

(2010) 09 CHH CK 0034
In the Chhattisgarh High Court
Case No : Second Appeal No. 331 of 1993

Smt. Nanbutia and Another	Vs	APPELLANT
Smt. Manglinbai and Others		RESPONDENT

Date of Decision : 14-09-2010

Acts Referred:

Chhattisgarh Land Revenue Code (Amendment) Act, 1980 — Section 165(1), 165(6)
Civil Procedure Code, 1908 (CPC) — Section 9
Constitution of India, 1950 — Article 244
Madhya Pradesh Land Revenue Code, 1959 — Section 170, 170A, 170B, 170B(2), 257

Citation : (2011) 1 CGLJ 275

Hon'ble Judges : T.P. Sharma, J

Bench : Division Bench

Final Decision : Allowed

Judgement

T.P. Sharma, J.—By this second appeal, the Appellant has challenged the legality & propriety of the judgment and decree dated 28.4.1993 passed by the District Judge, Raigarh, in Civil Appeal No. 22A/92, dismissing the appeal filed against the judgment and decree dated 3.3.1392 and decreeing the suit passed by the Third Civil Judge Class-II, Raigarh, in Civil Suit No. 60A/87.

2. The present second appeal has been admitted for consideration on the following substantial question of law:

Whether the suit is barred by Section 257 Clause (I) of the M.P. Land Revenue Code, 1959?

3. As per pleadings of the parties, on 18.2.72 original Plaintiff Hariram predecessor-in-title of the Respondents purchased agricultural land bearing khasra No. 171 area 1.955 hectares and khasra No. 31/2 area 0.50 hectare and came into possession from Chitki predecessor-in-title of the Appellants. Chitki filed an application u/s 170-B of the C.G. Land Revenue Code, 1959 (for short "the Code") for declaration of the alleged transactions as null and void. Same was allowed and transactions were declared null and void vide order dated

10.1.1983 in Revenue Case No. 35/A-23/81 -82. Alleged purchaser Hariram has challenged the order by filing civil suit and has also claimed declaration of title. Original Respondent Chitki and after death of Chitki, the present Appellants have contested the case and by filing written statement, they have denied the claim of the Plaintiff and alleged that civil suit is barred under the provisions of Section 257 (I) of the Code. After providing opportunity of hearing to the parties, learned Third Civil Judge Class-II, Raigarh decreed the suit against the present Appellants. Same was challenged before the lower appellate Court and learned lower Appellate Court by affirming the judgment and decree has dismissed the appeal.

4. I have heard learned Counsel for the parties, perused the judgment and decree impugned, judgment and decree of the trial Court and records of the Courts below.

5. Learned Counsel for the Appellant vehemently argued that admittedly Chitki was a member of aboriginal tribe and in case of sale by aboriginal tribe of his land, purchaser was required to notify his possession over the property, but the present purchaser/Plaintiff had not notified his possession. Thereafter proceeding u/s 170-B of the Code was initiated and finally transaction was declared null and void by the competent authority. The order was challengeable before the revenue authority in appeal or revision but original Plaintiff Hariram has filed civil suit against the decision u/s 170-B of the Code. Learned Counsel further argued, that in the light of bar created u/s 257 (I) of the Code, the suit was not maintainable and the Court below has illegally decreed the suit and thereby committed illegality.

6. On the other hand, learned Counsel for the Respondents supported the judgment and decree impugned and argued that the fact is not disputed that Chitki was a member of aboriginal tribe. Original Plaintiff Hariram has not notified his possession over the property to the competent authority. Proceeding was initiated u/s 170-B of the Code which was allowed and the alleged transaction was declared void. Learned Counsel further argued that the Plaintiff has challenged the legality and propriety of the decision of the revenue authority before the Civil Court. Section 170-B of the Code was amended vide Act 15 of 1980 which came into force from 24.10.1980. Subsequently, Clause (1) of Sub-section (2) of Section 170-B of the Code was amended vide Amendment Act No. 1 of 1988 which came into force from 5.1.1988. As per Clause (1) of Section 257 of the Code, civil suit relating to proceeding u/s 170-A of the Code was barred and the aforesaid provisions was amended by amending Act No. 18 of 1984, The provision of Clause (I-1) was inserted by Act No. 38 of 1995 which came into force from 15.12.1995. On the date of alleged transaction of sale viz., on 18.2.1972 Clause (I-1) was not in force, therefore, transaction relating to that day was not barred under the provisions of Section 257 (1-1) of the Code.

7. In the present case, only one substantial question of law has been formulated for consideration whether the suit is barred by Section 257 Clause (I) of the M.P.

Land Revenue Code 1959. The provisions of Section 170-B of the Code have been inserted vide Act of 15 of 1980 w.e.f. 10.10.1980. The provision was further amended the word within one year and was subsequently amended and substituted by the words within two years vide Act No. 38 of 1995 which came into force from 9.12.1995. Section 257 was amended and Clause (I-1) was added as follows:

(I-1) any matter covered u/s 170-B.

8. Definitely, amendment of Section 257 of the Code by inserting new Clause (I-1) which came into force on 9.12.1995 was not retrospective and was not applicable and available to the parties on the date of filing of the suit i.e. on 6.4.1983, but the provisions of Section 170-B of the Code was in force on 6.4.1983 on the date of filing of the suit.

9. As per pleadings of the original Plaintiff, order passed by the Sub Divisional Officer u/s 170-B of the Code casts cloud over his title, therefore, he has filed civil suit for declaration of such order as null and void and also claimed relief for declaration of such order null and void and for declaration of title on the basis of alleged sale deed.

10. As per pleadings of the parties, sale deed was executed on 18.2.1972 by a person member of aboriginal tribe. The provision of Section 170-B of the Code is existing till today which reads as under:

770-5. Reversion of land of members of aboriginal tribe which was transferred by fraud.--(1) Every person who on the date of commencement of the Chhattisgarh Land Revenue Code (Amendment) Act, 1980 (hereinafter referred to as the Amendment Act of 1980) 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 endings on the date of the commencement of Amendment Act, 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.

(2) If any person fails to notify the information as required by Sub-section (1) within the period specified therein it shall be presumed that such person has been in possession of the agricultural land without any lawful authority and the agricultural land shall, on the expiration of the period aforesaid revert to the person to whom it originally belonged and if that person be dead, to his legal heirs.

(2-A) If a Gram Sabha in the Scheduled area referred to in Clause (1) of Article 244 of the Constitution finds that any person, other than a member of an aboriginal tribe, is in possession of any land of a Bhumiswami belonging to an aboriginal tribe, without any lawful authority, it shall restore the possession of such land to that persons to whom it originally belonged and if that person is

dead to his legal heirs:

Provided that if the Gram Sabha fails to restore the possession of such land, it shall refer the matter to the Sub-Divisional Officer, who shall restore the possession of such land within three months from the date of receipt of the reference.

(3) On receipt of the information under Sub-section (1), the Sub-Divisional Officer shall make such enquiry as may be deemed necessary about all such transactions of transfer and if he finds that the member of aboriginal tribe has been defrauded of his legitimate right he shall declare the transaction null and void and pass an order revesting the agricultural land in the transferor and, if he is dead, in his legal heirs.

[(3) On receipt of the information under Sub-section (1) the Sub-Divisional Officer shall make such enquiry as may be necessary about all such transactions of transfer and if he finds that the member of aboriginal tribe has been defrauded of his legitimate right he shall declare the transaction null and void and:

(a) Where no building or structure has been erected on the agricultural land prior to such finding pass an order revesting the agricultural land in the transferor and if he be dead, in his legal heirs,

(b) Where any building or structure has been erected on the agricultural land prior to such finding, he shall fix the price of such land in accordance with the principles laid down for fixation of price of land in the Land Acquisition Act, 1894 (No. I of 1894) and order the person referred to in Sub-section (1) to pay to the transferor the difference, if any, between the price so fixed and the price actually paid to the transferor:

Provided that where the building or structure has been erected after the 1st day of January, 1984 the provisions of Clause (b) above shall not apply:

Provided further that fixation of price under Clause (b) shall be with reference to the price of registration of the case before the Sub-Divisional Officer.

11. As per provisions of Section 170-B of the Code, in case any transaction between the period commencing on the 2nd October, 1959 and ending on the date of the commencement of the Act, 1980 i.e. on 10.10.1980, a person in possession of agricultural land belonged to a member of tribe which has been declared to be an aboriginal tribe under Sub-section (6) of Section 165 of the Code is required to notify his possession to Sub Divisional Officer that how he has come in possession of such land, failing such, Sub Divisional Officer shall presume that such person has been in possession of the agricultural land without any lawful authority and the agricultural land shall, on the expiration of the period aforesaid revert to the person to whom it originally belonged and if that person be dead, to his legal heirs. Specific procedure has been prescribed u/s 170-B of the Code and a person not a member of Scheduled Tribe if he was in

possession of the agricultural land originally belonged to a member of tribe was under obligation to notify such possession to the Sub Divisional Officer.

12. In the present case, admittedly original Plaintiff has not notified his possession to the Sub Divisional Officer. Inquiry was made by the Sub Divisional Officer in Revenue Case No. 35/A-23/81-82 and proceeding was quashed by the Sub Divisional Officer. Order passed under the provisions of Section 170-B of the Code was appealable and Second Appeal was barred in terms of Section 170-B of the Code, but still revision against the order passed by the first appellate Court was maintainable u/s 50 of the Code. It shows complete procedure and opportunity for inquiry, investigation and opportunity of hearing to the parties.

13. Definitely, Clause (1-1) of Section 257 of the Code relating to bar for exercising jurisdiction by Civil Court is created vide Act No. 38 of 1995 which came into force from 9.12.1995, but the provisions of Section 50 of the Code was in force on the date of transaction, date of filing civil suit and date of possession by the Civil Court. Section 257 of the Code creates bar for entertaining suit by the Civil Court relating to the matters which the State Government, Board or any Revenue Officer is empowered to determine, decide or dispose of the matters under the Code and also create bar relating to the matters included in Clause (a) to (z-2) appended in Section 257 of the Code.

14. While dealing with the exclusion of jurisdiction of the civil Courts by any institute, the Supreme Court in the matter of State of Andhra Pradesh Vs. Manjeti Laxmi Kantha Rao (D) By L.rs. and Others, held that the normal rule of law is that civil courts have jurisdiction to try all suits of civil nature except those of which cognisance by them either expressly or impliedly excluded as provided u/s 9 CPC but such exclusion is not readily referred and the presumption to be drawn must be in favour of the existence rather than exclusion of jurisdiction of the civil courts to try a civil suit. The test adopted in examining such a question is (i) whether the legislative intent to exclude arises explicitly or by necessary implication, and (ii) whether the statute in question provides for adequate and satisfactory alternative remedy to a party aggrieved by an order made under it. Para 5 of the said judgment reads as under:

5. The normal rule of law is that civil courts have jurisdiction to try all suits of civil nature except these of which cognisance by them either expressly or impliedly excluded as provided u/s 9 CPC but such exclusion is not readily referred and the presumption to be drawn must be in favour of the existence rather than exclusion of jurisdiction of the civil courts to try a civil suit. The test adopted in examining such a question is (i) whether the legislative intent to exclude arises explicitly or by necessary implication, and (ii) whether the statute in question provides for adequate and satisfactory alternative remedy to a party aggrieved by an order made under it. In Dhulabhai and Others Vs. The State of Madhya Pradesh and Another, it was noticed that where a statute gives finality to the orders of the Special Tribunals, jurisdiction of the civil courts must be held to be excluded if there is adequate remedy to do what the civil courts would

normally do in a suit and such provision, however, does not exclude these cases where the provisions of the particular Act have not been complied with or the statutory tribunal has not acted in conformity with the fundamental principles of judicial procedure.

15. While dealing with the exclusion of jurisdiction of the Civil Court relating to the matters appealable u/s 170-B of the Code, the High Court of Madhya Pradesh in the matter of *Dhumaniya v. Harisingh and Ors.* 2001 RN 85 held that the suit against the order passed by the Sub Divisional Officer u/s 170-B of the Code cannot be decided on merits of the matter. Civil Court has to see whether an inquiry was conducted as provided u/s 170-B of the Code or not. While placing reliance in the matter of *State of Andhra Pradesh Vs. Manjeti Laxmi Kantha Rao (D) By L.rs. and Others*, , the High Court of Madhya Pradesh held that Civil Court has no jurisdiction to decide the case on merits but has only jurisdiction to see whether an inquiry was conducted as provided u/s 170-B of the Code or not.

16. While dealing with the question of exclusion of jurisdiction in case of matters triable by Revenue Court, a Division Bench of the High Court of Madhya Pradesh in the matter of *Nathuram Arjun Vs. Siyasharan Harprasad*, held that in case private right of way of cultivator through the field of another for access to his field, the revenue Courts are having exclusive jurisdiction to decide the matter and decision of revenue authorities under this section is exclusive and suit to enforce the common law right i.e., under Easements Act, does not lie.

17. While dealing with the question of exclusion of jurisdiction of the Civil Court, the Supreme Court in the matter of *K.S. Venkataraman and Co. Vs. State of Madras*, held that if a statute imposes a liability and creates an effective machinery for deciding questions of law or fact arising in regard to that liability, it may, by necessary implication, bar the maintainability of a civil suit in respect of the said liability. A statute may also confer exclusive jurisdiction on the authorities constituting the said machinery to decide finally a jurisdictional fact thereby excluding by necessary implication the jurisdiction of a Civil Court in that regard.

18. While dealing with the same question, the Supreme Court in the matter of *State of Kerala Vs. Ramaswami Iyer and Sons*, held that after referring to earlier cases, the view was reiterated that where the legislature sets up a special tribunal to determine questions relating to rights or liabilities which are the creation of a statute, the jurisdiction of the Civil Court would be deemed excluded by implication

19. In the light of legal propositions enumerated in the matters of *State of Andhra Pradesh Vs. Manjeti Laxmi Kantha Rao (D) By L.rs. and Others*, , *Nathuram Arjun Vs. Siyasharan Harprasad*, , *K.S. Venkataraman and Co. Vs. State of Madras*, and *N. Ramaswami Iyer and Sons (supra)*, exclusion of jurisdiction of the civil Court is not readily to be inferred. The Courts are required to examine the provisions of law namely, (i) whether it explicitly or by necessary

implication intent to exclude the jurisdiction of the civil Court and (ii) does the statute provide adequate remedy in case of grievance against order made under the statute.

20. Section 170-B of the Code provides procedure for inquiry relating to transaction hit by Section 170-B of the Code. Order made u/s 170-B of the Code is appealable under the provisions of Section 44 of the Code. Second appeal against such order is barred, but revision against the order passed by the first appellate Court is maintainable in accordance with Section 50 of the Code which shows that legislature has taken proper care and has provided adequate remedy in case of grievance against the order made u/s 170-B of the Code. Section 170-A of the Code deals with transaction relating to the land between aboriginal tribe and the person not belonging to aboriginal tribe and competent authority is competent to pass the order for return of the land and restore the possession after making detail inquiry. In continuance of procedure prescribed u/s 170-A of the Code, additional procedure/remedy has been provided u/s 170-B of the Code. As per Clause (I) of Section 257 of the Code, jurisdiction of the civil Court is barred relating to the matter covered u/s 170-B of the Code, although in the year 1995 by amending Act No. 38 of 1995 bar has been created relating to Section 170-B of the Code. Section 257 of the Code is in two parts. Principle provisions exclude jurisdiction of the civil Court relating to the matter triable by the revenue officers and authorities under the Code and Clause (a) to (z-2) appended in Section 257 of the Code, especially creates bar in exercising the jurisdiction by the civil Court. The section confers exclusive jurisdiction to the Revenue Courts in respect of certain matters as enumerated in this section. The section is drafted in a peculiar manner. It keeps intact jurisdiction of civil Court in respect of following:

- (i) Where jurisdiction is either conferred on civil court or it is stated that a civil suit will be competent in respect of certain matter; and
- (ii) Where jurisdiction is conferred on civil Court under any other provision of law specifically in respect of certain matter.

Under this section, jurisdiction of civil Court is excluded in respect of the following:

- (i) such matters which the State Government, the Board or any Revenue Officer is competent to decide under the provisions of this Code; and
- (ii) matters which are enumerated in Clauses (a) to (z-2) of this Section.

Clause (I) of Section 257 read with principle provision of Section 257 of the Code creates bar in exercising the jurisdiction of the civil Court relating to the matter covered u/s 170-B of the Code.

21. Although Clause (1-1) of Section 257 of the Code was not amended or inserted before 1995, but principle of Section 257 of the Code was in force on the date of transaction, date of filing of suit and date of possession by the Civil

Court which creates bar in exercising the jurisdiction by the Civil Court in the matter in which the State Government, Board or Revenue Officers is by the Court empowered to determine, decide and dispose of. The Revenue Officers are empowered to determine, decide and dispose of the matters relating to Section 170-B of the Code, especially relating to transaction between the periods of 2.10.1959 till 10.10.1980. The Sub Divisional Officer has decided the case in accordance with the provisions of the Code. While decreeing the suit and dismissing the appeal, both the Courts below have not considered the provisions of Sections 170,170-A and principle provisions of Section 170-B of the Code and have decreed the suit and dismissed the appeal only on the ground that Section 170-B of the Code does not create bar in exercising the jurisdiction of the civil Court, but have not considered the main clause of Section 257 of the Code and complete procedure provided u/s 170-B of the Code, thereby committed illegality.

22. Consequently, substantial question of law formulated for decision of the appeal is decided as positive. On the basis of decision on the substantial question of law formulated for the decision of the appeal, the appeal is allowed. Judgment and decree of both the Courts below are hereby set aside. Considering the peculiar facts that instead of filing the appeal and revision provided under the Code, the present Respondents have filed civil suit, they may challenge the order passed by the Sub Divisional Officer before appellate or revisional forum and if appeal or revision is filed, then delay in filing such appeal or revision may be considered in the light of pendency of civil suit and civil appeal. Parties shall bear their own cost.

23. Advocate fee as per schedule.

24. A decree be drawn accordingly.