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C.A.No. 2481 OF 1997
ITEM No.101(P.H.)

Court No.11

SECTION IV

S U P R E M E C O U R T O F I N D I A
RECORD OF PROCEEDINGS

Civil Appeal No.2481 of 1997

Gajendra Singh Appellant.

VERSUS

Ram Singh and anr. Respondent (s)

(With office report)

Date : 31/07/2003 This appeal was called on for hearing today.

CORAM :

HON'BLE MR. JUSTICE BRIJESH KUMAR
HON'BLE MR. JUSTICE ARUN KUMAR

For Appellant (s) Mr.S.S. Khanduja, Adv.
Mr. Yash Pal Dhingra, Adv.
Mr. Baldev Krishan Satija, Adv.

For Respondent (s) Mr.Prakash Shrivastava, Adv.
Mr. Nitin Bhardwaj, Adv.

RR-ex-parte

UPON hearing counsel the Court made the following
O R D E R

Mr. Prakash Shrivastava, learned counsel for the respondents started his arguments at 10.35 a.
m. and concluded at 12.35 p.m.
The appeal is allowed in terms of the signed order.

There will be no order as to costs.

(R.K. DHAWAN) (KAMAL SINGH)
COURT MASTER COURT MASTER

IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO.2481 OF 1997

Gajendra Singh Appellant.

Versus

Ram Singh and Anr. Respondents.

O R D E R

The main question which falls for consideration in this appeal is as to whether any right of occupancy tenant has accrued to the appellant under the provisions of Madhya Pradesh Land Revenue Code, 1959 or not.

Undisputedly Respondent No.1 Ram Singh is a Bhumiswami of the land in question. He filed a suit in the year 1980, claiming relief of declaration and possession, on the basis of cause of action said to have accrued on his forcible dispossession by the appellant, in the same year i.e. 1980. The case of the appellant has been that in 1965 the respondent Ram Singh had given the land to him, on lease for cultivation on a rent of Rs.600/- and certain amount of crop grown in the field, and he has been in possession since thereafter continuously and has also been paying land revenue to the State on behalf of Respondent No.1. The case of forcible dispossession against the
....2/-

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appellant-defendant in the year 1980, as alleged, has been denied. Oral as well as documentary evidence seems to have been adduced by the parties and receipts of the land revenue paid by the appellant were also filed. The High Court has not accepted the case of the plaintiff-respondent No.1 of having been forcibly dispossessed in 1980. So far the case of the defendant appellant is concerned, it has been found by the trial court that it being a lease for indefinite period, it would not be so covered under Section 168 of the Madhya Pradesh Land Revenue Code and the transaction amounted to sale, which was unregistered. The trial court, however, on the basis of continued and uninterrupted possession of defendant-appellant since 1965 found it to be a case of adverse possession, hence dismissed the suit. It also found that the suit was barred by limitation having been filed 12 years after the possession of the defendant-appellant. The first Appellate Court dismissed the appeal. The case of dis-possession by the defendant-appellant in 1980 has not been accepted. The first Appellate Court held that if Bhumiswami gives his land for cultivation to some other person on lease the other person acquires the right of occupancy tenant. We find such a provision is contained in Section 169 of Madhya Pradesh Land Revenue Code. It has also been found that the plaintiff had given his land to the defendant-appellant in 1965 on receipt of Rs.600/- and three quintal of wheat etc. It is
....3/-

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also observed that in terms of the provisions of the Code, the plaintiff have not taken steps to evict the defendant-appellant under Section 250 of the Madhya Pradesh Land Revenue Code within, two years. In the above circumstances it was held that the plaintiff had lost his rights of Bhumiswami and the rights of occupancy tenant have been acquired by the defendant appellant. The High Court without upsetting the findings of fact, as recorded by the two courts below, has considered the question of applicability of Section 169 of Madhya Pradesh Land Revenue Code. The High Court considered the question as to whether the above said provision is attracted or not. It is then observed that the case of the plaintiff had all along been that he had been forcibly dispossessed. Then the High Court observed that, "if this is the situation then the plea of the respondent that an oral tenancy was created in his favour would require deeper scrutiny". Surprisingly, we find that in deeper scrutiny of the matter, the High Court in a brief paragraph following the above, observed that the case of the defendant of creation of sub-tenancy is based on his plea of paying Rs.600/- and three quintals of wheat etc. But it is not supported by revenue records where the defendant appellant has been recorded as trespasser. This seems to be the only consideration for the finding and further observed that mere payment of land revenue to the State would not bring about the relationship of sub tenancy
....4/-

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between the plaintiff and the defendant. In that view of the matter it was held that provisions of Section 169 of MP Land Revenue Code would not be attracted to the facts of the case. Wit

h the above observations the findings recorded by the Appellate Court and the trial court are reversed. In our view the High Court has dealt with the matter curiously and found the entry of trespasser in regard to the defendant appellant as a conclusive of the nature of possession. All other evidence, which has been led by the parties oral as well as documentary which had been taken into account by two courts below in coming to the findings, as recorded by them, has not been considered at all. We feel that this question is quite relevant for the decision of this case and requires proper scrutiny as also observed by the High Court deeper scrutiny in the matter which was, however, not done.

We also find that though no plea of limitation seems to have been raised nor any issue framed but the first two courts have gone into the question and the parties seem to be aware of question of limitation involved. It also required some proper consideration by the High Court. In the above circumstances we only consider it appropriate and conducive to the ends of justice that the matter be re-examined by the High Court more appropriately and in case it chooses to set aside the findings of facts as recorded by the ...5/-

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two courts below the High Court must indicate cogent reasons and valid grounds for the same. In the result the appeal is allowed. The order passed by the High Court is set aside and the case is remanded to the High Court for a fresh hearing and decision in the light of the observation made in the body of the judgment. There will be no order as to costs.

.....J
(BRIJESH KUMAR)

.....J
(ARUN KUMAR)

NEW DELHI;
JULY 31, 2003.