(1967) 02 MP CK 0009

In the Madhya Pradesh High Court

Case No : M.P. No. 255 of 1966

Laxmi Prasad	APPELLANT
Vs	
Gajadhar Prasad and Others	RESPONDENT

Date of Decision : 03-02-1967

Acts Referred:
Constitution of India, 1950 — Article 226
Madhya Pradesh Land Revenue Code, 1959 — Section 165, 165(4)(b), 166, 170

Citation : (1970) ILR (MP) 721 : (1967) JLJ 313 : (1967) MPLJ 273

Hon'ble Judges : P.V. Dixit, C.J;R.J. Bhave, J

Bench : Division Bench

Advocate : A.L. Halve, for the Appellant; R.K. Tankha, for the Respondent

Final Decision : Allowed

Judgement

R.J. Bhave, J.

By this petition under Article 226 of the Constitution, the Petitioner seeks a writ of certiorari for quashing an order dated 16th February 1966 passed by the Board of Revenue, M.P., in Revenue Revision No. 32-IV of 1966.

The Petitioner''s brother Biharilal held 20.53 acres of land in Bhumi-swami rights. He transferred 5.42 acres of land to each of the Respondents 1 and 2 under registered sale-deeds dated 25th May 1961. These transfers were in contravention of Section 165(4)(b) of the Madhya Pradesh Land Revenue Code, 1959. The Petitioner, therefore, applied to be put in posses-sion of the said land u/s 170 of the Code. Mst. Ramdulari (respondent No. 6), the wife of Biharilal, also pressed her claim before the Sub-Divisional Officer for being put in possession of the said land on the ground that she was the nearer heir. The Sub-Divisional Officer found as a fact that the two transfers were hit by Section 165(4)(b) of the Code. He, however, held, that Mst. Ramdulari being the nearer heir was entitled to possession of the land u/s 170 of the Code. The Sub-Divisional Officer accordingly passed an order in favour of the Respondent No. 6 subject to the condition that she would be liable to pay the arrears of land revenue, if any, and the price paid by the Respondents 1 and 2 for purchasing the property, and the application of the Petitioner was dismissed. The Petitioner and the Respondents 1 and 2 thereupon preferred appeals before the Collector. The Collector took the view that the transactions in question were not in violation of the provisions of Section 165(4)(b) of the Code and therefore allowed the appeal of the Respondents 1 and 2 and rejected that of the Petitioner. The Petitioner and the Respondent No. 6 challenged the order of the Collector before the Additional Commissioner. The Additional Commissioner dismissed both the appeals on the ground that Section 170 of the Code was subsequently amended which deprived the Appellants of any right to make an application u/s 170. The Additional Commissioner expressed the view that the change in law could be taken into consideration in deciding the appeals before him. The Respondent No. 6 did not prefer any revision against that order but the Petitioner challenged the order of the Additional Commissioner before the Board of Revenue. The Board of Revenue refused to interfere with the order of the Additional Commissioner on the only ground that the Petitioner being a distant relation had no locus standi to file an application u/s 170 of the Code. The Board did not consider the questions as to whether the transfers effected in favour of the Respondents 1 and 2 were contrary to Section 165(4)(b) or whether the Additional Commissioner was in error in holding that the amendment of Section 170 had the effect of depriving the Petitioner of his right to apply u/s 170.

The contention of the Petitioner is that u/s 170 of the Madhya Pradesh Land Revenue Code, 1959, any heir can apply for being put in possession of the property transferred in contravention of Section 165(4)(b) and the applicant need not be the nearest relation. The contention of the Petitioner appears to be well founded. Section 170 of the Madhya Pradesh Land Revenue Code, 1959, before its amendment, was as follows:

170. Avoidance of transfer in contravention of Section 165.-

(1) Where possesion is transferred by a Bhumiswami in pursuance of a transfer which is in contravention of Clause (b) of Sub-section (4) or of Sub-section (6) of Section 166 any person who, if he survived the Bhumiswami without nearer heirs would inherit the holding, may within two years of such transfer of possession, apply to the Sub Divisional Officer to be placed in possession subject so far as the Sub-Divisional Officer may, in accordance with the rules made in this behalf, determine to bis acceptance of the liabilities for arrears of land revenue or any other dues which form a charge on the holding, and the Sub-Divisional Officer shall dispose of such application in accordance with the procedure which may be prescribed.

(2) Whether any land of a Bhumiswami is sold in contravention of Sub-section (6) of Section 165, the Court by which such sale is ordered shall, on the application of the Bhumiswami or any person who, if he survived the Bhumiswami without nearer heirs would inherit the holding made within two

years of such sale, set aside the sale and place the applicant in possession of the land subject to his accepting the liability for arrears of land revenue or any other dues which form a charge on the land.

From this section it is clear that any person, who, if he survived the Bhumiswami without nearer heirs, would inherit the holding, may apply to the Sub-Divisional Officer to be placed in possession of the property transferred.

Under Section 12 (1) of the C.P. Tenancy Act, 1920, also an occupancy tenant was authorized to transfer any right in his holding to any person who, if he survived the tenant without nearer heirs, would inherit his right. The words need in Section 12 (1) of the C.P. Tenancy Act, 1920, and Section 170 of the Madhya Pradesh Land Revenue Code, 1959, are identical. While interpret-ing Section 12 (1) of the C.P. Tenancy Act, 1920, it was held in Mohan v. Bodhan AIR 1925 Nag. 421 : 31 NLR 144 that the words "may transfer any right in his holding to any person who, if he survived the tenant without nearer heirs, would inherit his right" were meant to enlarge the right of the occupancy tenant to make a transfer in favour of any person who might be an heir and not necessarily the nearest heir under the said Act. The same words have been used in Section 170 of the Madhya Pradesh Land Revenue Code, 1959. We do not find any reason to take a different view. Section 170 appears to have been enacted with a view to keep the property in the family itself if the transfer is in violation of the provisions of Section 165(4)(b). The expression in question was judicially interpreted, and it may be safely assumed that the Legislature was aware of the interpretation and deliberately used the same expression in Section 170 of the Madhya Pradesh Land Revenue Code. In any case, we are bound by the interpretation put on similar words by the decision, referred to above.

It may be mentioned here that the State Government has framed rules u/s 170 of the Madhya Pradesh Land Revenue Code, 1959. Under Rule 5 the Sub-Divisional Officer is required to record a finding if the transfer in question was contrary to the provisions of Section 165(4)(b). If the finding is in affirmative, the Sub-Divisional Officer is required to issue notices to persons who seem to him prima facie to have a right equal or prior to that of the applicant. He is also required to issue a proclamation inviting claims of such persons. Under Rule 7 the Sub-Divisional Officer is then authorized to put in possession the applicant or any other person so entitled. These rules thus clearly indicate that the application for being put in possession nan be made even by a remoter heir and the Sub-Divisional Officer is authorized to put the applicant in possession if other nearer heirs are not prepared to press their claim. It may also be pointed out at this stage that neither Section 170 nor the rule framed under that section require the applicant to pay any consideration to the transferee. What is required under these provisions is that the applicant or any other claimant must accept the liability for arrears of land revenue and any other dues which form a charge on the holding, and nothing more. The rules, quoted above, also support the conclusion that u/s 170 even a distant heir may make an application.

It appears that the Sub-Divisional Officer did not strictly follow the rules by serving notices on nearer heirs and by issuing the necessary proclamation. The Respondent No. 6 had, however, made her claim before the Sub-Divisional Officer and that was considered by him and he passed the order directing the Respondent No. 6 to be put in possession of the property, as already indicated. Inasmuch as the Respondent No. 6 did not prefer a revision against the order of the Additional Commissioner and only the Petitioner challenged the order of the Additional Commissioner it appears that she does not wish to press her claim. In any case, in view of the provisions of Rules 5 and 7 the Board of Revenue could have issued a notice to the Respondent No. 6 in order to ascertain whether she wished to press her claim. This the Board did not do, and dismissed the Petitioner''s application on the ground that he was not the nearer heir. The interpretation put by the Board of Revenue on Section 170 of the Madhya Pradesh Land Revenue Code, 1959, is not correct as has been pointed out by us. The order of the Board must, therefore, be quashed.

The result is that the petition succeeds. The order of the Board of Revenue dated 16th February 1966 is quashed and the case is remanded to the Board for disposal according to law. In the circumstances of the case, we make no order as to costs. The outstanding amount of the security deposit shall be refunded to the Petitioner.