known to the plaintiff or his ascendants, the order dtd. 22.9.1964 (Ex.P-9) was not challenged by them, which in view of the clear language of Section 31 and 37 of the Act of 1952, became final and as such the civil Court had no jurisdiction to see the legality of the order regarding which the Tahsildar or the Collector was having exclusive jurisdiction. In the light of clear bar of jurisdiction of civil Courts, the learned Courts below have rightly held that the civil Court has no jurisdiction over the matter. Accordingly, substantial question of law no.3 is also decided against the plaintiff.

**23.** However, it is pertinent to mention here that as the land in question has already vested in the State and due to pendency of suit in question and due to pendency of second appeal, the land might be in possession of the encroachers but after dismissal of this second appeal, the State Government is free to initiate appropriate action against the encroachers with a view to secure possession of the land in question.

**24.** Resultantly, second appeal fails and is **dismissed**. However, no order as to the costs.

**(DWARKA DHISH BANSAL)**  
**JUDGE**