

HIGH COURT OF CHHATTISGARH, BILASPURSecond Appeal No.172 of 2003

Bhuli Ram (Died) Through Legal Heirs

(Plaintiff)

1. Mansai, S/o Late Bhuliram, aged about 52 years,

2. Fuleshwari Paikra, D/o Late Bhiliram, aged about 45 years,

Both are R/o Village Sitapur, Tahsil Sitapur, District Surguja (C.G.)

---- Appellants

Versus

1. Bali Ram, aged 30 years, S/o Basra

2. Nandu Alias Nanhua Ram, Aged 25 years, S/o Basrai

3. Smt. Mango Bai (Died and deleted)

Respondents No. 1 and 2 Caste Uraon, R/o Village Sitapur, Tahsil Sitapur, District Sarguja (C.G.)

4. Ramsajivan, aged 60 years, S/o Mohan Ram, Caste Kanwar, R/o Village Sitapur, Tahsil Sitapur, District Sarguja (C.G.)

5. The State of Chhattisgarh, Through the Collector, District Sarguja

(Defendants)

---- Respondents

For Appellants: Mr. V.K. Pandey, Advocate.

For Respondents No.1 and 2: -

Mr. A.K. Prasad, Advocate.

For Respondent No.5 / State: -

Mr. Vimlesh Bajpai, Govt. Advocate.

Hon'ble Shri Justice Sanjay K. AgrawalJudgment On Board17/01/2019

1. This appeal has been admitted for consideration on the following

substantial question of law: -

“Whether the findings arrived at by the lower appellate court in reversing the well reasoned order of the trial court is contrary to the evidence that has come on record?”

(For the sake of convenience, parties would be referred hereinafter as per their status shown in the plaint before the trial

Court.)

2. The plaintiff filed a suit for declaration of title that he is owner of the schedule land shown in Schedule B attached with the plaint and the order of the Sub-Divisional Officer dated 8-3-1994 reverting the land in favour of defendants No.1 to 3 – legal representatives of Madhuva, and further the order of the Collector affirming the order of the SDO dated 8-3-1994 are unsustainable and bad in law and are beyond jurisdiction, as they have purchased the suit land by registered sale deeds dated 2-3-1962 (Ex.P-1) and 30-1-1961 (Ex.P-2).
3. Defendants No.1 to 3 by filing written statement controverted the facts mentioned in the plaint stating inter alia that it was a Benami transaction and it does not confer any title to the plaintiff and the jurisdiction of the civil court is barred under Section 257(l-1) of the Chhattisgarh Land Revenue Code, 1959 (for short, 'the Code') in case arising under Section 170-B of the Code.
4. The trial Court decreed the suit finding that the order passed by the SDO and the Collector are without jurisdiction and beyond their jurisdiction and the plaintiff is owner and Bhumiswami of the suit land which the first appellate Court reversed disagreeing with the finding of the trial Court and thereby dismissed the suit of the plaintiff and which has been assailed in this second appeal in which substantial question of law has been framed and which has been set-out in the opening paragraph of this judgment.
5. Mr. V.K. Pandey, learned counsel appearing for the appellants / LRs of the plaintiff, would submit that the first appellate Court is absolutely unjustified in reversing the well reasoned finding of the trial Court granting decree in favour of the plaintiff as such, the judgment & decree of the first appellate Court is liable to be set-aside restoring the

decree of the trial Court.

6. Mr. A.K. Prasad, learned counsel appearing for respondents No.1 and 2 / defendants No.1 and 2, would support the impugned judgment & decree passed by the first appellate Court.
7. I have heard learned counsel for the parties and considered their rival submissions made herein-above and went through the records with utmost circumspection.
8. It is not in dispute that the plaintiff purchased the suit land from the predecessor-in-title of defendants No.1 to 3 – Madhuva by registered sale deeds dated 2-3-1962 (Ex.P-1) and 30-1-1961 (Ex.P-2), but the said land was reverted in favour of defendants No.1 to 3 (successors-in-title of Madhuva) by the order of the SDO dated 8-3-1994 while granting the review petition in exercise of power conferred under Section 170-B of the Code which was affirmed by the Collector in appeal preferred by the appellant/plaintiff and that order of the SDO as affirmed by the Collector has become final as per own showing of the plaintiff in the plaint, as it was not taken further in appeal/revision. The plaintiff though sought declaration that the order of the SDO reverting the land in favour of defendants No.1 to 3 and the order of the Collector affirming the order of the SDO be declared as without jurisdiction, but surprisingly, neither the order of the SDO nor the order of the Collector affirming the order of the SDO was brought on record except seeking declaration that orders are beyond jurisdiction.
9. It is well settled law that even a void order or decision rendered between parties cannot be said to be non-existent in all cases and in all situations. Ordinarily, such an order will, in fact, be effective inter partes until it is successfully avoided or challenged in a higher forum.
10. The Supreme Court in the matter of State of Kerala v. M.K.

Kunhikannan Nambiar Manjeri Manikoth, Naduvil (Dead) and others¹ has clearly held that even a void order or decision rendered between parties will be effective inter partes until it is successfully avoided by observing as under: -

“7. ... even a void order or decision rendered between parties cannot be said to be non-existent in all cases and in all situations. Ordinarily, such an order will, in fact, be effective inter partes until it is successfully avoided or challenged in a higher forum. Mere use of the word 'void' is not determinative of its legal impact. The word 'void' has a relative rather than an absolute meaning. It only conveys the idea that the order is invalid or illegal. It can be avoided. ...”

11. The Supreme Court following the principle of law laid down in M.K. Kunhikannan Nambiar's case (supra), in the matter of Krishnadevi Malchand Kamathia and others v. Bombay Environmental Action Group and others² again held that whether an order is valid or void, cannot be determined by the parties. For setting aside such an order, even if void, the party has to approach the appropriate forum. Their Lordships of the Supreme Court observed in paragraphs 17, 18 and 19 as under: -

“17. *In State of Punjab v. Gurdev Singh*³ this Court held that a party aggrieved by the invalidity of an order has to approach the court for relief of declaration that the order against him is inoperative and therefore, not binding upon him. While deciding the said case, this Court placed reliance upon the judgment in *Smith v. East Elloe RDC*⁴, wherein Lord Radcliffe observed: (AC pp. 769-70)

“... An order, even if not made in good faith, is still an act capable of legal consequences. It bears no brand of invalidity [on] its forehead. Unless the necessary proceedings are taken at law to establish the cause of invalidity and to get it quashed or otherwise upset, it will remain as effective for its ostensible purpose as the most impeccable of orders.”

18. *In Sultan Sadik v. Sanjay Raj Subba*⁵, this Court took

1 (1996) 1 SCC 435

2 (2011) 3 SCC 363

3 (1991) 4 SCC 1

4 1956 AC 736 : (1956) 2 WLR 888 : (1956) 1 All ER 855

5 (2004) 2 SCC 377

a similar view observing that once an order is declared non est by the court only then the judgment of nullity would operate *erga omnes* i.e. for and against everyone concerned. Such a declaration is permissible if the court comes to the conclusion that the author of the order lacks inherent jurisdiction/competence and therefore, it comes to the conclusion that the order suffers from patent and latent invalidity.

19. Thus, from the above it emerges that even if the order/notification is void/voidable, the party aggrieved by the same cannot decide that the said order/notification is not binding upon it. It has to approach the court for seeking such declaration. The order may be hypothetically a nullity and even if its invalidity is challenged before the court in a given circumstance, the court may refuse to quash the same on various grounds including the standing of the petitioner or on the ground of delay or on the doctrine of waiver or any other legal reason. The order may be void for one purpose or for one person, it may not be so for another purpose or another person.”

12. Similarly, in the matter of Shyam Sundar Sarma v. Pannalal

Jaiswal and others⁶, a three-Judge Bench of the Supreme Court has clearly held that an appeal which is dismissed for default or as barred by limitation is nevertheless an appeal in the eye of the law for all purposes and a decision in the appeal and the same cannot be treated on par with non-filing of an appeal or withdrawal of appeal.

13. Reverting to the facts of the present case, it is quite vivid that though the plaintiff branded the order of the SDO under Section 170-B of the Code dated 8-3-1994 as without jurisdiction, but did not produce the copy of the order of the SDO while questioning the same and therefore the invalidity of the order cannot be examined in absence of the order having been produced while seeking declaration of the said order as beyond jurisdiction. It was incumbent on the part of the plaintiff to produce the copy of the order and to challenge its validity either on the ground that it has been passed in violation of the principles of natural justice or on the ground that the provision contained in Section 170-B of the Code was not followed or review

⁶ (2005) 1 SCC 436

was not grantable which the plaintiff failed to do for the reasons best known to him and further, the plaintiff did not even mention the date of the order passed by the Collector affirming the order of the SDO dated 8-3-1994, as such, the order of the SDO as affirmed by the Collector has become final and the land has already been reverted in favour of defendants No.1 to 3. In absence of successful challenge to the order of the SDO and the order of the Collector, the first appellate Court has rightly declined the decree for declaration in favour of the plaintiff.

14. There is one more reason for not interfering with the order of the first appellate Court, as though the plaintiff was party to the order passed by the SDO dated 8-3-1994 and he also preferred appeal before the Collector, therefore, he was required to seek setting aside of those orders being a party to those orders, but even he did not ask for setting aside of those orders and merely sought for the relief of declaration without questioning the order of SDO and Collector as such suit was barred by Section 34 of the Specific Relief Act, 1963.
15. The Supreme Court in the matter of **Jugraj Singh and another v. Jaswant Singh and others**⁷ in similar circumstances in which the plaintiff did not challenge the order of the SDO and sought declaration dehors the order of the SDO, held the suit to be barred by Section 42 of the Specific Relief Act, 1877 which is *pari materia* to Section 34 of the Specific Relief Act, 1963 and observed as under: -

“11. ... We are also satisfied that the appellants were not entitled to a declaration. We have reproduced the paragraph in which the reliefs were asked in the plaint. It will be noticed that they neither asked for the cancellation of the order of the Collector nor for any injunction, two of the reliefs which they were entitled to ask in the case in addition to the declaration. Such a suit would be hit by Section 42 of the Specific Relief Act and we would be quite in a position to deny them the declaration without these specific reliefs. Indeed they had only to ask for the setting

7 AIR 1971 SC 761

aside of the order.”

16. Considering the matter from any angle, it cannot be held that the first appellate Court is unjustified in reversing the judgment & decree of the trial Court by interfering. The suit has rightly been dismissed. I do not find any illegality and perversity in the judgment & decree of the first appellate Court. The substantial question of law is answered accordingly and the second appeal is dismissed. No order as to cost(s).

17. Decree be drawn-up accordingly.

Sd/-
(Sanjay K. Agrawal)
Judge

Soma