
(2010) 05 MP CK 0044
In the Madhya Pradesh High Court
Case No : Writ Petition No. 216 of 1991

Rimmo

APPELLANT

Vs

Kisan

RESPONDENT

Date of Decision : 13-05-2010

Acts Referred:

Madhya Pradesh Land Revenue (Amendment) Act, 1980 — Section 10
Madhya Pradesh Land Revenue Act, 1976 — Section 5
Madhya Pradesh Land Revenue Code, 1959 — Section 165(6), 169, 170A, 170A(1), 170B
Madhya Pradesh Land Revenue Ordinance, 1981 — Section 3

Citation : (2010) ILR (MP) 1792 : (2010) 3 MPLJ 549

Hon'ble Judges : R.K. Gupta, J

Bench : Single Bench

Judgement

R.K. Gupta, J.

The present appeal has been filed at the instance of the Defendants challenging the judgment and decree dated 23.4.1991 passed by the Second Additional Judge to the Court of "District Judge, Chhindwara in Civil Appeal No. 6-A/1991 arising out of the judgment and decree dated 29.1.1991 in Civil Suit No. 10-A/1990.

The facts leading to this appeal are that the Plaintiff-Respondent No. 1 herein filed a civil suit for possession and permanent injunction. The suit was filed on the ground that there had been a decree in their favour passed on 29.4.1975 in Civil Suit No. 155 A/1973 by the Third Civil Judge, Class II Chhindwara for the specific performance of the contract. Pursuant to the said decree, land in question was transferred in favour of the Plaintiff-Respondent. Since the Appellant-Defendants were disturbing the possession of the Respondent Plaintiff, therefore, civil suit was filed by the Plaintiff for permanent injunction and possession of the land and according to the Plaintiff they were dispossessed by the Defendants. Civil suit was decreed in favour of the Plaintiff and against which an appeal was preferred by the Defendants before the first appellate Court and

the first appellate Court also affirmed the judgment and decree passed by the trial Court and against which the second appeal has been filed before this Court.

The appeal has been admitted on the following substantial question of law:

Whether in view of the provisions of section 170-A and 170-B of the Land Revenue Code, a decree for possession could have been granted by the lower appellate Court?

The sections 170-A of the M.P. Land Revenue Code was by section 5 of the M.P. Act No. 61 of 1976 published in the M.P. Rajpatra dated 29.11.1976. section 170-B was added by section 10 of the M.P. Act No. 15 of 1980 published in M.P. Rajpatra dated 24.10.1980. By virtue of section 3 of the M.P. Ordinance No. 12 of 1981 published, in the M.P. Gazette dated. 25th October, 1981 words "one year" were substituted in section 170-B by words "one-and-half year" and in the year 1982 the same was converted into "two years". On that basis, the question for consideration is whether the suit for possession and also for permanent injunction was maintainable at the instance of the Respondent Plaintiff and whether the Courts below are justified in decreeing the suit.

It is contended on behalf of the Appellants that section 170-A provides that "notwithstanding anything contained in the Limitation Act, 1963, Sub- Divisional Officer may, on his own motion or on an application made by a transferor of agricultural land belonging to a tribe which has been declared to be an aboriginal tribe under Sub-section (6) of section 165 on or before the 31st December 1978, enquire into a transfer effected by way of sale or in pursuance of a decree of a Court of such land to a person not belonging to such tribe or transfer effected by way of accrual of right of occupancy tenant u/s 169 or of Bhumiswami under Sub-section (2-A) of section 190 at any time during the period commencing on the 2nd October 1959, and ending on the date of commencement of the Madhya Pradesh Land Revenue Code (Third Amendment) Act, 1976 to satisfy himself as to the bona fide nature of such transfer. If the Sub-Divisional Officer on an enquiry and after giving a reasonable opportunity to the persons owing any interest in such land, is satisfied that such transfer was not bona fide, he may notwithstanding anything contained in this Code or any other enactment for the time being in force may direct for reversion of the land in favour of aboriginal tribe.

On basis of the aforesaid, for the purposes of answering the question raised while admitting the appeal this Court has to look into the provisions contained in section 170-A of the Code as to who has to invoke the jurisdiction of Sub-Divisional Officer for holding enquiry that the transfer effected pursuant to a decree of Court was not bona fide one.

It is contended on behalf of the Appellants that it was for the Plaintiff to move an application to the Sub-Divisional Officer that the occupancy of the land by the Appellants was not bona fide but in the present case rather than moving application to the Sub-Divisional Officer, the Plaintiff filed civil suit and thus, the

civil suit as such was not maintainable as the jurisdiction to invoke the powers u/s 170-A are to be invoked, by the Revenue Authority, therefore, in view of bar created u/s 257 of the Code, no civil Court shall have jurisdiction to entertain such a civil suit. On the contrary, Plaintiff-Respondents submitted that in the present case, the transfer of land in favour of the Plaintiff- Respondent was effected in pursuance to a decree of a Court with regard to the land then an application, has to be moved to the Sub-Divisional Officer for holding enquiry whether the transfer as such was bona fide or not. It is contended that person who challenges the bona fide of transfer of land will approach the Sub-divisional Officer and in case he comes to the conclusion that transfer in pursuance to decrees of the Court was not bona fide then only the Civil Court may not have the jurisdiction. It was for the Defendants-Appellants to move an application against the transfer of the land in pursuance to decree of Court that same was not bona fide action.

section 170-A of the Act provides that if an application is moved to the Sub-Divisional Officer by a transferor or Sub-Divisional Officer on its own motion enquire with regard to bona fide of transaction of transfer in pursuance of decree of the Court. Thus, the matter with regard to bona fide nature of transfer as contemplated u/s 170-A of the Act could, alone be inquired into by such S.D.O. to whom an application u/s 170-A is moved. No application is moved by the Defendants against the transfer of the land to the Plaintiff in. pursuance of the decree of the Court. Therefore, if the statement so made by the learned Counsel for the Appellant-Defendants is accepted that it was for the Respondent-Plaintiffs to have moved an application to the Sub-Divisional Officer then Sub-section (1) of section 170-A comes against his way and argument that Plaintiff-Respondent should have moved an application to the Sub-Divisional Officer is devoid of substance because Sub-section (1) of section 170-A itself indicates that an application has to be moved to Sub-Divisional Officer by a transferor. The Plaintiff is not a transferor who could have moved an application to the Sub- Divisional Officer to invoke his jurisdiction u/s 170-A of the Act. section 170-A also does not permit that a person in whose favour the transfer is effected will also go to the Sub-Divisional Officer.

Apart from the aforesaid, purpose behind section 170-A of the Act had been to inquire into all such transactions which are contrary to law in relation to the land belonging to aboriginal tribe, may be such transactions are pursuant to a decree of a Court. The provision contained, in section 170-A of the Act does not permit that even a transferee would have power to move an application to show bona fide that transfer effected in his favour is bona fide. The provision to challenge the bona fide of such transfer is to be invoked by a person who is transferor.

In view of the analysis of the provision as contained in section 170-A of the Act, scrutiny of facts available on record and rival contentions advanced by the parties I do not find that section 170-A of the Act will have any application in the present case so that jurisdiction of the civil Court is barred.

As far as section 170-B of the Act is concerned, Sub-section (1) provides that every person who on the date of commencement of the Madhya Pradesh Land Revenue Code 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 commencement of Amendment Act of 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.

In the present case, the suit was not for declaration of title to hold that transfer is valid. The transfer was effected in favour of the Plaintiff in pursuance to the execution of the decree, which was granted in their favour. In view of the aforesaid, when the Plaintiff approaches the Civil Court for injunction and possession of the land then it cannot be said that such a civil suit is barred by virtue of section 170-B of the Code. Sub-section (1) only contemplates that a person who is in possession of the agricultural land belonging to a member of a tribe, which has been declared as 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 of 1980 has to intimate the Sub-Divisional Officer in such form. As I have already held that the purpose of said information was only to the extent that he was in possession of the agricultural land.

According to their own showing the Respondent-Plaintiff was not in possession of the land and according to the suit averment made by the Plaintiff, the Appellants-Defendants are in possession of the suit property then though, he has a valid title in his favour in pursuance of the decree of the Court yet the eventuality of such decree or subject matter of suit as such is beyond the scope of section 170-B of the Code.

There is a difference between section 170-A and 170-B of the Code. section 170-A applies in case of eventuality of a transfer and power has to be invoked by a transferor whereas u/s 170-B the power has to be invoked by a transferee. If the transfer is in pursuance to a decree passed by the Court then the same is one of the transfer for the purposes of section 170-A. section 170-B does not specifically contemplates that if the transfer is in pursuance of a decree and judgment of the Court then still the transferee has to apply under that section and thus, in the present case, the Plaintiff got the land in pursuance of the decree of the Court then. I have my own doubt that such a transfer will be covered u/s 170-B so that he is required to invoke the jurisdiction of the Sub-Divisional Officer.

In view of the aforesaid. I am of the opinion that the question involved in the appeal with regard to applicability of section 170-A and 170-B is to be answered that in the present case sections 170-A and 170-B of the Code have no application. Therefore, the question which was raised in the suit with regard to

possession and permanent injunction is not the subject matter which could be inquired into the aforesaid two sections and therefore, the bar created u/s 257 shall have no application.

In view of the aforesaid, the present appeal being sans merit is dismissed accordingly. No order as to costs.