

**(2020) 11 CHH CK 0008**

**Chhattisgarh High Court**

**Case No:** Second Appeal No. 411 Of 2009

Guda And Ors

APPELLANT

Vs

Ramchand And Ors

RESPONDENT

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**Date of Decision:** Nov. 25, 2020

**Acts Referred:**

- Chhattisgarh Land Revenue Code, 1959 - Section 170(B), 257(1)
- Code Of Civil Procedure 1908 - Section 47

**Hon'ble Judges:** Sanjay K. Agrawal, J

**Bench:** Single Bench

**Advocate:** J.K. Saxena, A.N. Pandey, Ravi Kumar Bhagat

**Final Decision:** Dismissed

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### **Judgement**

Sanjay K. Agrawal, J

1 This second appeal preferred by the defendants / appellants herein was admitted for hearing by formulating the following substantial question of law:

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Whether the first appellate Court is justified in decreeing the suit in favour of the plaintiff to be title holder ignoring the fact that order of the Sub

Divisional Officer, Bagicha, passed under Section 170(B) of the Chhattisgarh Land Revenue Code, 1959 on 09.12.1996 (Ex-D/1), was not challenged

by the plaintiff before the trial Court and that order has become final and thereby committed illegality?

(For the sake of convenience, parties would be referred hereinafter as per their status shown and ranking given in the suit before the trial Court.)

2. The suit property was originally held by Manglu and Hagru " fathers of defendants No.1 and 2, respectively. They sold the suit property in favour of the father of the plaintiffs " Ghanshyam by registered sale deed dated 1-5-1958 vide Ex.P-1. Later-on, at the instance of the defendants,

proceeding under Section 170-B of the Chhattisgarh Land Revenue Code, 1959 (for short, "the Code"™) was initiated and ultimately, by order of

the Sub-Divisional Officer dated 9-12-1996 vide Ex.D-1, the sale was declared void in exercise of power under Section 170-B of the Code.

Thereafter, the plaintiffs filed suit on 12-9-2006 stating inter alia that they are title holders and possession holders of the suit land and the order passed

by the Sub-Divisional Officer on 9-12-1996 is without jurisdiction as the Chhattisgarh Land Revenue Code, 1959 came into force on 2-10-1959,

whereas the transaction is of 1-5-1958, therefore, the Sub-Divisional Officer could not have declared the transaction void in exercise of power under

Section 170-B of the Code and therefore decree of declaration of title and permanent injunction be granted in their favour.

3. Resisting the suit, the defendants filed written statement stating inter alia that the order of the Sub-Divisional Officer has not been challenged in the

civil suit and no declaration has been sought seeking setting aside of the said order, therefore, the order of the SDO has become final and the revenue

court has exclusive jurisdiction of the matter and jurisdiction of the civil court is barred in view of Section 257(l-1) of the Code, as such, the suit

deserves to be dismissed.

4. The trial Court upon appreciation of oral and documentary evidence available on record dismissed the suit holding that the order of the SDO dated

9-12-1996 (Ex.D-1) has become final as it has not been questioned before any competent revenue authority. On appeal being preferred by the

plaintiffs, the first appellate Court reversed the judgment and decree of the trial Court holding that the Code came into force with effect from 2-10-

1959, whereas the transaction has been made on 1-5-1958, therefore, the order of the SDO is without jurisdiction and as such, the same need not be

challenged and granted decree of declaration of title and permanent injunction in favour of the plaintiffs against which this second appeal has been

preferred by the defendants in which substantial question of law has been framed which has been set-out in the opening paragraph of this judgment.

5. Mr. J.K. Saxena, learned counsel appearing for the appellants herein / defendants, would submit that the first appellate Court is absolutely

unjustified in holding that the SDO has no jurisdiction to pass the order dated 9-12-1996 (Ex.D-1), the order of the SDO is not challenged and even if it

is held that it is without jurisdiction, yet the plaintiffs have not sought the cancellation of sale deed by seeking declaration of the same as void and in

absence of that, the order of the SDO has become final and as such, the first appellate Court could not have decreed the suit.

6. Mr. A.N. Pandey, learned counsel appearing for respondents No.1 to 3 herein / plaintiffs, would submit that since the Code came into force with

effect from 2-10-1959 and impugned transaction vide Ex.P-1 is dated 1-5-1958, therefore, the provisions contained in the Code i.e. Section 170-B

would not be applicable, as such, the order of the SDO dated 9-12-1996 was wholly without jurisdiction and without authority of law and therefore

seeking cancellation of the same is not at all required, as a void order need not be set aside, as such, the second appeal deserves to be dismissed.

7. I have heard learned counsel for the parties and considered their rival submissions made herein-above and also went through the records with

utmost circumspection.

8. Admittedly, the plaintiffs' father " Ghanshyam purchased the suit property from the father of defendants No.1 & 2 on 1-5-1958 vide Ex.P-1

and came into possession of the same, thereafter, at the instance of the defendants, proceeding under Section 170-B of the Code was initiated and the

order reverting the land was passed in favour of the defendants by the SDO on 9-12-1996 vide Ex.D-1. The Code came into force with effect from 2-

10-1959 and Section 170-B of the said Code would be applicable only for the transactions commencing from 2-10-1959 to 24-10-1980.

9. It is well settled by a Division Bench of this Court in the matter of Yadram (dead) through LRs. Smt. Yamuna Bai and others v. State of C.G. and

others 2015(5) C.G.L.J. 402 (DB) that Section 170-B of the Chhattisgarh Land Revenue Code, 1959 will apply to transactions done between 2-10-

1959 and 24-10-1980 ONLY. It has been held in paragraphs 17 and 19 of the report as under: -

¶17. In the present case, law is amended with limited retrospective effect. Plain reading of Section 170-B of the Code as amended covers the

transaction made between 2-10-1959 till 24-10-1980 and not the transaction made prior to 2-10-1959. The language of Section 170-B of the Code is

plain and unambiguous and it is not permissible to deploy rules of interpretation to attribute any other meaning to the words used by the legislature, that

those which naturally flow from it. If the plain words of Section 170-B of the Code are interpreted in such a way as to assign its meaning other than

what is written in it, that is, if the Section is read to apply to transactions done prior to 2-10-1959 despite specific stipulation in the Section that it will

apply to transactions done on and after 2-10-1959, then such an interpretation will create new obligations and duties disturbing the vested rights which,

normally, should not be done by resorting to interpretation. Therefore, on the face of the plain and unambiguous wordings of Section 170-B of the

Code, we are unable to subscribe to any view other than the one that it is restricted in its application to the transactions done between 2-10-1959 and

24-10-1980 only.

(s) In view of the legal opinion we have formed regarding the applicability of Section 170-B of the Code, we answer the question referred that the

provisions of Section 170-B of the Code and Act No.15 of 1980 (with effect from 24-10-1980) will apply in respect of transaction involving transfer /

acquisition of right by a non-tribal over a land, before such acquisition of title or interest or transfer, belonged to member of tribe who has been

declared to be an aboriginal under sub-section (6) of Section 165 of the Code from the commencement of the Chhattisgarh Land Revenue Code, 1959

i.e. 2-10-1959 till commencement of the Amendment Act, 1980 i.e. 24-10-1980.¶

10. As such, it is quite vivid that Section 170-B of the Code is applicable only to the transactions entered into between 2-10-1959 and 24-10-1980 and

the person who came into possession of land pursuant to the transaction between 2-10-1959 and 24-10-1980 is required to furnish information within

two years as to how he came in possession of the suit land failing which the consequences stated in Section 170-B of the Code would ensue. As such,

in the instant case, the SDO did not have jurisdiction to initiate proceeding under Section 170-B of the Code as the transaction in question vide Ex.P-1

is prior to 2-10-1959 i.e. of 1-5-1958 (Ex.P-1).

(k) The submission of the defendants is that the plaintiffs did not question and did not seek declaration that the order of the SDO is void, therefore,

decree could not have been granted by the first appellate Court.

(l) Now, the question would be, whether the order, which is void ab initio, is required to be cancelled?

(m) The Supreme Court in the matter of Mahadeo Prasad Singh and another v. Ram Lochan and others (1980) 4 SCC 354 has clearly held that if the

sale is nullity, it does not need setting aside. It was further held that decree passed by the Court without jurisdiction is a nullity and its invalidity could

be set up whenever it is sought to be enforced or relied upon, even at the stage of execution, and even in collateral proceedings. It was observed in

paras 33, 34 and 35 of the report as under: -

“33. Once we come to the conclusion that the sale in question was totally null and void, the alternative contention of the appellants with regard to

the suit being barred by Section 47 of the Code of Civil Procedure, does not survive.

(hh) This is not a case of an irregular or voidable sale which continues to subsist so long as it is not set aside, but of a sale which was entirely without

jurisdiction. It was non est in the eye of law. Such a nullity does not from its very nature, need setting aside.

As pointed out by this Court in Kiran Singh v. Chaman Paswan AIR 1954 SC 340 :

“ it is a fundamental principle, well established that a decree passed by a court without jurisdiction, is a nullity; and that its invalidity could be set up

whenever it is sought to be enforced or relied upon, even at the stage of execution, and even in collateral proceedings”.

(n) In the matter of Prem Singh and others v. Birbal and others (2006) 5 SCC 353, it has been held by their Lordships of the Supreme Court that when

a document is valid, no question arises of its cancellation. When a document is void ab initio, a decree for setting aside the same would not be

necessary as the same is non est in the eye of the law, as it would be a nullity.

(o) At this stage, Mr. Saxena, learned counsel for the appellants herein / defendants, would submit that the revenue court has exclusive jurisdiction in the matter of Section 170-B of the Code by virtue of Section 257(l-1) of the Code and the civil court has no jurisdiction to consider the issue. This argument deserves to be rejected in view of the decision rendered by this Court in the matter of Dhanajiram and another v. Praveen Kumar and others 2014(2) C.G.L.J. 334 in which it has been held by this Court relying upon the judgment of the Supreme Court in the matter of Dhulabhai v. State of M.P. AIR 1969 SC 78 and the decision of the M.P. High Court in the matter of Dhumaniya v. Harisingh and others 2001 RN 85 that civil court can examine whether basic fundamental principles of judicial process have been followed or not by competent authority while passing the order and held as under: -

¶12. In view of the aforesaid legal position in spite the bar created under section 257(1)(L-1) of the Code against orders passed by the Revenue Authorities under section 170-A and 170-B of the Code in their exclusive jurisdiction even then the civil Court had jurisdiction to entertain and consider the matter up to the extent whether the authority concerned has complied with the prescribed procedure or not while holding the enquiry and passing the order. But such jurisdiction is limited as laid down in the case of Dhulabhai (supra). The civil Court cannot consider the questions decided by such revenue authorities on merits under their exclusive jurisdiction. Thus, it is held that the civil Court has jurisdiction to entertain such suit up to the aforestated extent. ¶

16. Reverting to the facts of the case finally, it is quite vivid that since the transaction in question is of 1-5-1958 (Ex.P-1) and the Code came into force with effect from 2-10-1959, therefore, the SDO would have no jurisdiction to pass order under Section 170-B of the Code as that provision would not be invocable at the instance of the defendants and therefore the order passed by the SDO on 9-12-1996 (Ex.D-1) is absolutely without jurisdiction and without authority of law and it is void from inception, as such, it was not required to be questioned specifically and setting aside of that order was not required to be asked for. In the instant case, parties were well aware of the issue qua applicability of Section 170-B of the Code, as the

trial Court had specifically dealt with the order of the SDO dated 9-12-1996 (Ex.D-1) under Section 170-B of the Code which the first appellate Court

has rightly reversed holding that Section 170-B of the Code would not be applicable to the transaction entered prior to coming into force of the Code

i.e. 2-10-1959 and no prejudice has been caused to the defendants by not framing an issue particularly when the plaintiffs in this case have clearly

pleaded that the Code came into force with effect from 2-10-1959 and the transaction is prior to that, therefore, the provisions of the Code would not

be applicable and jurisdiction of civil court is not barred from examining the issue in the instant suit filed by respondents No.1 to 3 herein / plaintiffs.

In view of the above, I do not find any illegality in the judgment and decree passed by the first appellate Court, rather it is justified in reversing the

judgment and decree of the trial Court and in granting decree in favour of the plaintiffs. The substantial question of law is answered accordingly.

In the result, the second appeal deserves to be and is accordingly dismissed. Parties shall bear their own cost(s).

(s) Appellate decree be drawn-up accordingly.