

HIGH COURT OF CHHATTISGARH, BILASPUR

Judgment reserved on 30-7-2018

Judgment delivered on 27-8-2018

FA No. 109 of 2001

1. Ramdev s/o Badhansay, age 45 years, Occupation-Agriculture
2. Mahabeer s/o Badhansay, age 30 years, Occupation-Agriculture
3. Jagdev s/o Badhansay, age 28 years, Occupation-Agriculture
4. Ramchandra s/o Shivmangal, age 50 years,
5. Dinesh s/o Ramdin, age 23 years,
6. Roopram s/o Ramsevak, age 20 years,
7. Krishna s/o Vishambhar, age 18 years,
8. Hariram s/o Dalsay, age 50 years,
9. Munna s/o Madho, age 25 years,
10. Devsay s/o Badgiram, age 25 years,
11. Munniram s/o Dalsay, age 40 years,
12. Shankar s/o Dalsay, age 35 years,
13. Udayram s/o Madho, age 21 years,

No.4 to 13 by caste Rajwar, All R/o village Mendrakala,
P.S./Tehsil Ambikapur, District Surguja (CG)

---- Appellants

Versus

1. Amrit s/o Ganjhu (Dead) through Lrs-
1A. Budhram S/o Amrit, age 25 years, (Lrs.of Def. No.1)
2. Jhingo d/o Ganjhu,
3. Rampyari d/o Ganjhu
All r/o village Bankipur, P.S. Jaynagar, Tehsil Surajpur, District Surguja (CG)
4. Kalyandas s/o Anandi (Dead) through LRs -
 - 4.1- Safiyano wd/o Kalyandas, age 46 years,
 - 4.2- Hiro Bai d/o Kalyandas, age 26 years,
 - 4.3-Hirmen Bai d/o Kalyandas, age 23 years,
 - 4.4- Panduram s/o Kalyandas, age 16 years,
 - 4.5-Budhiyaram s/o Kalyandas, age 11 years,
 - 4.6- Gudduram s/o Kalyandas, age 6 years,
 - 4.7-Guddi Bai s/o Kalyandas, age 3 years,No. 4 yo 7 Minor, through their mother and natural guardian Safiyano wd/o Kalyandas

All r/o village Mendrakala P.S./Teh. Ambikapur, District Surguja (CG)

5. Sailudas s/o Anandi,
6. Dailandas s/o Anandi,
7. Nangulabi w/o Devendra,
No.5 and 6 r/o village Mendrakala, P.S. and Tehsil Ambikapur, District Surguja (CG)
No.7 r/o village Chitabahar, P.S. and Tehsil Ambikapur, District Surguja (CG)
8. Siri Patvari, P.C. No.23, Tehsil Ambikapur, District Surguja (CG)
9. The State of M.P. (Now CG) through Collector, Surguja, Ambikapur

---- Respondents

For appellants	:	Mr. D.N. Prajapati, Advocate.
For respondents	:	None though served

SB: Hon'ble Shri Justice Ram Prasanna Sharma

CAV JUDGMENT

1. This appeal is preferred by the appellants under Section 96 of the Code of Civil Procedure, 1908 against the judgment and decree dated 30-1-2001 passed by the District Judge, Sarguja at Ambikapur (CG) in Civil Suit N.20-A/99, wherein the said court dismissed the suit filed by the appellants for declaration of title over the land mentioned in Schedule A & B of the plaint, for declaring the sale deed void executed by respondents No. 1 to 3 in favour of respondent No.7 and for permanent injunction.
2. As per the averment the original recorded owner of the land in question was one Ganjhu Ram, who was predecessor of respondents No. 1 to 3. He belongs to Scheduled Tribe and sold

the said land to one Anandi Panika in the year 1964. As both were Tribes, transaction between them was permissible under Section 165 of the Chhattisgarh Land Revenue Code, 1959. Further case was that Anandi Panika was declared as non-tribe in the year 1971 by the State of Madhya Pradesh. The said Anandi being a person of general caste, transferred the land to the appellants. They transferred the land of Schedule B to various other villagers. After the amendment in the Madhya Pradesh Land Revenue Code 1980, as per Section 170(B), Sub-divisional Officer drew proceeding against the appellants and it was ordered that transaction between Ganjhu Ram and Anandi Panika was benami transaction, therefore, the land be returned back to the possession and ownership of all the successors of Ganjhu i.e., respondents No. 1 to 3.

3. Learned counsel for the appellants would submit that the order of the competent authority i.e., Sub Divisional Officer is challenged before the Collector regarding land of Schedule-B and the matter was remitted and proceeding under Section 170-B of the Code was decided in favour of purchaser, therefore, the appellants who have not challenged the order of the Sub Divisional Officer should be kept on same footing.
4. In view of this court, the trial Court was not assessing the order of the Collector or Sub Divisional Officer regarding land of

Schedule-B. In absence of proper pleading and material regarding said transaction, the trial Court was not competent to decide the issue beyond record.

5. Learned counsel for the appellant would further submit that the provision of Section 170-B of the Act, 1959 is not attracted in the present case, therefore, the finding of the trial Court is not sustainable.
6. From the evidence on record (Ex. P/7), it is established that Anandi Panika appeared during proceeding before the Sub Divisional Officer and she has stated that she has not purchased the land but Badansai, Heera Sai and Kawal Sai and others have purchased the land and the said sale deed is not denied by present appellant or successors of Badansai, Heera Sai and Kawal Sai and it is established before the said authority that transfer was not *bona fide* and, therefore, the authority has passed the order as per provision of Section 170-B of the Land Revenue Code, 1959. As per Section 170-B of the Act, 1959, it has to be enquired how a person who is in possession of agricultural land belongs to tribe came into possession for a period from 2-10-1959 to 9-6-1980 and 21-10-1980.
7. As per law laid down by Hon'ble the Apex Court in the matter of **Bhaj vs. Sub Divisional Officer, Thandia, reported n 2003 (1) SCC 692**, no exception has been enacted by the Legislature as

to exclude from the purview of Section 170-B of the Code 1959, even if transaction of transfer was between two persons and both of whom are members of about regional tribes.

8. When Anandi appeared before Sub Divisional Officer and stated that transaction is not genuine transaction, the finding recorded by the Sub Divisional Officer was just and proper and the trial court is right in not declaring the said order void.
9. Learned counsel for the appellant would further submit that the transaction was not benami as held by Sub Divisional Officer because transaction between the parties were entered into in the year 1964 and 1981 and benami transaction came into force in the year 1988.
10. In view of this court, the argument is without substance because Section 170-B of the Code 1959 is not related to benami transaction, but it is related to property which was earlier of a member of Tribe and the some other is in possession of the property during the period between 1959 to 1980. The provision required that such person should satisfy the lawful authority for occupying the same. In the present case, since transaction was not bona fide, therefore, therefore, the order was passed against the appellant.
11. Section 257 of the Code, 1959 commands that no civil court shall entertain any suit in a matter to which Revenue Officer is

empowered to determine. The matter covered under Section 170-B of the Code 1959 is excluding the jurisdiction of the civil court in the present case. Finding arrived at by the Sub Divisional Officer is based on legally admissible evidence and it is not a case where the provision of the Act has not been complied with or the matter was submitted without jurisdiction before the Sub Divisional Officer.

12. On overall assessment of the material placed before the trial Court, the trial Court is right in dismissing the suit of the appellant and this court has no reason to interfere with the same.
13. Accordingly, the appeal is liable to be and is hereby dismissed and decree is passed against the appellants and in favour of the respondents as under:
 - (I) Suit is dismissed with cost..
 - (ii) Appellants to bear the cost of the respondent through out.
 - (iii) Pleader's fee, if certified, be calculated as per Schedule or as per certificate whichever is less.
 - (iv) A decree be drawn up accordingly.

Sd/-

(Ram Prasanna Sharma)
Judge

Raju