

SUPREME COURT OF INDIA

Durjan Singh

Vs.

Vir Singh

C.A.No.53 of 2008

(R.Banumathi and Indira Banerjee,JJ.,)

06.09.2018

JUDGMENT

R.Banumathi,J.,

1. This appeal arises out of judgment and order dated 11th April 2005 and dated 29th July, 2005 passed by the High Court of Madhya Pradesh at Jabalpur by which the High Court has set aside the order passed by the District Collector who held that the transaction was a loan transaction.

2. Case of the appellants is that the predecessors of the appellants as well as respondent NO(s).7 and 8 obtained a loan of Rs.400/- from the father and uncle of the first respondent and in security of the said loan executed a sale deed dated 23rd November, 1953 in the name of the first respondent for 2/3rd area of Khasra No(s).315, 316/2 and 313/3 i.e. 8.04 acres out of total 12.03 acres. It is the further case of the appellants that a further loan of Rs.200/- was taken and against the security of the said loan, an agreement to sell was executed for the remaining 1/3rd i.e. 1.28 acres of land bearing Khasra No.129/2.

3. After coming into force of the Madhya Pradesh Samaj Ke Kamjor Vargon Ke Krishi Bhumi Dharakon Ka Udhara Dene Walon Ke Bhumi Hadapane Sambandhi Kuchakron Se Paritran Tatha Mukti Adhinyam, 1976 (For short, M.P. Adhinyam 1976). The predecessors of the appellants moved an application under Section 5 of the M.P. Adhinyam 1976 with a prayer to set aside the sale deed, allegedly executed in security of the loan, and to declare the same as null and void. Upon examination of the report, about the transaction from the Sub-Registrar and the statement of witness, S.D.O., Sagar, allowed the application by holding that the transaction/sale deed is within the prohibited transaction of Section 4 of the M.P. Adhinyam 1976, declared the sale deed dated 23rd November, 1953 as null and void and directed the first respondent to hand over possession of the disputed lands to the appellants. In appeal, the order of the S.D.O. was affirmed by the District Collector.

4. Being aggrieved, the respondents herein preferred writ petition before the High Court challenging the order of the District Collector. The High Court observed that in order to

attract the provisions of Section 4 of the M.P. Adhinyam 1976, it is necessary for the appellants to prove that they were not holding the land exceeding eight hectares of unirrigated land or four hectares of irrigated land within the State whether as a Bhumiswami or as a occupancy tenant or a Government lessee.

The High Court simply held that in order to set the law in motion the provision of Section 4 of M.P. Adhinyam 1976, it is to be proved that the respondents thereon, appellants herein, are of weaker sections, as indicated in Section 4 of M.P. Adhinyam 1976. The High Court held that in the application before the Sub-Divisional Officer there was no entry in the prescribed format or there were no averments to show that the predecessors of the appellant/appellants were having less than eight hectares of unirrigated land/four hectares of irrigated land within the State and in the absence of such averments in the application, order of the District Collector passed under the M.P. Adhinyam 1976 was not maintainable. Being aggrieved the appellants are before us.

5. We have heard Mr. Akshat Shrivastava, learned counsel appearing for the appellants and Ms. Pragati Neekhara, learned counsel appearing for respondent NO.1 and Mr. Rajesh Srivastava, learned counsel appearing for the respondents-State and considered the impugned order(s) and the materials on record.

6. Even at the very outset, it is to be pointed out that the High Court has not examined the crucial points that were raised in the writ petition, namely:- (i) Whether M.P. Adhinyam 1976 (appointed date of which was 1st January, 1971) would be applicable to a transaction dated 23rd November, 1953, entered into prior to the appointed day, which is the subject-matter in the present case.; and (ii) Whether the transaction in-question dated 23rd November, 1953 would or would not come within the purview of the M.P. Adhinyam 1976 and whether the alleged loan, if any, for which the sale deed alleged to be executed was subsisting on the date of the appointed day. In our considered view, the High Court should have examined these questions of law. Only after considering these two questions of law, in our view, the High Court could have examined the question whether the appellants are "holders of agricultural land" within the meaning of Section 2(c) of the M.P. Adhinyam 1976 to examine whether the appellants are holding less than eight hectares of unirrigated land or four hectares of irrigated land within the State whether as a Bhumiswami or as a occupancy tenant or a Government lessee.

7. Be that as it may, from the impugned order it appears that the High Court has proceeded on the basis of the submission made on behalf of the writ petitioners. It is the case of the appellants that the original records were not available and the High Court had no occasion to look into the application of the appellants which was never produced before the High Court. The impugned order also does not indicate whether the application of the appellants had actually been perused.

8. In the result, the impugned order(s) is set aside and the matter is remitted back to the High Court for considering the matter afresh after affording sufficient opportunity to both the parties as well as State of Madhya Pradesh and decide the same in accordance with law

preferably within a period of six months from the date of receipt of copy of this judgment. Status quo, as on today, be continued till the disposal of the matter by the High Court.

9. The appeal is accordingly disposed of.