(2014) 04 CHH CK 0032

In the Chhattisgarh High Court

Case No : Second Appeal No. 29 of 2004

Shyam Sunder APPELLANT

Vs

State of C.G. RESPONDENT

Date of Decision : 09-04-2014

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 100, 96
Madhya Pradesh Ceiling on Agricultural Holdings Act, 1960 — Section 11(3), 2(h)
Registration Act, 1908 — Section 17
Transfer of Property Act, 1882 — Section 5, 53-A, 54

Citation : (2014) 3 CGLJ 187

Hon'ble Judges : Sanjay K. Agrawal, J

Bench : Single Bench

Advocate : Parag Kotecha, Advocate for the Appellant; Vinay Harit, Deputy Advocate General, Advocate for the Respondent

Final Decision : Dismissed

Judgement

Sanjay K. Agrawal, J.

1. The substantial question of law formulated and to be answered in Plaintiff''s second appeal is as under:--

"Whether the two Courts below have justified in deciding the suit as well as the first appeal overlooking the mandatory requirement of Section 11(3) of C.G. Ceiling on Agriculture Holdings Act, 1960 particularly when the revenue record bears the name of the appellant?"

[For sake of convenience, the parties would be referred hereinafter as per their status shown in the suit before the trial Court]

Sans unnecessary details, the facts which are essential to be stated for the purpose of disposal of the present second appeal are as under:--

1.1 Plaintiff-Shyam Sunder Agrawal filed a suit seeking decree of declaration that the order passed by defendant No. 2 Competent Authority under the Madhya Pradesh Ceiling on Agricultural Holdings Act, 1960 (hereinafter called as "the Act of 1960") holding the suit land as surplus land by order dated 30/06/1989 is null and void and not binding on him stating inter alia that the suit land has been purchased jointly by Baburam Agrawal, Shyam Sunder Agrawal and Maya Devi Agrawal by unregistered sale deed dated 30/09/1956 from erstwhile owner Smt. Rani Dhanraj Kunwar Devi and obtained possession thereof. Plaintiff''s name was recorded in the revenue records and on registered partition dated 22/08/1974, 12.50 Acre fell in share of the plaintiff.

1.2 It is further case of the plaintiff that a Ceiling Case No. 136-A/90/B/74-75 was registered in the Court of competent authority under the Act of 1960, in which, the order was passed by the defendant No. 2 on 30/06/1989 declaring the suit land to be surplus land, holding it to be owned by defendant No. 4-Joyti Bhushan Pratap Singh and vested the land in favour of the defendant No. 4 on 30/06/1989 and the suit land likely to be allotted to the landless person.

1.3 It is further case of the plaintiff that being person interested to the land, he was required to be noticed u/s 11(3) of the Act of 1960 by competent authority before declaring land to be surplus land, and therefore, the order passed by the competent authority is not binding and the aforesaid decree as claimed be granted in his favour.

1.4 Defendants filed their joint written statement stating inter alia that the suit land was duly recorded in the name of erstwhile owner Smt. Rani Dhanraj Kunwar Devi and in the Khasra Panchshala for the year 1958-59 to 1962-63, the plaintiff''s name was not recorded and the return furnished by Smt. Rani Dhanraj Kunwar Devi in the sale to the plaintiff by unregistered sale deed has not been disclosed.

1.5 It was further pleaded that the jurisdiction of the Civil Court in respect of the order of competent authority is barred, as no appeal or revision has been filed within 60 days from 30/06/1989 therefore, that suit deserves to be dismissed.

1.6 During the course of the trial, plaintiff examined two witnesses and exhibited nine documents in his support, whereas the defendants examined one witness and submitted eight documents in their support.

1.7 The trial Court on appreciation of oral and documentary evidence on record, framed six issues and answered the same as under:--

1.8 The trial Court, by its judgment and decree dated 30/10/1999 dismissed the suit of the plaintiff holding that the plaintiff has failed to establish the purchase of the suit land from Smt. Rani Dhanraj Kunwar Devi and further failed to prove that the order of the competent authority under the Act of 1960 is illegal and void.

1.9 On appeal preferred by the plaintiff u/s 96 of the Code of Civil Procedure, 1908 (in short ''the CPC''), the First Appellate Court by its impugned judgment and decree dated 30/09/2003, affirmed the finding of the Trial Court and dismissed the appeal of the plaintiff.

2. Questioning the legal acceptability and sustainability of the impugned judgment and decree dated 30/09/2003 passed by Second Additional District Judge (F.T.C.) Korba in Civil Appeal No. 5-A/2002, this instant second appeal has been preferred by the plaintiff u/s 100 of the CPC, in which, substantial question of law has been formulated as mentioned in opening paragraph of this judgment.

3. Mr. Parag Kotecha, learned counsel appearing for the appellant/plaintiff would submit that the judgment and decree passed by two Courts below holding that the plaintiff has no title upon the suit land and therefore, he is not a person interested and not entitled for notice and opportunity of hearing u/s 11(3) of the Act of 1960 is perverse being contrary to law and is liable to be set-aside. Learned counsel for the appellant placed reliance upon the judgments of Madhya Pradesh High in Saadat Mohammad Khan and Others Vs. State of M.P. and Others, and Bala Vs. State of M.P. and Others, .

4. Per contra, Mr. Vinay Harit, learned Deputy Advocate General appearing for the State/defendants would submit that concurrent finding recorded by two Courts below holding that the plaintiff has no title on the suit land, and therefore, he is not a person interested and not entitled for notice u/s 11(3) of the Act of 1960 is a finding of fact based on evidence and no interference is called for.

5. I have heard learned counsel appearing for the parties and perused the records of both the Courts below with utmost circumspection. Answer to substantial question of law:

6. In order to appreciate the controversy between the parties, it would be profitable to quote the definition of ''holder'' as defined in Section 2(h) of the Act of 1960 as well as Section 11(3) of the Act of 1960, which reads thus:--

"2. Definitions.--In this Act, the context otherwise requires.--(h) "holder" means a tenure holder or an occupancy tenant or a Government lessee of land within the-State and the expression "to hold land" or "holding land" shall be construed accordingly;"

"11. Preparation of statement of land held in excess of the ceiling are.--(1) ***

(2) ***

(3) The draft statement shall be published at such place and in such manner as may be prescribed and a copy thereof shall be served on the holder or holders concerned, the creditors and all other persons interested in the land to which it relates. Any objection to the draft statement received within thirty days of the publication thereof shall be duly considered by the competent authority who after giving the objector an opportunity of being heard shall pass such order as it deems fit."

7. A close reading of Section 11(3) of the Act of 1960 would show that the draft

statement shall be published at such place and in such manner as may be prescribed and a copy thereof shall be served on the following persons:--(i) holder or holders concerned, (ii) the creditors (iii) all other persons interested in the land to which it relates.

8. Admittedly and undisputedly, the plaintiff is not a ''holder'' of the land as defined in Section 2(h) of the Act of 1960 and he is also not a creditor.

9. Now, the question is whether plaintiff comes within the definition of the Section 11(3) of the Act of 1960, a person interested in the land to which it relates and complied in word. The person interested has not been defined under the Act of 1960. Though the person interested has not been defined under the Act of 1960, but in order to person interested within the meaning of Section 11(3) of the Act of 1960, a person must have some legal right, valid title or interest in the land to which it relates.

10. The plaintiff has claimed exclusive right, title and interest in the suit property on the basis of unregistered sale deed Exhibit P-1 dated 30/09/1956, in which, erstwhile owner of the land Smt. Rani Dhanraj Kunwar Devi has sold 50 acres of the land to Shri Baburam Agrawal, Shyam Sunder Agrawal and Smt. Maya Devi Agrawal by unregistered sale deed for consideration of Rs. 400/-.

11. It would be pertinent to mention here that proceeding initiated under the Act of 1960 for declaring excess land to be surplus land, the plaintiff has claimed the land on the basis of unregistered sale deed. The C.G. Ceiling on Agricultural Holdings Act, 1960 is a social welfare legislation enacted to make available to surplus land to the Government for distribution to the needy and landless person. The Supreme Court in case of Authorised Officer, Thanjavur and Another Vs. S. Naganatha Ayyar and Others, , while highlighting the object of Tamil Nadu Land Reforms (Fixation of Ceiling on Land) Act, 1961 held as under:--

"1.........the scheme of the Act designed for distributive justice in the field of agricultural land ownership, sufficient to disclose the purpose of the legislation, the mischief it intends to suppress, the reverse effect of the construction put on the key section (S. 22) in the judgment under appeal and the consequent stultification of the objective of the Ceiling Act. While dealing with welfare legislation of so fundamental a character as agrarian reform, the court must constantly remember that the statutory pilgrimage to ''destination social justice'' should be helped, and not hampered, by judicial interpretation.

2. The Ceiling Act, in its structure and process, follows the common pattern. The object is equitable distribution of land to the landless by relieving those who hold more than the optimum extent fixed by the law. The success of the scheme depends on maximisation of surplus land to be taken over by the State from large landholders. The strategy of fixing a severe ceiling on land holdings was expected to be paralysed by anticipatory stratagems by landholders and so the legislature sought to outwit them and clamped down preemptive restrictions on transfer whereby the surplus takeover would be sabotaged."

12. The Division Bench of Madhya Pradesh High Court in case of State of Madhya Pradesh Vs. Board of Revenue, Gwalior and Others, , has also considered the object of enacting the Act of 1960 and held that the in construing a provision in the Ceiling Act the broad objective of the Act has to be kept in view. The Division Bench held as under:--

"12........ The Ceiling Act is a social welfare legislation designed to implement the great objective of securing social justice enshrined in the Preamble and the Directive Principles of the Constitution. The object of the Ceiling Act is to make available surplus land to the Government for distribution to the needy. The rules of construction applicable to expropprietory legislation are not applicable here and language permitting the construction which best secures the object of the Ceiling Act must be preferred against others, which seek to defeat agrarian justice. Reference here may be made to Section 35 of the Act which provides for allotment of surplus land vesting in the State. u/s 35, surplus land vested in the State u/s 12 has to be allotted in Bhumiswami rights essentially to agricultural labourers and landless persons or to their societies in accordance with the priorities mentioned therein on payment of premium (payable in not more than twenty installments) equivalent to compensation payable in respect of such land. The very object of allotment of surplus land to agricultural labourers and landless persons on payment of premium equivalent to compensation shows that the compensation provided for in the Act was not intended to be so high as to be out of reach of the labourers and landless persons."

13. Section 5 of the Transfer of Property Act, 1882 ("the TP Act", for short) defines "transfer of property" as under:

"5. "Transfer of Property" defined-In the following sections "transfer of property" means an act by which a living person conveys property, in present or in future, to one or more other living persons, or to himself, [or to himself] and one or more other living persons, and ''to transfer property'' is to perform such act."

[In this section "living person" includes a company or association or body of individuals, whether incorporated or not, but nothing herein contained shall affect any law for the time being in force relating to transfer of property to or by companies, associations or bodies of individuals.]

14. Section 54 of the T.P. Act defines "sales" thus:

"54. ''Sale'' Defined.--''Sale'' is a transfer of ownership in exchange for a price paid or promised or part-paid and part-promised.

Sale how made.--Such transfer, in the case of tangible immovable property of the value of one hundred rupees and upwards, or in the case of a reversion or other intangible thing, can be made only by a registered instrument.

In the case of tangible immovable property of a value less than one hundred rupees, such transfer may be made either by a registered instrument or by delivery of the property."

15. Section 17 of the Registration Act, 1908 makes a deed of conveyance compulsorily registrable. I extract below the relevant portions of Section 17 of the Registration Act, 1908:

"Section 17 - Documents of which registration is compulsory--(1) The following documents shall be registered, namely:--

* * *

(b) other non-testamentary instruments which purport or operate to create, declare, assign, limit or extinguish, whether in present or in future, any right, title or interest, whether vested or contingent, of the value of one hundred rupees and upwards, to or in immovable property.

* * *

(1-A) The documents containing contracts to transfer for consideration, any immovable property for the purpose of section 53-A of the Transfer of Property Act, 1882 (4 of 1882) shall be registered if they have been executed on or after the commencement of the Registration and Other Related laws Amendment Act, 2001 and, if such documents are not registered on or after such commencement, then, they shall have no effect for the purposes of the said section 53-A."

16. It is thus clear that a transfer of immovable property by way of sale can only be by a deed of conveyance (sale deed). In the absence of deed of conveyance (duly stamped and registered as required by law), no right, title or interest in an immovable property can be transferred.

17. Admittedly, in the instant case, the suit property was allegedly transferred in favour of the plaintiff and two others by unregistered sale deed dated 30/09/1956, by which, the plaintiff has claimed title on the suit land and thereby person interested in land within the meaning of Section 11(3) of the Act of 1960.

18. Thus, keeping in view the Act of 1960 that has been enacted with an object of equitable distribution of the land to the landless person and further considering the fact that the original holder of the land/defendant No. 2 in his return filed before the Competent Authority under the Act of 1960; did not disclose the fact of alleged sale that too by unregistered sale deed in favour of the plaintiff and the Competent Authority has declared the suit land to be part of surplus land and in view of that unregistered sale deed, no right, title is conferred in favour of the plaintiff and person having no semblance of right/title in the suit land, cannot be held to be person interested within the meaning of Section 11(3) of the Act of 1960.

19. Further submission of the learned counsel for the plaintiff is that, after the said purchase, plaintiff''s name stood recorded in the revenue record, and therefore, he is a person interested within the meaning of Section 11(3) of the Act of 1960.

20. It is well-settled law that the entries in the Revenue Record does not confer

right, title and interest to the property and the Revenue Records are not documents of the title. Very recently, the Supreme Court in case of Union of India (UOI) and Others Vs. Vasavi Co-op. Housing Society Ltd. and Others, has clearly held that the entries in the Revenue Records are not proof of title. Paragraphs-17 and 20 of the report held as under:--

"77. This Court in several judgments has held that the revenue records does not confer title. In Corporation of the Corporation of the City of Bangalore Vs. M. Papaiah and Another, held that "it is firmly established that revenue records are not documents of title, and the question of interpretation of document not being a document of title is not a question of law." In Guru Amarjit Singh Vs. Rattan Chand and others, this Court has held that "that the entries in Jamabandi are not proof of title." In State of Himachal Pradesh Vs. Keshav Ram and others, this Court held that the entries in the revenue papers, by no stretch of imagination can form the basis for declaration of title in favour of the plaintiff.

20. We are of the view that even if the entries in the records of rights carry evidentiary value, that itself would not confer any title on the plaintiff on the suit land in question Ext. X-1 is Classer Register of 1347 which according to the trial court, speaks of the ownership of the plaintiff''s vendor''s property. We are of the view that these entries, as such, would not confer any title. Plaintiffs have to show, independent of those entries, that the plaintiff''s predecessors had title over the property in question and it is that property which they have purchased. The only document that has been produced before the court was the registered family settlement and partition deed dated 11.12.1939 of their predecessor in interest, wherein, admittedly, the suit land in question has not been mentioned."

21. Thus, in the light of ratio laid down by the Supreme Court in above-stated decisions and in view of the finding recorded in foregoing paragraphs that the plaintiff has neither acquired any title over the suit land nor have any semblance of legal right on the basis of mutation, it is held that plaintiff is not a person interested within the meaning of Section 11(3) of the Act of 1960.

22. Reliance placed by Mr. Kotecha in case of Saadat Mohammad Khan (supra) is clearly distinguishable as in that case right of Bhumiswami had accrued to the petitioner u/s 169 of the Code as bataidar, therefore, he was held to be person interested within the meaning of Section 11(3) of the Act of 1960.

22.1. Other decision relied upon by Mr. Kotecha, Bala 2014 (4) MPLJ 667 (supra) is also distinguishable as in that case suit land was mortgaged with Bank (Creditor) and petitioner purchased the same in public auction and without notice to petitioner, land was declared to be surplus land by the Competent Authority. The Madhya Pradesh High Court quashed the order of the Competent Authority in view of the fact that creditor was required to be noticed u/s 11(3) of the Act of 1960.

23. Thus, the trial Court as well as the First Appellate Court is absolutely and perfectly justified in holding that the plaintiff is not a person interested to be

entitled for notice u/s 11(3) of the Act of 1960. The finding recorded by two Courts below dismissing the suit is hereby confirmed. Thus, the substantial question of law is answered accordingly.

24. Resultantly, the second appeal deserves to and accordingly dismissed. No order as to cost(s). A decree be drawn-up accordingly.

