(1973) 04 MP CK 0006

In the Madhya Pradesh High Court

Case No : C.R. No. 781 of 1971

Radhelal and others APPELLANT

Vs

Punaram and others RESPONDENT

Date of Decision : 30-04-1973

Acts Referred:

Contract Act, 1872 — Section 65
Madhya Pradesh Land Revenue Code, 1959 — Section 165(6)
Transfer of Property Act, 1882 — Section 53A

Citation : (1979) ILR (MP) 377 : (1974) JLJ 672 : (1974) MPLJ 761

Hon'ble Judges : P.K. Tare, C.J

Bench : Single Bench

Advocate : A.K. Khaskalam, for the Appellant; A.N. Mukerjee, for the Respondent

Final Decision : Allowed

Judgement

P.K. Tare, J.

This is a revision by the defendants against the order, dated 11-10-1971, passed by the Second Civil Judge, Class II, Balaghat, in Civil Suit No. 30-A of 1971, deciding two preliminary issues as follows:

Finding

(1)

Whether the agreement to sell by Budha, an aboriginal tribe, is void?

No.

(b)

If yes, whether the suit is not maintainable

The suit is maintainable

The respondents filed a suit for a permanent injunction alleging that one Budha had agreed to sell his agricultural lands and in pursuance of the agreement, he had placed the plaintiffs in possession. As the defendants threatened dispossession, the respondents claimed a permanent injunction.

On behalf of the petitioners it was asserted that the defendants'' predecessor, Budha, was a member of the aboriginal tribe and any agreement of sale entered into by him without the permission of the Collector would be void, as per section 165(6) of the M.P. Land Revenue Code, 1959. Therefore, according to the petitioners, the respondents got no right, whatsoever, as the agreement of sale was a nullity, which could not be enforced in a Court of law on the basis of which the respondents were not entitled to any relief or any assistance from the Court, whatsoever.

Thereupon, the learned trial Judge framed some issues, out of which two questions were tried as preliminary issues. The learned Judge answered them in favour of the plaintiff-respondents.

It is true that section 165(6) of the M.P. Land Revenue Code, 1959, lays down that when a member of an aboriginal tribe wants to sell his land to a person who does not belong to an aboriginal tribe, permission of a Revenue Officer, not below the rank of a Collector, is necessary. It only implies that without such permission no transfer can be said to be valid. This question was considered by A.P. Sen J., in Soma v. Beerchand 1970 MPLJ 66 (S.A. No. 556 of 1965, decided on the 27th March 1970.) also headnoted by the Madhya Pradesh Law Journal as Sen J., relied on the pronouncement of their Lordships of the Privy Council in AIR 1943 29 (Privy Council) . I may observe that if an agreement is entered into by a member of an aboriginal tribe for selling the agricultural lands to a person who is not a member of the aboriginal tribe, the obtaining of permission of a Collector is a condition precedent and if the condition precedent is not fulfilled, the transaction, in my opinion, would be void and I am in agreement with the view expressed by A.P. Sen J., in the said case that such a transfer will be a nullity.

The learned counsel for the respondents, however, invited attention to the pronouncement of their Lordships of the Supreme Court in Mrs. Chandnee Widya Vati Madden Vs. Dr. C.L. Katial and Others, and invoked the doctrine of part performance as per section 53A of the Transfer of Property Act. I may observe that although it may be open to a person to invoke the doctrine of part performance in respect of transactions which are invalid on account of want of registration, the doctrine is not available where a transaction is void or a nullity. From this point of view there can be no doubt that the respondents cannot rely on section 53A of the Transfer of Property Act, in their favour to justify their possession. If their possession be wholly illegal, no Court of law can assist them by granting an injunction in their favour. From this point of view there can be no doubt that the respondents'' suit as framed is not tenable in law. On the other hand it is open to them to frame their suit in such a manner where the Court would be able to give them relief. As was the situation in the Privy Council case of Babu Raja Mohan Manucha v. Babu Manzoor Ahmad Khan, (supra), it is open to the respondents to claim refund of consideration by relying on section 65 of the Indian Contract Act and to mould their relief accordingly.

The learned counsel for the respondents invited attention to the pronouncement of their Lordships of the Privy Council in AIR 1930 287 (Privy Council) and urged that specific performance could be claimed in such a situation as the agreement to sell would include a covenant to apply to the Revenue Officer for sanction or permission, whatever may be necessary. There can be no doubt that as laid down by their Lordships in the said case, an agreement to sell the property which requires sanction of another authority might be construed to include a covenant to apply for such sanction. In the present case an application had been filed by Budha for sanction. He died and the present petitioners opposed the grant of sanction. The Collector had refused that sanction by dismissing the petition of Budha as represented by his legal representatives after his death. Thus, there is no question of the principle laid down by their Lordships of the Privy Council in the said case being invoked in the instant case as permission having been applied for was already refused and, therefore, for that reason also, the suit as framed cannot be said to be tenable in law. However, it is still open to the respondents to claim refund of consideration as already indicated on the principles laid down by their Lordships of the Privy Council in Babu Raja Mohan Manucha v. Babu Manzoor Ahmad Khan (supra).

The learned counsel for the respondents offered to apply for amendment of the plaint so as to convert it into a suit for refund of consideration on the premises that the transaction in question was void. If I may say so, they should properly have moved the trial Judge in that behalf and now I would leave them to file the requisite application in the trial Court which may be considered on its own merits.

Subject to the above observations, this revision succeeds and is accordingly allowed and the two preliminary issues decided by the learned trial Judge are answered in favour of the present petitioners. However, under the circumstances I direct that there shall be no order as to costs of this Court, which shall be borne as incurred. The case is remitted to the trial Judge for passing a final order in accordance with the opinion given above as also to consider any amendment application that the respondents might choose to file for converting the suit into one for refund of consideration on the premises that the transaction in question is void.