NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR

Second Appeal No.95 of 2004

Nihal Chand (Died) through his LR's

1. Smt. Dalim Kunwar Patel, widow of late Nihal Chand, aged about-70 years,
2. Hemram Patel, son of late Nihal Chand, aged about 56 years,
3. Jeevan Lal Patel, son of late Nihal Chand, aged about 40 years,
4. Nand Lal Patel, son of late Nihal Chand, aged about 30 years,

All residents of village-Darama, Tahsil-Tamnar, District Raigarh (CG)

---- Appellants/Plaintiff

Versus

1. Chitram, S/o. Girtiram Kanwar, Aged about 65 years, Occupation – Cultivation,
2. Mst. Manmati, Wd/o. Girtiram, Aged about 80 years,

   Both R/o. Village Darama, Tahsil Gharghoda, District Raigarh (CG)
3. Nanki (Now dead)

3A. Sahani Dhanwar (Died) through his LR's

3(A) (i) Smt. Chamarin widow of late Sahani Dhanwar, aged about 40 years,

3(A) (ii) Anand Kumar S/o Late Sahani Dhanwar, aged about 25 years,

Both are residents of village Darama, Post Office-Jivri, Thana Punji patra, Tahsil Tamnar, District-Raigarh (CG)

4. State of Chhattisgarh, Through Collector, Raigarh (CG)

---- Respondents/Defendants

For Appellants/Plaintiff	:	Mr.Anurag Verma, Advocate
For Res.Nos.1 and 2/Defendants	:	Mr.Abhishek Saraf, Advocate
For Res.3(A) (i) & 3(A) (ii)	:	None present
For Respondent No.4	:	Mr.Matin Siddiqui, Dy.A.G.

Hon'ble Shri Justice Sanjay K. Agrawal

Judgment on Board

20.08.2019

1. The substantial question of law involved, formulated and to be

answered in this second appeal preferred by the plaintiff is as under:-

> "Whether the Appellate Court was justified in reversing the judgment and decree passed by the trial Court in spite of the fact that the transfer of agricultural land in question was made in the year 1958, therefore, the provision of Section 170-B of the M.P. Land Revenue Code was not applicable ?"

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

2. The plaintiff filed a suit for declaration of title and permanent injunction stating inter-alia that the suit land was purchased by registered sale deeds dated 9.1.1958 (Ex.P-1) and 6.5.1958 (Ex.P-2) by the plaintiff's father Gangaram in the name of Girtiram Kanwar as he was mitan (friend of plaintiff's father). After death of Girtiram Kanwar, the plaintiff moved an application for transfer of the suit land in his name, which was mutated in his favour vide Ex.P-3, but later on defendant No.1, son of Girtiram Kanwar, initiated proceeding under Section 170-B of the Chhattisgarh Land Revenue Code, 1959 (hereinafter called as 'the Code'), in which on 25.2.87 the Sub Divisional Officer, Gharghoda directed the plaintiff to hand over the possession of the suit land to defendant No.1 finding the transaction to be in violation of the provision contained in Section 170-B of the Code that necessitated filing a suit for declaration of title and for declaring that order dated 25.2.87 passed by the SDO under Section 170-B of the Code is null and void and contrary to law. The plaintiff also claimed the suit land by way of adverse possession stating that he has perfected his title by way of adverse possession.

3. Defendant No.1 filed his written statement and denied the averments made in the plaint stating inter-alia that his father Girtiram Kanwar has purchased the suit land by registered sale deeds dated 9.1.1958 (Ex.P-1) and 6.5.1958 (Ex.P-2), as such, the plaintiff has no right and title over the suit land.

4. The trial Court after appreciating oral and documentary evidence available on record, by its judgment and decree dated 29.9.2001, decreed the suit holding that the suit land was purchased by the plaintiff's father namely Gangaram from Sukhdeo, Nanki and Manbodh by registered sale deeds dated 9.1.1958 (Ex.P-1) and 6.5.1958 (Ex.P-2), but sale deeds were registered in the name of Girtiram, defendant's father and order dated 25.2.87 passed by the SDO is null and void and the plaintiff has perfected his title by way of adverse possession. On appeal being preferred by defendant No.1-Chitram, Son of Girtiram Kanwar and Manmati, Widow of Girtiram Kanwar, the first appellate Court allowed the appeal and dismissed the suit filed by the plaintiff. Questioning the judgment and decree of the first appellate Court, this second appeal under Section 100 of the CPC has been filed by the appellants/plaintiff, in which substantial question of law has been formulated by this Court, which has been set-out in the opening paragraph of this judgment.

5. Mr.Anurag Verma, learned counsel for the appellants/plaintiff, would submit that the first appellate Court is absolutely unjustified in holding that the provision contained in Section 170-B of the Code would apply in the instant case as transaction is of 9.1.1958 (Ex.P-1) and 6.5.1958 (Ex.P-2) and Chhattisgarh Land Revenue Code came into force w.e.f. 2.10.1959, therefore, the provision contained in Section 170-B of the Code cannot be invoked into and the order of the SDO was clearly contrary to the provision contained in Section 170-B of the Code, therefore, it deserves to be set aside.

6. Mr.Abhishek Saraf, learned counsel for respondents No.1 and 2/defendants, would support the impugned judgment and decree and submit that the provision contained in Section 170-B of the Code would be applicable to the facts of the instant case and therefore, the first appellate Court is absolutely justified in setting aside the judgment and decree of the trial Court.

7. I have heard learned counsel for the parties and considered their rival submissions made hereinabove and also went through the records with utmost circumscription.

8. Admittedly, the plaintiff's father purchased the suit land by registered sale deeds dated 9.1.1958 (Ex.P-1) and 6.5.1958 (Ex.P-2) though in the name of Girtiram Kanwar, father of defendant No.1 and on the basis of which, the plaintiff got his name mutated on 6.5.1984. In a proceeding initiated by defendant No.1 under Section 170-B of the Code, the SDO, Gharghoda on 25.2.87 declared the transaction to be illegal and directed the plaintiff to hand over the possession of the suit land to defendant No.1.

9. The question for consideration would be, whether in such transaction entered into on 9.1.1958 (Ex.P-1) and 6.5.1958 (Ex.P-2), the provision contained in Section 170-B of the Code would be applicable which came into force on 02.10.1959 ?

10. In order to decide the dispute raised at the Bar, it would be appropriate to notice Section 170-B (1) of the Code which reads as under:-

> "**170-B. Reversion of land of members of aboriginal tribe which was transferred by fraud**.-(1) Every person who on the date of commencement of 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 of Amendment Act, 1980 shall, within two years of such 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."

11. A careful perusal of Section 170-B (1) of the Code would show that person in possession on the date of commencement of the Amendment Act of 1980 i.e. 24.10.1980 of the agricultural land belonging to a member of aboriginal tribe is required to notify to the Sub Divisional Officer within two years from 24.10.1980 in the manner prescribed that how he came into possession of such land. The Chhattisgarh Land Revenue Code, 1959 came into force w.e.f. 2.10.1959

12. The question as to the applicability of Section 170-B of the Code was referred to a Division Bench on account of divergent view. The question referred to a Division Bench was as under:-

> "Whether the provision of Section 170-B of the Chhattisgarh Land Revenue Code, 1959 inserted vide M.P. Amendment Act No.15 of 1980 with effect from 24-12-1980, are applicable in respect of transactions prior to commencement of Chhattisgarh Land Revenue Code, 1959, involving transfer / acquisition of right by non-tribal over a land which, before such acquisition of title or interest or transfer, belonged to a member of tribe who has been declared to be an aboriginal tribe under sub-section (6) of Section 165 of the C.G. Land Revenue Code, 1959?"

13. The Division Bench of this Court in the matter of **Yadram (Dead) through LRs. Smt.Yamuna Bai and others v. State of C.G. & others**[1] answered the reference and clearly held that Section 170-B of the Code covers the transaction made between 02.10.1959 till 24.10.1980. It was observed as under:-

> "17. In the present case, law is amended with limited retrospective effect. Plain reading of Section 170-B of the Code as amended covers the transaction made between 2-10-1959 till 24-10-1980 and not the transaction made prior to 2-10-1959. The language of Section 170-B of the Code is plain and unambiguous and it is not permissible to deploy rules of interpretation to attribute any other meaning to the words used by the legislature, that those which naturally flow from it. If the plain words of Section 170-B of the Code are interpreted in such as way as to assign its meaning other than what is written in it, that is, if the Section is read to apply to transactions done prior to 2-10-1959 despite specific stipulation in the Section that it will apply to transactions done on and after 2-10-1959, then such an interpretation will create new obligations and duties distributing the vested rights which, normally, should not be done by resorting to interpretation. Therefore, on the face of the plain and unambiguous wording of Section 170-B of the Code, we are unable to subscribe to any view other than the one that it is restricted in its application to the transactions done between 2-10-1959 and 24-10-1980 only.
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> 19. In view of the legal opinion we have formed regarding the applicability of Section 170-B of the Code, we answer the question referred that the provisions of

1 2015(5) C.G.L.J. 402 (DB)

> Section 170-B of the Code and Act No.15 of 1980 (with effect from 24-10-1980) will apply in respect of transaction involving transfer / acquisition of right by a non-tribal over a land, before such acquisition of title or interest or transfer, belonged to member of tribe who has been declared to be an aboriginal under sub-section (6) of Section 165 of the Code from the commencement of the Chhattisgarh Land Revenue Code, 1959 i.e. 2-10-1959 till commencement of the Amendment Act, 1980 i.e. 21-10-1980."

14. Applying the principles of law laid down by this Court in **Yadram** (supra), it is vivid that the alleged transaction is of 9.1.1958 and 6.5.1958, much prior to 2.10.1959, i.e. prior to the date of coming into force of the Code, the transaction is not covered under the provision of the Code and therefore, Section 170-B of the Code was not applicable and order of the SDO dated 25.2.87 has rightly been declared to be illegal by the trial Court and to be not binding on the plaintiff. Even otherwise, it is contrary to the provision contained in Section 170-B of the Code as it was not applicable to the transaction dated 9.1.1958 and 6.5.1958.

15. In view of above, the first appellate Court is absolutely unjustified in reversing the finding of the trial Court with regard to applicability of Section 170-B of the Code to the plaintiff by recording perverse finding. In the result, the judgment and decree of the first appellate Court is partly set aside and decree of the trial Court is partly restored only to the extent that order dated 25.2.87 passed by the SDO, Gharghoda in Revenue Case No.4/A-23/85-86 is not binding on legal representatives of the plaintiff/appellants herein. The substantial question of law is answered accordingly.

16. The second appeal is partly allowed to the extent indicated hereinabove leaving the parties to bear their own cost(s).

17. Decree be drawn-up accordingly.

Sd/-

(Sanjay K.Agrawal)
Judge

B/-