

(1990) 07 GUJ CK 0001

In the Gujarat High Court

Case No : Special Civil Application No's. 788, 820 and 821 of 1980

Balubhai Jethabhai Shah

APPELLANT

Vs

Chhaganbhai Bamanbhai and Another

RESPONDENT

Date of Decision : 25-07-1990

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 34 Rule 2, Order 34 Rule 3
Contract Act, 1872 — Section 65, 70
Gujarat Rural Debtors Relief Act, 1976 — Section 2, 8
Transfer of Property Act, 1882 — Section 58

Citation : AIR 1991 Guj 85 : (1991) 1 GLR 60

Hon'ble Judges : R.K. Abichandani, J

Bench : Single Bench

Advocate : H.J. Shah and P.J. Bhatt, for J.G. Shah, for the Appellant; D.N. Pandya, for K.R. Vyas and B.B. Antani, A.G.P., for the Respondent

Judgement

1. This group of 3 petitions raises common questions of law and facts and can be conveniently dealt with together. The petitioners have, in all these 3 matters, challenged the orders of the respondent No. 2, District Registrars of Co-operative Societies and Appellate Authority whereby the orders issuing certificates u/s 8(3) of the Gujarat Rural Debtors Relief Act, 1976 (hereinafter referred to as "the Act") by the Debt Settlement Officer, in favour of the first respondents were confirmed.

2. Before dealing with the various legal contentions in these matters, the facts of each of these petitions may be set out.

3. In Special Civil Application No. 788 of 1980, the respondent No. 1, who had made an application for obtaining relief under the said Act in respect of his debt of Rs. 3,000/-, stated that he had mortgaged the land in favour of the petitioner and that since he was a marginal farmer his debt should be discharged. The Debt Settlement Officer came to the conclusion that the respondent No. 1 was a marginal farmer and that having regard to the nature of the transaction it was a mortgage by conditional sale. The respondent No. 1 was therefore entitled to

obtain the certificate of discharge of debt. An appeal which was preferred against this order was dismissed by the District Registrar of Co-operative Societies and the Appellate Authority, the respondent No. 2 herein and the certificate issued by the Debt Settlement Officer u/s 8(3) of the said Act was confirmed. Admittedly, the registered document dated 9th May 1975, which was executed in this matter, contains a condition that the land in dispute was to be handed over on the Akhatrij of any of the years within 10 years from the date of deed on the refund of Rs. 2,700/- being the amount earlier described as consideration under the deed. It is recorded that, on the refund of the amount, the land is to be returned.

4. In Special Civil Application No. 820 of 1980, on an application being made by respondent No. I for a certificate showing discharge of debt, the Debt Settlement Officer, Naswadi, after examining the relevant material, came to the conclusion that the respondent No. I was a marginal farmer and that the transaction in question was a mortgage by conditional sale and that therefore the respondent No. I was entitled to the certificate of discharge from the debt. The Appellate Authority, the respondent No. 2 herein by order dated 27-7-1979 confirmed the said certificate issued in favour of the respondent No. 1.

5. The document in question was executed in this case by the respondent No. I on 14th May, 1970 and admittedly that document contain a stipulation that the possession of the land in question was to be handed over to the respondent No. I by the petitioner 2 years after the execution of the said deed on any Akhatrij when the same amount of Rupees 2,500/- is given by the respondent No. 1 to the petitioner. In the body of the said deed it has been mentioned that the possession of the land was given by way of conditional sale.

6. In Special Civil Application No. 821 of 1980 the facts are almost identical with those of Special Civil Application No. 820 of 1980. Even in this matter, the Debt Settlement Officer and the Appellate Authority came to the conclusion that the respondent No. I was a marginal farmer and that the transaction in question was of mortgage by conditional sale and that the respondent No. I was entitled to a certificate of discharge of debt u/s 8(3) of the said Act. The Deed was executed by the respondent No. I on 14th May, 1970 which clearly records the stipulation that the possession of the land was to be handed over to respondent No. I by the petitioner, 2 years after the date of the deed on any Akhatrij on which the same amount of Rs. 2,500/- was given to the petitioner.

7. In all these 3 matters, the respondent No. I admittedly are Adivasis. The lands are situate in Taluka Naswadi, Village Chametha.

8. It was contended by Mr. H. J. Shah, the learned advocate appearing for the petitioners in all these matters, that the transactions were in the nature of outright sale and were not mortgages and therefore the Debt Settlement Officer and the Appellate Authority committed an error in holding that there was a "debt" within the meaning of Section 2(c) of the said Act. He argued that the amount in question was consideration for the property which was sold and since

there was no debt involved, the powers could not have been exercised under the provisions of the said Act by the Debt Settlement Officer or the Appellate Authority. He also contended that the respondent No. I was not a "debtor" u/s 2(d) of the Act in all these cases. Mr. Shah relied upon the decision of this High Court in the case of Kamlaben Chhotabhai Jivabhai v. Shivabhai Somabhai Patel (Special Civil Application No. 2021 of 1982 (with Special Civil Applications Nos. 1893 / 82, 2943/82 and 903/83, (reported in 1984 GLH (UJ) 7) in support of his contention that even if the transactions in question were to be treated as mortgages by conditional sale, the creditor had no right to call for the money against the offer of the return of the property and therefore the important ingredient of the definition of debt namely "payability" was missing in these cases and that these respondent No. I cannot therefore be called debtors.

9. The question whether any debt was existing so as to entitle the respondent No. I to get the relief provided by this beneficent legislation would depend on the construction of the deed. The Debt Settlement Officer and the Appellate Authority have construed the deed and came to the conclusion that it is of the nature of mortgage by conditional sale in all these 3 cases Section 2(c) defines "debt" so as to mean any liability (inclusive of interest) which is due from a debtor in cash or kind, whether secured or unsecured, or whether payable under a decree or order- of any Civil Court, or otherwise, and subsisting on and legally recoverable on or after the appointed day. The appointed day is 15th August, 1976. Therefore, one has to examine whether there was any debt within the meaning of the said definition subsisting on and legally recoverable on or after the appointed day. The word "recoverable" would also mean receivable or that which can be regained (See *Berwick v. Matthews* (1892) 66 LT 564 DC). The word "recoverable" would mean something which is capable of/being recovered or regained as also something capable of being retrieved or made good (See the Oxford English Dictionary, Volume VIII, Pages 272-273). The question, therefore, would be whether in a mortgage by conditional sale, the amount which is stipulated to be returned can be said to be recoverable within the meaning of Section 2(c) of the said Act.

10. Section 58(c) of the Transfer of Property Act deals with mortgage by conditional sale and provides, inter alia, that where the mortgagor ostensibly sells the mortgaged property on condition that on payment of the mortgage money being made the buyer shall transfer the property to the seller, the transaction is called a mortgage by conditional sale. It will be noticed that the mortgage by conditional sale is different from a sale with a condition of repurchase, for, in the latter case the ownership vests in the transferee from the date of instrument and there would be no question of debt being in existence after the transaction, while in a mortgage by conditional sale, the debt would subsist and a right to redeem remains with the debtors. In *Bhoju Mandal Vs. Debnath Bhagat*, , the Supreme Court, while considering the distinction between the two concepts of mortgage by conditional sale and a sale with a condition of repurchase, observed that the question to which category a document belongs

presents a real difficulty which can only be solved by ascertaining the intention of the parties on a consideration of the contents of a document and other relevant circumstances. It has been held that the decided cases which have laid down many tests to ascertain the intentions of the parties are only illustrative in nature and not exhaustive. It was also held that, recitals such as those describing the amount paid as consideration for the sale, referring to usual covenant of title being given and making provision of reconveyance in case of payment of the prescribed amount within the time agreed upon, would be found in a document purporting to be an ostensible sale and such recitals were not decisive of the question raised. In the case before the Supreme Court, the total area of the land mortgaged in the year 1923 was 13.17 acres and the amount advanced thereunder was Rs. 1600/-. One year after the transaction, 12.6 acres of these lands was transferred by the document in question for a sum of Rs. 2,800/- which means a smaller extent was mortgaged for a higher amount and it was in this context that the Supreme Court held that it was improbable that a mortgagee would advance an additional amount and take a mortgage of a smaller extent in discharge of an earlier mortgage whereunder a larger extent was given on security. It was held that, unless there were extraordinary reasons for such conduct, this would be a clinching circumstance in favour of holding that the document was a sale.

11. In the case of Patel Atmaram Nathudas v. Patel Babubhai Keshavlal (reported in AIR 1975 Guj 120), this Court, while considering the question whether the transaction was mortgage by conditional sale with clause for repurchase found that the fact that a long period was provided for exercising the right of repurchase and the vesting of the property was postponed clearly showed that the transaction was mortgage by conditional sale. While examining the document the Court also noticed the use of the expression "return of Rs. 2,500/-" which indicated the existence of the relationship of the creditor and debtor. It was observed that the question of "return" can only arise in case of a debt and it cannot arise in the context of an outright sale.

12. In Patel Atmararn Nathudas and Others Vs. Patel Babubhai Kashavlal, , this Court, was construing a deed which was described as a conditional sale deed executed for a consideration of Rs. 8,00/-. The possession of the property was delivered by the executant to executee on the same day and the document contained a stipulation that the house was to be returned to the executant if he repaid 7 the consideration. It was held that embodying of the condition to get back the house in the sale deed and condition of returning the house on payment of the same amount which had been received and nonmention of payment of any other amount, were clearly indicative of the fact that the parties intended to create a relationship of the debtor and creditor between themselves and that for the amount advanced by way of a loan, the property was given in security. It was held that the description of the document was not very material and though ostensibly it was a sale deed, in substance, on examination of the material terms thereof it was a document intended to be a mortgage by conditional sale.

13. From the above authorities, it can be said that it is a settled legal position that mere description of a document would not be sufficient to hold it to be a sale, when in substance it is a document of mortgage by conditional sale. This necessarily brings us to the construction of the deeds. It will be noticed that, in each of these 3 documents, the condition, that, on repayment of the amount the buyer shall transfer the property to the seller, is embodied in the document itself. In the deed executed by Chhaganbhai Bamanbhai Bhil, the respondent No.1 in Special Civil Application No. 788 / 80, the transaction is described as a conditional sale. In the latter part of the deed, it is in terms stipulated that during any of the years within 10 years from the date of the execution of the deed, the same amount of consideration namely Rs. 2,700/- can be returned to the executee and at that time the land was to be returned to the executant. It is, thus, clear that there was no outright sale of the land covered by the said document. The fact that the identical amount of Rs. 2,700/- was to be returned for getting back the possession of the land is significant to show that only relationship of creditor and debtor was intended to be brought about by the said transaction. No buyer intending to purchase immovable property would put his title to jeopardy for a period of 10 years nor would he agree to return the property for the same price at which he has purchased during any time up to 10 years from the date of the purchase. The expression to the effect that "the amount of Rs. 2,700/- will be returned" is also significant inasmuch as if it were really meant to be consideration, there was no question of return of the same amount. It is only when there is a specified debt that the question of returning the same amount would arise in such cases. The return of the identical amount of Rs. 2,700/- impels one to come to the conclusion that there was a transaction of mortgage by conditional sale. The Debt Settlement Officer and the Appellate Authority have, therefore, come to the right conclusion as regards the nature of the said document being a mortgage by conditional sale.

14. The documents executed by the respondent No. I Bhil Shantilal Bhailalbhai (Special Civil Appln. No. 820/ 80), respondent No. I Bhil Bhagubhai Nanabhai (Special Civil Application No. 821/ 80) on 14th May, 1970 are almost identical. In both these petitions, the petitioner is the same person and these two documents have been executed in his favour. In these documents, the nature of the documents is described as conditional sale and possession is handed over from the date of the deed as against the amount of Rs . 2 , 500/- given in each case under these documents. In both these documents, there is a stipulation that on the giving, of the same amount of Rs. 2,500/- on any Akhatrij after 2 years from the date of the deed, the possession of the land will be handed over to these executants by the petitioners. It will be noticed from these documents that the transaction is not only described as a conditional sale. But there is reference only to possession being handed over without any reference to title deeds being handed over as against the said amount and even while stipulating that the property was to be handed over to the executant on payment of the same amount of Rs. 2,500/- there is reference only to possession and not to the

ownership of the property, From the terms of these documents, it is clear that no outright sale was intended and the parties intended to bring about relation ship of a creditor and a debtor securing the debt by mortgaging the land. Thus, the Debt Settlement Officer and the Appellate Authority rightly concluded that the transactions in these cases were also in the nature of mortgage by conditional sale and there was no outright sale.

15. A mortgage is defined u/s 58(a) as the transfer of an interest in a specific immovable property for the purpose of securing the payment of money advanced or to be advanced by way of loan, an existing or future debt, or the performance of an engagement which may give rise to a pecuniary liability. Thus, by the very nature of these transactions they were intended to secure debt. The said act received Presidential assent on 14th August, 1976 and came into force from 15th August, 1976. The liability of the debtor in order to avail of the benefit under the act ought to have been subsisting on and legally recoverable on or after the appointed day. In Special Civil Application No. 788/80, the respondent No. I had executed the deed of mortgage by conditional sale on 9th May, 1975 and the deed stipulated that during 10 years from the date of the deed on any Akhatrij by returning the amount the property could be taken back by the respondent No. 1. Therefore, as per that stipulation, on any Akhatrij up to 9th May, 1985 the respondent could have returned the amount and taken the property. In the deeds executed on 14th May, 1972 by the respondent No. 1, in Special Civil Application No. 820/80 and respondent No. I in Special Civil Application No. 821/80, the stipulation was that on any Akhatrij after 2 years from the date of these deeds, i.e. 14th May, 1972, these respondents No. I could have paid the said amount back and retrieved their property.

16. u/s 67 of the Transfer of Property Act, it has been, inter alia, provided that, in the absence of a contract to the contrary, the mortgagee has, at any time after the mortgage money has become due to him, and before a decree has been made for the redemption of the mortgaged property, or the mortgage-money has been paid or deposited as provided thereunder a right to obtain from the Court a decree that the mortgagor shall be absolutely debarred of his right to redeem the property, or a decree that the property be sold. A suit to obtain a decree that a mortgagor shall be absolutely debarred of his right to redeem the mortgaged property is called a suit for foreclosure. It has also been provided that, nothing shall be deemed to authorise any mortgagee, other than a mortgagee by conditional sale or a mortgagee under an anomalous mortgage by the terms of which he is entitled to foreclose, to institute a suit for foreclosure, or an usufructuary mortgagee as such or a mortgagee by conditional sale as such to institute a suit for sale. Under Order XXXIV, Rule 2 of the Code of Civil Procedure, it has been, inter alia, provided that, in a suit for foreclosure if the plaintiff succeeds, the Court shall pass a preliminary decree directing that if the defendant pays into Court the amount found or declared due on or before such date as the Court may fix, the plaintiff shall deliver to the defendant or to such person as the defendant appoints, all documents in his possession or power

relating to the mortgaged property, and shall retransfer the property to the defendant at his cost free from the mortgage and from all incumbrances created by the plaintiff. Order XXXIV, Rule 3 enables the defendant to make payment into Court of all the amounts due before any final decree is passed in a foreclosure suit. It will, thus, be noticed that, on payment of the amount due under the transaction of mortgage, the executant is entitled to get his property back. In other words, the executee, on recovery of all his dues, has to hand over the property to the executant. In this context, we may also refer to the provisions of Articles 62 and 63 of the Schedule to the Limitation Act, which provide respectively for limitation for suits to enforce payment of money secured by a mortgage or otherwise charged upon immovable property, and by a mortgagee for foreclosure or for possession of immovable property mortgaged. It will be noticed that, for suits for enforcing the payment of money secured by a mortgage or otherwise charged upon immovable property, the period of limitation prescribed is 12 years from the date when the money sued for becomes due under Article 62. The limitation prescribed for suits by a mortgagee for foreclosure is 30 years from the date when the money secured by the mortgagee becomes due as provided in Article The word "recoverable" occurring in Section 2(c) which defines debt is of wide amplitude and would include that what can be got back again or regained or something that is receivable, capable of being retrieved or made good. The executee could have enforced the payment of the dues within the limitation prescribed in view of the above provisions. The amount was therefore a debt which was, recoverable within the meaning of the said definition because of the possibility of the executee recovering the amount and because of the fact that he could have validly received the same from the executant. Thus, in all these matters there undoubtedly was a debt which was subsisting on the appointed day, i.e., 15th August, 1976. The authorities were, therefore, justified in issuing the certificates of discharge of debts in all these 3 cases u/s 8(3) "of the said Act.

17. It was contended rather half-heartedly that the respondent No. I were not marginal farmers. The finding of facts in all these 3 cases is clearly to the effect that these Adivasis were marginal farmers and therefore "debtors" within the meaning of Section 2(d) of the said Act and therefore entitled to the relief intended for such debtors. There is no valid reason for interfering with this sound finding of fact by the authorities.

18. The reliance placed on behalf of the petitioner on the judgment of this Court in the case of Kamlaben Chhotabhai Jivabhai v. Shivabhai Somabhai Patel (reported in 1984 GLH (UJ) 7) is misconceived inasmuch as from the subsequent order passed in Miscellaneous Civil Applications Nos. 231 to 233 and 1015/85 on 12-12-85, it appears that review applications were filed again, the said judgment and all these review applications were allowed by consent. It appears that, from the office record (which was called for during the hearing at the instance of and by the consent of all the learned advocates) that the attention of the Hon"ble Judge was brought to a Division Bench judgment of this Court in the case of Vora

Saiyedbhai Kadarbhai (A Partnership firm) Vs. Saiyed Intajam Hussen Sedumiya and Others, in which one of the points for consideration was as to whether a debt incurred under a usufructuary mortgage was a debt within the meaning of the said Act or not and it was held that the debt incurred under a usufructuary mortgage was also a debt within the meaning of the said Act. In view of the said Division Bench Judgment, the review applications were allowed and therefore, since the judgment stands reviewed, its ratio no longer can be relied upon by the petitioners and the judgment is no longer good law by virtue of its being reviewed. It appears from the record of that case that, by a separate order passed on the same day, i.e. 12-12-85, after allowing the review applications by setting aside the judgment in Special Civil Application No. 2021/82 and other cognate matters, the Hon"ble Judge passed an order remanding all the 4 matters to the initial authority. It will also be noticed that the decisions which were referred to in the judgment reported in 1984 GLH (UJ) 7 5 were dealing with the question of transfer of equity of redemption by the debtor, which question does not arise in the instant case.

19. My above finding should be sufficient to dispose of the above petitions. However, since the learned advocate appearing for the respondent No. I has raised an interesting point of law which has been argued by all concerned and has bearing on these matters. I am also considering that point for completion of the record. It has been contended by the learned advocate Mr. D. N. Pandya appearing for the respondent No. 1. in all these matters that from the admitted facts, all these 3 executants are Adivasis, i.e., persons belonging to Scheduled Tribe, namely Bhil. The transactions effected by them were therefore prohibited by virtue of Section 73-AA of the Bombay Land Revenue Code since an occupancy of a person belonging to any of the Scheduled Tribes, shall not be transferred to any person without the previous sanction of the Collector. Admittedly, no such previous sanction of the Collector was obtained. It is also an admitted fact that, a notification has been published u/s 73A in respect of the said area of Naswadi Taluka putting an embargo on the transferability of the occupancies without previous sanction of the Collector. A detailed provision is made in sub-section (4) as to how such void transaction, should be dealt with by the Collector.

20. The provisions of Sections 73-A and 79-A came to be considered by a Division Bench of this Court in Ahmedabad Abdulganj Memon v. State of Gujarat (reported in 13 GLR 354) and it has been mentioned in the judgment (at page 358) that the Government of Gujarat by its notification No. LND-39164,1509-G dated 4th April, 1961 issued in exercise of the powers conferred upon it u/s 73A of the Bombay Land Revenue Code 1879, declared that the provisions of the said Section 73A shall be applicable to all those villages in the scheduled areas of the State of Gujarat in which survey settlement under the Bombay Land Revenue Code was not introduced and to which the provisions of the said Section 73A were not made applicable. The Government also by the said notification exempted from the operation of the said Section 73A all persons not being

members of Scheduled Tribes holding lands in the villages to which the said Section 73A was declared to be applicable by the said notification. The cumulative effect of the notification was that the occupancy of the land held by the members belonging to Scheduled Tribes and situate within the area to which the notification was applied could not be transferred without the previous sanction of the Collector as provided for in Section 73A of the Code. The lands in dispute in the said matter before the Court were situate in the area, i.e. Naswadi Taluka in which the lands of the present executants is situate. It was held that the object behind the provision was to protect the members of the Scheduled Tribes against exploitation; such persons were persons primarily attached to land and were wholly dependent upon their land and if they were made to part with their lands they would suffer immense hardship and possibly they would be rendered destitute. In order to extend protection to such vulnerable class in respect of land held by them, even the Constitution made a special provision and that the Governor may restrict transfer of land from the scheduled areas. It was held that, Section 73A and especially the notification issued thereunder seeks to effectuate the very purpose underlined in para 5 read with Article 244 of the Constitution. In para 23 of the judgment, it has been observed that in order to protect the weaker members of the society in the area in which original survey settlement is not introduced, partial restraint is sought to be" imposed upon the transferability of occupancy and power is conferred upon the Collector to restrain transfer of occupancy except where it is considered necessary and also to, provide for the consequence of transfer and contrary to the provision of Section 73A by making the transfer null and void. After conferring this power and providing for its effect of making transfer made contrary to the provisions of Section 73A null and void, a forum, is created for the enforcement of the scheme. In paragraph 33 of the judgment, while dealing with the facts of the case, it was held, that, it Chandubhai was a member of the Scheduled Tribe and if he transferred the land on 17-3-67, i.e., after the issue of the notification u/s 73A, obviously the transfer would be invalid as it was made without previous sanction of the Collector. It was further observed that if the initial transfer was invalid, subsequent transfer for the purpose of Section 73A read with Section 79A would be invalid. In the present case, admittedly, the notification u/s 73A is in respect of the same area namely Naswadi Taluka and these 3 executants belong to Scheduled Tribe community of Bhils. It is also not disputed that no previous sanction of the Collector was ever obtained before effecting these transactions in favour of the" petitioners. Thus, obviously, these transactions were hit by the provisions of Section 73AA and were therefore void. Any transaction which is null and void cannot be given recognition to for any purpose. When there is a statutory embargo imposed for the purpose of protecting the interest of the scheduled tribes, a transaction which is in violation of such embargo cannot be recognised by contending that it ought to be challenged elsewhere. The provisions which imposed the embargo are not intended only for the Collectorate for taking further action as provided in sub-section (4) of Section 73AA, but are intended for all concerned to know that these transactions should not be

recognised so that the interests of the scheduled tribes are protected.

21. Reliance was sought to be placed by Shri H. J. Shah, learned advocate appearing for the petitioners on the decision of this Court in *Purshottambhai Ramdas Patel v. Appellate Officer and District Registrar (Cooperative Societies) Rural Debt, Broach* (reported in 29(2) GLR 1001) and in *Ravjibhai Soniyabhai Vasava v. Appellate Officer and District Registrar, Bharuch* (reported in 1990 (1) GLH (UJ) 3 at 4) for contending that the Debt Settlement Officer or the Appellate Authority could not have granted any relief under the provisions of Section 73AA and 73AD of the Code. It will- be noticed that the facts in these two matters were entirely different; the transactions were of outright sale and there was no question of any debt in such transactions which could be considered by the authorities under the said Act. It is in this context that it was held that the Debt Settlement Officer under the said Act could not have exercised the functions of the Collector u/s 73AA of the Bombay Land Revenue Code. It has been observed in paragraph 5 of the judgment in *Purshottambhai Ramdas Patel's* case (supra) that the authority to take action for violation of the provisions of Section 73A, 73AA etc., is the Collector and not the Debt Settlement Officer or the Appellate Authority under the Gujarat Rural Debtors Relief Act. It has been observed that the Debt Settlement Officer and the Appellate Authority confused themselves about the said powers and assumed powers and jurisdiction under the Land Revenue Code. We do not find any such confusion in the present case where the Debt Settlement Officer and the Appellate Authority have acted under the provisions of the said Act while issuing certificate u/s 8(3). In other words, in the present case, the authorities have not acted under the provisions of the Bombay Land Revenue Code and therefore these two decisions cannot help the petitioners.

22. When on the facts which are admitted these transactions are null and void, the question that arises is whether the amounts purported to have been paid by way of consideration became recoverable or payable assuming that these were sale transactions, as sought to be contended on behalf of the petitioners. It has been held by the Supreme Court in *Mulamchand v. State of Madhya Pradesh* (reported in 1968 SC 1218) : (1968 All LJ 745) that the provisions of Section 70 of the Indian Contract Act, 1872 can be invoked by the aggrieved party to a void contract. Thus, if a contract is void, then the payment which is made under such a contract can be recovered on the ground that no unjust enrichment can be allowed to a party. Thus, it was possible for the petitioners to have recovered the amount from these executants on the ground that it was paid under a void contract. Therefore, even for this reason, these amounts were debt within the meaning of Section 2(c) of the said Act which was subsisting and recoverable. When consideration is paid under an agreement whereby property is transferred and the transfer is void, the transferee can recover the money advanced u/s 65 and/or Section 70. It appears to be just and proper that money paid in pursuance of a transaction which was thought to be valid contract but which in truth by virtue of statutory prohibition is null and void should be recoverable in quasicontract. Thus, the amount paid to the respondent being legally recoverable

it was "debt" within the meaning of Section 2(c) of the said Act. The fact that the petitioners did not intend to recover or that they may not have recovered is not material. The test is whether a given executee could have recovered or that it was possible to effect recovery or that such an amount can be received lawfully or got back. In a given case if the executee has snatched away the lands of Adivasis for a paltry sum, they may not actually resort to legal process or recovering the amount and may insist on keeping the land but that would surely be not the test for ascertaining whether the amount is recoverable. The true test would be that if an intending executee wants to recover it he can do so. The possibility so far as the executant is concerned, of recovery of an amount paid under a void contract cannot be ruled out. Therefore, it necessarily was a debt even from this angle. In any event, as observed earlier, since the transactions have been found to be of the nature of mortgage by conditional sale, the authorities have come to a right conclusion that there was a debt in each of these cases for which these executants were entitled to a certificate of discharge u/s 8(3).

23. In the result, all these petitions fail and deserve to be dismissed. Rule is discharged in each of these matters and the petitioners are ordered to pay the costs to the respondents in each of these matters.

24. Petitions dismissed.