

(2003) 07 MP CK 0083

In the Madhya Pradesh High Court

Case No : Second Appeal No. 613 of 2001

Bane Singh (deceased) through L.Rs. Smt. Kalabai and Others	APPELLANT
Vs	
Basantibai and Others	RESPONDENT

Date of Decision : 24-07-2003

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 100
Madhya Pradesh Samaj Ke Kamjor Vargon Ke Krishi Bhumi Dharakon Ka Udhar Dene
Walon Ke Bhumi Hadapane Sambandhi Kuchakron Se Paritran Tatha Mukti Adhiniyam,
1976 — Section 7

Citation : (2004) 2 MPHT 28

Hon'ble Judges : A.M. Sapre, J

Bench : Single Bench

**Advocate : G.M. Chafekar and P.V. Bhagwat, for the Appellant; S.R. Bohra, (A),
for the Respondent**

Final Decision : Dismissed

Judgement

A.M. Sapre, J.—This is a second appeal filed by the plaintiff u/s 100 of CPC against the judgment/decreed, dated 22-10-2001, passed by the learned IXth Additional District Judge, Indore in C.A. No. 1-A of 2000, which in turn arises out of Civil Suit No. 294-A of 1986, decided by IVth Civil Judge, Class I, Indore, on 7-3-1992. It was admitted for final hearing on following substantial question of law:--

"Despite having held that the orders of the SDO under the M.P. Samaj Ke Kamjor Vargon Ke Krishi Bhumi Dharakon Ka Udhar Dene Valon Ke Bhumi Hadapane Ke Kuchakron Se Paritran Tatha Mukti Adhiniyam, 1976 (hereinafter called "the Kuchak-ra Adhiniyam") was illegal on account of no notice of the proceedings under the said Adhiniyam was given to the appellants, the Courts below erred in not granting decree for declaration that the said order was not binding on the appellants ?"

2. Heard Shri G.M. Chafekar, learned Senior Counsel with Shri P.V. Bhagwat,

learned Counsel for the appellants and Shri S.R. Bohra, learned Counsel for respondent No. 1 (A).

3. One Basantibai - a Harijan widow was the owner of the land in suit. She claimed to have sold the land in suit to one Mangu Singh. Both, Basantibai and Mangu Singh are dead.

4. Basantibai then filed an application u/s 7 of the M.P. Samaj Ke Kamjor Vargon Ke Krishi Bhumi Dharakon Ka Udhar Dene Walon Ke Bhumi Hadapane Sambandhi Kuchakron Se Paritran Tatha Mukti Adhiniyam, 1976 (for short "Adhiniyam") before the competent authority (SDO) against Mangusingh challenging the alleged transaction of sale of land made by her in favour of Mangusingh. In substance, her case was that the alleged transaction of sale was not in fact a sale transaction out and out, but it was actually in the nature of a loan without there being any element of sale. This application was allowed by the competent authority by his order, dated 6-5-1985 bi-parte on contest by Mangusingh. It was held that sale in question was a void sale and that it was not intended to be acted upon. It was, therefore, directed that possession of land be restored to Basantibai. Mangu Singh as also his three sons ("appellants" herein) filed an appeal to Collector against the said order. The Collector by order, dated 30-12-1985 dismissed the appeal and upheld the order of SDO. Mangusingh and his sons then filed writ being W.P. No. 991 of 1986. This writ was dismissed on 23-3-1995 by this Court. As a result of this dismissal, all the orders passed by the authorities under the Adhiniyam became final.

5. It is after this dismissal, three sons of Mangusingh filed a suit out of which this appeal arises against Basantibai for a declaration that the order passed by SDO, dated 6-5-1985 is not binding on them because they were not parties to the original application filed by Basantibai before SDO. It was their case that since the sale deed stood in their name and they were not noticed of the proceedings, the order passed by SDO declaring the sale in question is bad in law and is not thus, binding on them. This was denied by defendant. The Trial Court dismissed the suit and First Appellate Court upheld the dismissal giving rise to filing of this second appeal by the plaintiffs.

6. Having heard learned Counsel for the parties and having perused record of the case, I find no substance in the appeal and hence, it merits dismissal.

7. In my considered opinion, the appellants (plaintiffs) has no case much less even triable to file a suit out of which this appeal arises. Indeed, filing of the suit was yet another attempt on the part of appellants to avoid execution of the orders affirmed by the High Court in writ petition under the Adhiniyam. It is not in dispute being a matter of judicial record that these very appellants had challenged the order of SDO alongwith their own father in appeal before the Collector and having failed in appeal, filed the writ in this Court unsuccessfully. The remedy of appellants was then in filing SLP to Supreme Court against the order of this Court in writ rather than to file civil suit. Indeed, filing of the suit

was barred under the Adhiniyam whose provisions gives overriding powers on the orders of Civil Court. In other words, no suit can be filed to challenge the orders of competent authority passed under the Adhiniyam. But that apart, the grounds on which the suit was founded were raised by the appellants in appeal filed before the Collector and perused further in writ but those grounds were repelled. No suit then could be filed on the same grounds to challenge the sale deed in Civil Court.

8. In my opinion, therefore, neither the suit could be filed by the appellants to challenge the sale in question, nor they had a right to challenge the orders passed by the authorities under the Adhiniyam which were upheld by the High Court in writ and nor could such a suit be decreed. It was, thus, rightly dismissed by the two Courts. The question of law thus framed, really do not arise out of this case and if really arises, has no merit, because it was rightly answered against the appellants.

9. In view of aforesaid discussion, the appeal fails and is dismissed with cost Rs. 1,500/- payable by appellants to respondents.