

(1971) 09 MP CK 0016
In the Madhya Pradesh High Court
Case No : S.A. No. 333 of 1967

Malik Mohammad Hanif

APPELLANT

Vs

Mohammad Saleem and another

RESPONDENT

Date of Decision : 02-09-1971

Acts Referred:

Madhya Pradesh Land Revenue Code, 1959 — Section 165, 165(4)(b), 2(1)(i)

Citation : (1972) JLI 887

Hon'ble Judges : Bishambhar Dayal, C.J

Bench : Single Bench

Advocate : R.K Pandey, for the Appellant; P.S. Khirwadkar Respondent No. 2, for the Respondent

Final Decision : Dismissed

Judgement

Bishambhar Dayal, C.J.—This Second Appeal is by defendant No. 1. The only point raised before the lower appellate Court, where also the appeal had been filed by the" same defendant, was that the transfer in favour of the plaintiff, who claimed possession over the land, was invalid because it was in contravention of section 165 of the M.P. Land Revenue Code, 1959. The facts, which are not in dispute, are that the plaintiff purchased the whole holding of 7.66 acres from defendant No. 2 and thereupon wanted to take possession from the defendant No. 2, but in a criminal" proceeding u/s 145 of the Code of Criminal Procedure, it was held that defendant No. 1 was in possession. Consequently, the present suit was filed for declaration of title and possession. The suit has been decreed by the lower appellate Court on the ground that the transfer of this whole holding in favour of the plaintiff, though less than 10 acres of unirrigated land, was not in contravention of section 165 (4) (b) of the Code.

2. After hearing Learned Counsel for both the parties, I find that the decision of the Court below is quite correct. Although this sub-suction has not been omitted, but it was in force at the time of the disputed sale and was in the following words:-

"165 (4). Notwithstanding anything contained in sub-section (1); no Bhumiswami shall have the right to transfer any land-

(a)... ..

(b) if such transfer shall result in a holding the area of which is below five acres of irrigated or ten acres of unirrigated land."

What was prohibited by this provision was that as a result of the transfer, the holding which was created should not be less than 10 acres of unirrigated land. But, in the present case, the holding transferred in favour of the plaintiff was already less than 10 acres of unirrigated land and after the transfer no new holding came into existence. The same whole holding was transferred in favour of the plaintiff. The word "holding" has been defined in section 2(1)(i) of the Code as follows :-

" "holding" means-

a parcel of land separately assessed to land revenue and held under one tenure."

The dispute parcel of land was held by defendant No. 2 under one tenure and was separately assessed to land revenue. Even after the transfer, the same parcel of land remained separately assessed to land revenue and under one tenure. Thus there is no change in the holding and no new holding has come into existence as a result of the transfer. The decision of the Court below was, therefore, right.

3. Learned Counsel, appearing for the appellant, relied, upon *Ravishankar v. State of M.P.* [1]. That was a case in which a person who had less than 10 acres of land transferred 0.20 acre out of it. In that case, as a result of the transfer, a new holding comprising of 0.20 acres in the hands of the purchaser, and another new holding comprising of the previous holding minus 0.20 acre, would have come into existence. It was in those circumstances that it was held that the transfer was invalid and hit by section 145(4)(b) of the Code. The facts of the present case are entirely different.

4. I see no point in this appeal. It is dismissed with costs.