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HIGH COURT OF CHHATTISGARH, BILASPUR**SA No. 679 of 2003**

- Sibri Bai (Dead) Through LRs., As Per Court Order Dt. 19-12-2019

1.1 - (A) Firni D/o Late Sibribai Aged About 40 Years W/o Gondara, R/o Village - Jhargaon, Post - Kastura, Tehsil - Kunkuri District - Jashpur Chhattisgarh

1.2 - (B) Sukhmani D/o Late Sibribai Aged About 37 Years W/o Jeetu, R/o Village - Mokara, Gumla (Jharkhand)

1.3 - (C) Deepak S/o Late Sukri And Krishna Khariya, Aged About 10 Years Minor, Through Their Father Krishna Khadiya R/o Village - Ondara, Bagbotha, Gumla (Jharkhand)

1.4 - (D) Rajesh S/o Late Sukri And Krishna Khariya Aged About 5 Years Minor, Through Their Father Krishna Khadiya R/o Village - Ondara, Bagbotha, Gumla (Jharkhand)

---- Appellants

Versus

1. Lajhru (Dead) Through LRs., As Per Court Order Dt. 19-12-2019.
1.1 - (A) Xevier Tirkey S/o Late Lajhru, Aged About 55 Years R/o Village - Jokari, P. C. No. 15, Tehsil - Kunkuri, District - Jashpur Chhattisgarh
2. Makdu S/o Hudu Aged About 30 Years Caste - Gayar, Occupation - Agriculture, R/o Village Jhargaon, P. C. No. 19 Ra. Ni. Ma. Kastura, Tehsil Kunkuri, District - Jashpur Chhattisgarh
3. The State Of Chhattisgarh, Through Collector, District - Jashpur Chhattisgarh (Proforma D F D . No. 5)

---- Respondents

For Appellants	:	Shri A.K.Prasad, Advocate.
For State	:	Shri Ravish Verma, Govt. Advocate
For other respondents	:	None

Hon'ble Shri Justice Manindra Mohan Shrivastava**Order On Board****21/05/2020**

This appeal arises out of order dated 30/08/2003 passed by the Second Additional District Judge (FTC) Jashpur, Chhattisgarh in Civil Appeal No.25-A/03 by

which, learned lower Appellate Court reversed the judgment and decree dated 10/04/2000 passed by the Trial Court and decreed plaintiff's suit.

2. The respondent / plaintiff filed a suit seeking declaration of title based on sale deed dated 18/07/1967 (Ex.P/3) on the pleadings that the plaintiff's father Jairam had purchased the disputed property vide sale deed dated 18/07/1967 from Late Aandhu, husband of defendant No.1- Phulobai and father of other defendants. After purchase, revenue records were mutated in the name of plaintiff's father – Jairam. Plaintiff's father died in the year 1982. Thereafter, plaintiff's name was recorded. According to the plaintiff, ever since the date of purchase, plaintiff's father and thereafter, plaintiff remained in continuous cultivating possession of the property. On the basis of reports of subordinate revenue officers, the Sub-Divisional Officer, Kunkuri proceeded under Section 170-B of Land Revenue Code (for short 'the Code') and passed an order on 29/06/1982 directing return of property to defendants, in execution of which, Nayab Tahsildar, Duldula mutated revenue records in view of defendants 1, 2 and 3 and also delivered possession. This gave rise to cause of action to the plaintiff to file a suit. According to the plaintiff, as defendants 1, 2 and 3 all are aboriginal tribe, the order passed by the Sub-Divisional Officer, Kunkuri is not binding. As no written statement was filed by the defendants, they were proceeded ex-parte.

3. Learned Trial Court framed issue on the aspect of jurisdiction as to whether the jurisdiction of the Civil Court is barred in view of the provisions contained in Section 257 of the Code, present being a matter covered under Section 170-B of the Code.

4. Vide judgment and decree dated 10/04/2002, learned Trial Court held that plaintiff's suit was barred under Section 257 of the Code. Aggrieved by the said judgment, plaintiff preferred an appeal. Learned lower Appellate Court came to the conclusion that as the plaintiff and defendant, all belong to aboriginal tribe, neither

provisions of Section 165 (6) of the Code nor Section 170-B of the Code is attracted in the matter of transaction of land between the parties. On this finding, learned lower Appellate Court concluded that plaintiff's suit was not barred under Section 257 of the Code and on the basis of pleadings, oral and documentary evidence, particularly, the sale deed executed in favour of Jairam (plaintiff's father), plaintiff's suit was decreed as prayed for.

5. This appeal was admitted on following solitary substantial question of law -

“Whether the First Appellate Court was not justified in reversing the judgment and decree of the trial Court and holding that the disputed land was transferred by an Adivasi in favour of an Adivasi, therefore, in this matter Section 170-B of the M.P. Land Revenue Code is not attracted.”

6. Learned counsel for the appellant made pointed submission that the learned lower Appellate Court committed patent illegality in holding the suit to be maintainable, completely ignoring the clear mandate of Section 257 (I-1) of the Code which clearly provide that any matter covered under Section 170-B of the Code falls outside the domain of ordinary civil jurisdiction of the Civil Court. He would further contend that even if the parties to the transaction belong to aboriginal tribe, whether or not Section 165 (6) of the Code is applicable, applicability of Section 170-B of the Code is not ousted. He submits that the finding of the learned lower Appellate Court is based on this fundamentally flawed premise. It is patently illegal and therefore, the appeal deserves to be allowed by holding that the plaintiff's suit was not maintainable and barred in view of provisions contained in Section 257 (I-1) of the Code.

In the alternative, he would argue that even it were to be held that the Civil Court, despite statutory bar, had limited jurisdiction to entertain and consider the matter only to the extent whether the authority had complied with prescribed procedure or not while holding enquiry under Section 170-B of the Code and passing the order, as held in S.A.No.370/03 decided on 14/11/2019, in the

absence of any declaration sought and case made out for exercise of jurisdiction on limited aspect, in view of settled legal position, suit was liable to be dismissed on all counts.

7. Having given my anxious considerations to the submission made by learned counsel for the appellant, in my opinion, learned lower Appellate Court has committed patent illegality in holding that as the parties belong to aboriginal tribe, the provisions contained in Section 170-B of the Code would not be attracted. This issue is no longer *res integra* and Their Lordships in the Supreme Court in the case of **Bhaiji v. Sub-Divisional Officer, Thandla and ors., (2003) 1 SCC 692** have clearly held that even if the parties to the transaction belong to aboriginal tribe, Section 170-B of the Code would be applicable and its applicability is not ousted for that reason alone. It was authoritatively held -

“8. It is well known that some of the aboriginal tribes are nomadic and some indulge into crimes traditionally and historically. The purpose of settling land with the tribals mostly which is done at very concessional rates and at times even without involving an obligation to pay the land revenue, is so done with a view to see that the aboriginals settle at one place abandoning nomadism and picking up tilling the soil as their vocation by settling at one place and earning livelihood by labour and toil. It is also well known that creamy layers have developed and even as amongst socially unprivileged some have acquired affluence. An affluent shrewd tribal may indulge in exploiting his fellow beings. Possibility cannot be ruled out where a non-tribal may manage to have land transferred apparently but not in reality in the name of a tribal and taking advantage of his status, affluence or any other means, conferring him with capacity to exploit, may till the land to his own advantage depriving the aboriginal tribal from the benefits of the land settled by the State with him. All such cases are taken care of by Section 170-B. The purpose of enacting Section 170-B of the Code is very wide. The object sought to be achieved, as its drafting indicates, is to gather and make available all statistics with

the State officials so as to find out how much land belonging to aboriginal tribals is in possession of anyone to whom it does not belong as on the cut off date. The information having been collected, the enquiry under sub-Section (3) shall be directed towards finding out the nature of transaction resulting into transfer of land - whether such transaction of transfer has resulted in the aboriginal tribal having been defrauded of his legitimate right in the land. Sub- Sections (1), (2) and (3), as enacted in 1980, have to be read as part of one whole scheme. If the submission of Shri Gambhir is correct then the object of enquiry under sub-Section (3) would have been to find out if such transaction of transfer has resulted in an aboriginal tribal having been defrauded of his legitimate right by a person not belonging to aboriginal tribe. But that is not so. Nowhere in the entire scheme of sub-Sections (1), (2) and (3) of Section 170-B, as enacted in 1980, there is the least indication of confining the applicability of the provision to such transactions of transfer as were entered into by a member of an aboriginal tribe in favour of a member not belonging to aboriginal tribes. No exception has been enacted by the legislature so as to exclude from the purview of Section 170-B transactions of transfer between two persons both of whom are members of aboriginal tribes. Had it been so, the legislature would have specifically said so. The language of the section as drafted in 1980 is clear and unambiguous and does not admit of any doubt so far as this aspect is concerned.”

8. In the present case, even if this Court were to hold that despite there being an exclusionary clause (l-1) of Section 257 of the Code, to a limited extent, the Civil Court could have exercised its jurisdiction to examine the legality of the order passed by the Revenue Officer under Section 170-B of the Code as held by this Court in its order dated 14/11/2019 passed in S.A.No.370/03 [*Lalsay (died) and ors. v. Prakasiyus Kerketta and ors.*], in the present case, the plaintiff has not even sought any declaration against the order passed by the Sub-Divisional Officer on 29/06/1992, which document has been filed before the

Court below by the plaintiff himself as Ex.P/1. Once the Sub-Divisional Officer passed an order, it could not be avoided. The plaintiff did not lay challenge to the order nor sought relief against the same, but only sought declaration of its title based on sale deed of the year 1957 (Ex.P/3).

It is too well settled legal position and in view of plethora of decisions of the Supreme Court in the case of **State of Kerala v. M.K.Kunhikannan Nambiar Manjeri Manikoth, Naduvil (Dead) and ors., 1996 (1) SCC 435, Krishnadevi Malchand Kamathia and ors. v. Bombay Environmental Action Group and ors., 2011 (3) SCC 363, State of Punjab v. Gurdev Singh, 1991 (4) SCC 1, Smith v. East Elloe RDC, 2004 (2) SCC 377 and Shyam Sundar Sarma v. Pannalal Jaiswal and ors., 2005 (1) SCC 436** that even if an order is void, the order requires to be complied and it cannot be avoided.

Furthermore, in view of specific provisions contained in Section 34 of the Specific Relief Act, 1963 (old Section 42 of Specific Relief Act, 1877), the suit was not maintainable in the absence of seeking appropriate relief against the order of the Sub-Divisional Officer. In the case of **Jugraj Singh** (supra), it was held-

“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 aside of the order.”

9. In view of above consideration, the plaintiff's suit was clearly barred under Section 257 (I-1) of the Code. The question of law is accordingly answered in

the manner that the learned lower Appellate Court was not justified in reversing the judgment and decree of the Trial Court and holding that the disputed land was transferred in favour of Adivasi, therefore, Section 170-B of the Code is not attracted.

10. In view of above finding, even in such transaction, Section 170-B of the Code is attracted, consequently, the plaintiff's suit is held barred under Section 257 (I-1) and Section 165 (6) of the Code. The appeal is, accordingly, allowed. The impugned judgment and decree passed by the learned lower Appellate Court is set aside and is accordingly dismissed as not maintainable.

Parties to bear their respective costs. Let appellate decree be accordingly drawn.

Sd/-

(Manindra Mohan Shrivastava)
Judge