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HIGH COURT OF CHHATTISGARH, BILASPUR

Order Reserved on : 26.08.2021

Order Passed on : 26/10/2021

W.P.(227) No. 484 of 2013

Kapleshwar (Dead) Through Lrs.

- 1(A). Nirmal Prasad Paikra, S/o. Late Kapleshwar, aged about 28 years,
- 1.(B). Pratim Prasad Paikra, S/o. Late Kapleshwar, aged about 24 years
- 1.(C.) Leema Paikra, D/o. Late Kapleshwar, aged about 19 years,
- 1.(D). Purnima Paikra, D/o. Late Kapleshwar, aged about 18 years

All are R/o Village and Tahsil - Kansabel, P.S. Kansabel, District Jashpur Chhattisgarh.

---- Petitioners

Versus

1. Balbhadra Sharma, S/o. Kapurchand Sharma, aged about 60 years,
2. Khitishchandra, S/o. Kapurchand Sharma, aged about 54 years,
3. Anant, S/o. Kapurchand Sharma (deleted)
4. Satyanarayan, S/o. Kapurchand Sharma, aged about 50 years,
5. Sharda, D/o. Kapurchand Sharma, aged about 38 years,
6. Tikeshwari, D/o. Kapurchand Sharma, aged about 35 years,
7. Pratima D/o Kapurchand Sharma Aged About 35 Years
8. Ratansai (Dead) Through Lrs. Nil
- 8.(A). Lihendra, D/o. Ratansai, aged about 35 years, R/o. Chandragarh, Tahsil – Pathalgaon, District – Jashpur (C.G.)
9. Sonsai, S/o. Manijir, aged about 47 years,
10. Prem Sai (Dead) Through Lrs.
- 10.(A) Kamal Sao, S/o. Late Prem Sai, aged about 30 years
- 10.(B) Samal Sai, S/o. Late Prem Sai, aged about 28 years

All are R/o. Village- Kansabel (Ghanjutoli), Tahsil – Bagicha, District – Jashpur (C.G.)

11. (Deleted) Sumati As Per Court Order Dated 19.09.2018.
12. Bikulsai, S/o. Ranjan Sai, aged about 35 years, R/o. Siharbud, Tahsil Kansabel, District Jashpur, Civil and Revenue District Jashpur Chhattisgarh.
13. The Sub Divisional Officer (Revenue) Bagicha, District Jashpur Chhattisgarh.
14. The Collector Jashpur, at Post and District Jashpur Chhattisgarh.
15. The Commissioner Surguja Division at Ambikapur, District Surguja Chhattisgarh.

---- Respondents

For Petitioners	: Mr. A.K. Prasad, Advocate
For Respondents No.1 to 7	: Mr. Vinay Pandey, Advocate
For Respondents No.12	: Mr. Shailendra Sharma, Advocate
For Respondents/State No.13 to 15	: Mr. Alok Nigam, Govt. Advocate

Hon'ble Shri Justice Rajendra Chandra Singh Samant

C A V Order

1. This petition has been brought being aggrieved by the order dated 26.04.2013, passed by the Commissioner, Sarguja Division Ambikapur in Revenue Revision Case No.152/A-23/11-12.
2. The property under dispute in this case is Kh. No. 436/3 measuring 0.0417 hectares, situated at village – Kansabel, District – Jashpur (C.G.). This land was originally recorded in the name of the petitioner and others, who are members of scheduled tribe. A complaint was received by the Collector, Jashpur on the basis of which, the proceeding under Section 170-B of the Chhattisgarh

Land Revenue Code was initiated, before the Court of S.D.O., Pathalgaon, District – Jashpur. Order dated 28.05.2008 (Annexure P-2) was passed by the learned S.D.O. directing reversion of disputed land in favour of the petitioner and others. Appeal was preferred before the Collector, Jashpur by the respondents, which was dismissed by the order dated 03.04.2012 (Annexure P-3). Respondents then preferred a revision, before the Commissioner, Division Sarguja, which has been decided by the impugned order by which the revision was allowed and orders of S.D.O. and Collector both have been set-aside.

3. It is submitted by the learned Counsel for the petitioners that the learned Revisional Court has held that the case under Section 170B of the C.G. Land Revenue Code, 1959 (hereinafter referred to as the “Code of 1959”) was earlier initiated and decided by the S.D.O. on 31.03.1992. No appeal was preferred against that order, which has attained finality. Hence, on the basis of this background, the order of the S.D.O. and Collector have been set-aside. It is submitted that in the matter of proceeding under Section 170-B of the Land Revenue Code, principle of res judicata is not applicable. Therefore, the impugned order is not sustainable. The order of the S.D.O. and Collector are correct orders passed. Prayer has been made for quashing the impugned order and restoring the orders of the S.D.O. and Collector.
4. Learned counsel for the respondents raises objection on the ground that the petitioner was not a party, before the Commissioner in the revision petition No.152/A-23/11-12,

therefore, he has no right to challenge the impugned order. It is submitted that the learned revisional Court has set-aside the order of the S.D.O. and Collector on the ground that the land in question was purchased by the predecessor of the respondent in the year 1939, therefore, in case of such transaction of sale, there will be no applicability of Section 170-B of the Code, 1959 and secondly that same issue was raised earlier and decided by the S.D.O. by order dated 31.03.1992, which was not challenged in any Court, therefore, that has attained finality. Hence, the impugned order is sustainable.

5. In reply, it is submitted by the learned counsel for the petitioners that the Commissioner has observed in the impugned order in para-6, that it was argued by the learned counsel that the Court of S.D.O. and appellate Court of Collector have passed the orders without any enquiry, therefore, the case be remanded back. Therefore, it being the case that the order of S.D.O. was passed without any enquiry, the case was fit to be remanded. It is also submitted that the petitioners have locus to challenge the impugned order, because he was a party in the proceeding, before the S.D.O. and also in the appeal, before the Collector and further the revision petition has set-aside the whole order of the S.D.O. and Collector, which has affected the right and entitlement of the petitioners. Hence, the petitioners have entitlement to challenge the impugned order and he has locus standi. It is prayed that the petition be allowed and the relief be granted to the petitioners.

6. I have heard the learned counsel for the parties and perused the documents placed on record.
7. Section 43 of the C.G. Land Revenue Code, 1963 provides that unless otherwise expressly provided in this Code, the procedure laid down in the Code of Civil Procedure, 1908 shall so far as may be, be followed in all proceeding under this Code. The mentioning of words all the proceedings includes the proceeding under Section 170-B of the Code, 1959. Section 170-B Sub-Section (1) of the Code, 1959 is specifically referable, which is as follows :-

“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 the Madhya Pradesh Land Revenue Code (Amendment), 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

8. Wordings of this provisions are very clear that a non-tribal is in possession of agricultural land, which earlier belonged to a member of 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

commencement of amendment Act, in that case such person shall be bound to provide that information as to how he came in such possession.

9. It has been mentioned in the impugned order that the disputed land was purchased by the ancestor of the respondents in the year 1939. The learned S.D.O. has also mentioned in the order dated 28.05.2008 regarding presence of unregistered sale transaction prior to the enactment of the Code, 1959 and also that sale deed being of value below Rs.100/- was lawful. It has been similarly observed by the Collector in the order dated 03.04.2012, which has been reiterated by the revisional Court in the impugned order, therefore, certainly, the possession of the respondents on the basis of sale transaction was not within the period 2nd October, 1959 and the date of amendment 1980 and that the sale transaction was of date prior to 2nd October, 1959, therefore, the finding recorded that the instant case is not covered under the provision of Section 170-B of the Code, 1950 is a correct finding in the impugned order.
10. As it is clearly provided under Section 43 of the Code, 1959 that the provisions of C.P.C. shall be applicable to the proceeding before the revenue Court unless expressly they are barred in provision under the Code of C.P.C., therefore, there is no such provisions present barring the application of the principle of res judicata by the Code of Civil Procedure, which is provided under Section 11 of the C.P.C. It is not disputed that earlier proceeding under Section 170-B of the Code, 1959 was initiated and decided

by the S.D.O. by order dated 31.03.1992 and that was not challenged in appeal by the petitioners, side therefore, that order has attained finality and has the effect of res judicata, hence for this reason, this Court is of view that the present petition is without any substance, which is dismissed.

Sd/-
(Rajendra Chandra Singh Samant)
Judge

Balram