

NON-REPORTABLE

**IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION**

CIVIL APPEAL NO.....OF 2023

(Arising out of Special Leave Petition (Civil) No.6061 of 2019)

Khora (Dead)
Through Legal Heirs & Ors. ... Appellant(s)

Versus

Mohar Sai & Ors. ...Respondent(s)

J U D G M E N T

V. Ramasubramanian, J.

1. Challenging the judgment and decree passed by the High Court of Chhattisgarh in a second appeal, confirming the concurrent judgment and decrees of the Trial Court and the First Appellate Court, the defendants have come up with the above appeal.

2. We have heard the learned counsel for the parties.

3. Respondent No.1 herein filed a suit in Civil Suit No.11-A/95, on the file of the Third Civil Judge Class-2, Ambikapur, Sarguja, M.P., for declaration of title and permanent injunction in respect of a land purchased by him under a deed of sale dated 02.04.1981.

Respondent No.1 purchased the said land from one Phool Chand Cherwa. The seller Phool Chand belonged to the Scheduled Tribe. Though respondent No.1 was also a Scheduled Tribe, the appellants contended that the purchase was on behalf of his master who was not a Tribal and that the purchase was actually a *benami* transaction for the benefit of a non-tribal. The Trial Court rejected the stand taken by the appellants and decreed the suit and the decree came to be confirmed both by the First Appellate Court and the High Court. Therefore, defendant Nos. 1 and 2 have come up with the above appeal.

4. The main ground of attack to the impugned judgment is **(i)** that the question of validity of the sale has already been decided in the proceedings before the Revenue Authorities and hence operated as *res judicata*; and **(ii)** that there was a clear bar of jurisdiction of the civil court, under Section 257 of the Chhattisgarh Land Revenue Code, 1959 (for short "*the Code*").

5. The first ground of attack is premised on an order passed by the Departmental Officer, Ambikapur on 03.02.1983, in terms of Section 170 of the Code declaring the sale deed dated 02.04.1981 executed by Phool Chand in favour of respondent No.1 (plaintiff) to be fraudulent and *benami* and in violation of Section 165 of the

said Code. It appears that the order of the Departmental Officer dated 03.02.1983 was confirmed by the Appellate Authority by an order dated 28.03.1984. The same was confirmed by the Board of Revenue/Tribunal on 14.03.1990, in a revision petition filed by respondent No.1. The challenge made to all these three orders, by respondent No.1 by way of a writ petition, also failed with the dismissal of the writ petition for want of prosecution.

6. In the light of the aforesaid facts it is contended that the proceedings under the Land Revenue Code have attained finality in the year 1991 and that the proceedings before the Civil Court initiated in 1995 were barred by *res judicata*.

7. But we do not think so. Admittedly respondent No.1 who filed the suit on the strength of the sale deed executed in his favour was also a tribal person. In such circumstances, the question as to whether respondent No.1 was only the ostensible owner and not the beneficial owner could not have been gone into by the Revenue Authorities. It is true that under Section 165(6c), the Collector is entitled to go into the question whether the transaction is spurious or *benami*. But the power conferred by Section 165(6c) is to be exercised while passing an order under sub-section (6a), granting or refusing to grant permission or under sub-section (6b), ratifying

or refusing to ratify the transaction. Such a power is not expressly extended to avoidance of transfers under Section 170.

8. Moreover, sub-sections (6a) to 6(f) appear to have been inserted by a Notification dated 15.04.1981, which was subsequent to date of execution of the sale deed in question. When the transferee himself was a tribal person and he himself had come to Court seeking a declaration that his purchase was genuine and valid, the Court is certainly entitled to hold an enquiry. In fact, the Trial Court framed an issue on the question of possession and found that respondent No.1 had constructed a house on the property and that his sons are living there. They were also domesticating cattle in the said property. An attempt was made by the appellants herein to show that the transaction was hit by Benami Transaction (Prohibition) Act, 1988. That was also rejected by the Trial Court. Since all these questions could not have been gone into by the Revenue Authorities, the findings recorded by them could not have operated as *res-judicata*.

9. As rightly pointed out by the High Court, the bar of jurisdiction under Section 257 of the Code relates to any matter which the Authorities are empowered to determine/decide or dispose of. The question whether the purchase by a tribal was a

sham and nominal transaction for the benefit of a non-tribal, may not fall exclusively within the jurisdiction of the Authorities. Therefore, the High Court was right in rejecting the said contention.

10. In fact, the case set up by the appellants was that Phool Chand was an employee of defendant No.3 and was addicted to liquor and that defendant No.3 got the sale executed without paying proper consideration, when Phool Chand was in an inebriated condition. But the Trial Court found on evidence that Phool Chand was working as a Clerk in the Nagar Palika.

11. In view of the above, we find no grounds to interfere with the concurrent judgment and decrees of all the three Courts below. Hence the Civil Appeal is dismissed. There will be no order as to costs. Pending application(s), if any, shall also stand disposed of.

.....**J.**
(V. RAMASUBRAMANIAN)

.....**J.**
(PANKAJ MITHAL)

New Delhi;
February 20, 2023