

(2014) 12 CHH CK 0045
In the Chhattisgarh High Court
Case No : Writ Petition (C) No. 938 of 2012

Sanjay Kumar Bajpai and Others

APPELLANT

Vs

State of C.G. and Others

RESPONDENT

Date of Decision : 12-12-2014

Acts Referred:

Constitution of India, 1950 — Article 226, 227 — Madhya Pradesh Samaj Ke Kamjor Vargon Ke Krishi Bhumi Dharakon Ka Udhar Dene Walon Ke Bhumi Hadapane Sambandhi Kuchakron Se Paritran Tatha Mukti Adhiniyam, 1976 - Section 11, 14, 2, 2(a), 2(f) — Transfer of Property Act, 1882 - Section 58

Citation : (2015) 2 CGLJ 30

Hon'ble Judges : Goutam Bhaduri, J.

Bench : Single Bench

Advocate : P.K.C. Tiwari, Sr. Advocate assisted by Shashi Bhushan Tiwari, Advocate, for the Appellant; Chandresh Shrivastava, P.L., for the Respondent

Final Decision : Allowed

Judgement

Goutam Bhaduri, J.—Challenge in this petition is to order dated 07.06.1988 (Annexure P/1), passed by the Additional Collector, Raipur, in Revenue Appeal Case No. 58-B/125(2)/1987-88, whereby the appeal preferred under Section 8 of the Madhya Pradesh Samaj Ke Kamjor Vargon Ke Krishi Bhumi Dharkon Ka Udhar Dene Walon Ke Bhumi Hadapane Samabandhi Kuchakron Se Paritran Tatha Mukti Adhiniyam, 1976 (hereinafter referred to "the Act, 1976") by the one Dhan Bai, since deceased, was allowed and it was directed to hand over the possession of the land to the appellant on the ground that the sale deed dated 26.12.1962 and 09.04.1963 were out come of transaction of loan and were not actually a sale transaction. Briefly stated facts as contended by the petitioners was that, by way of two sale deeds, one of it was dated 26.12.1962 (Annexure P/7), sale was made in respect of land bearing Kh. No. 101, 102, 1428, 1435/1 & 1435/2 total admeasuring area 4.31 acres of land, while the other sale deed was dated 09.04.1963 (Annexure P/8) in respect of Kh. No. 1435/1 and 1435/2 total admeasuring area 2.00 acres, situated at village Lavan. The sale deeds were

executed by one Sibbo, S/o. Suhal in favour of Mangalacharan, S/o. Ramchandra Bajpai. The sale deed dated 26.12.1962 was for sale consideration of Rs. 800/-, whereas the sale deed dated 09.04.1963 was for sale consideration of Rs. 600/-. Learned counsel for the petitioners would submit that after execution of said sale deeds, the respective names of the purchasers were recorded in the revenue record in presence of the then seller, which would be evident from Annexure P/8A, which was never objected.

2. Admittedly, an application under Section 5 of the Act, 1976 was filed by Dhan Bhai, widow of seller after death of Sibbo, the original seller of lands. This fact is also not in dispute that when such application was filed on 19.12.1981, which finds a reference in Annexure P/2 (i.e. the order of the Sub-Divisional Officer), the original purchaser Manglacharan was no more as he died on 18.08.1980, which is evident from Annexure P/9 and Annexure P/12 i.e. the death certificate and the report of the Patwari. On reading of Annexure P/12 i.e. the order-sheet of the Sub-Divisional Officer it would further reflect that on 27.06.1983, a bailable warrant was issued in such revenue proceedings and in response to that, the petitioner Sanjay Kumar Bajpai appeared before the Court of Sub-Divisional Officer and submitted his response. On such application having been filed U/s. 5 of the Act, 1976, an enquiry was conducted by the Sub-Divisional Officer. The Sub-Divisional Officer by its order dated 18.09.1987 (Annexure P/2) came to a conclusion that the complaint so made was frivolous, therefore, affirmed the sale deeds, which was executed by Sibbo in favour of Manglacharan.

3. Being aggrieved by such order of Sub-Divisional Officer, an appeal was preferred U/s. 8 of the Act, 1976 by the respondents before the Additional Collector and the Additional Collector by its order dated 07.06.1988, passed the impugned order which is under challenge.

4. Learned counsel for the petitioner would submit that the appointed day in Section 2 of the Act, 1976 was 01.01.1971. Therefore, the transaction which was of 1962-1963 could not have been opened by invoking the provisions of the Act of 1976. He would further submit that when the order of the Collector (Annexure P/1) was passed, whereby the appeal filed by Dhan Bai (since deceased) was allowed, under the legal advise, the petitioners, who were mainly the agriculturists, filed a civil suit, before the Civil Judge Class-II, Balodabazar to set-aside such order in the year 1988. It is further stated that the said civil suit was filed by the legal heir of Mangalacharan, the petitioners being the affected parties. The said civil suit was dismissed on 04.10.1993 by Annexure P/3. It is further stated that the order was further taken up in appeal before the Court of Additional District Judge, Balodabazar, which was dismissed by order dated 15.03.1994 (Annexure P/4). It is also stated that the said order was further challenged by way of second appeal, before this High Court, in Second Appeal No. 207/1994 and ultimately the second appeal was also dismissed on 28.07.2011 by this Court by Annexure P/5. It is also stated that the said order was further traveled to Hon"ble Supreme Court, however, the Hon"ble Supreme

Court had also declined to interfere in such order of dismissal.

5. The learned counsel for the petitioners would further submit that dismissal of the civil suit was on the premises that Section 14 of the Act, 1976 bars the jurisdiction of the Civil Court and that was the reason of the dismissal. He would further submit that the finding recorded by the Court below i.e. Civil Court and Additional District Judge have no force as on one hand the Court had held that the Court did not have jurisdiction to decide the case and therefore, the finding on the other issues neither will have bearing nor were required and were consequently has no force.

6. By referring the order of Sub-Divisional Officer dated 18.09.1987, wherein the application filed by Dhan Bai was dismissed, the learned counsel would submit that in such proceedings, after detailed enquiry, the Court came to conclusion that the transactions were not a loan but actually it was out and out sale. He referred to the statement discussed in such order and would submit that the learned Court below has categorically held that the transactions were of sale. While attacking the impugned order Annexure P/1, the learned counsel would submit that firstly the S.D.O. was not having the jurisdiction to entertain the application U/s. 5 of the Act, 1976. Consequently, the Collector also did not have the jurisdiction. He would further submit that the only criteria of the Collector to upset the order of Sub-Divisional Officer was that since Sibbo had purchased the land for an amount of Rs. 3400/- in the year 1961, but since the said property were sold for only Rs. 1400/- in the year 1962-63, therefore, the transaction itself were branded as doubtful. He would submit that arriving to such conclusion was without any substance and it was contended that presumption can not be drawn under the surmises without any proof and accordingly prays to set-aside the impugned order.

7. Learned counsel would further submit that after the entire bout of litigation in civil suit and dismissal, the order dated 17.06.1988 was challenged by way of instant petition in the year 2012. So no deliberate delay was committed by the petitioner. It is further submitted that the facts and circumstances of the case would reveal that the delay in filing of the petition was genuine in nature. He would further submit that after the petitioner filed a civil suit before the Court below, their possession was protected by interim order of injunction, which was carried further in appeal up to the second appeal and the possession was protected under the orders of the Court till the second appeal was dismissed and decided on merits. Therefore, in all these years after passing of the order of the Collector to dispossess the petitioners, the petitioners had taken reasonable care to protect their rights and agitated the grievances before the different Court and therefore, it can not be stated that there has been deliberate laches on the part of the petitioners.

8. Per contra, Shri Somnath Verma learned counsel appearing on behalf of respondents No. 8 to 11(A) & 11(B) & Shri Saifuddin Rajas, learned counsel appearing on behalf of respondents No. 4 to 7 would submit that the instant

petition is hit by gross delay and latches. They would submit that the impugned order dated 07.06.1988 is challenged by way of instant petition after the delay of about 24 years and there is no reasonable explanation exists. They would further submit that admittedly Sibbo, who was the husband of Dhan Bai, the appellant, before the Collector, purchased the land in the year 1961 for a consideration of Rs. 3400/- and subsequently on 26.12.1962 and 19.04.1963, the same land was sold for at a lower sale consideration of Rs. 1400/-. They would further submit that the nature of the transactions would go to show that the transactions were actually not a sale, but the nature of the transactions was mortgage. They would submit that the transaction was usufructuary mortgage as defined U/s. 58 of the Transfer of Property Act, 1882.

9. The counsel for respondents would further submit that admittedly an application was filed by the Dhan Bai, wife of Sibbo, after death of Sibbo, before the Sub-Divisional Officer U/s. 5 of the Act, 1976 on 19.12.1981. This fact is also not disputed that at the time of sale in favour of Manglacharan, the possession of the lands were handed over to the purchaser. The counsel further referred to the order-sheet of the Sub-Divisional Officer which is filed as Annexure P/12 and would submit that the order-sheet would reflect that the petitioner Sanjay Kumar Bajpai appeared in person and contested the said proceeding and enquiry conducted by S.D.O. Therefore, it cannot be stated that the enquiry was conducted against a dead person.

10. Learned counsel for the respondents further stated that initially after the orders of the Sub-Divisional Officer (Annexure P/2), it was subject of challenge, before the Collector and Additional Collector has passed the impugned orders, which is well merited. It is stated that after such order was passed, the same was subject of challenge before the Civil Court and before the Civil Court it was prayed that the implementation of such orders be stayed. He would further submit that thereafter ultimately the civil suit was dismissed with a finding that the transaction were not a sale transaction, but the nature of the transaction was mortgage, which finds place at para-38 of the order of the Civil Court. They would further submit that ultimately the civil suit was dismissed on the ground that the Civil Court did not have the jurisdiction in terms of Section 14 of the Act, 1976.

11. The counsel for the respondents would further submit that the finding recorded in such order that the nature of such transaction was mortgage and order of the Collector is well merited, the same is affirmed by the Appellate Court which traveled up to the first appeal and second appeal and up to the Hon''ble Apex Court and such finding has not been disturbed. Therefore, at this stage it can not be stated that the transaction was that of sale. They would further submit that since civil suit was dismissed in the year 1994, the petitioner was in know of the fact that the civil suit was barred. They would further submit that despite the matter was taken up in second appeal, the same order was confirmed, therefore, it can not be stated that the petitioner did not have

knowledge of the fact that the civil suit was barred and accordingly should have redressed their grievances as available to them under the law. Therefore, the counsel would submit that the delay which is caused of 24 years can not be explained as a bona fide and the petition is liable to be dismissed on the ground that the instant petition is grossly delayed.

12. Learned counsel for the respondents placed a reliance of *Nadia Distt. Primary School Council and Another Vs. Sristidhar Biswas and Others*, and would submit that the petitioners were sitting over the fence and such delay and laches which is likewise in the instant case can not be condoned.

13. The State counsel also opposed the petition and would submit that the petition is grossly delayed, therefore, the same is liable to be dismissed.

14. I have heard the learned counsel for the parties at length and perused the records.

15. The first limb of contention raised by the respondents that the instant writ petition is hit by delays and laches. It is true that the Court helps the vigilant and not indolent. The delay may be a relevant factor for which the Court may refuse to entertain the writ application for granting relief except in case where the delay is accounted. Secondly, if the delay is satisfactory explained the Court may exercise its jurisdiction. Though there is no specific period of limitation for invoking jurisdiction of the High Court under Articles 226 & 227 of the Constitution of India, the High Court may refuse to exercise its extraordinary power of writ jurisdiction where the petitioner is guilty of laches or undue delay. However, delay, by itself, is not a ground to reject the writ petition and in an appropriate case, the Court may condone the delay because of the reason that the Court may not enquire into belated and stale claims is not a rule of law, but a rule of practice based on sound and proper exercise of discretion to be exercised by the High Court under Article 226, and there is no any inviolable rule that whenever there is delay, the Court may necessarily refused to entertain the writ petition.

16. The Hon'ble Supreme Court in *between Tukaram Kana Joshi and Others thr. Power of Attorney Holder Vs. M.I.D.C. and Others*, , has held that the delay and laches may be the one facet to deny exercise of discretion but it is not an absolute impediment and the discretion under Article should be exercised where no third party right is involved and cause of action is continuous. Further in *between M/s. Dehri Rohtas Light Railway Company Limited Vs. District Board, Bhojpur and and District Board, Shahabad and others*, , the Supreme Court has laid down that the real test to determine delay in such cases is that the petitioner should come to the writ Court before a parallel right is created and that lapse of time is not attributable to any laches and negligence. The test is not to physical running of time. If the Court finds the illegality exists, then the laches cannot be the sole ground to deny the claim.

17. Now if the facts are examined in this case, it shows that after the order of

the Additional Collector was passed on 07.06.1988, the civil suit bearing No. 145-A/1988 was filed wherein on 22.12.1988 an injunction was granted by Annexure P-13 whereby the possession of the petitioners were protected. The civil suit in its final order was dismissed on 04.10.1993 by Annexure P-3. Against that first appeal was preferred bearing No. 23-A/1993 in November, 1993. Perusal of such order sheet filed as Annexure P-14 shows that the possession of the petitioners were protected in such first appeal too. The civil suit and the first appeal was dismissed primarily on the ground that the order passed under the Act, 1976 cannot be challenged in view of Section 14 of the Act, 1976. For sake of brevity, Section 14 of Act, 1976 is reproduced herein below:

14. Bar of jurisdiction of Civil Courts--Subject to provisions of Section 11, no Civil Court shall have any jurisdiction to settle, decide or deal with any question which is by or under this Act required to be settled, decided or dealt with by the Sub Divisional Officer or the Collector.

18. The first appeal was dismissed on 15.03.1994 by Annexure P-4 and against that second appeal was preferred which was admitted for hearing and ultimately by an order dated 28.07.2011 (Annexure P-5), the said second appeal was dismissed on the ground that no substantial question of law formulated for decision of appeal. Subsequently, against such dismissal of the second appeal, SLP was preferred before the Hon"ble Supreme Court, which was also dismissed on 02.04.2012 by Annexure P-6.

19. Therefore, this become relevant that after filing of the suit in 1988, the possession of the petitioners were protected by temporary injunction and thereafter when the civil suit was finally dismissed, the first appeal was preferred therein also the petitioners filed an application for injunction and on the prayer the possession was protected. When the first appeal was also dismissed, the second appeal was preferred and the petitioners' right through predecessor protected with respect to the possession. The second appeal was ultimately came to be dismissed on 28.07.2011 and thereafter the instant writ petition was preferred in the month of June, 2012. In this writ petition, the possession of the petitioners were again protected by an interim order dated 03.07.2012. Meaning thereby, after filing of the civil suit in the intervening period, possession of the petitioners were protected and after dismissal of the civil suit and second appeal when the writ petition was filed the plaintiffs are in possession of the disputed property. Therefore, though there was an order of restoration of the disputed land was made by the Additional Collector on 07.06.1988, the possession of the petitioners continued and continued under the judicial orders. Consequently, it did not precipitate any interest and right in favour of the respondents.

20. Here in this case, the fact goes to show that the petitioners were not sleeping or keeping quite over their right but there had been a continuous effort to opposing the interest of third party in the land. After examination of the entire fact, it can be safely presumed that the interest of third party respondent was not crystallized whether any possessory or ownership but the same was

continuously put in question by the continuous litigation by the petitioners. The parallel possessory right though created under the orders of Additional Collector but in sum and substance the effect of same was arrested and restoration of possession to the respondent remained unclear and porous. Therefore, in the considered opinion of this Court, if the substantial justice and technical consideration are pitted against each other, the case of substantial justice deserves to be preferred as herein this case the respondents cannot be said to have vested right in injustice because of non deliberate delay.

21. The respondents have placed their reliance in *Narayan Prasad Agrawal Vs. State of M.P. and Others*, and *Nadia Distt. Primary School Council and Another Vs. Sristidhar Biswas and Others*, . In those cases, the Hon'ble Supreme Court decline the relief on the principles that the person who sit on the fence and wait for a favourable order and thereafter wake up to take up the matter, are not entitled to any relief. In the given set of facts, here in this case, facts would reveal that petitioners were continuously agitated their right before the Civil Court to protect their right. Ultimately the Civil Court declined to interfere the order in view of statutory bar of Section 14 of the Act, 1976. Therefore, in facts and circumstances of case, it appears that sufficient cause of delay existed and the Court cannot take a pedantic approach that every days delay must be explained. According to the opinion of this Court, the fact leads to presume that no deliberate delay has been caused on account of any considerable negligence or on account of malafide. Therefore, predominant argument advanced by the respondents that the writ petition should be dismissed for delay and laches cannot be accepted and accordingly, in my considered opinion, the petitioners have sufficiently explained the delay.

22. Now coming to the merits of the case, the petitioners have challenged the order dated 07.06.1988 (Annexure P-1) passed by the Additional Collector under the Act, 1976. The object of Act was to provide better economic condition of holders of agricultural land in the weaker sections of the people by providing further relief from agricultural indebtedness by nullifying the land grabbing designs resorted to in many a form by lenders of money while and after extending credit to them and matters connected therewith. The Act promulgated with the object to save the weaker section of the society who obtain loans for their urgency and executes the documents for security of the loan in order to arrest such transaction of loan and further to stop such transaction the Act was promulgated.

23. The Act declares the appointed day as 1st of January, 1971. The Act received the assent of the President on 22nd January, 1977 and the assent was first published in the M.P. Gazette (Extraordinary) dated 31st January, 1977. The petitioners through their predecessor had purchased the suit land by two sale deeds dated 26.12.1962 and 09.04.1963 (Annexure P-7 and P-8). The sale was made by Sibbo in favour of Manglacharan, son of Ramchandra Bajpai. This fact is not in dispute that Manglacharan was the grand father of the present petitioners.

Thereafter, the document Annexure P-8(A) goes to show that in the revenue records the names were mutated in the presence of the purchaser and seller namely Sibbo. The said document is of year 1963 and contains an endorsement of R.I. dated 11.10.1963 that the seller and purchaser both had ratified the transaction and the possession of land was accepted to be delivered. It is evident that at the time of mutation of such name in revenue records, no protest was made by the then seller Sibbo questioning the subject sale.

24. Section 2(a) of the Act, 1976 prescribes the "appointed day" as 01.01.1971, therefore, the plain reading of the Act would go to show that the Act was applicable from 31.01.1977 which is the date of its publication and it had taken into its sweep the transaction from 01.01.1971 i.e. from the appointed day. Therefore, the necessary consequence was that if money lender has obtained possession of the land by force or otherwise or obtained a decree for such possession that transaction shall be covered by the Act, 1976. It follows from the aforesaid Act that the Act was only partially retrospective upto 1971. Therefore, it would not be retrospective to affect the transaction which was much prior to 1971 could not have been enveloped by simple and plain language of the statute. Further, reliance is placed in between Krishna Manjari (Smt.) and others Vs. Mukut Ram and another 1998 R.N. 286 (HC.MP).

25. Apart from it, further reading of statute prescribes the prohibited transaction under Section 2(f) which reads as under:

(f) "prohibited transaction of loan" means a transaction in which a lender of money advances loan to a holder of agricultural land against security of his interest in land, whether at the time of advancing the loan or at any time thereafter during the currency of the loan in any of the following modes, namely:--

(i) agreement to sell land with or without delivery of possession;

(ii) outright sale of land with or without delivery of possession accompanied by separate agreement to re-sell it;

(iii) outright sale of land with or without delivery of possession with a distinct oral understanding that the sale shall not be acted upon if the loan is re-paid;

(iv) outright sale of land with or without delivery of possession with a condition incorporated in the sale deed to re-sell it on repayment of the loan;

(v) transaction in any modes other than those specified in clauses (i) to (iv) affecting interest in land including a fraudulent transaction or a transaction designed to defeat the provisions of any law regulating money lending or interest, for the time being in force,

and includes all those transaction in which a lender of money has after the appointed day but on or before the date of publication of this Act in the Gazette, obtained possession of land of the holder of agricultural land through Court or by

force or otherwise or obtained a decree for such possession to wards satisfaction of loan;

26. Examination of the documents of this case would reveal that till the original seller Sibbo was alive no application in any nature under Section 5 was filed but in the year 1982 a complaint was made for Rin-mukti which is recorded in order sheet Annexure P-12. The said application was filed by Dhan Bai widow of Sibbo, the original seller. The seller namely Sibbo during his life time had not filed such application. The S.D.O. upon such application after detail enquiry had dismissed the claim preferred by the respondents by order dated 18.09.1987. The S.D.O. by the said order held that the transaction was out and out was sale and it was not a case of mortgage.

27. Reading of Act, 1976 and a simple interpretation of prohibited transaction has been categorically stated in the Act. It purports that agreement to sale with or without delivery of possession in clause (f) of clause (ii) outright sale of land with or without delivery of possession accompanied by separate agreement to re-sell it; (iii) outright sale of land with or without delivery of possession with a distinct oral understanding that the sale shall not be acted upon if the loan is repaid; (iv) outright sale of land with or without delivery of possession with a condition incorporated in the sale deed to re-sell it on re-payment of the loan. Therefore in order to restore the land, the aggrieved party should have categorically establish the fact that a particular transaction was within definition of prohibited transaction at the time of enquiry before the Court of first instance i.e. the S.D.O. Since the Act of 1976 is penal in nature as such in order to have application of the Act distinct evidence must exist. Here it is pertinent to note that the revenue records Annexure P-8(A) reveal that in presence of the original seller when the delivery of possession was admitted the mutation of name of purchaser was made. The said document is of 1963 and has a presumptive value of correctness. So taking into consideration of time, inference cannot be drawn of such prohibited transaction and in opinion of this Court, the respondent could not fall back to the orders of civil suit since the suits were dismissed for want of jurisdiction and any observation made therein are non-est in the eyes of law. Taking into totality of the facts, I am of the opinion that the learned S.D.O. had arrived at a correct conclusion of facets after evaluating the evidence placed before it that sale was not covered under prohibited transaction and consequently the order of the Additional Collector, Annexure P-1, cannot be sustained.

28. For the foregoing reasons, as has been discussed herein above, I am inclined to allow this petition. Accordingly, the order passed by the Collector dated 07.06.1988 (Annexure P-1) passed in Case No. 58-B/125(2) Year 1987-88, is set aside. In the result, the writ petition is allowed. No order as to costs.