

(2011) 12 CHH CK 0042
In the Chhattisgarh High Court
Case No : Second Appeal No. 622 of 1995

Komal Kumari Gond

APPELLANT

Vs

State of M.P. (now Chhattisgarh) and others

RESPONDENT

Date of Decision : 01-12-2011

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 100
Madhya Pradesh Ceiling on Agricultural Holdings Act, 1960 — Section 11, 11(3), 11(4), 11(5), 11A(2)

Citation : (2012) 1 CGBCLJ 132 : (2012) 1 MPHT 87

Hon'ble Judges : T.P. Sharma, J

Bench : Division Bench

Advocate : N.K. Shukla and Mr. Aditya Khare, for the Appellant; Vinod Kumar Takem, Panel Lawyer for the State/Respondents, for the Respondent

Final Decision : Dismissed

Judgement

Hon'ble Mr. T.P. Sharma, J.—By this second appeal u/s 100 of the Code of Civil Procedure, 1908 (for short "CPC"), the appellant has challenged the legality and propriety of the judgment and decree dated 19-7-95 passed by the 7th Additional District Judge, Bilaspur, in Civil Appeal No. 75-A/91, affirming the judgment and decree of dismissal of civil suit dated 28-2-1987 passed by the 2nd Civil Judge Class I, Bilaspur. in Civil Suit No. 32-A/1964. Present second appeal was admitted on 11-10-95 on the following substantial question of law :-

Whether the Courts below were justified in holding that the jurisdiction of the Civil Court was barred by the provisions of Section 46 of M.P. Ceiling on Agricultural Holdings Act, 1960 ?

2. As per pleading of the parties, present appellant/plaintiff is relative of Indrakumari Devi, who was owner of suit property situated at Village Chirha, Tehsil Pandariya. Ceiling proceeding under M.P. Ceiling on Agricultural Holdings Act; 1960 was initiated against holder of the lands namely, Smt. Indrakumari Devi. After providing opportunity of hearing, land in dispute which was shown in

the name of original holder has been vested on the Government. Present appellant/plaintiff preferred appeal before the Additional Collector, Bilaspur. Same was dismissed. Then she filed suit for declaration. By filing written statement, the respondents have denied adverse allegation and have pleaded that property in dispute was Bhumiswami land of Indrakumari Devi against whom ceiling proceeding has been initiated and decided. Indrakumari Devi has submitted her return, in which she has not mentioned that she has gifted the property or otherwise disposed of the suit property to the present appellant. After providing opportunity of hearing to the parties, the 2nd Civil Judge Class I, Bilaspur has dismissed the suit on the ground that suit was not maintainable in the light of Section 46 of the C.G. Ceiling on Agricultural Holdings Act, 1960 (for short "the Act, 1960"). Same was challenged before the Lower Appellate Court and the Lower Appellate Court has also affirmed the finding of the Trial Court by dismissing the appeal.

3. I have heard learned Counsel for the parties, perused the judgment and decree impugned, judgment and decree of the Trial Court and records of the Courts below.

4. Learned Counsel for the appellant vehemently argued that as per subsection (2) of Section 11-A of the Act, 1960, civil suit was not barred and bar created u/s 46 of the Act, 1960 is subject to provisions of the Act, 1960, therefore, in terms of sub-section (2) of Section 11-A of the Act, 1960 suit which was pending in the year 1988 was barred and by dismissing suit and appeal both the Courts below have committed illegality.

5. On the other hand, learned Panel Lawyer for the State/respondents opposed the appeal and argued that suit filed on behalf of the appellant was not the suit arising out of Section 11 of the Act, 1960, therefore, present suit was barred u/s 46 of the Act, 1960 and by dismissing suit and appeal both the Courts below have not committed any illegality.

6. As per pleading, documentary and oral evidence, proceeding under the Act, 1960 was initiated against original land holder Smt. Indrakumari Devi relating to suit property, who was owner of the suit property. She has not mentioned in her return that she has gifted the property to the present appellant in the year 1960 or prior to initiation of proceeding. Competent Authority has declared the lands surplus and opportunity for choice was provided to her, thereafter the order was challenged before the Additional Collector, Bilaspur, which was dismissed.

7. As per sub-section (4) of Section 11 of the Act, 1960, Competent Authority was competent to require the matter summarily relating to title over the suit property which was subject-matter of ceiling proceeding, but no objection has been filed or raised by the appellant before such authority. Even original holder has not mentioned the aforesaid fact in her return. As per sub-section (5) of Section 11 of the Act, 1960, decision of the Competent Authority in this regard was final and conclusive and as per amended provisions of sub-section (4) of

Section 11 of the Act, 1960, party against whom the order has been passed was at liberty to file civil suit within the stipulated time. The present appellant has not filed any civil suit in accordance with sub-section (4) of Section 11 of the Act, 1960. Sub-sections (4) and (5) of Section 11 of the Act, 1960 reads as under :-

11. Preparation of statement of land held in excess of the ceiling area.-

(1) *** **

(2) *** **

(3) *** **

(4) If while considering the objections received under sub-section (3) or otherwise, the Competent Authority finds that any question has arisen regarding the title of a particular holder and such question has not already been determined by a Court of competent jurisdiction, the Competent Authority shall proceed to enquire summarily into the merits of such question and pass such orders as it things fit.

(5) The order of the Competent Authority under sub-section (4) shall subject to the decision in appeal or revision be final and conclusive.

(6) *** **

(7) *** **

8. Sub-section (2) of Section 11-A of the Act, 1960 has been amended vide C.G. Act 8 of 1989 relates to the suit arising out of Section 11 of the Act, 1960. Subsection (2) of Section 11-A of the Act, 1960 reads as under :-

11-A. Consequences to ensure commencement of the Chhattisgarh Ceiling on Agricultural Holdings (Amendment) Act, 1989.-

(1) *** **

(2) The Civil Court before whom the cases arising out of Section 11 as it stood immediately before 1st November, 1988, were pending may deal with those cases but such pendency before the Civil Court shall not prevent the Competent Authority from disposing of the cases under this Act, notwithstanding any stay granted or other process issued by the Civil Court debarring the Competent Authority for doing so.

(3) *** **

(4) *** **,.

9. Section 46 of the Act, 1960 creates bar in entertaining the civil suit by Civil Court. Section 46 of the Act, 1960 reads as under :-

46. Bar of jurisdiction of Civil Courts.- Save as expressly provided in this Act, no Civil Court shall have any jurisdiction-

- (i) to settle, decide or deal with any question which is by or under this Act required to be settled, decided or dealt with by the Competent Authority; and
- (ii) to grant stay in any cases under this Act.

10. Except civil suit provided and permitted under the Act, 1960 other civil suits relating to the matters which can be settled and decided under the Act, 1960 are not maintainable before the Civil Court. The present civil suit had not arose out of Section 11 of the Act, 1960, therefore, it was barred in terms of Section 46 of the Act, 1960. By dismissing the suit and appeal both the Courts below have not committed any illegality. Both the Courts below were justified in holding that jurisdiction of Civil Court was barred by the provisions of Section 46 of the Act, 1960.

11. Consequently, substantial question of law formulated for the decision of this appeal is decided as positive. On the basis of finding on substantial question of law, the appeal deserves to be dismissed and it is hereby dismissed.

12. Parties shall bear their own costs.

13. Advocate fee as per schedule. Decree be drawn accordingly.