

HIGH COURT OF CHHATTISGARH, BILASPUR**Second Appeal No.322 of 2001**

1. Ramjatan Singh s/o Dilbodh Singh Paikra, aged about 20 years,
Now attained majority
2. Dilbodh Singh Paikra S/o Gauha Ram aged about 45 years, Caste
Kanwar

Both r/o village Chiranga, Tehsil Sitapur, Distt. Surguja, C.G.

---- Appellants/Defendants No.1 & 2

Versus

1. Charman S/o Bhagat Kanwar, aged about 34 years, Caste-Kanwar,
r/o village Chiranga, Tehsil Sitapur, Distt. Surguja (CG)

Through his next friend Shri Ramsharan Ram, Advocate, Ambikapur,
Distt. Surguja, C.G.

2. The State of Chhattisgarh, through Collector Surguja, Ambikapur

---- Respondents

For Appellants/defendants No.1&2	: Mr.A.K.Prasad, Advocate
For Respondent No.1/plaintiff	: Mr.Vivek Bhakta, Advocate
For Respondent No.2	: Mr.Rahul Jha, G.A.

Hon'ble Shri Justice Sanjay K. Agrawal

Judgment on Board

05/03/2019

1. The substantial question of law involved, formulated and to be
answered in the second appeal preferred by defendants No.1 and 2
is as under:-

“Whether the findings arrived by lower appellate court
while reversing judgment of the trial Court is contrary to
the evidence that has come on record ?

[For the sake of convenience, the parties would be referred
hereinafter as per their status shown and ranking given in the

suit before the trial Court].

2. The suit land was originally government land. Settlement parcha was granted in favour of Bhagat Kunwar in Surguja settlement and he remained in possession of the suit land during his lifetime. Plaintiff No.2-Sukhwaro was wife of original land holder-Bhagat Kunwar and plaintiff No.2 is son of Bhagat Kunwar. Plaintiff No.2-Sukhwaro died during the pendency of the suit. It was pleaded in plaint that they are title-holders of the suit land and sale dated 10.1.1989 (Ex.D/1) allegedly made by plaintiff No.1 in favour of defendant No.1 is without legal necessity and no title has been conferred to defendant No.1 as parties are aboriginal tribes, in which even widow has no right to alienate the suit land.
3. Defendants No.1 and 2 filed their written statement admitting the plaint allegation to the extent that settlement parcha was granted in favour of Bhagat Kunwar and after death of Bhagat Kunwar, plaintiff No.1 has alienated the suit land in favour of defendant No.1 for legal necessity after obtaining ₹3000/- from him, as such, suit deserves to be dismissed. The trial Court after appreciating oral and documentary evidence available on record, by its judgment and decree dated 29.1.96 dismissed the suit. On appeal being preferred by plaintiff No.2/respondent No.1 herein through his legal guardian, the First Appellate Court allowed the appeal finding no legal necessity on the part of plaintiff No.1 to alienate the suit land in favour of defendant No.1. Questioning legality and validity of the impugned judgment and decree of the First Appellate Court, this

second appeal under Section 100 of the CPC has been preferred by the appellants/defendants No.1 and 2, in which substantial question of law has been formulated, which has been set out in the opening paragraph of this judgment.

4. Mr.A.K.Prasad, learned counsel for the appellants/defendants No.1 and 2, would submit that the First Appellate Court is absolutely unjustified in holding that there was no legal necessity to alienate the suit land as witness to the sale deed i.e. Sitaram (DW-4) has been examined to prove the sale made by plaintiff No.1 in favour of defendant No.1, as such, finding recorded by the First Appellate Court is absolutely perverse and liable to be set aside.
5. Mr.Vivek Bhakta, learned counsel for respondent No.1/plaintiff, would submit that finding recorded by the First Appellate Court is in accordance with law and no interference is called for by this Court. He would further submit that transaction was hit by Section 165 (7-b) of the Chhattisgarh Land Revenue Code, 1959 (hereinafter called as "the Code").
6. Per contra, Mr.Prasad would submit that it is a new point raised in second appeal, which cannot be permitted to be raised.
7. I have heard learned counsel for the parties and considered their rival submissions made hereinabove and also went through the records with utmost circumspection.
8. In para-4 of the plaint, it has clearly been stated that suit land was settled by the Government in favour of Bhagat Kunwar, husband of plaintiff No.1 and father of plaintiff No.2, which was admitted by

defendants No.1 and 2 in para-4 of their written statement, as such, there was no dispute that suit land was held by the Government and was settled in favour of the plaintiffs' predecessor-in-title Bhagat Kunwar in Surguja settlement. Accordingly, it is the land held by the plaintiffs' predecessor-in-title from the State Government. It is also not in dispute that the plaintiffs are members of aboriginal tribes and land has been sold by plaintiff No.1 in favour of defendant No.1 without permission of the Collector.

9. Section 165 (7-b) of the Code states as under:-

“165 (7-b) Notwithstanding anything contained in sub-section (1), a person who holds land from the State Government or a person who holds land in Bhomiswami rights under sub-section (3) of section 158 or whom right to occupy land is granted by the State Government or the Collector as a Government lessee and who subsequently becomes Bhoomiswami of such land, shall not transfer such land without the permission of a revenue officer, not below the rank of a Collector, given for reasons to be recorded in writing.”

As such, execution of sale deed without permission from the Collector is void in view of provisions contained in Section 165 (7-b) of the Code.

10. The Supreme Court in the matter of Keshabo and another v. State of M.P. and others¹ while considering the *para materia* provision contained in Section 165 (6) of the Code has held as under:-

“The M.P. Revenue Code is a welfare legislation made to protect the ownership rights in the land of a Scheduled Tribe to effectuate the constitutional obligation of Articles 39(b) and 46 of the Constitution read with the Preamble.

¹ (1996) 7 SCC 765

Economic empowerment of a tribal to provide economic democracy is the goal. Prevention of their exploitation due to ignorance or indigency is a constitutional duty under Article 46. Agricultural land gives economic status to the tiller. Therefore, any alienation of land in contravention of the above objectives is void.”

- 11.** The Division Bench of the Madhya Pradesh High Court in the matter of Mulayam Singh v. Budhwa Chamar² while considering the provision contained in Section 165 (7-b) of the Code held as under:-

“5. It is not in dispute that no permission from the Collector was obtained and the sale was made without the permission of Collector. The respondent cannot transfer his land even though he is declared bhumiswami, without the permission of the Collector. Transfer was made without such permission, so the appellants will not get any legal rights. In the circumstances, the Additional Collector has rightly held that the sale was in contravention of the provisions of section 165 (7-B) of the Code and is void. Mutation effected on the basis of sale was set aside and the land was directed to be recorded in the name of the respondent No.1.” (Emphasis added).

The Division Bench of the Madhya Pradesh High Court further held as under:-

“This provision was enacted on 28-10-1992, much after the transaction of sale in this case. Though it provides that after expiry of a period of ten years, the land may be transferred but it is also subject to the prohibition of section 165 (7-B) of the Code. So until and unless such a permission is granted by the Collector with cogent reasons, the sale is not permissible. The aforesaid enactment has been made to restrict the transfer of the land which has been granted on lease by the State Government to landless person and such person cannot be deprived of the land by any transfer except as permissible under section 165 (7-B) of the Code and gives jurisdiction to the Collector to consider such a prayer only after a period of ten years and not before that.”

12. Thus, from the above-stated legal position, it is quite vivid that if permission of the Collector is not obtained before transferring the land held by Bhumiswami and if the land is held from the State Government, the transfer is *void-ab-initio*. In the instant case, it is evident from the records that plaintiff No.1 has sold the suit land in favour of defendant No.1 vide sale dated 10.1.1989 (Ex.D/1) without permission of the revenue officer not below the rank of the Collector for the reasons to be recorded in writing, therefore, such a transaction is void.

13. Now the question raised by learned counsel for the appellants/defendants No.1 and 2 that no such plea was raised by the plaintiffs before the trial Court and before the First Appellate Court. In the instant case, it is admitted position on record that original land holder-Bhagat Kunwar was aboriginal tribe and he has held the land from the State Government and plaintiff No.1 could not alienate the said land in favour of defendant No.1 without permission of the Collector, therefore, such a plea being the pure question of law can be permitted to be raised for the first time in the second appeal. The First Appellate Court came to the specific conclusion that plaintiff No.1 has no legal necessity to alienate the suit land to defendant No.1 as also for the reasons that plaintiff No.2 is a person of unsound mind and he was contested his appeal through his legal guardian. Finding recorded by the First Appellate

Court that alienation was without legal necessity is the finding of fact based on evidence available on record.

14. It is settled law that in exercise of power under Section 100 of the Code of Civil Procedure, the High Court cannot interfere with the finding of fact recorded by the first appellate court which is the final court of fact, unless the same is found to be perverse (See Gurvachan Kaur and others v. Salikram (Dead) Through LRS.³). I do not find any perversity in the finding recorded by the First Appellate Court. Accordingly, the second appeal deserves to be and is hereby dismissed affirming the judgment and decree of the First Appellate Court leaving the parties to bear their own cost(s).

15. A decree be drawn up accordingly.

Sd/-

(Sanjay K.Agrawal)
Judge

B/-

3 (2010) 15 SCC 530