IN THE HIGH COURT OF MADHYA PRADESH AT JABALPUR

BEFORE

HON'BLE SHRI JUSTICE G. S. AHLUWALIA

ON THE 15th OF OCTOBER, 2024

WRIT PETITION No. 13369 of 2024

GIRDHARI PAWAR

Versus

SMT. SAVITRI BAI BARKADE AND OTHERS

Appearance:

Shri Mukesh Agrawal – Advocate for the petitioner.

Shri Jaideep Sirpurkar – Advocate for respondents no.1 and 2.
Shri Gajendra Parashar – PL for respondent no.3 / State.

ORDER

This petition under Article 226 of Constitution of India has been filed seeking following reliefs :-

> (A). To quash the impugned orders :-
> (i) Order dated 31.08.2018 passed in Ek./Rev./ Chhindwara / Bhu.Raa./2018/230 by the Board of Revenue, Gwalior. (Annexure-P/1).
> (ii) Order dated 01.01.2018 passed in Rev. Case No.427/Appeal/2016-17 by the Collector, Chhindwara. (Annexure-P/2) and
> (iii) Order dated 18.7.2017 passed in Rev. Case No./02/A-23/2015-16, by the SDO, Chhindwara. (Annexure-P/3)
> Whereby the sale deed of the petitioner has been declared as null and void in arbitrary and in illegal manner.

> (B). Any other relief, order or direction as this Hon'ble court deems proper in the present facts and circumstances of the case may also be granted along with cost of the petition.

2. It is submitted by counsel for petitioner that by registered sale deed dated 13.1.1975 petitioner purchased land bearing Khasra nos. 296/1, 296/2 and 427 from Pandri. Thereafter, respondents no. 1 and 2 filed an application under Section 170 (B) read with Section 165 (6) and 7(B) of MPLR Code. The said application was allowed by SDO (Revenue) Chhindwara by order dated 18.7.2017 passed in Revenue Case No. 02/A-23/2015-16 and it was held that the land in dispute originally belonged to Umrao Gond who was member of original tribe and how the name of Pandri was got recorded in the revenue records has not been proved by the petitioner. Accordingly, sale deed executed by Pandri in favour of the petitioner was set-aside and an order of eviction of the petitioner from the land in dispute was passed and it was also directed that names of legal heirs of Parani Bai namely respondents no.1 and 2 be recorded in the revenue records.

3. Being aggrieved by the said order, petitioner preferred an appeal which too was dismissed by the Collector, Chhindwara by order dated 1.1.2018 passed in Revenue Case No.427/Appeal/2016-17. The orders passed by the SDO (Revenue) and Collector, Chhindwara were challenged by the petitioner by filing a revision before the Board of Revenue which was registered as Case No.1/Revision/Chhindwara /LR/2018/2305 which too was dismissed by order dated 31.8.2018.

4. Challenging the orders passed by the Revenue Courts, it is submitted by counsel for petitioner that earlier the land was originally held by two separate Jamindars namely Umedchand who was Jamindar of Khasra no. 296 area 13.17 acre and Siddh Gopal who was Jamindar of Khasra no. 427 area 0.32 acre. Thereafter, as per the provisions of Madhya Pradesh Abolition of Proprietary Rights (Estates, Mahals, Alienated Lands) Act, 1950, the said land was vested in the State Government by notification dated 27.1.1951.

5. It is further submitted that thereafter, the land was allotted to Pandri by Tahsildar, Chhindwara in Case No. 9/A-19/1966-67. The allotment was done by the competent authority by order dated 22.8.1967 and accordingly, name of Pandri was recorded in the revenue records starting from 1967-68. After the land was purchased by the petitioner, his name was also recorded in the revenue records, which is evident from Khasra Panchsala which has been filed as Annexure-P/17. Thus, it is submitted that the land never belonged to a member of original tribe and thus, there is no violation of Sections 165 (6) and 170 (B) of MPLR Code and thus, the Revenue Courts have wrongly set aside the sale deed executed in favour of the petitioner by Pandri. However, it is fairly conceded by counsel for petitioner that the allotment proceedings which have been filed as Annexure-P/15 which started from order dated 31.12.1967 and ended with allotment of the land in dispute to Pandri was never placed before the Revenue authorities and for the first time, it has been placed before the High

Court and thus, it is submitted that the orders passed by the Revenue Courts thereby holding that the petitioner has failed to prove ownership of Pandri is erroneous and thus, it is liable to be set aside.

6. Per contra, petition is vehemently opposed by counsel for the respondents.

7. By referring to a judgment and decree dated 27.8.2015 passed by 4th Civil Judge Class-1, Chhindwara in Civil Suit No.15A/2014 as well as the judgment and decree dated 25.5.2019 passed by 3rd Additional District Judge, Chhindwara in Civil Appeal No.60A/2015, it is submitted by Shri Jaideep Sirpurar that the Civil Court had already held that the petitioner has failed to prove his ownership but accepting his possession over the land in dispute has issued a permanent injunction order to the effect that he can be dispossessed only in accordance with law.

8. It is submitted that although civil suit was filed for injunction but since the Civil Court has given a finding with regard to ownership of the petitioner over the land in dispute, therefore, question of ownership was directly and substantially involved in the suit between the same parties and thus, it would operate as *res-judicata*. To buttress his contention, counsel for respondents no.1 and 2 has relied upon the judgment passed by the Supreme Court in the case of **Sulochana Amma vs. Narayanan Nair** reported in **(1994) 2 SCC 14**, **Annaimuthu Thevar (dead) by Lrs. Vs. Alagammal and others** reported in **(2005) 6 SCC 202** and a judgment passed by a Division

Bench of this Court in the case of **Revenue Department and another vs. Chaitanya Realcon Pvt. Ltd. and others** decided **on 22.4.2017** in **WA No.23/2017.**

9. Faced with such a situation, counsel for petitioner has invited attention of this Court towards paragraph 17 of the judgment passed by the Appellate Court. It is submitted that petitioner had filed an application under Order 6 Rule 17 CPC r/w Order 41 Rule 27 CPC for taking additional documents on record. By filing of such applications, petitioner wanted to incorporate the relief of declaration of title as well as for mutation of name of petitioner in the revenue records along with proceedings of allotment but the said application was rejected on the ground that in case if the amendment is allowed and allotment proceedings are taken on record, then the suit would become barred under Section 257 of MPLR Code. Once, the Appellate Court itself has refused to entertain application for amendment and has refused to take allotment proceedings on record on the ground of jurisdiction, then any observation made by the Appellate Court would be nullity and the same can be challenged even in the collateral proceedings.

10. Heard learned counsel for the parties.

11. Undisputed facts are that allotment proceedings were never placed before any of the Revenue Courts, therefore, the Revenue Courts had no occasion to consider the effect of allotment of land to Pandri. Only question for consideration is as to whether the findings

regarding ownership recorded in the suit filed by the petitioner would operate as *res- judicata* or not.

12. Supreme court in the case of **Sulochana Amma (supra)** in paragraph 9 has held as under :-

> "**9.** Shri Sukumaran further contended that the remedy of injunction is an equitable relief and in equity, the doctrine of res judicata cannot be extended to a decree of a court of limited pecuniary jurisdiction. We find no force in the contention. It is settled law that in a suit for injunction when title is in issue for the purpose of granting injunction, the issue directly and substantially arises in that suit between the parties. When the same issue is put in issue in a later suit based on title between the same parties or their privies in a subsequent suit the decree in the injunction suit equally operates as res judicata. In this case, when the right and interest of the respondent were questioned in his suit against *K*, the validity of the settlement deed and the terms thereof were gone into. The civil court found that *K* acquired life estate under the settlement deed executed by his wife conferring vested remainder in the respondent and on its basis the respondent was declared entitled to an injunction against *K* who was prohibited not only from committing acts of waste, but also from alienating the properties in favour of third parties. The later suit of injunction to which the appellant was a party also binds the appellant. Therefore, even the decree founded on equitable relief in which the issue was directly and substantially in issue and decided, and attained finality, would operate as res judicata in a

> subsequent suit based on title where the same issue directly and substantially arises between the parties. As the appellant is deriving title from *K* who was a party in the former suit is also hit by the doctrine of lis pendens under Section 52 of the Transfer of Property Act."

13. Supreme Court in the case of **Annaimuthu Thevar (supra)** in paragraphs 27, 28 and 29 has held as under : -

> "**27.** The next question that arises is whether the issue of ownership and title in the suit house was directly and substantially in issue in the former suit or not. In the subsequent suit undoubtedly the foundation of claim is title acquired by the present appellant under registered sale deed dated 28-2-1983 from Muthuswami.
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> **28.** If we examine the nature of claim and pleadings in the former suit of Muthuswami as mortgagor and Plaintiff 2 the mortgagee, the suit appears to be based on the alleged right of Muthuswami as the owner to execute the mortgage. The decree of mandatory injunction in the former suit was sought on the ground that Muthuswami could execute a valid mortgage with possession in favour of the mortgagee and the defendant wife had no right or title, whatsoever, to interfere with the possession of the plaintiffs. The suit was resisted by the wife Alagammal on the ground that she had been placed in possession of the suit house with her children for their residence on the alleged settlement reached in the village Panchayat in the year 1971 in which her husband relinquished his right in the suit house in their favour. True it is, that relinquishment of an immovable property cannot be validly made without a written and

registered document. It seems from the conduct of Muthuswami that he had no courage to enter the witness box in the former suit to face the cross-examination on behalf of the wife on the existence of alleged settlement in the village Panchayat and relinquishment by him of his right in the suit house. It is apparent that he wanted to wriggle out of that settlement reached in the village Panchayat. As a first attempt in that direction he executed a mortgage deed to enable the mortgagee to institute a suit against his wife to dispossess her and deprive her of the right in the house which Muthuswami had earlier agreed to grant to her in the village Panchayat. Having failed in the joint suit filed by him with his mortgagee, he did not prosecute the litigation any further and preferred no appeal. As a second attempt to deprive his wife and children of the right in the house, he executed a registered sale deed in the year 1983 in favour of the present appellant. The aforementioned sale deed was executed after he had obtained a document of conveyance from the Housing Society and that he could obtain being an heir of his late mother who was the original allottee of the house from the Housing Society. The present subsequent suit has been filed by the present appellant who is purchaser by registered deed dated 28-2-1983 obtained from Muthuswami.

29. The former suit in which decree of permanent injunction was sought was clearly founded on the claim of Muthuswami as the owner of the suit house to execute a mortgage. The issue of title or ownership of the suit house was thus directly or substantially involved in the former suit."

14. Therefore, it is clear that even if the suit is filed for injunction, question of title would be directly and substantially involved and any finding with regard to the same would operate as *res judicata.* However, in the present case, petitioner had filed an application under Order 6 Rule 17 CPC read with Order 41 Rule 27 CPC. By the amendment application, petitioner had sought declaration of his title as well as for mutation of his name in the revenue records and had also placed a copy of allotment proceedings on record.

15. In paragraph 17 of the judgment and decree passed by the Appellate Court, it has been observed as under :-

> "17– यदि अपीलार्थी के चाहे अनुसार आदेश 6 नियम 17 सीपीसी सहपठित आदेश 41 नियम 27 सीपीसी को स्वीकार करते हुए मूल वाद में स्वत्व, घोषणा एवं राजस्व अभिलेखों में अपीलार्थी का नाम भूमि स्वामी की हैसियत से दर्ज कराने का निर्देश देने की सहायता संशोधन करने की अनुमति दे दी जाए और अपीलार्थी द्वारा प्रस्तुत दस्तावेज जिनमें पंढरी पिता गोमाजी कुनवी के पक्ष में कलेक्टर द्वारा भूमि आवंटन के आधार पर स्वत्व घोषणा की सहायता हेतु दावा चलाने की अनुमति दी जाए तो यह संहिता 1959 की धारा 257 (ठ) (ठ–1) का उल्लंघन होगा। ऐसी सहायता जोड़ने के उपरांत मामला प्रतिप्रेषित करना होगा, जो विधि की मूल भावना के विरूद्ध है, इसलिए आदेश 6 नियम 17 सीपीसी स्वीकार योग्य नहीं है।

16. Thus, it is clear that Appellate Court had refused to entertain amendment application and had also refused to consider the allotment proceedings in the light of bar as contained under Section 257 of MPLR Code.

17. Under these circumstances, this Court is of considered opinion that once the Appellate Court itself was of the view that the grounds raised by the petitioner cannot be considered in view of the bar as contained under Section 257 of MPLR Code, then it cannot be said that any finding given by the Appellate Court would operate as *res judicata.* Even otherwise any finding beyond the jurisdiction is a nullity after having held that the amendment application as well as prayer for filing additional evidence under Order 41 Rule 27 CPC cannot be entertained, otherwise the suit would be barred under Section 257 of MPLR Code, the Appellate Court should not have considered the effect of sale deed by Pandri in favour of the petitioner without the permission of Collector.

18. Under these circumstances, since the findings given by the Appellate Court are nullity in view of its own finding as recorded in paragraph 17 of its judgment, this Court is of considered opinion that the judgment passed by the Civil Court which had merged in the judgment and decree passed by the Appellate Court would not operate as *res judicata.*

19. Under these circumstances, this petition is **allowed** and order dated 18.7.2017 passed in Revenue Case No.02/A-23/2015-16 by SDO (Revenue) Chhindwara, order dated 01.01. 2018 passed in Revenue Case No.427/Appeal/2016-17 by Collector, Chhindwara and order dated 31.08.2018 passed in 1/Revision/ Chhindwara / LR/2018/2305 by Board of Revenue, Gwalior are hereby **quashed.**

20. The matter is remanded back to the SDO (Revenue) Chhindwara who would reopen the Revenue Case No. 02/A-23/2015-16. The petitioner, if so advised, shall file a copy of the allotment proceedings before the SDO (Revenue), District Chhindwara to prove the ownership of Pandri. If such documents are filed, then the same shall be taken on record by the SDO (Revenue) Chhindwara and thereafter shall decide as to whether the proceedings initiated by respondents no.1 and 2 would be covered by Section 170 (B) of the MPLR Code or not.

21. It is made clear that this Court has not commented upon the effect of the allotment proceedings and SDO (Revenue) shall decide the same in accordance with law without getting influenced or prejudiced by this order.

22. Parties are directed to appear before the SDO (Revenue) Chhindwara **on 13.11.2024**. No fresh notice to any of the parties would be required.

23. With aforesaid observation, petition is **disposed of.**

(G. S. AHLUWALIA)
JUDGE

JP

JITENDRA KUMAR PAROUHA