

HIGH COURT OF CHHATTISGARH, BILASPUR**Second Appeal No.10 of 2006**

Smt.Chandrikabai, aged about 40 years, w/o Kannahaiyyalal Soni, R/o Chatapara, Bilaspur, Tahsil and District: Bilaspur (M.P.) (Now C.G.)

---- Appellant

Versus

(Legal Representatives of Jodhan Rao)

1(a) Smt.Anjubai (died and deleted)

(b) Rama Rao (died and deleted)

(c) Purushottam Rao, aged about 58 years, s/o Jodhan Rao

(d) Shyam Sunder, aged about 45 years, s/o Jodhan Rao

(e) Smt.Subadra, aged about 40 years, wd/o Nand Rao,

(f) Smt.Bhaijabai, aged 45 years, w/o Ganga Rao.

All R/o Tilak Nagar, Bilaspur

2. Ramji Rao, aged about 45 years, S/o Jodhan Rao, R/o Paydarwa, Tah. & District Bilaspur (M.P.) (Now C.G.)

---- Respondents

For Appellants	: Mr.R.S.Marhas, Advocate
For Respondents No.1 and 2:	Mr.Sri Kumar Agrawal, Senior Advocate with Mr.Anand Kumar Gupta, Advocate
For Respondent No.3/State	: Mr.Arun Shukla, Govt.Advocate

Hon'ble Shri Justice Sanjay K. Agrawal

Judgment on Board

16/07/2019

1. The substantial questions of law involved, formulated and to be answered by this Court in this appellant's second appeal are as under:-

“1. Whether the Courts below were justified in holding that

the transaction of execution of sale on 15.4.75 which was in lieu of an agreement dated 9.1.73 (earlier to the filing of the Civil Suit No.25-A/73) was hit by the doctrine of lis pendense ?

2. Whether the Courts below were justified in holding that a suit based upon the Panch Phesla was binding upon the plaintiff so as to obliterate her title if acquired prior to the date of institution of that suit ?”

[For the sake of convenience, the parties would be referred hereinafter as per their status shown in the suit before the trial Court]

2. Suit filed by Jodhan Rao and Ramji Rao, original applicants herein, being Civil Suit No.25A/73 under Section 6 of the Specific Relief Act, 1963 (hereinafter called as “the Act of 1963”) was decreed ex-parte by the trial Court in their favour on 16.11.76. Basant Rao, defendant No.1 therein filed an application for setting aside ex-parte decree. That application was dismissed on 10.8.1978 and thereafter, he preferred appeal under Section 96 of the CPC, which was also dismissed on 5.3.1980. In the meanwhile, decree was executed on 21.9.1977 by Jodhan Rao and Ramji Rao and thereafter on 22.9.1977, the appellant herein preferred an application under Order 21 Rules 99 and 100 of the CPC claiming possession from the respondents herein, which the trial Court dismissed holding that the appellant being stranger and having purchased the suit property on 15.4.1975 during the pendency of suit filed by the respondents herein, the said alienation is hit by Section 52 of the Transfer of Property Act, 1882 (hereinafter called as 'TP Act'). The appeal taken by the appellant was also dismissed on 19.4.1998,

against which, this second appeal under Section 100 of the CPC has been filed by the appellant, in which substantial questions of law have been framed by this Court, which have been set-out in the opening paragraph of this judgment.

5. Mr.R.S.Marhas, learned counsel for the appellant, would submit that both the Courts below were absolutely unjustified in holding that transfer made by Basant Rao in favour of the appellant is hit by Section 52 of the TP Act. Since that suit was based on Section 6 of the Act of 1963, therefore, the provisions contained in Section 52 of the TP Act would not be applicable, as such, the two Courts below have committed legal error in rejecting the application filed by the appellant herein under Order 21 Rule 99 and 100 of the CPC. Therefore, the orders passed by Courts below deserve to be set aside.

6. Mr.Shri Kumar Agrawal, learned Senior Counsel ably assisted by Mr.Anand Kumar Gupta, learned counsel for the respondents, would submit that the provisions contained in Section 52 of the TP Act would be applicable even in a suit filed under Section 6 of the Act of 1963 and application under Order 21 Rule 99 and 100 of the CPC would not be applicable to transferee pendente lite, as such, the second appeal deserves to be dismissed.

7. I have heard learned counsel appearing for the parties and considered their rival submissions made herein-above and also went through the records with utmost circumspection.

8. Admittedly, the earlier suit was filed under Section 6 of the Act of 1963 by plaintiffs therein, Bodhan Rao and Ramji Rao on 24.9.73 and thereafter, defendant No.1-Basant Rao transferred the suit property in favour of Smt.Chandrika Bai, appellant herein, on 15.4.75, suit was decreed ex-parte on 16.11.1976 and application under Order 21 Rule 99 and 100 of the CPC was also came to be rejected.

9. The question for consideration would be whether Section 52 of the TP Act would be applicable in a suit filed under Section 6 of the Act of 1963 ?

10. Section 6 (1) of the Act of 1963 provides as under:-

“6. Suit by person dispossessed of immovable property.”-(1) If any person is dispossessed without his consent of immovable property otherwise than in due course of law, he or any person claiming through him may, by suit, recover possession thereof, notwithstanding any other title that may be set up in such suit.”

This provision provides special and speedy remedy for a particular kind of grievance, to replace in possession a person who had been evicted from immovable property of which he had been in possession otherwise than by process of law.

11. The Supreme Court in the matter of Sanjay Kumar Pandey and others v. Gulbahar Sheikh and others¹ has held that proceedings under Section 6 of the Act of 1963 are summary in nature, limited to finding out question of possession within a period of six

¹ (2004) 4 SCC 664

months of institution of suit, ignoring question of title.

12. In a suit under Section 6 of the Act, the only question that has to be determined by the Court is whether the plaintiff was in possession of the disputed property and whether he had been illegally dispossessed therefrom on any date within six months prior to the filing of the suit. (See I.T.C. Limited v. Adarsh Co-operative Housing Society Ltd.,²). The purpose behind Section 6 of the Act is to restrain a person from using force and to dispossess a person without his consent otherwise than in due course of law. (See East India Hotels Ltd. v. Syndicate Bank³).

13. At this stage, it would be appropriate to notice Section 52 of the TP Act, which states as under:-

“52. Transfer of property pending suit relating thereto.—During the pendency in any Court having authority [within the limits of India excluding the State of Jammu and Kashmir] or established beyond such limits] by the Central Government any suit or proceedings which is not collusive and in which any right to immoveable property is directly and specifically in question, the property cannot be transferred or otherwise dealt with by any party to the suit or proceeding so as to affect the rights of any other party thereto under any decree or order which may be made therein, except under the authority of the Court and on such terms as it may impose.

Explanation.—For the purposes of this section, the pendency of a suit or proceeding shall be deemed to commence from the date of the presentation of the plaint or the institution of the proceeding in a Court of competent jurisdiction, and to continue until the suit or proceeding has been disposed of by a final decree or order and complete satisfaction or discharge of such

² 2012 (8) JT 188

³ 1992 Supp (2) SCC 29

decree or order has been obtained, or has become unobtainable by reason of the expiration of any period of limitation prescribed for the execution thereof by any law for the time being in force.”

14. The Privy Council in the matter of Gouri Dutt Maharaj v. Sukur Mohammad and others⁴ has held that the broad purpose of Section 52 is to maintain the *status quo* unaffected by the act of any party to the litigation pending its determination. It was further held that the applicability of the section cannot depend upon matters of proof or the strength or weakness of the case on the one side or the other in *bona fide* proceedings. To apply any such test is to misconceive the object of the enactment and the trial Court is in error where it lays stress on the fact that the agreement on which the suit is based has not been registered.

15. Transfer of possession 'pendente lite' will be transfer of “property” within the meaning of Section 52 of the TP Act, but the lis must be such as can effect possession. It is only a lis pending in a Court having jurisdiction to entertain it and grant the relief sought that would hit transfers during its pendency. (See Lakha Devassya v. Eupen Thomma⁵).

16. Suit for recovery of possession based on dispossession without his consent under Section 6 of the Act of 1963 in my considered opinion will be covered by Section 52 of the TP Act. The plaintiff has instituted a suit based on his previous dispossession, then definitely it

4 A.I.R. (35) 1948 Privy Council 147

5 AIR 1953 Travancore-Cochin 573

will be right to immovable property within the meaning of Section 52 of the TP Act and therefore, transfer will hit by Section 52 of the TP Act and once the dispute is pending adjudication, transfer made will be covered by Section 52 of the TP Act. In view of the aforesaid analysis, both the Courts below have rightly concluded that transfer made by Basant Rao in favour of Smt.Chandrika Bai during the pendency of suit under Section 6 of the Act of 1963 is hit by Section 52 of the TP Act. Both the Courts below are also absolutely justified in holding that suit filed by Jodhan Rao and Ramji Rao, decree-holder on the basis of unregistered award and decree granted therein in accordance with law and not hit by Section 32/33 of the Arbitration Act, 1940. I do not find any illegality or perversity in the said finding. It is hereby affirmed.

17. Accordingly, the second appeal deserves to be and is hereby dismissed. The appellant shall bear their own cost and cost of the respondents.

18. A decree be drawn up accordingly.

Sd/-

(Sanjay K.Agrawal)
Judge

B/-