

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR

Writ Appeal No.490 of 2014

1. Amir, S/o Late Mukund Gonda, aged about 50 years, By Caste Aboriginal Tribe
2. Konda, S/o Mukund Gonda, aged about 40 years, By Caste Aboriginal Tribe
3. Jaiman, S/o Late Mukund Gonda, aged about 30 years, By Caste Aboriginal Tribe
4. Kushla, S/o Late Mukund Gonda, aged about 25 years, By Caste Aboriginal Tribe
5. Dhanu, S/o Late Mukund Gonda, aged about 20 years, By Caste Aboriginal Tribe,

All are R/o Village Adi Pathor, R.I. Circle Mainpur, Police Station Deva Bhoga, District Gariyaband, Chhattisgarh

---- Appellants

versus

1. Bhuneshar Sinha, S/o Late Shri Lakhi Dhan Sinha, aged about 52 years
2. Sunat Ram Sinha, S/o Late Shri Lakhi Dhar Sinha, aged about 45 years
Both are R/o Village Dondhra, R.I. Circle Mainpur, Tahsil and District Gariyaband, Chhattisgarh
3. State of Chhattisgarh, through the Principal Secretary Revenue, Mantralaya, Raipur, Chhattisgarh
4. Commissioner, Raipur Division, Raipur, Chhattisgarh
5. Collector, Gariyaband, Chhattisgarh
6. Sub-Divisional Officer Revenue, Gariyaband, District Gariyaband, Chhattisgarh

---- Respondents

For Appellants	:	Shri Dharmesh Shrivastava, Advocate
For State/Respondents No.3 to 6	:	Shri B. Gopa Kumar, Deputy Advocate General

Hon'ble Shri Navin Sinha, Chief Justice
Hon'ble Shri Justice P. Sam Koshy

Judgment on Board

Per Navin Sinha, Chief Justice

30/11/2015

1. I.A. No.2 of 2015 has been filed to condone delay of 278 days in filing

the appeal. Considering the explanation that delay was occasioned urging the filing of a Review application earlier, after hearing the parties, I.A. No.2 of 2015 is allowed and delay is condoned.

2. The present appeal arises from order dated 28.1.2014 allowing Writ Petition No.2044 of 2002 preferred by Respondents No.1 and 2. The Learned Single Judge set aside the order of the Additional Commissioner, Raipur dated 31.7.2002 in Revision Case No.22-A/23 Year 2001-02. The latter order in turn had set aside the appellate order by the Additional Collector, Gariyaband dated 20.9.2001 allowing the appeal preferred by Respondents No.1 and 2 in turn setting aside the order dated 10.4.2000 by the Sub-Divisional Officer in a proceeding under Section 170-B of the Chhattisgarh Land Revenue Code, 1959 (hereinafter referred to as 'the Code') initiated by the Appellants.

3. Learned Counsel for the Appellants submitted that the Learned Single Judge erred in not appreciating the reasons discussed by the Revisional authority that an agreement for sale did not convey Title in absence of conveyance by a registered document. Mere mutation coupled with payment of land revenue did not create Title. Respondents No.1 and 2 had not placed any material in support of their having acquired Title. The Appellants remained the lawful owners of the lands. They belonged to an aboriginal tribe. The Additional Commissioner committed no error in directing reversion of the lands to the Appellants, who were the grand children of the original owner Sukhru Gond, under Section 170-B of the Code. The application under Section 170-B of the Code had been filed by the father of the Appellants, son of Sukhru Gond. The concurrent finding of fact by the Sub-Divisional Officer and the Additional Commissioner ought not to have been interfered with.

4. We have heard Learned Counsel for the State also.

5. The transactions with regard to the lands in question was made in the year 1938 between Late Sukhru Gond, the grand father of the Appellants and Late Lakhi Sinha, father of Respondents No.1 and 2. Sukhru Gond in his lifetime did not question the transaction made by him in favour of Late Lakhi Sinha as fraudulent or illegal for any other reason. No disclosure has been made with regard to the date of death of Sukhru Gond. Mukund Gond son of Sukhru Gond sought to invoke Section 170-B of the Code only on 10.4.2000 after the best evidence that could be given by Sukhru Gond was no more available due to his demise. Again no disclosure has been made how old was Mukund Gond in 1938. In absence of any evidence with regard to his age, it is a questionable fact if Mukund Gond had any personal knowledge regarding the documents executed by his Late father. Certainly, the present Appellants did not have any knowledge or information with regard to the actions of their grand father done in 1938 as they were in all probability not even born then. What may have been done validly and legally when done is now sought to be declared illegal merely because evidence may be lost by time sought to be proved by persons who may have been minors in 1938 or were not even born then.

6. The Code came into force in 1959. Section 170-B of the Code was inserted by amendment with effect from 24.10.1980. The latter provides that where a person may have come into possession of lands belonging to a member of tribe so declared to be an aboriginal tribe under Section 165(6) of the Code between the period commencing 2.10.1959 when the Code came into force ending on the date of the amendment, i.e., 24.10.1980, it was actionable within a period of two years. Thus, the cause of action must have accrued by a transaction between the aforesaid dates and could be questioned within a period of two years thereafter. Section 170-B sub-section (3) of the Code makes it mandatory that the Sub-Divisional Officer

would make an inquiry about all such transactions of transfer and if he finds that the member of aboriginal tribe has been defrauded of his legitimate right he shall declare the transaction null and void and pass an order revesting the agricultural land in the transferor and, if he is dead, in his legal heirs.

7. The transactions in question were entered by late Sukhru Gond long before even the Code came into force. Respondents No.1 and 2 did not come into possession of the lands during the intervening period of coming into force of the Code and the Amendment much less was there any allegation of Sukhru Gond having been defrauded.

8. In view of the discussion we find no reason to interfere with the conclusion of the Learned Single Judge, also for additional reasons discussed, that in absence of any allegations of fraud, the Sub-Divisional officer had no jurisdiction to entertain the application under Section 170-B of the Code.

9. The appeal is dismissed.

Sd/-

(Navin Sinha)
CHIEF JUSTICE

Sd/-

(P. Sam Koshy)
JUDGE