

HIGH COURT OF CHHATTISGARH, BILASPUR**WRIT APPEAL No. 37 of 2015**

1. Chherku Ram, aged 53 years son of Late Sibho Mehar, Resident of village and post office Chakarbhata camp, Tahsil Bilha, District Bilaspur (Chhattisgarh).
2. Samari Bai aged 56 years Daughter of Late Sibho Mehar, Resident of village Bilha, Tahsil Bilha, District Bilaspur Chhattisgarh.
3. Than Singh Aged 43 years Son of Shri Arjun Singh Mirr, Resident of Toilidih, P.S. Pulgaon, Tahsil Bilaigarh, District Baloda Bazar Bhatapara, Chhattisgarh.
4. Dhani Ram aged 28 years son of Shri Nityanand.
5. Neera Bai aged 24 years, Wife of Shri Subhash.

Both 4 and 5 are resident of Village and Post Office Putka, Tahsil Saraipali, District Mahasamund, Chhattisgarh.

---- Appellants

Versus

1. Sanjay Kumar Bajpai, aged 51 years son of Late Shri Devi Dayal, Occupation Agriculture.
2. Ajay Kumar Bajpai, aged 49 years son of Late Shri Devi Dayal, Occupation Teaching.
3. Deep Kumar Bajpai, aged 46 years, son of Late Shri Devi Dayal, Occupation Teaching.
4. Durgesh Kumar Bajpai, aged 41 years son of Late Shri Devi Dayal, Occupation Agriculture.

All above 1 to 4 are residents of village Lawan, Tahsil Baloda Bazaar, District Baloda Bazaar-Bhatapara Chhattisgarh.

5. State of Chhattisgarh Through the Collector, District Baloda Bazaar-Bhatapara Chhattisgarh
6. The Sub Divisional Officer, Baloda Bazaar, District Baloda Bazaar-Bhatapara, Chhattisgarh.
7. The Additional Collector, Raipur (Now Baloda Bazaar) Chhattisgarh.
8. Mani Ram, aged 37 years, son of Shri Pardeshi Mochi.
9. Tika Ram, aged 30 years son of Shri Pardeshi Mochi.
10. Mahesh Kumar Aged 25 years son of Shri Pardeshi Mochi.

All above No. 8 to 9 are residents of Chakarbhata, Tahsil Bilha, District Bilaspur Chhattisgarh.

11. Pardeshi Aged 77 years son of Shri Sibbo Mehar, Resident of village Rahangi, Post Office Chakarbhatta, Tahsil Bilha, District Bilaspur Chhattisgarh.

---- Respondents

For Appellants	:	Shri Ritesh Verma, Advocate.
For Respondents 1 to 5	:	Shri P.K.C. Tiwari, Senior Counsel with Shri Shashi Bhushan, Advocate.
For Respondent/State	:	Shri B. Gopa Kumar, Deputy Advocate General

Hon'ble The Acting Chief Justice
Hon'ble Shri Justice Pritinker Diwaker

Order On Board

Per Navin Sinha, Acting Chief Justice

19/03/2015

We have heard Counsel for the Appellants and the Respondents.

2. The present appeal arises from the order dated 12.12.2014 passed in Writ Petition (C) No. 938 of 2012. The Learned Single Judge has allowed the writ petition holding that the sale deed in question was executed prior to the appointed day and was not subsisting as a loan agreement on the date that the application was filed by the Respondents under Section 5 of the Madhya Pradesh Samaj Ke Kamjor Vargon Ke Krishi Bhumi Dharakaon Ka Udhart Dene Walon Ke Bhumi Hadapan Sambandhi Kuchakron Se Paritran Tatha Mukti Adhiniyam, 1976 (hereinafter referred to 'the Act')

3. Learned Counsel for the Appellants submits that the alleged transaction of sale and purchase made and executed on 26.12.1962 and 9.4.1963 by deceased Sibbo Mochi was a sham document. It was essentially a loan transaction agreement prohibited under the Act. The wife of the deceased therefore filed an application under Section 5 of the Act for protection and relief by return of the lands. The Respondents had earlier filed a suit to set aside the order of the Additional Collector. The Additional Collector held that the alleged sale deed was a sham

transaction, essentially a loan transaction agreement hit by the Act. The suit filed by the Respondents to set aside the order was dismissed on 4.10.1993 and the appeal also dismissed on 15.3.1994. A second appeal was also dismissed on 28.7.2011 and the Special Leave Petition also declined interference by the Supreme Court. The issue having attained finality there was no occasion for the Single Judge to hold otherwise that it was a genuine transfer of sale and purchase and not a sham agreement for what was essentially a loan transaction agreement.

4. Learned Senior Counsel for the Respondents opposed the appeal submitting that the sale deeds dated 26.12.1962 and 9.4.1963 were both prior to the appointed day of 1.1.1971 as defined under Section 2(a) of the Act. The Act had been given retrospective effect for six years only after promulgation on 22.1.1977. The sale was complete before the appointed day and the name of the purchaser also entered into the revenue record. Sibomochi was deceased on 18.8.1980. In his life time he never filed any application under the Act. The wife of the deceased filed an application under Section 5 of the Act only after his death on 19.12.1981, much belatedly. The dismissal of the suit was on the ground of non-maintainability in view of Section 8 of the Act providing an appellate forum before the Sub Divisional Officer against the order passed under Section 5 of the Act. Any observation made in a suit which was not maintainable cannot be of any relevance.

5. We have considered the submissions on behalf of the parties and are of the opinion that the appeal can be disposed off on a single issue. It is an undisputed fact that the sale deeds in question were executed much prior to the appointed day of 1.1.1971 for a consideration and the name of the Respondents as purchasers entered into revenue records.

6. Section 5 of the Act reads as follows:

“5. Application for protection and seeking relief under this Act.-
A holder of agricultural land who is a party to any transaction of loan subsisting on the appointed day or entered into thereafter may apply to the Sub-Divisional Officer within such time, and in

such form and manner as may be prescribed for protection and relief under this Act.”

7. It is therefore apparent that as on the appointed day of 1.1.1971, there should have been a loan agreement subsisting to enable the aggrieved to file an application under Section 5 of the Act. If there was no transaction of loan subsisting on the appointed day, the Sub Divisional Officer had no jurisdiction to entertain an application under Section 5 of the Act. Sibomochi was deceased on 18.8.1980. He had more than sufficient time to file an application under Section 5 of the Act, if it was maintainable, and he was of the opinion that it was a sham sale deed essentially a loan transaction agreement. No explanation has been furnished why he did not do so. The wife of the deceased filed an application under Section 5 of the Act as late as 19.12.1981 after his death.

8. The civil suit and the appeal were dismissed on the ground of non-maintainability in view of the appellate remedy available under Section 8 of the Act.

9. If an application under Section 5 of the Act was filed questioning a document or arrangement executed, much before the appointed day, the Sub Divisional Officer could not have given further retrospective effect to the Act than intended by the legislature. The entire proceedings before the Sub Divisional Officer were therefore completely without jurisdiction.

10. We therefore find no reason to interfere with the order of the learned Single Judge. The appeal is dismissed.

ACTING CHIEF JUSTICE

JUDGE