

HIGH COURT OF CHHATTISGARH, BILASPUR**Second Appeal No.261 of 2012**

Johanram, S/o late Chaitu Ram Sahu, aged about 70 years, R/o Village Bhoinapar, Tah. Balod, Dist: Durg (at present Dist: Balod) (CG)

----- **Appellant/Plaintiff**

Versus

1. Gayabai D/o late Guha Ram Kanwar, aged about 60 years, R/o Village Bhoinapar, Tah. Balod, Dist: Durg (at present Dist: Balod) (CG)
2. State of Chhattisgarh, through Collector, Durg (at present Dist: Balod) Dist office (CG)

----- **Respondents/Defendants**

For Appellant/Plaintiff: Mr.B.P.Gupta, Advocate
 For Respondent No.2 : Mr.Ravi Bhagat, Dy.G.A.

Hon'ble Shri Justice Sanjay K. Agrawal

Order on Board

13/7/2021

1. Proceedings of this matter have been taken-up through video conferencing.
2. Heard this second appeal preferred by the appellant/plaintiff on the question of admission and formulation of substantial question of law. By the impugned judgment and decree, the first appellate Court dismissed the appeal preferred by the appellant/plaintiff affirming the judgment and decree of the trial Court dismissing the suit.
3. Mr.B.P.Gupta, learned counsel for the appellant/plaintiff, would submit that both the Courts

below committed legal error in holding that exchange of agricultural land could not have been made without prior permission of the Collector in view of the provisions contained in Section 165(6) of the Chhattisgarh Land Revenue Code, 1959 (hereinafter called as 'the Code') and further erred in holding that the document (exchange deed) requires registration. Such findings are perverse to the record and the appeal deserves to be admitted by formulating the substantial question of law for determination.

4. It is the case of the plaintiff that his father was title-holder of the suit land bearing Khasra No.347/7 area 0.30 acre and father of defendant No.1 was title-holder of the land bearing Khasra No.128 (renumbered Khasra No.235) area 0.08 hectare, which the plaintiff and father of defendant No.1 in the year 1952 exchanged for sake of convenience and exchange deed (Ex.P-1) was also executed between the parties and pursuant to which, the parties are in respective possession of exchange land and revenue records have already been corrected and they are in possession of their respective share, but in February, 2002, defendant No.1 claimed original land bearing Khasra No.235 area 0.08 hectare and made an application to Naib-Tahdildar, Balod, leading to filing of the suit

for declaration of title and permanent injunction, which both the Courts below have dismissed holding that prior permission of the Collector would be necessary since the exchange of agricultural land is governed by the provisions contained in Section 167 of the Code, which is subject to provisions of Section 165 of the Code. Admittedly, defendant No.1 was a member of aboriginal tribe (Kunwar by caste) and the plaintiff is not a member of aboriginal tribe.

5. At this stage, it would be appropriate to notice Section 167 of the Code which provides as under:-

"167. Exchange of land.-Subject to the provisions of section 165 Bhumiswami may exchange by mutual agreement the whole or any part of their holding for purposes of consolidation of holdings or securing greater convenience in cultivation."

6. Section 167 of the Code is based on Section 68 of the Madhya Bharat Land Revenue and Tenancy Act, 1950 and Section 73 of the Vindhya Pradesh Land Revenue And Tenancy Act, 1953, but there was no such provision in the Madhya Pradesh Land Revenue Code, 1954, which has now been introduced in the Chhattisgarh Land Revenue Code, 1959. According to this section, exchange of land is permissible either for the purposes of consolidation of holdings or for securing greater convenience in cultivation.

7. A careful perusal of the aforesaid provisions (Section

167 of the Code) would show that Section 167 of the Code is subject to Section 165 of the Code and restrictions imposed in Section 165(6), (6-a) and (6-c) of the Code would be applicable for exchange of agricultural land, as such, restrictions imposed on transfers by a member of aboriginal tribe and such a member living in the area notified are also applicable to exchange of land because it is covered by word "otherwise" used in sub-section (6), (6-A) and (6-c) of Section 165 of the Code, as such, both the Courts below have rightly held that without permission of the Collector under Section 165(6) of the Code, father of defendant No.1 could not have made any exchange of the suit land and exchange, if any, made is hit by Section 165 of the Code. (See Ramkaran v. Pyaribai and others¹).

8. Similarly, Section 167 of the Code permits exchange between Bhumiswami, but that exchange deed has to be registered under Section 17 of the Indian Registration Act, 1908 because the provisions of the General Law are not excluded.

9. In the matter of Shriram v. Meerabai² the Madhya Pradesh High Court dealing with issue held as under:-

"The next argument of Shri Choubey is that suit lands were validly exchanged by Darai with

¹ 1997 RN 38 (HC)
² 1979 (II) MPWN 179

defendant, such an exchange being permissible under Section 167 of the M.P. Land Revenue Code, 1959. This provision only indicates that exchange of land between the Bhumiswamis is permissible under the Code. That however does not deal with mode of transaction which is governed by General law. Under the General law an exchange of immoveable land amounts to conveyance which requires registration in accordance with Section 17 of the Indian Registration Act."

10. In the considered opinion of this Court, the suit has rightly been dismissed by two Courts below for two reasons, firstly, exchange as defined in Section 167 of the Code is subject to Section 165 of the Code and Section 165 of the Code restricts transfer by the members of aboriginal tribe without prior permission of the Collector under sub-sections (6), (6-A) and (6-c) of Sections 165 of the Code and secondly, exchange deed (Ex.P-1) is required to be registered as the provisions of the General law are not excluded and admittedly, exchange deed (Ex.P-1) is not registered as per Section 17 of the Indian Registration Act.

11. For the aforesaid reasons, two Courts below are absolutely justified in dismissing the suit filed by the plaintiff holding that exchange so made is not in accordance with law and rightly refused to grant decree in favour of the plaintiff. I do not find any substantial question of law involved in this second appeal for admission of this appeal.

12. Accordingly, the second appeal deserves to be and is hereby dismissed in *limine* without notice to other side. No cost(s).

Sd/-

(Sanjay K.Agrawal)
Judge

B/-