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**(2011) 11 MP CK 0022**  
**In the Madhya Pradesh High Court**  
**Case No : Writ Petition No. 3233 of 2002**

Makhan Gir Mahant and Others

APPELLANT

Vs

State of M.P. and Others

RESPONDENT

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**Date of Decision :** 11-11-2011

**Acts Referred:**

Madhya Pradesh Land Revenue Code, 1959 — Section 165, 165(6), 170B  
Transfer of Property Act, 1882 — Section 53

**Citation :** (2012) 1 MPHT 130 : (2012) 4 MPJR 174

**Hon'ble Judges :** Sanjay Yadav, J

**Bench :** Single Bench

**Advocate :** R.P. Khare, for the Appellant; L. Joglekar, Govt. Advocate, for the Respondent

**Final Decision :** Allowed

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## Judgement

Sanjay Yadav, J.—Petition is directed against the order dated 23-4-2002 passed by the Additional Commissioner, Jabalpur, in Revenue Revision No. 11-A/23/99-2000, which in turn affirms the order dated 22-6-1993 passed by Sub Divisional Officer and order dated 19-7-1999 passed by Collector, Chhindwara declaring sale deed dated 13-1-1966 as null and void. Vide sale deed dated 13-1-1966 land admeasuring 5.90 acres out of Kh. No. 214/1-Ka: situated at Village Keria. P.C. No. 84, Tehsil Amarwada, District Chhindwara was sold for a consideration of Rs. 2000/- by Shivlal to Smt. Anokhi Bai widow of Parmat Gosai (Smt. Anokhi Bai was survived by Smt. Shanta Bai w/o Makhan Giri Gosai her only legal heir, who expired during pendency of present petition and is substituted by present petitioners).

2. Shivlal, the Bhoomi swami belonging to aboriginal tribe, notified under sub-section (6) of Section 165, M.P. Land Revenue Code, 1959, sought prior permission to sell the land in question as is contemplated under said provision. Collector, Chhindwara vide order dated 10-1-1966 granted the permission in following terms:--

10-1-1966

3. Armed with the permission Shivalal, executed a sale deed for consideration of Rs. 2000/- duly registered on 13-1-1966. On the basis whereof Smt. Anokhi Bai was placed in possession of said land, who got her name mutated in revenue records.

4. On 25-8-1977, i.e., nearly after 11 years said Shivalal filed an application before the Sub-Divisional Officer, Amarwada for restoration of possession of land in question on the ground that the sale on 29-3-1966 was with a condition that when the loan is repayed the land shall be re-conveyed. On 1-4-1978, the revenue case 21-A/23/77-78 which was registered on the application was dismissed for want of prosecution.

5. Again on 10-3-1983 an application was filed by said Shivalal seeking cancellation of the sale deed dated 13-1-1966, this time, on the ground that, the holder of land, i.e., Smt. Anokhi Bai violated provisions of Section 170-B of Code of 1959. [Section 170-B was instituted by M.P. 15 of 1980 w.e.f. 24-10-1980, wherein sub-section (1) stipulates : "170-B. Reversion of land of members of original tribe which was transferred by fraud.-- (1) Every person who on the date of commencement of the Madhya Pradesh Land Revenue Code (Amendment) Act, 1980 (hereinafter referred to as the Amendment Act of 1980) is in possession of agricultural land which belonged to a member of a tribe which has been declared to be an aboriginal tribe under sub-section (6) of Section 165 between the period commencing on the 2nd October, 1959 and ending on the date of the commencement of Amendment Act, 1980, shall, within two years of such commencement, notify to the Sub-Divisional Officer in such form and in such manner as may be prescribed, all the information as to how he has come in possession of such land"].

6. The Sub-Divisional Officer by order dated 25-3-1987 held the sale deed null and void on the ground that the holder, i.e., Smt. Anokhi Bai had failed to comply the provisions of sub-section (1) of Section 170-B of 1959 Code. In an appeal the order was affirmed with a direction for reverting the land by order dated 24-7-1987. In a revision Commissioner, set aside the order dated 24-7-1987 and remitted the matter for hearing on merit by order dated 28-7-1988. Collector, Chhindwara, on remand by order acted 28-10-1989 set aside the order of Sub-Divisional Officer and remitted the matter with a direction to cause an enquiry as to whether the sale deed dated 13-1-1966 was obtained by fraud. Sub-Divisional Officer, vide order dated 22-6-1993 held that the sale deed dated 13-1-1966 was not absolute sale but in lieu of loan transaction; accordingly he declared the sale deed null and void. The order was confirmed in Appeal (dismissed on 19-7-1999) and Revision (dismissed on 23-4-2002).

7. As apparent from respective order the sale deed dated 13-1-1966 has been declared null and void and land is reverted on two grounds, viz., (i) that the transaction was not an outright sale but the sale deed in question was in lieu of

loan transaction, and (ii) that the presumption which has required to be rebutted under sub-section (3) of Section 170-B was not discharged by the holder of land who also failed to abide by the stipulation contained in sub-section (1) of Section 170-B of 1959 Code.

8. Evidently, the transaction effected by sale deed dated 13-1-1966 was after the permission granted by the Collector Chhindwara by order dated 10-1-1966 as is required vide sub-section (6) of Section 165 of Code of 1959. Therefore, what is required to be established under sub-section (3) of Section 170-B is as to whether Shivilal member of aboriginal tribe was defrauded of his legitimate rights. Subsection (3) of Section 170-B stipulates that "On receipt of the information under sub-section (1) the Sub-Divisional Officer shall make such enquiry as may be deemed necessary about all such transactions of transfer and if he finds that the member of aboriginal tribe has been defrauded of his legitimate right he shall declare the transaction null and void and pass an order revesting the agricultural land in the transferer and, if he is dead, in his legal heirs".

9. Thus, unless established by way of cogent evidence that the transaction has been with an intention to defraud the member of aboriginal tribe of his lawful rights the transaction cannot be declared a null and void.

Section 53 of the Transfer of Property Act, 1882 provides:--

53. Fraudulent transfer.--(1) Every transfer of immovable property made with intent to defeat or delay the creditors of the transferor shall be voidable at the option of any creditor so defeated or delayed.

Nothing in this sub-section shall impair the rights of a transferee in good faith and for consideration.

Nothing in this sub-section shall affect any law for the time being in force relating to insolvency.

A suit instituted by a creditor (which term includes a decree-holder whether he has or has not applied for execution of his decree) to avoid a transfer on the ground that it has been made with intent to defeat or delay the creditors of the transferor shall be instituted on behalf of, or for the benefit, of all the creditors.

(2) Every transfer of immovable property made without consideration with intent to defraud a subsequent transferee shall be voidable at the option of such transferee.

For the purposes of this sub-section, no transfer made without consideration shall be deemed to have been made with intent to defraud by reason only that a subsequent transfer for consideration was made.

10. The expression "defraud" as per Law Lexicon : P. Ramnatha Aiyer, 2nd Edn. Reprint 1999, means:--

To deprive of some right, interest, or property by deceitful devices to withhold from wrongfully to injure by embezzlement to cheat to overreach to withhold from another that which is justly due to him or to deprive him of a right by deception or artifice to deprive of a right by withholding from another by indirection or device that which he has a right to claim or obtain; to deprive of something dishonestly.

11. Defraud therefore, always denotes some form of dishonesty. Therefore, necessary it is to show in order to raise a presumption as to the fraudulent nature of a voluntary transfer that the gratuitous transferor at the time of the transfer was indebted to the transferee. Unless this burden is discharged, a voluntary transfer cannot be adjudged as a fraudulent transaction.

12. In *Dr. Vimla Vs. Delhi Administration*, at Page 1576, it is observed that expression "defraud" involves two elements, viz., (i) deceit, and (ii) injury which is something other than economic loss, that is deprivation of property whether movable or immovable or of money which include any harm caused to any person in body, mind, reputation on such others.

13. In the case at hand, the aspect as to whether Shivilal was deprived of the property in question, is the issue. Since there was a proper permission u/s 165 (6) of Code, 1959 burden heavily lies on Shivilal to discharge and prove that he was defrauded. To discharge the burden though he examined Topsingh Patel, Goverdhan Dehariya, Roshan Vishwakarma, Shakat Ali, and Basant Master; however, none of these persons had witnessed any loan transaction and though there is a mention of some "Kacci Rasid" (unauthentic receipt) being torn out at the time of registration, is not sufficient to draw a conclusion that Shivilal was indebted and that property in question was transferred in lieu of such loan. The recital in the sale deed also does not indicate any such loan transaction. Since indebtedness has been the ground for declaring the sale deed dated 13-1-1966 as null and void and the onus was on Shivilal who pleaded that he was defrauded having failed to discharge the same, authority concerned was not justified to declare the sale deed as void merely on the basis of "Kacci Rasid" and the evidence of persons who never witnessed the loan transaction.

14. In the result the impugned order dated 22-6-1993 is hereby quashed. Consequently, the appellate order dated 19-7-1999 and the revisional order dated 23-4-2002 are also set aside. The land in question be restored to the petitioners. In case any building or structure has been raised by Shivilal or his legal heirs during the interregnum period when the land in question stood reverted to terms the Sub-Divisional Officer, Amarwada shall fix the price thereof in accordance with the principles laid down for fixation of price in the Land Acquisition Act, 1894 within three months from communication of this order. The petitioners would then pay the price to respondents within two months from the date they are informed about the price. The compliance is got to be effected by the Sub Divisional Officer, Amarwada as per law. In the result petition is allowed to the extent above. No costs.