

VASANT BALU PATIL & ORS.

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v.

MOHAN HIRACHAND SHAH & ORS.

(Civil Appeal Nos.821-825 of 2009)

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OCTOBER 9, 2015

**[RANJAN GOGOI AND N.V. RAMANA, JJ.]**

*Injunction – Suit for declaration of title and injunction – Respondents-plaintiffs claiming to be owners of land, filed suits for injunction by against companies raising constructions on the suit land – Case of construction companies that they were authorised to raise the constructions by the villagers claiming to be owners of the land – Subsequently, impleadment of appellants-defendants as parties to the suits – Denial of title of the respondents by the appellants – Respondents seeking amendment of the plaint to incorporate the relief of declaration of title which was allowed – Respondents’ case that suit land devolved upon him through his grand father and father – Appellants’ case that as per the mutation entries of the years 1916 and 1927, the land was held by respondent’s grand father and thereafter by respondent’s father on behalf of the villagers – Dismissal of suits by trial court – However, first appellate court and High Court decreed the suits in favour of the respondents relying on the order by the revenue authority that the mutation entries were doubtful in view of certain interpolations or overwritings in the said mutation entries – On appeal, held: Mutation entries do not conclusively establish title – Plea of the appellants that the title of the respondent was found in their favour merely on the basis of the mutation entries cannot be accepted – Title of the respondent to land covered by survey No.43, 49 and 54 is established – Said survey numbers were*

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A mentioned against the mutation entries – If the entry with regard to the land being held on behalf of the villagers as made in the mutation records are to be ignored, on account of the findings recorded in the order of the revenue authority, which were approved in the appeal proceedings as being  
 B findings of fact recorded on the basis of the evidence on record, the title of the respondents to the suit land covered by the survey Nos. is proved and established.

C *Siddalingamma & Anr. vs. Mamtha Shenoy* 2001 (4) Suppl. SCR 366:2001 (8) SCC 561 – referred to.

#### Case Law Reference

D 2001 (4) Suppl. SCR 366 Referred to. Para 12.

CIVIL APPELLATE JURISDICTION: Civil Appeal No. 821-825 of 2009.

E Vinay Navare, Satyajeet Kr., Abha R. Sharma, Advs., for the Appellatns.

Jay Savla, Renuka Sahu, Abhinav Sharma, E. C. Agrawala, Advs., for the Respondents.

F The Judgment of the Court was delivered by

G **RANJAN GOGOI, J. 1.** The plaintiffs' suits (Nos. 124 of 1982 and 125 of 1982) for declaration of title and injunction were dismissed by the learned trial court. In first appeal, the learned District Judge reversed the decree of dismissal and decided the suits in favour of the plaintiffs. The said decree has been affirmed in second appeal by the Bombay High Court. Aggrieved the present appeals have been filed by the defendants in the two suits.

H 2. Insofar as recital of the relevant facts is concerned it

will suffice to notice that the plaintiffs' suits were initially for injunction against one Essar Construction Company (Suit No.125 of 1982) and one Ardeshir B. Kurshetji & Sons Pvt. Ltd. (Suit No.124 of 1982) who were raising certain constructions on the suit land of which the plaintiffs claimed to be owners. Initially the present appellants/defendants were not parties to the said suits. However, subsequently they were impleaded as defendants as, according to the plaintiffs, they were informed by the construction companies that they were authorised to raise the constructions on the suit land by the villagers of Mandva Village who claimed to be owners of the land. The appellants/defendants who were so impleaded and proceeded against in a representative capacity filed their written statement in the suits denying the title of the plaintiffs. The plaintiffs asserted their title, specifically by seeking the additional relief of declaration of title which was allowed to be brought on record by permitting an amendment of the suits insofar as the relief(s) claimed is concerned.

3. The basis of the claim of the plaintiffs date to the year 1916 when the suit land measuring 14.5 acres was recorded in the name of one Amarsi Gujjar, the grandfather of the present respondent-plaintiffs. It is the case of the plaintiffs that upon demise of Amarsi Gujjar in the year 1926, the property devolved by survivorship on Hirachand Gujjar, the father of the plaintiffs and on his demise in the year 1971 the same devolved upon the plaintiffs.

4. The appellant-defendants, on being impleaded in the suits, filed written statements contending, *inter alia*, that the mutation entry of the year 1916 showed Amarsi Gujjar as the holder of the land on behalf of the villagers. He was described as a Vahiwatadar of the villagers. Similarly, the mutation entry of the year 1927 following the death of Amarsi Gujjar also recorded Hirachand Gujjar as a Vahiwatadar and the land was

A shown as being held on behalf of the villagers. The above is the core of the claim of the respective parties on the basis of which certain supplemental pleas have also been raised which will be noticed as we proceed to delve further into the matter.

B           **5.** The learned trial court, as already noticed, dismissed the suits of the plaintiffs. This was primarily on the basis that the mutation entries of the years 1916 and 1927, which formed the foundation of the claims of the parties, indicated that the land was held by Amarsi Gujjar and thereafter by Hirachand Gujjar on behalf of the villagers. What would be particularly relevant to be noticed, at this stage, out of the huge multitude of facts that confronts the Court is that there was a parallel revenue proceeding wherein the issue was one pertaining to the correctness of the aforesaid two mutation entries. The said proceedings culminated in an order of the State Government dated 06.01.1993 passed in exercise of its revisional powers holding that the mutation entries of 1916 and consequently the entries of the year 1927 were extremely doubtful in view of certain interpolations or overwritings in the said mutation entries. Accordingly, the mutation entries were declared to be without any legal effect. The said order was challenged by the appellant in a writ petition which was heard and decided along with the second appeal in question. The order passed by the High Court in the civil writ petition has also been challenged before us in the present appeals.

G           **6.** In deciding the civil proceedings arising out of the suits in question, the first appellate court and the High Court disagreed with the learned trial court and overturned the findings of the learned trial court on all the issues. It is the very same pleas raised before the forums below on the issues arising for determination, that are being resurrected in the present appeals, to contend that the conclusion of the first appellate court and the High Court are wholly untenable

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requiring the interference of this Court in the exercise of its A  
jurisdiction under Article 136 of the Constitution.

7. It is in the above conspectus of facts that a brief resume  
of the contentions advanced on behalf of the parties would be B  
necessary not only to recapitulate the issues arising for  
determination in the present appeals but also to take note of  
what was urged before the forums below and the reasons for  
the conclusions reached and the views expressed by the said  
forums which have culminated in the present appeal. C

8. At the outset, Shri Vinay Navare, learned counsel for  
the appellants has contended that against the findings of the  
revisional authority in the revenue proceedings (order dated  
6.1.1993) a writ petition bearing No. 5893 of 1993 was filed  
before the High Court which was answered by the very same D  
impugned order by holding that as the question of title has  
been raised in the suit and found in favour of the plaintiffs it will  
not be necessary to separately adjudicate the correctness of  
the findings reached in the revenue proceedings. Shri Navare E  
has urged that neither the first appellate court nor the High  
Court had dealt with the legality of the mutation entries in  
question. Consequently no specific finding in this regard was  
recorded. In fact, the courts below concluded the issue in favour  
of the plaintiffs merely on the basis of the findings of the revenue F  
authorities. Once the mutation entries of 1916 and 1927 were  
so adjudged, another vital document which established the title  
of the defendants i.e. Khata No.47 which recorded the name  
of the villagers against the suit land came to be decided against G  
the defendants, consequentially, in a similar manner. It has been  
further urged on behalf of the appellants that the materials on  
record had amply demonstrated that all other land belonging  
to Amarsi Gujjar in his personal capacity were transferred in  
the name of his three sons Hirachand, Tapidas and Vittaldas.  
The mutation entries in respect of such land do not include the H

A suit land which fact would go to show that the suit land was not the personal property inherited by the legal heirs of the original owner, Amarsi Gujjar but was held by the said person on behalf of the villagers. It is additionally urged that some part of the suit land was acquired by the Government under the Land Acquisition Act and the materials on record indicate that possession of such land was handed over by Hirachand Gujjar on behalf of the villagers and compensation for such acquisition was received by Hirachand Gujjar alongwith two other villagers, namely, Nathram and Chaya Nakhawa.

9. It is further urged that the plaintiffs' suits was barred by limitation inasmuch as though the defendants had disputed the title of the plaintiffs to the suit land in the written statement filed in the year 1985, the plaintiffs had by an amendment of the suits prayed for addition of the relief of declaration of title. The said amendment was allowed by the learned trial court on 16.07.1995. The amended relief sought and granted, therefore, is clearly barred under the provisions of the Limitation Act, it is urged.

10. Finally, it is contended that though voluminous documents were introduced in evidence on behalf of the plaintiffs to prove their title, none of the exhibited documents had a relevant bearing to the survey numbers covering the suit lands except Survey No.43. It is, therefore, contended that the findings of the learned courts below regarding title of the plaintiffs is plainly untenable in law.

11. The aforesaid arguments on behalf of the appellants have been countered by Shri Jay Savla learned counsel for the respondents by contending that the legitimacy of the mutation entries on the basis of which, primarily, the suit was dismissed by the learned trial court has been conclusively decided in the revenue proceedings holding the same to be highly suspicious in view of the interpolations and the

overwritings therein. The said facts and findings recorded thereon were noticed in the course of the adjudication of the suits and were accepted by the learned courts below. The same are essentially findings of fact. If the mutation entry of 1916 which was the foundation of the claim of the parties is suspect, as has been held by the learned courts below, the claim of the plaintiffs to ownership is established and the substratum of the defendants' claim, including the claim of title on the basis of khata No.47 and payment of revenue in respect of the land covered by the said khata No. 47 (allegedly the suit land) will necessarily fall through. It is urged that the materials on record and the documents relied upon do not conclusively prove that compensation was received by Hirachand Gujjar on behalf of the villagers. In any case, the said issue would also stand concluded by the findings recorded in respect of the legitimacy of the original mutation entries. So far as the plea of limitation is concerned, it is urged that the order allowing the amendment of the suits to bring on record the additional relief of declaration of title has gone unchallenged and has attained finality in law. Therefore, the issue with regard to limitation issue necessarily had to be decided in favour of the plaintiffs inasmuch as the said amendment(s) would relate back to the date of filing of the suits. Reliance in this behalf has been placed on a judgment of this Court in Siddalingamma & Anr. vs. Mamtha Shenoy<sup>1</sup>.

12. We have considered the submissions advanced on behalf of the parties. While there can be no manner of doubt that mutation entries do not conclusively establish title, we remain unimpressed by the arguments and contentions advanced on behalf of the appellants that the title of the plaintiffs in the instant case was found in their favour merely on the basis of the mutation entries in question. The suit scheduled property as described in the plaints filed in both the suits show that the

<sup>1</sup> 2001 (8) SCC 561.

A suit land measuring 2 hectares 70 ares is covered by survey No.43, 49, 49A/1 and 54 which corresponds to new survey nos. 262, 214, 214A/1, 214B. The materials on record indicate that the title of the plaintiffs to land covered by survey No.43 stands established by Exh.63 whereas land covered by survey No.49 and 54 stands proved by Exh.154 and 158. It is the aforesaid survey numbers which are mentioned against the mutation entries of 1916 as well as the mutation entries of the year 1927. Coupled with the above, if the entry with regard to the land being held on behalf of the villagers as made in the mutation records are to be ignored, on account of the findings recorded in the order of the revenue authority dated 6.1.1993, which findings have been finally approved in the appeal proceedings arising out of the suits as being findings of fact recorded on the basis of the evidence on record, there can be no difficulty in holding that the title of the plaintiffs to the suit land covered by the survey Nos. indicated above stands proved and established. The entries in khata No.47 would also have to be understood with reference to the conclusions as above. Insofar as the land acquisition proceedings are concerned there is no conclusive material to hold that the payment of compensation was received by Hirachand Gujjar on behalf of the villagers so as to belie the case of the plaintiffs and/or establish the title of the defendants. The plea of the defendants that the voluminous documents brought on record do not establish the title of the plaintiffs has already been dealt with in the context of the specific exhibits which are relatable to the survey Nos. relevant to the suit land. So far as the plea of limitation is concerned there can be no manner of doubt that the amendment of the plaint(s) to incorporate the relief of declaration of title has necessarily to relate back to the date of filing of the suit. Once the said amendments were allowed and were not challenged by the defendants, the issue with regard to limitation has to be decided in favour of the plaintiffs.

13. For the aforesaid reasons we do not find any merit in A  
the case of the appellants as laid before us on the grounds  
and contentions as noticed. The appeals therefore will have to  
fail and are accordingly dismissed. However in the facts and  
circumstances of the case we make no order as to costs.

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Nidhi Jain

Appeals dismissed.