NAFR

HIGH COURT OF CHHATTISGARH AT BILASPUR

Second Appeal No. 986 of 1996

1. Smt. Martha W/o Jaimangal (died) through LRs. :-

A. Pawal Toppo, s/o Late Jaimangal, Aged about 50 years.

B. Saihun Toppo (died) through Lrs. :-

(I). Jewal Toppo S/o Late Saihun Toppo, Aged about 35 years, Occupation Agriculture, R/o Village Amera, P.S. & Post Sankargarh, Tahsil Sankargarh, Distt. Balrampur-Ramanujganj, Chhattisgarh.

C. Jaidan Toppo, S/o Late Jaimangal, Aged about 44 years.

D. Jyoti Prakash Toppo (died) through Lrs. :-

(I). Nilima Toppo Wd/o Late Jyoti Prakash Toppo, Aged about 55 years.

(ii). Jaideep Toppo S/o Late Jyoti Prakash Toppo, Aged about 32 years.

(iii). Purnima Toppo D/o Late Jyoti Prakash Toppo, Aged about 26 years.

All at present R/o C/o Poulus Minj, House No. 569 Jasmani Niwas, Shyam Nagar, Aagarkhar, Jamnipali, Korba, Distt. Korba, Chhattisgarh.

E. Gamalious Toppo S/o Late Jaimangal, Aged about 40 years.

All R/o Village Amera, P.S. and Post and Up-tahsil Sankargarh, Tahsil Samri, Distt. Surguja, Chhattisgarh.

2. Jaimangal S/o Sukra (died and deleted).

---Appellants/Plaintiffs

Versus

1. Harila S/o Nanu (died) through Lrs. :-

   A. Dunchi, S/o Sukhana Nageshiya, Aged about 32 years.

   B. Bhukhana S/o Sukhana Nageshiya, Aged about 29 years.

   C. Soma S/o Sukhana Nageshiya, Aged about 26 years.

   D. Katku S/o Sukhana Nageshiya, Aged about 23 years.

   All R/o Village Mahangai Pat Thana Sanna, Tahsil Bagicha, Distt. Jashpur, Chhattisgarh.

2. Ramyad S/o Late Diya Mahto (died) through Lrs. :-

   A. Chandravati W/o Ramyad, Aged about 50 years.

   B. Anuj S/o Late Ramyad, Aged about 20 years.

   Both are R/o Village Kharkona, P.O. Shankargarh, Tahsil Kusmi, Distt. Surguja, Chhattisgarh.

3. Sakindar S/o Late Laxman, Aged about 25 years, R/o Village Semra, Tahsil Bagicha, Distt. Raigarh, M.P.

4. Jitni Bai D/o Late Diya Mahto (died) th. LRs. :-

   A. Arjun S/o Late Gati, Aged about 35 years, R/o Village Semra, Post Khani, P.S. Bagicha, Distt. Jashpur, Chhattisgarh.

   B. Rupni D/o Late Gati, Aged about 33 years, R/o Village Semra, Post Khani, P.S. Bagicha, Distt. Jashpur, Chhattisgarh.

C. Tarni D/o Late Gati, Aged about 38 years, R/o Village Semra, Post Khani, P.S. Bagicha, Distt. Jashpur, Chhattisgarh.

5. Nanki Bai D/o Late Diya Mahto (died) th. Lrs. :-

A. Dev Lalan S/o Late Ishwar, Aged about 31 years, Village Dhori, P.S. and Post Dhurki and Distt. Garhwaha, Jharkhand.

B. Lalit Yadav S/o Late Ishwar, Aged about 48 years, Village Dhori, P.S. and Post Dhurki, Distt. Garhwaha (Jharkhand).

C. Gangavati D/o Late Ishwar, Aged about 46 years, Village Dhori, P.S. and Post Dhurki, Disst. Garhwaha, Jharkhand.

D. Indravati D/o Late Ishwar, Aged about 45 years, Village Dhori, P.S. and Post Dhurki, Distt. Garhwaha, Jharkhand.

E. Binda D/o Late Ishwar, Aged about 43 years, Village Dhori, P.S. and Post Dhurki and Distt. Garhwaha, Jharkhand.

F. Champa D/o Late Ishwar, Aged about 42 years, Village Dhori, P.S. and Post Dhurki and Distt. Garwaha, Jharkhand.

6. State of M.P. through Collector, Sarguja, Ambikapur.

--- Respondents

For Appellants :- Mr. A.K. Prasad, Advocate

For Respondents 2(A), 2(B) & 3:-

Mr. Vikash Pandey, Advocate

For State :- Mr. Ravi Bhagat, Dy. G.A.

Hon'ble Shri Justice Sanjay K. Agrawal

Judgment on Board

14/06/2021

1. This second appeal preferred by the appellants/plaintiffs (now their Lrs.) was admitted for hearing on 27/01/1998 by formulating the following three substantial question of law :-

> "(i) Whether the respondent Nos. 2 to 5 were entitled to raise the defence that they had purchased the suit property by sale deed dated 26-3-1957 from the respondent No. 1, Harila, without proving that they have complied with the provisions of Section 170-B of the M.P. Land Revenue Code and obtained a valid order in their favour in accordance with law ?
>
> (ii) Whether the Court below was right in relying the document Ex. D-1 to hold that the respondent No. 1, Harila belonged to Kisan caste in absence of any proof that there was any caste like Kisan in the District Sarguja ?
>
> (iii) Whether the lower appellate Court in absence of any collusion on the part of the respondent No. 1, Harila wrongly held that he did not belong to Nagesia Aboriginal Tribe ?"

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

2. The suit property, shown in Schedule 'A' appended with the plaint, situated at Village

Amera, Tahsil Kusmi, District Sarguja was originally held by defendant No. 2 namely Harila. Plaintiff No. 1 claimed that she has purchased the suit property from Harila by registered sale deed dated 08/03/1976 (Ex. P/1) and thereafter came into possession of the said suit property, whereas original defendant No. 1 namely Deeya Mahto claimed that he has purchased the suit property from Harila by unregistered sale deed dated 26/03/1957 (Ex. D/2).

3. It is further case of the plaintiffs that they were dispossessed from the suit property by defendant No. 1 – Deeya Mahto pursuant to which proceedings under Section 145 of CrPC was initiated in which by order dated 28/01/1979, the Sub-divisional Magistrate declared the possession of defendant No. 1 over the suit property and the revision preferred by the plaintiffs against that order was also dismissed which necessitated for the filing of the suit by the two plaintiffs for declaration of title and possession stating inter alia that since defendant No. 2 namely Harila was a member of aboriginal tribe ('Nageshiya' by caste), he could not have alienated the suit property in

favour of defendant No. 1 by unregistered sale deed dated 26/03/1957 (Ex. D/2) and the transaction is hit by Section 170-B of M.P. Land Revenue Code, 1959, as such, they are entitled for decree for declaration of title and possession over the suit property.

4. Defendant No. 1 – Deeya Mahto filed his written statement stating inter alia that defendant No. 2 is not 'Nageshiya' by caste and thus, he is not a member of aboriginal tribe rather he is 'Kisan' by caste which does not come under aboriginal tribe, therefore, defendant No. 2 has rightly alienated the suit property in his favour and plaintiffs being the members of aboriginal tribe, defendant No. 2 had no right to alienate the suit property in their favour by registered sale deed dated 08/03/1976 (Ex. P/1).

5. Defendant No. 2 filed his separate written statement and supported the plaint averments made by the plaintiffs.

6. Learned trial Court, upon appreciation of oral and documentary evidence on record, dismissed the suit by its judgment and decree dated 30/07/1992 finding no merit and on appeal being

preferred by the plaintiffs, learned first appellate Court affirmed the judgment and decree of the trial Court and by its impugned judgment and decree dated 24/09/1996 dismissed the appeal against which this second appeal has been preferred by the plaintiffs under Section 100 of CPC wherein three substantial questions of law have been formulated and set out in the opening paragraph of this judgment.

7. Mr. A.K. Prasad, learned counsel for the appellants/LRs. of plaintiffs, would vehemently submit that defendant No. 2 Harila was a member of aboriginal tribe ('Nageshiya' by caste) and therefore, he could not have alienated the suit property in favour of defendant No. 1 Deeya Mahto by unregistered sale deed dated 26/03/1957 (Ex. D/2) which is absolutely in violation of Section 165(6)/170-B of Land Revenue Code. He would also submit that both the Courts below are unjustified in holding that defendant No. 2 Harila belonged to 'Kisan' caste and thus, he was not a member of aboriginal tribe, as such, the finding recorded by both the Courts below in this regard deserves to be set aside and decree for declaration of title and possession over the

suit property be granted in favour of the plaintiffs.

8. Mr. Vikash Pandey, learned counsel for respondents No. 2(A), 2(B) and 3/LRs. Of original defendant No. 1 Deeya Mahto, would submit that both the Courts below are absolutely justified in dismissing the suit of the plaintiffs by holding that defendant No. 2 Harila was not a member of aboriginal tribe and as such, the provisions of Section 165(6)/170-B of the Land Revenue Code are not attracted and the instant appeal is liable to be dismissed.

9. None appeared on behalf of LRs of defendant No. 2 Harila, though served.

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

11. Since all the three substantial questions of law are related to each other, being in relation with applicability of Section 170-B of the Land Revenue Code in the transaction dated 26/03/1957 (Ex. D/2) by which sale deed was executed by defendant No. 2 Harila in favour of defendant

No. 1 Deeya Mahto, all of them are being considered and decided together.

12. The suit property was admittedly held by original defendant No. 2 Harila who died during the pendency of this second appeal. Firstly, he sold the suit property to defendant No. 1 Deeya Mahto by unregistered sale deed dated 26/03/1957 (Ex. D/2) and thereafter, he sold the suit property to the plaintiffs by registered sale deed dated 08/03/1976 (Ex. P/1) and since, in the proceedings initiated by defendant No. 1 under Section 145 of CrPC, defendant No. 1 was found in possession of the suit property by the S.D.M. which was also affirmed by the revisional Court, it necessitated for the filing of the suit by the plaintiffs for declaration of title and possession over the suit property.

13. While dismissing the suit of the plaintiffs, both the Courts below have held that defendant No. 2 Harila was not the member of the aboriginal tribe and did not belong to 'Nageshiya' caste rather he was 'Kisan' by caste, therefore, provisions of Section 165(6)/170-B of the Land Revenue Code are not attracted.

14. It is important to notice that plaintiffs' main case is that the alienation of the suit property dated 26/03/1957 (Ex. D/2) made by defendant No. 2 Harila in favour of defendant No. 1 Deeya Mahto is hit by Section 165(6)/170-B of the Land Revenue Code. Admittedly and undisputedly, the transaction was entered into between defendant No. 2 Harila and defendant No. 1 Deeya Mahto on 26/03/1957 (Ex. D/2), that is, prior to coming into force of the M.P. Land Revenue Code, 1959 with effect from 02/10/1959.

15. This Court, in the matter of **Yadram (dead) through Lrs. Smt. Yamuna Bai & Ors. V. State of Chhattisgarh & Ors.**[1], has considered the issue as to whether the provisions of the Land Revenue Code would be attracted if the alienation is made prior to the date of coming into force of the Land Revenue Code. In paragraph 1 of the judgment, the following question of law was framed by the Division Bench :-

> “ 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 a non-tribal over

1 2015(5) CGLJ 402 (DB)

> a land which, before such acquisition of title or interest or transfer, belonged to a member of tribe who has been declared to be aboriginal tribe under sub section (6) of Setion 165 of the C.G. Land Revenue Code, 1959 ?"

16. Thereafter, their Lordships answered the question in paragraph 17 of the judgment and held that the provisions of the Code would not apply if a transaction took place prior to 02/10/1959 i.e. coming into force of the Land Revenue Code, which states 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 coverst 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 unambigous 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 a 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 situation 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 disturbing the vested rights which, normally, should not be done by resorting to interpretation. Therefore, on the face of the plain and unambigous wordings 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. "

17. In the instant case, admittedly, the transaction was entered into between defendant No. 2 Harila and defendant No. 1 Deeya Mahto on 26/03/1957 (Ex. D/2), that is, prior to coming into force of the M.P. Land Revenue Code, 1959 with effect from 02/10/1959, therefore, as per the decision rendered by this Court in **Yadram** (supra), the provision of Section 170-B of the Land Revenue Code would not be applicable herein. As such, the finding recorded by both the Courts below that defendant No. 2 Harila did not belong to 'Nageshiya' caste and thus he is not a member of aboriginal tribe rather he belonged to 'Kisan' caste, so the provisions of Section 165(6)/170-B of the M.P. Land Revenue Code, 1959 would not be applicable to him, is duly established and the provisions of Section 170-B of the Code would not be applicable on the pure legal ground that the transaction dated 26/03/1957 (Ex. D/2) entered between defendant No. 1 and defendant No. 2 took place prior to 02/10/1959 i.e. the date of commencement of the M.P. Land Revenue Code, 1959. Thus, the alienation of the suit property made by defendant No. 2 Harila in favour of defendant No. 1 Deeya Mahto on

26/03/1957 (Ex. D/2) is not hit by Section 165(6)/170-B of the Land Revenue Code, 1959.

18. Accordingly, the substantial questions of law are inevitably answered in favour of the defendants and against the plaintiffs. It is held that the provisions of Section 165(6)/170-B would not be applicable in the present case and therefore, no exception can be taken to the finding recorded by both the Courts below. As a fallout and consequence of the aforesaid legal discussion, I do not find any perversity or illegality in the finding recorded by both the Courts below while dismissing the suit of the plaintiffs.

19. The second appeal, being devoid of merits, deserves to be and is accordingly dismissed and all the pending applications including the application under Section 100(5) of CPC stands disposed of. No cost(s).

20. Decree be drawn-up accordingly.

Sd/-
(Sanjay K. Agrawal)
Judge

Harneet