

(1987) 03 MP CK 0002

Madhya Pradesh High Court

Case No: M. P. No. 3037 of 1985

Prakashchand

APPELLANT

Vs

Kanhaiyalal and others

RESPONDENT

Date of Decision: March 18, 1987

Acts Referred:

- Civil Procedure Code, 1908 (CPC) - Section 121
- Madhya Pradesh Ceiling on Agricultural Holdings Act, 1960 - Section 9

Citation: (1987) JLJ 505 : (1987) MPLJ 484

Hon'ble Judges: N.D. Oza, C.J; Faizanuddin, J

Bench: Division Bench

Advocate: S.C. Pandey, for the Appellant;

Final Decision: Dismissed

Judgement

@JUDGMENTTAG-ORDER

N.D. Ojha, C.J.

Heard Shri S. C. Pandey for the petitioner, on the question of admission.

The petitioner filed a suit against respondents Nos. 1 to 4 for possession and declaration of title in regard to agricultural land. The contesting respondents made an application requiring the petitioner to furnish particulars as contemplated by Rule 4-A of Order 6 of the CPC as inserted by the CPC (Madhya Pradesh Amendment) Act, 1984, hereinafter referred to as the Amending Act. This application was dismissed by the trial Court but on a revision having been filed by the contesting respondents it was allowed by the Additional Judge to the Court of District Judge, Raipur on 26th June 1985. The present writ petition challenges the aforesaid order. It also challenges the constitutional validity of not only Rule 4-A referred to above but also Rule 3-B which too was inserted by the same Amending Act.

Rule 3-B inter alia contemplates :

3-B. Condition for entertainment of suits:- (1) No suit or proceeding for, -

(a) declaration of title or any right over any agricultural land, with or without any other relief; or

(b) specific performance of any contract for transfer of any agricultural land, with or without any relief, shall be entertained by any Court, unless the plaintiff or applicant, as the case may be, knowing or having reasons to believe that a return u/s 9 of the Madhya Pradesh Ceiling on Agricultural Holdings Act, 1960 (No. 20. of 1960) in relation to land aforesaid has been or is required to be filed by him or by any other person before competent authority appointed under that Act, has impleaded the State of Madhya Pradesh as one of the defendants or non-applicants, as the case may be, to such suit or proceeding.

(c) No Court shall proceed with pending suit or proceeding referred to in sub-rule (1) unless, as soon as may be, the State Government is so impleaded as a defendant or non-applicant.

Explanation. - The expression "suit or proceeding" used in this sub-rule shall include appeal, reference or revision, but shall not include any proceeding for or connected with execution of any decree or final order passed in such suit or proceeding.

In case challenge to Rule 4-A fails, the impugned order passed by the Additional Judge cannot be said to be such which may justify interference in the present writ petition, the same being in conformity with the said rule.

As regards challenge to the constitutional validity of Rules 3-B and 4-A, it has been urged by the counsel for the petitioner that the requirements of these rules do not have any material bearing in so far as, the suit for declaration of title or any right over agricultural land or suit for specific performance of any contract for transfer of any agricultural land is concerned. We find it difficult to agree with this submission. It is settled law that the State is the owner of all agricultural land and various tenure holders only hold specific right in the land as may be conferred by law. In this view of the matter, the provision to the effect that in any suit or proceeding with regard to agricultural land, the State shall be made a party, cannot be said to be invalid. Being the owner of the land, the State is entitled to safeguard its interest in respect of the said land. The amended provisions also are calculated to ensure that the provisions of the M. P. Ceiling on Agricultural Holdings Act, 1960, are not violated with impunity in a suit or proceeding in regard to agricultural land. The said provision is not only in public interest but is also relevant with regard to the procedure followed in a suit dealing with declaration of title or any right over agricultural land as well as the specific performance of any contract for transfer of agricultural land to which the provisions of the M. P. Ceiling on Agricultural Holdings Act, 1960, are applicable.

In regard to the legislative competence of the State Government, it has not been urged and in our opinion, rightly that the State Government was not competent to enact the Amending Act. What was urged by the counsel for the petitioner, however, is that in view of section 121 CPC occurring in Part X, any amendment in the First Schedule could be made only in accordance with the provisions of the said Part X and not otherwise. Section 121 CPC provides that the rules in the First Schedule shall have effect as if enacted in the body of this code until annulled or altered in accordance with the provisions of this Part. The various sections following section 121 occurring in Part X of CPC lay down rules for making amendments in the First Schedule. They mainly deal with the power of the High Court to make amendments. In our opinion, it is obvious that nothing contained in Part X can exclude the legislative competence either of the Parliament or the State Legislature to make an amendment in the CPC including the First Schedule thereto. The powers conferred for amending the First Schedule by various sections occurring in Part X are in addition to the powers of the Parliament or the State Legislature to make amendments in the Code of Civil Procedure. The validity of the impugned rules, therefore, cannot be challenged on the ground that the said amendment has been made in exercise of the powers not conferred by Part X of the Civil Procedure Code. In the result, we find no merit in this writ petition. It is accordingly dismissed.