

AFR

HIGH COURT OF CHHATTISGARH, BILASPUR**FIRST APPEAL No 49 of 2003****Reserved on 06.08.2018****Delivered on 13-8-2018**

(Arising out of judgment/decreed dated 21.01.2003 in Civil Suit No. 6A/2000 of the Additional District Judge, Link Court Ramanujganj)

Gopal Prasad S/o Late Kanhai Sao, age 45 years, Occupation – Agriculture and Business, r/o village Wadrafnagar, Tehsil Wadrafnagar, P.S. Basantpur, Distt – Surguja, C.G.

---- Appellant**Versus**

1. Munna Lal s/o Late Mahadev, occupation – Agriculture and Teacher.

2. Sahdev s/o Jirjodhan, occupation – Agriculture,

Both r/o village Wadrafnagar, Tehsil Wadrafnagar, Distt – Surguja, C.G.

3. The State of M.P. (Now C.G.) through Collector, Surguja, Ambikapur.

---- Respondents

 For Appellant : Mr. Shakti Raj Sinha, Advocate
 For Respondents No. 1 and 2 : Mr. Rahul Mishra, Advocate
 For Respondent No.3 : Ms. Sunita Jain, Panel Lawyer

Hon'ble Shri Justice Sharad Kumar Gupta**CAV ORDER**

1. In this first appeal the challenge levied is to the order and decree dated 21.01.2003 passed by the Additional District Judge, Link Court Ramanujganj in Civil Suit No. 6A/2002 whereby and whereunder he allowed the I.A. No.2 filed by the

respondents No. 1 and 2, and rejected the appellant's plaint.

2. This is admitted by respondents No. 1 and 2 that the old Khasra No. of the disputed land is 389/1 admeasuring area 1.214 Ha. and new Khasra No. is 863 admeasuring 1.20 RA. Late Jirjodhan is the father of the respondent No.2 and grand father of respondent No.1. Jirjodhan was by caste Gond. He died in 1983. On 21.04.1999 disputed land was recorded in their name and an endorsement was made that as per the order dated 31.12.1995 of SDO, Wadrafnagar passed in Revenue Case No. 151/A/23/91-92.
3. In brief the appellant's case is that late Jirjodhan had executed will in his favour on 21.07.1982, he is the titleholder of the disputed land and he has possession over that land. He has no knowledge about the said order. SDO has no jurisdiction because he got the disputed land through will which does not come in the category of transfer.
4. In brief the case of respondent No.1 is that late Jirjodhan has not executed the will in favour appellant. In the case in hand the provision of Section 170-A & B of the Land Revenue Code, 1959, (for brevity 'the Code') are applicable and civil Court has no jurisdiction.
5. Being aggrieved by the impugned order and decree, appellant has preferred this appeal.
6. Counsel for the appellant vehemently argued that appellant

had challenged the validity of the order passed by the SDO, thus trial Court committed illegality while passing the impugned order and decree.

7. Counsel for the respondents No.1 and 2 argued that the impugned order and decree are in accordance with law and do not call for any interference by this Court.

8. Appellant has filed the suit for the declaration that he is the owner of the disputed land and he has possession over it and the order dated 31.12.1995 passed by the SDO is illegal and for permanent injunction.

9. It would be pertinent to mention the provisions of Section 170-B of the Code which reads as under:-

“170B-Reversion of land of members of aboriginal tribe which was transferred by fraud – (1) Every person who on the date of commencement of the Madhya Pradesh Land Revenue Code (Amendment) Act, 1980 (hereinafter referred to as the Amendment Act of 1980) is in possession of agricultural land which belonged to a member of a tribe which has been declared to be an aboriginal tribe under sub-section (6) of section 165 between the period commencing on the 2nd October, 1959 and ending on the date of the commencement, notify to the Sub-Divisional Officer, in such form and in such manner as may be prescribed, all the information as to how he has come in possession of such land.

(2) If any person fails to notify the information as required by sub-section (1) within the period specified therein it shall be presumed that such person has been in possession of

the agricultural land shall, on the expiration of the period aforesaid revert to the person to whom it originally belonged and if that person be dead, to his legal heirs.

(2-A) If a Gram Sabha in the Scheduled area referred to in clause (1) of Article 244 of the Constitution finds that any person, other than a member of an aboriginal tribe, is in possession of any land of a Bhumiswami belonging to an aboriginal tribe, without any lawful authority, it shall restore the possession of such land to that persons to whom it originally belonged and if that person is dead to his legal heirs:

Provided that if the Gram Sabha fails to restore the possession of such land, it shall refer the matter to the Sub-Divisional Officer, who shall restore the possession of such land within three months from the date of receipt of the reference.

(3) On receipt of the information under sub-section (1), the Sub-Divisional Officer shall made such enquiry as may be deemed necessary 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 be dead, in his legal heirs.

[(3) On receipt of the information under sub-section (1) the Sub-Divisional Officer shall make such enquiry as may be necessary 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 –

(a) Where no building or structure has been erected on the agricultural land prior to such finding pass an order

revesting the agricultural land in the transferor and if he be dead, in his legal heirs,

(b) Where any building or structure has been erected on the agricultural land prior to such finding, he shall fix the price of such land in accordance with the principles laid down for fixation of price of land in the Land Acquisition Act, 1894 (No. 1 of 1894) and order the person referred to in sub-section (1) to pay to the transferor the difference, if any, between the price so fixed and the price actually paid to the transferor:

Provided that where the building or structure has been erected after the 1st day of January, 1984 the provisions of clause (b) above shall not apply:

Provided further that fixation of price under clause (b) shall be with reference to the price on the date of registration of the case before the Sub-Divisional Officer”

10. The provision of Section 257(l-1) of the Code reads as:

“257 Exclusive jurisdiction of revenue authorities -

Except as otherwise provided in this Code, or in any other enactment for the time being in force, no Civil Court shall entertain any suit instituted or application made to obtain a decision or order on any matter which the State Government, the Board, or any Revenue Officer, may this Code, empowered to determine, decide to dispose of, and in particular and without prejudice to the generality of this provision, no Civil Court shall exercise jurisdiction over any of the following matters:

xxxxxxx

xxxxxxx

xxxxxxx

(l-1) any matter covered under Section 170-B.”

11. Counsel for the appellant relied on the judgment of this Court passed in **Dhanajiram and Another vs. Praveen Kumar and Others {2014(2) C.G.L.J. 334}** which lays down that in spite of bar created u/s 257(L-1) of the Code against orders passed by the Revenue Authorities u/s 170-A and 170-B of the Code in their exclusive jurisdiction even then the civil Court had jurisdiction to entertain and consider the matter upto the extent whether the authority concerned has complied with the prescribed procedure or not while holding the enquiry and passing the order.

12. Counsel for respondents No. 1 and 2 placed reliance on judgment of this Court in **Smt. Nanbutia and Another vs. Smt. Manglinbai and Others {2011 (1) C.G.L.J. 275}** wherein it has been held that Courts below have not considered the main clause of S. 257 of the Code and complete procedure provided u/s 170-B of the Code, thereby committed illegality. Judgment and decree of both the courts below are set aside. Considering the peculiar facts that instead of filing the appeal and revision provided under the Code, the present respondents have filed civil suit, they may challenge the order passed by the Sub-Divisional Officer before appellate or revisional forum and if appeal or revision is filed, then delay in filing such appeal or revision may be considered in the light of pendency of civil suit and civil appeal.

13. Counsel for respondents No. 1 and 2 cited para 22 of the

judgment of the Hon'ble High Court of Madhya Pradesh in **Dhumaniya v. Harsingh and others {2001 RN 85}** which reads as under:-

“ 22. The civil Court has gone into the questions which were required to be decided by SDO and as a matter of fact, decided by the SDO. The matters which are required to be decided by the SDO are not final as against the order of the SDO there is further appeal and revision provided under the Code. The orders thus passed are final and the jurisdiction of the civil Court is barred u/s 257(1-1) of the Code. Thus, Courts below could have seen only to the extent whether basis fundamental principles of the judicial process have been followed or not by the competent authority passing the order and the jurisdiction of the civil Court is limited as laid down in the case of *Dhulabhai v. State of M.P.* and case must fall within the parameter of the tests mentioned in Para 19 of this order. The Courts below have not considered the material such as the voters list which was referred to by the SDO and also the lease deed filed by the respondent, granted to Luraiya Sahariya.”

14. The Apex Court in the case of **Dhulabhai v. State of M.P. {1968 RN 683}** has considered as to what extent in a provision of exclusive jurisdiction any interference can be made by Civil Court. Several tests have been laid down wherein third test states that where the statute gives a finality to the orders of the special tribunals, the civil court's jurisdiction must be held to be excluded if there is adequate remedy to do what the civil courts would normally do in a suit. Such provision however does not exclude those cases where the provisions of the particular Act have not been complied with or statutory tribunals has not acted

in conformity with the fundamental principles of judicial procedure.

15. Counsel for respondents No. 1 and 2 cited para 17 of the judgment of the Hon'ble High Court of Madhya Pradesh in **Chambaram v. Chanda and others {1993 RN 155}** which reads as under:-

“ 17. This Court is definitely of the opinion that the term 'transfer' as occurring in section 165(6) of the Code is not to be given restricted meaning, also not to be read in the light of the definition given in Sec.5 of the Transfer of property Act. It has to be liberally construed, assigning an extended meaning so as to cover every contingency which results in depriving the aboriginal holder of the title and vesting the same in any non-aboriginal. That interpretation only would satisfy the Legislative intent and the laudable public purpose behind.”

16. In the present case admittedly appellant had not notified his possession to the SDO as per the provisions of Section 170-B(1). Order passed under the provisions of Section 170-B of the Code is appealable. Second appeal is barred but revision against the order passed by the appellate court is maintainable under Section 50 of the Code. It shows complete procedure and opportunity for enquiry, investigation, an opportunity of hearing to the parties.

17. The appellant has not filed the copy of the order of the S.D.O. dated 31-12-1995 passed under Section 170-B of the Code. He has filed the copy of the appeal against the order

passed under Section 170-B of the Code. It appears from the pleading of para 10 of the plaint that said appeal has been dismissed. He has also not filed the copy of the order of appellate authority. In these circumstances, this Court finds that appellant failed to show that the provisions of the Code have not been complied with or sub divisional officer or appellate authority have not acted in conformity with the fundamental principles of the judicial procedure. In these circumstances and looking to the observations made in **Dhanajiram (supra)**, **Smt. Nanbutia (supra)**, **Dhumaniya (supra)**, **Dhulabhai (supra)** and **Chambaram(supra)** this Court finds that the jurisdiction of the Civil Court to decide the matter on merits, is barred under Section 257 (I-1) of the Code, and the Civil Court also does not have the aforesaid limited jurisdiction.

18. Looking to the above mentioned facts and circumstances this Court finds that the Trial Court has not committed any illegality in rejecting appellant's plaint. Thus, the impugned order and decree are confirmed to the above extent. The appeal being devoid of merits deserves to be and is hereby dismissed.

19. A decree be drawn up accordingly.

20. Appellant shall bear his own costs and costs of respondents also.

Sd/-
(Sharad Kumar Gupta)
Judge