
(1994) 04 MP CK 0049
In the Madhya Pradesh High Court
Case No : Civil S.A. No. 16 of 1981 (G)

Buddha and Another

APPELLANT

Vs

Bala Prasad and Others

RESPONDENT

Date of Decision : 28-04-1994

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 6 Rule 17

Citation : (1994) 1 MPJR 384

Hon'ble Judges : T.S. Doabia, J

Bench : Single Bench

Advocate : K.K. Lahoti and Mr. K.B. Chaturvedi, for the Appellant; K.N. Gupta, for the Respondent

Final Decision : Dismissed

Judgement

T.S. Doabia, J.

The defendants preferred an appeal against the judgment and decree of trial Court. They were unsuccessful. This is their second appeal.

The brief facts are as under :

In his case a sale was made by the father of the defendants in favour of the plaintiff-respondent. This sale was made in 1964. Later on in 1970 the defendants dispossessed the plaintiff. This led to the filing of suit out of which this appeal has arisen. The plea taken by the defendants was that sale deed in 1964 was in fact not a sale but a transaction of mortgage. The trial court on 8.5.74 came to the conclusion that the sale deed dated 8th May, 1964 being a registered document was a valid transaction and decreed the suit.

The learned counsel for the appellants have raised a new point in this appeal. He contends that the appellants are entitled to the benefit of the provisions contained in M.P. Samaj Ke Kamjor Vargon Ke Krishi Bhumi-dharon ka Udhart Dene Walon ke Bhumi Hadapne Sambandhi Kuchakron Se Paritran Tatha Mukti

Adhiniyam 1976. (here in after referred to as the Adhiniyam). An application under order 6 Rule 17 of the CPC was filed seeking permission to amend the pleadings and to contend that this is a matter which is required to be gone into by the revenue officer specified in the above Adhiniyam. This application was filed on 17th of March, 1993; At the time of arguments, the attention of the counsel was drawn to the fact that in the application it has simply been stated that the appellants are owners of less than eight hectares of land and that they have not specified as to whether this is irrigated or unirrigated land and as such, they would not be entitled to the benefit of the 1976 Adhiniyam, unless and until they have a plea is that the land in question is unirrigated. Faced with this, another application was filed on 21st of April, 1994. This application has again been filed under Order 6 Rule 17 and an averment has now been made that the eight hectares of land is unirrigated. On the basis of the above an argument has been raised that the matter is required to be gone into under the aforementioned Adhiniyam.

I am of the view that the provisions of the above Adhiniyam would not be attracted to the facts of this case and therefore, I am dealing with the merits of the controversy.

I have gone through the judgment dated 16th May. 1974 of the trial Court as well as of first appellate Court. A categorical finding has been recorded by both the Courts that a sale-deed was executed by the father of the defendant /appellants in favour of the plaintiff. It is a registered sale-deed. The plea taken that a fraud was practised upon the father of the defendants was negated. This plea, on the face of it, is a weak plea because it was taken after eight years of the execution of the sale-deed. The trial Court gave cogent reasons for coming to the conclusion that the sale-deed in question was not procured by practising any fraud. As a matter of fact, the person in whose favour the sale-deed was executed was minor. The fact that the scribe of the sale deed or the attesting witnesses had not been examined by the defendants was also taken into consideration to record a finding against the appellants. Merely because the price had been fixed on the lower (sic) would be no ground to come to a conclusion that the sale-deed was not a genuine document or it was brought into existence by practising fraud. The further (sic) plea taken by the defendants that the land was in fact given on mortgage and it was not sold was again a plea which did not find favour with courts below. The sale has been made by a registered sale-deed and a registered document has to be taken on its face value. In this view of the matter. I do not find any reason to differ with the findings recorded by the courts below. The appeal as such would merit dismissal.

The argument now raised for the first time in this appeal by the learned counsel for the appellants may be examined. It is contended that the question whether transaction is sale or not requires to be determined under the Adhiniyam, 1976.

As indicated above, an application under Order 6 Rule 17 was filed on 17th March. 1993. In this, the plea taken is that the transaction in question would be

covered by the terms "prohibited transaction of loan" as occurring in section 2 (f) of the Adhiniyam. In this regard, it would be appropriate to take note of a few statutory provisions. These are Section 2(c),(f). Section 3 and Section 5.

2. Definitions. - In this act unless the context otherwise requires.

(e) "holder of agricultural land" in the weaker sections of the people means a holder of land used for purposes of Agriculture not exceeding eight hectares of unirrigated land or four hectares of irrigated land within the State whether as a Bhumiswami or an occupancy tenant or a Government lessee either in any one or all of the capacities together within the meaning of the Code.

(f) "Prohibited transaction of loan means a transaction in which a lender of money advances loan to a holder of agricultural land against security of his interest in land, whether at the time of advancing the loan or at any time thereafter during the currency of the loan in any of the following modes, namely :-

(i) agreement to sell land with or without delivery of possession:

(ii) outright sale of land with or without delivery of possession accompanied by separate agreement to re-sell it.

(iii) outright sale of land with or without delivery of possession with a distinct oral understanding that the sale shall not be acted upon if the loan is repaid.

(iv) outright sale of land with or without delivery of possession with a condition incorporated in the sale deed to re-sell it on repayment of the loan.

(v) transaction in any modes other than those specified in clauses (i) to

(iv) affecting interest in land including a fraudulent transaction designed to defeat the provisions of any law regulating money lending or interest, for the time being in force, and includes all those transactions in which a lender of money has, after the appointed day but on or before date of publication of this Act in the Gazette, obtained possession of land of the holder of agricultural land through (sic) or by force or otherwise or obtained a decree for such possession towards satisfaction of loan;

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Act to override other laws. - The provisions of this Act and any rules made thereunder shall have effect, notwithstanding anything inconsistent therewith contained in any other law for the time being in force or any instrument having effect by virtue of any such law or any custom, usage or agreement or decree or order of a court or other authority.

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Application for protection and seeking relief under this Act - A holder of agricultural land who is a party to any transaction of loan subsisting on the

appointed day or entered into there after may apply to the Sub-Divisional Officer within such time: and in such form and manner as may be prescribed for protection and relief under this Act.

It would also be relevant to note that vide amendment made in section 15 of the Adhiniyam by Act No 29 of 1988 the period of limitation has been extended. It has been provided that where a transaction has been entered into after 31st of January 1977 and prior to the commencement of the M.P. Adhiniyam of 1976 an application u/s 5 can be filed within five years of such commencement. The argument is that as this amendment was published in the official Gazette on 16th of November, 1988, therefore, an application can be made to the concerned revenue officer by 15th of November, 1993. The further argument is that as application under Order a Rule 17 was filed in this Court within this period, therefore, this Court should refer the dispute to the Sub-Divisional Officer for further adjudication.

The learned counsel for the appellants has also relied upon a decision given by this Court in the case of Nihal Singh v. Nahani and another Misc. appeal No 68 of 1989, decided on 25.9.90 wherein permission was granted to incorporate the proposed amendment in the plaint and a direction was given to refer the matter for the decision of the Sub-Divisional Officer within a time-bound programme.

I am of the view that the provisions of this Adhiniyam are not attracted to the facts of this case and no reference can be made to the Sub-Divisional Officer for adjudication with regard to a matter where there exists a valid decree passed by a civil court. In this case a decree was passed on 18th May, 1974 before the Adhiniyam came into force. It would not be out of place to mention here that section 3 does provide that the provisions of this Act are to have overriding effect but this Act is silent as to what would happen to those cases where decrees have already been passed by the civil courts. The law is well settled that the Legislature is not competent to nullify an adjudication made by a civil court. As a matter of fact, the Act in question does not deal with a situation where a decree has been passed by the civil court. It only deals with a situation where an application has been made for the first time before the concerned revenue officers, the civil Court passed the decree in this case on 8th of May, 1974. This cannot be nullified by any legislative process. This matter was considered by the Supreme court in the case of State of Haryana and others Vs. The Karnal Co-op. Farmers' Society Limited, etc. etc. and others, In this case, decrees were passed by civil courts holding that certain lands and immovable properties did not answer the description of the term "Shamilat". An amendment in the law directing Assistant Collectors to decide claims by ignoring them was held to be ultra vires. Reference was made to the earlier decisions given by the Supreme Court in the case of Sunder Dass Vs. Ram Prakash, ; Shri Prithvi Cotton Mills Ltd. and Another Vs. Broach Borough Municipality and Others, and also Smt. Indira Nehru Gandhi Vs. Shri Raj Narain and Another, and ultimately it was held in para

31 as under :-

Thus, it becomes clear that a Legislature while has the legislative power to render ineffective the earlier judicial decisions, by removing or altering or neutralising the legal basis in the unamended law on which such decisions were founded, even retrospectively it does not have the power to render ineffective the earlier judicial decision by making a law which simply declares the earlier judicial decisions as invalid or not binding for such power if exercised would not be a legislative power but a judicial power which cannot be encroached upon by a Legislature under our Constitution.

I am accordingly of the view that the Adhiniyam of 1976 makes no provisions for dealing with a situation where a decree has been passed by a civil court before the enforcement of the Adhiniyam. Therefore, once a decree has been passed by a civil court, it can only be reversed by the Court exercising appellate jurisdiction. Not only this, till today, no application has been filed by the appellants before the Sub-Divisional Officer. Simply because an application was filed before this Court will not amount to filing of an application before the revenue officer. There is no provision which requires this Court to transfer pending proceedings to a Sub-Divisional Officer. As a matter of fact, a Sub-Divisional Officer cannot sit over a decision given by the civil court. As such, I am of the view that this is a case where a decree was passed by the civil court on 18th of May, 1974, much before the coming into force of the 1976 Adhiniyam. Such a decree can be reversed or modified only by an appellate Court. The giving of retrospective effect to the Adhiniyam would also not be of any assistance to the counsel for the appellants. This Legislature would equally be hit by the principle law laid down in the aforementioned cases. Apart from this, as indicated above, the appellants have not preferred any application before the Sub-Divisional Officer and their claim to get adjudication has become time-barred.

It may be seen that the transaction in question is of the year 1964. It was described as a sale and was duly registered, A Division Bench of this Court in the case reported as Keshav Singh v. Bhavsingh. 1994 J.L.J. 210 refused to interfere where the sale-deed in question was executed more than two decades ago. The position in this case is akin to the above case. The sale-deed was executed in 1964. No such even on the basis of the ratio of the decision given by the Division Bench of this Court, it would not be appropriate to come to a conclusion that the sale in fact was not a sale. Thus, looking from any point of view there is no merit in this appeal. It is dismissed. There shall be no order as to the costs.