
(1980) 07 MP CK 0006

In the Madhya Pradesh High Court

Case No : Miscellaneous Petition No. 65 of 1977

Chironjilal Bhawarilal

APPELLANT

Vs

Bhura Dhanna through L.Rs. and others

RESPONDENT

Date of Decision : 04-07-1980

Acts Referred:

Constitution of India, 1950 — Article 226
Evidence Act, 1872 — Section 91, 92

Citation : (1980) 07 MP CK 0006

Hon'ble Judges : J.P. Bajpai, J

Bench : Single Bench

Advocate : K.S. Vaidya, for the Appellant; A.P. Palekar, for the Respondent

Final Decision : Dismissed

Judgement

J.P. Bajpai, J.—To accept the contention of the petitioner would amount to making a hole in the Debt Relief Act, through which could be driven not a small coach or car, but in the words of Denning L.J., an articulated vehicle. Whenever, it is found that if what a person does is really A, but covers the reality by giving to it the colour of B, the Court should naturally go behind the form and look to the substance. The provisions of a statute cannot be evaded by covering the reality by an ungenue transaction.

2. In the present case, the original respondent-debtor Bhura (since dead) moved the Debt Relief Court in accordance with the provisions of the Madhya Pradesh Anusuchit Jati Evam Jan Jati Rini Sahayata Adhiniyam for a discharge of the alleged debt of Rs. 500, which was advanced to him by the petitioner. It was alleged by the debtor that he had in all paid a sum of more than Rs. 800 but despite the same, the petitioner was trying to enforce the alleged nominal transaction in the shape of a deed of sale executed under a collateral agreement for securing the repayment of loan. It is not disputed even by the petitioner that he had recovered a sum of Rs. 550 from the debtor Bhura. Bhura undisputedly belonged to the Scheduled Caste. It was not disputed that the provisions of the

Act referred above were applicable to him provided the transaction was held in reality to be a debt. However, the case of the petitioner was that he had purchased House No. 169 situate in Shilanath Camp Ward of Indore Town from Bhura on 31-3-1968 by a registered deed of sale for a consideration of Rs. 500 and that Bhura was allowed to remain in actual occupation of the said house as a tenant by executing a rent note reserving monthly rent at Rs. 15. The contention put forth by the petitioner before the Debt Relief Court and also before this Court was that the transaction in reality was a sale and not that of a loan advanced on payment of interest at the rate of Rs. 15 per month. It would be significant to mention that before the institution of the case before the Debt Relief Court, the petitioner had already brought a suit on the basis of the alleged rent note claiming arrears of rent and eviction. He obtained an ex parte decree against the defendant not only for arrears of rent, but also for eviction. By that time, the decree was put in execution, the provisions of the aforesaid Act came into force on 15th August, 1973. The case of the respondent-debtor was that according to the prevalent practice, the creditors by taking advantage of the helplessness of the persons belonging to the weaker sections, insisted on obtaining a formal deed of sale by way of collateral security to ensure the repayment of loan and since the transaction was not intended to be operative as a deed of sale, in reality, and possession of the property sold was not being given, a formal rent note was also got executed by reserving the amount of interest agreed in the shape of rent. According to the respondent, the interest to be charged by the petitioner was @ 3% per month, i. e. 36% per annum and accordingly a sum of Rs. 15 was shown as rent. According to him, however, there was no relationship of landlord and tenant and since the transaction in substance was that of a loan, he was entitled to the relief provided by the Act by moving the competent Authority.

3. The Debt Relief Court, after noticing the petitioner, entered into an enquiry to ascertain the true nature of the transaction and to find out whether the said deed of sale was real or sham and whether it was a case of debt existing on the date of commencement of the Act. The Debt Relief Court recorded evidence and relied on various circumstances to arrive at the conclusion that the transaction in the colour of a deed of sale was a nominal one, not intended by the parties to be operative as a deed of sale. According to the Debt Relief Court, it was a transaction simply in the nature of collateral security for the purpose of ensuring the repayment of loan and interest. The petitioner himself had to ultimately admit during the course of his deposition before the Debt Relief Court that he never got possession of the house even after the execution of the deed of sale. He further admitted that it was agreed that on payment of the original amount of Rs. 500 and rent due at the rate of Rs. 15 per month, he would execute a deed of conveyance in favour of the respondent Bhura. In order to give a colour of a real sale to the transaction, the petitioner at the beginning stated that he himself had incurred the expenses of the stamps and registration etc. but later on had to admit that he had deducted the entire amount spent towards the execution of

the deed out of the original amount of Rs. 550 and paid the remaining amount alone to Bhura. There is nothing on record to show that after the execution of the deed of sale in respect of the house in question, the petitioner at any time took steps to get his name mutated in the municipal record. This would have been the natural course of conduct if the transaction was a real sale. He would have at least taken such steps after the expiry of the agreed period. The petitioner has further admitted that the amount of Rs. 15 shown as rent was calculated at the rate of Rs. 3% per month. He had further admitted that he had received Rs. 550 from the respondent but the same was towards the amount of arrears of rent. He had further admitted that he had obtained sale-deeds in similar manner from other four or five persons of the said locality. At one stage, he deposed that he had advanced Rs. 500 to Bhura against the house, which being a "kachcha" one, was described as a "tapara", but immediately on realising that the said statement would indicate that a loan was advanced on the security of the house, he made an attempt to change the same and found it convenient to say that he had not advanced the said amount against the house but had actually purchased the same.

4. In my opinion, the appreciation of the evidence and the finding arrived by the Debt Relief Court holding that the transaction was not in reality a sale, but a nominal one by way of collateral security for the recovery of loan and interest, is quite reasonable and proper and does not call for interference.

5. The learned counsel for the petitioner, when faced with this situation, contended that since a deed of sale and a rent note of the same date have been executed, the Debt Relief Court had no jurisdiction to entertain any such proceedings, because on the face of the documents, there was nothing in the shape of a loan or debt in existence and the provisions of the Act were not applicable. Actually speaking, the learned counsel for the petitioner relied on the label given to the transaction. As stated at the outset, the Debt Relief Court was fully justified and within jurisdiction in enquiring and ascertaining the real nature of the transaction. Merely because any transaction has been given a colourable style, it cannot be said that the law must be accepted as such. By doing so, the very purpose of the remedial statute like the present one, would stand frustrated. If this contention is accepted, then it would be providing a handle to the creditors to get rid of the consequences of the legislation and deprive the debtors of the relief sought to be given by the statute. The words of such a statute have to be so construed as to give the complete remedy, which the words of the statute permit. Only by doing so, it can be secured that the relief contemplated by the statute will not be denied to the class intended to be relieved. In this respect, the statement of aims and objects of the Act in question would be relevant. The Act was originally confirmed to the debtors belonging to the Scheduled Tribes, but had later on with effect from 15th August, 1973, extended to the members of the Scheduled Castes also. The statement of aims and objects runs as under:

Due to the limited resources for earning their livelihood, the members of the Scheduled Tribes have to borrow money to meet their necessities of life. It is observed that taking advantage of the social and economic backwardness of the members of the Scheduled Tribes, the money-lenders lend money to them on exorbitant rates of interest with the result that the original debtor is unable to repay the loan in his lifetime and the over-swelling amount of loan is passed on from generation to generation keeping the families concerned in perpetual bondage of the creditors.

6. Similar is the view expressed by a Division Bench of this Court in the case of *Surjit v. Bhukhan and others* 1977 (1) MPWN 43. It is true that the said view has been expressed while dealing with a case under Madhya Pradesh Gramin Reen Vimukti Adhiniyam, but the same is not material because the very use and the scheme and objects of the said statute is similar to the present one.

7. In view of the discussion made above, this Court is of the opinion that the Debt Relief Court was within its power in holding an enquiry for ascertaining the real nature of the transaction and simply because a formal deed of sale and a rent note were executed, it did not lose its jurisdiction to ascertain whether there was actually any debt in existence. The revisional authority had also taken a reasonable view and was right in affirming the order made by the Debt Relief Court.

8. The next contention put forth by the learned counsel for the petitioner was that the subsequent conduct of the parties was not relevant and could not be looked into for ascertaining the nature of the transaction. As already discussed above, when the subject matter of enquiry happens to be for ascertaining whether certain transaction was a colorable one and what was intended to be really acted upon was something different under a collateral agreement between the parties various surrounding circumstances and conduct of the parties do become relevant and the provisions of section 91/92 of the Evidence Act do not come in way.

9. Lastly, it was contended that even on the evidence on record, the view taken by the Debt Relief Court as confirmed by the revisional authority, warrants interference. In my opinion, when the findings arrived by the Debt Relief Court are found to be generally correct, the scope for determining certain facts by reappraisal of evidence in proceedings under Article 226 of the Constitution of India would be little. The findings impugned do not suffer from any error of law. Even otherwise, in the context of the facts and circumstances brought on record, this Court is not inclined to take a different view.

10. This petition, therefore, fails and is dismissed. Parties would, however, bear their own costs. The amount of security, if any deposited, be refunded to the petitioner.