(2019) 01 CHH CK 0062

In the Chhattisgarh High Court

Case No : Writ Petition No. 3587 Of 2006

Kanwal Singh APPELLANT

Vs

State Of Chhattisgarh And Ors RESPONDENT

Date of Decision : 14-01-2019

Acts Referred:
Chhattisgarh Land Revenue Code, 1959 — Section 170B

Citation : (2019) 01 CHH CK 0062

Hon'ble Judges : Prashant Kumar Mishra, J

Bench : Single Bench

Advocate : Vivek Tripathi, Rajendra Tripathi

Final Decision : Dismissed

Judgement

1. The petitioner has assailed the legality and validity of the impugned orders (Annexure-P/1 to P/3) passed by the Board of Revenue, Additional Collector and the Sub Divisional Officer (Revenue), respectively. By order (Annexure-P/3) passed by the SDO(R), Raigarh in exercise of powers under Section 170-B of the CG Land Revenue Code, 1959 (for short 'the Code'), the said Revenue Officer has set aside the transaction dated 16.9.1972 and 20.10.1975 pertaining to the land bearing Khasra No.1604/1-x ad measuring 1.149 hectares together with consequent mutation order dated 17.12.1972 and has directed for reversion of the land in favour of legal heirs of deceased tribal holder Manbodh.

2. Halka Patwari of village Munund, PH No.26, Tehsil Dharamjaigarh, District Raigarh submitted a report to the SDO (Revenue) that Manbodh, Naththuram and Narayan, all Gond Tribals, had sold the subject land to Dev Singh, son of Gangaram of village Tiur, Tehsil Kharsia on 16.9.1972. However, since after the date of sale deed the land is possessed by non-tribal Kanwal, son of Atmaram Gabel, who is in cultivating possession of the land in violation of Section 170-B of the Code, proceeding under the said provision needs to be initiated. After registering the case, the SDO (Revenue) issued notice to all the affected parties or their legal heirs and recorded their statements. Petitioner Kanwal Singh

submitted before the SDO that he has purchased the land from Dev Singh by a registered sale deed dated 20.10.1975 and has not purchased any land from Manbodh or his sons. He stated that the land has been purchased after obtaining permission from the Collector on 13.10.1975.

3. Bramha Dayal, son of Manbodh stated that their father and uncle have sold the land to Dev Singh on 16.9.1972 but the land is possessed by Kanwal Singh. Initially the sale deed itself was to benefit Kanwal Singh but no sale deed was executed in his favour by his father or uncle. Kanwal Singh has obtained the land through Dev Singh by means of Benami transaction even though they had never intended to sell the land in favour of Kanwal Singh Gabel, who is non-tribal. He would further state that subsequent sale deed by Dev Singh in favour of Kanwal Singh was only with a view to legalise the Benami transaction. Similar was the statement of Naththuram, who would additionally submit that the land was in fact sold to Kanwal Singh in the year 1972 but the sale deed was executed in favour of Dev Singh and that the sale consideration of Rs.1,000/- was in fact paid by Kanwal Singh and has never sold the subject land to Dev Singh. It was further stated by Naththuram that Dev Singh does not reside at village Munund because he is the resident of village Tiur and would never come to the village Munund for cultivating the land.

4. The original purchaser Dev Singh's wife Nana Bai stated that her late husband has purchased some land at village Munund but her husband had never gone to the said village for cultivating the land which was given on lease to some other person. Later on the land was sold to Kanwal Singh. Purchaser Kanwal Singh has stated that he has not purchased any land from Manbodh and his brothers but purchased the land from Dev Singh after obtaining permission from the Collector.

5. The SDO (Revenue) appreciated the material on record to conclude that the first sale deed itself was for the benefit of Kanwal Singh who purchased the subject land through Dev Singh and later on the subject land was sold by Dev Singh in favour of Kanwal Singh along with some other pieces of land after obtaining permission from the Collector, Raigarh, by a registered sale deed dated 20.10.1975. In this sale deed, Kanwal Singh purchased total 8 Khasra numbers ad measuring 8.20 acres for Rs.7,500/-. The SDO found that Manbodh and his brothers had never sold the land to Kanwal Singh but from the date of execution of first sale deed itself, Kanwal Singh was cultivating the land. Therefore, in respect of the subject land, the first sale deed dated 16.9.1972 along with subsequent sale deed dated 20.10.1975 is a result of fraud on the original holder Manbodh, therefore, the land needs to be reverted in favour of his legal heirs and Manbodh's brothers Naththuram and Narayan Gond.

6. The above order of the SDO (Revenue) has been affirmed in appeal by the Additional Collector, Raigarh and by the Board of Revenue.

7. Having heard learned counsel for the parties and having gone through the records, it appears, the finding recorded by the subordinate revenue authorities

in their original, appellate or revisional jurisdiction does not suffer from any infirmity or perversity. There is no explanation offered by petitioner Kanwal Singh as to how he came into possession of the land from the date of first sale deed dated 16.9.1972 when the first purchaser Dev Singh had not sold the land to him. It appears, Kanwal Singh in fact wanted to purchase total 8.20 acres of land including the subject land. However, the subject land did not belong to Dev Singh, therefore, it was first purchased by him and thereafter Dev Singh obtained permission from the Collector to sell the subject land along with other lands to Kanwal Singh. The first transaction in respect of the subject land was itself Benami transaction and consequently the second transaction after obtaining permission was also a result of fraud, as it was based on Dev Singh's ownership/ title on the strength of first sale deed which was Benami sale deed to benefit Kanwal Singh.

8. The Supreme Court in B.K. Muniraju v State of Karnataka and Others1 held thus at para 22 :

"22. It is settled law that a writ of certiorari can only be issued in exercise of extraordinary jurisdiction which is different from appellate jurisdiction. The writ jurisdiction extends only to cases where orders are passed by inferior courts or tribunals or authorities in excess of their jurisdiction or as a result of their refusal to exercise jurisdiction vested in them or they act illegally or improperly in the exercise of their jurisdiction causing grave miscarriage of justice. In regard to a finding of fact recorded by an inferior tribunal or authority, a writ of certiorari can be issued only if in recording such a finding, the tribunal/authority has acted on evidence which is legally inadmissible, or has refused to admit an admissible evidence, or if the finding is not supported by any evidence at all, because in such cases the error amounts to an error of law. It is needless to mention that a pure error of fact, however grave, cannot be corrected by a writ."

9. In the present case, all the revenue authorities have recorded a concurrent finding against the petitioner holding that the subject sale deed was a result of fraud, therefore, the said finding being pure finding of fact, the same cannot be interfered under the writ jurisdiction.

10. There is no substance in the Writ Petition, which deserves to be and is hereby dismissed.