

(1978) 01 MP CK 0007

Madhya Pradesh High Court (Indore Bench)

Case No: Miscellaneous Petition No. 82 of 1977

Kachra Gotam Anjana

APPELLANT

Vs

Juzar Uda Balai and other

RESPONDENT

Date of Decision: Jan. 25, 1978

Acts Referred:

- Madhya Pradesh Anusuchit Jan Jati Rini Sahayata Adhiniyam, 1967 - Section 24

Citation: (1979) MPLJ 120

Hon'ble Judges: P.D. Mulye, J; G.L. Oza, J

Bench: Division Bench

Advocate: G.M. Chafekar and D.D. Vyas, for the Appellant; P.K. Saxena for Respondent No. 1 and Shil Kumar, Nigam, Dy. Govt. Advocate for State, for the Respondent

Final Decision: Dismissed

Judgement

@JUDGMENTTAG-ORDER

G.L. Oza, J.

This is a petition filed by the petitioner against an order passed by the Debt Relief Court, Mandsaur and maintained on revision by the Collector, Mandsaur, under M.P. Anusuchit Jan Jati Rini Sahayata Adhiniyam, 1967.

According to the petitioner he filed the suit for specific performance of the contract or recovery of money advanced against the respondent No. 1. This suit was filed on the basis of an agreement which was in the nature of agreement to convey immovable property (agricultural land) situated in village Maliya Kherkheda. This suit was pending before the Civil Judge Class II, Mandsaur where a compromise was filed and in accordance with the compromise, a compromise decree was passed on 21-7-64. According to the terms of the compromise decree the respondent was to pay to the petitioner a sum of Rs. 1500 in seven instalments, along with interest. It was also agreed that if the respondent No. 1 commits default in payment of any

instalment the agricultural lands mentioned in the decree shall stand transferred in the name of the petitioner. It was, therefore, partly a decree for payment of money and in default of instalment a decree for specific performance of the contract. The last instalment in this decree was due on 1-6-68. According to the petitioner no payments of instalment were made till 1970 and ultimately the petitioner filed an execution before the Civil Judge Class II, Mandsaur praying that the decree for specific performance of the contract be executed against the judgment-debtor. A notice of this execution was issued to the judgment-debtor where he raised various objections. It is alleged by the petitioner that these objections were overruled by the executing Court and the execution for specific performance was ordered. Consequently, as the respondent No. 1 did not execute the sale deed, the executing Court itself executed a sale deed in favour of the petitioner in accordance with this decree. It is also alleged that the petitioner decree-holder was put in possession of the disputed land by the Court through warrant of possession.

The respondent No. 1 is a balai by caste and therefore, he fell within the definition of schedule caste under M.P. Anusuchit Jan Jati Rini Sahayata Adhiniyam, 1967. He, therefore, made an application before the respondent No. 2 the Presiding Officer of the Debt Relief Court, Mandsaur and prayed that the decree in favour of the petitioner was a decree for payment of loan and, therefore, he be discharged of the debt. The Presiding Officer of the Debt Relief Court registered the case u/s 24 of the M.P. Anusuchit Jan Jati Rini Sahayata Adhiniyam, 1967. The petitioner resisted this case by contending that the decree of the civil Court was not a decree for payment of money and it was not outstanding as according to the petitioner the learned Civil Judge had executed the decree of specific performance and also had executed a sale deed in favour of the petitioner. These objections were rejected and the application filed by respondent No. 1 was allowed and it was declared that the judgment-debtor respondent No. 1 was discharged of Rs. 1500 and it was further ordered that the disputed land be returned to the respondent No. 1. This order was passed on 5-3-1977.

It is alleged that one Bhuli Bai, wife of respondent No. 1 filed a suit for permanent injunction and sought temporary injunction under Order 39, Rules 1 and 2 of the CPC about the disputed land against the petitioner and the temporary injunction was refused as it was held that the petitioner is in possession of the disputed land. This order was also upheld on appeal by the Court of District Judge, Mandsaur.

It is also contended by the petitioner that he filed a revision petition against the order of the Presiding Officer of Debt Relief Court and Collector Mandsaur maintained the order passed by the Presiding Officer of the Debt Relief Court. The petitioner has now, therefore, filed the present petition contending that he has no other remedy against the decision of the Presiding Officer of the Debt Relief Court except a revision which has been dismissed. The petitioner in this petition sought a relief of quashing of the order of the Presiding Officer of the Debt Relief Court,

Mandsaur and also that of the Collector, Mandsaur, maintaining the order.

It was contended by Learned Counsel appearing for the petitioner that M.P. Anusuchit Jan Jati Rini Sahayata Adhiniyam, 1967 (hereinafter referred to as "the Act") was extended to the members of the schedule caste by an amendment of the Act which is M.P. Act No. 33 of 1972 which received the assent of the President on 23rd November, 1972 and was published in the Gazette on 6th December, 1972. According to the petitioner although the amending Act received the assent of the President in December 1972, but the Debt Relief Courts were constituted by notification issued in the month of August, 1973, and it is not in dispute that this Act came into force from 30th June, 1973. According to the petitioner the compromise decree which was sought to be executed was passed on 21-7-64 and where the instalments were payable upto 1-6-68. This decree according to Learned Counsel was partly for payment of money upto 1-6-68 provided the respondent No. 1 did not commit any default in payment of any one of these instalments; but if he commits any default then it remained a decree for specific performance of the contract for a transfer of agricultural lands in favour of the petitioner mentioned in the decree. Learned Counsel therefore, contended that the execution petition was filed by the petitioner on 8-4-70. It was further contended that before this Act was brought into force, the Executing Court had disposed of the objections raised by the respondent No. 1 and what remained in the executing Court was only a decree for specific performance of the contract and this according to Learned Counsel could not fall within the meaning of the word "debt" as defined under sub-clause (4) of section 2 of the Act and therefore, the Debt Relief Court has no jurisdiction to adjudicate upon the application filed by the respondent No. 1. According to the petitioner therefore the Presiding Officer, of the Debt Relief Court has acted beyond his jurisdiction, and therefore, it was contended that the orders passed by the Debt Relief Court be quashed.

Learned Counsel for the respondent on the other hand contended that it could not be disputed that originally the claim of the petitioner against the respondent No. 1 was in the nature of a loan transaction. It is also clear that an agreement to convey property was incorporated by way of collateral security. It was also contended that although the plaintiff appellant filed a suit for specific performance of the contract; but ultimately it ended with a compromise decree and the terms of the compromise decree itself indicated that it was a money decree and the judgment debtor failing to repay the amounts as indicated in the decree that the decree holder was entitled to execute it for specific performance of the contract by a transfer of his agricultural lands. It was contended that merely because in the alternative a relief by way of transfer of immovable property was provided, it could not be contended that the decree was not a decree for debt. According to Learned Counsel for respondent in view of the definition of "debt" as given in sub-clause (4) of section 2 of the Act, the present transaction will squarely fall within the ambit of this definition. In support of his contention Learned Counsel placed reliance on the decisions reported in Punjabi

v. Moti 1973 M P L J 130 and [Channilal and Another Vs. Bundelal,](#)

It was also contended by Learned Counsel for the respondent that clause in the compromise decree for transfer of immovable property was more or less a penal clause and it was within the discretion of the executing Court to enforce it or not. Thus, except the penal clause the decree remained only the money decree. According to him on the date this Act was extended to the schedule castes there was subsisting debt which falls within the mischief of this Act, and the Presiding Officer of the Debt Relief Court therefore, had jurisdiction to entertain the application filed by the respondent no. 1. Consequently, according to Learned Counsel the petition could not succeed.

M.P. Anusuchit Jan Jati Rini Sahayata Adhiniyam, 1967 has been enacted to give relief to the schedule castes and to the schedule tribes when they are indebted. Apparently this is social legislation enacted to help the suffering communities like the schedule castes. "Debt" which has been defined in sub clause (4) of section 2 of the Act in fact has not been defined; but what is provided is an inclusive definition indicating that the definition is wide enough and what could be included has been illustrated. Sub clause (4) of section 2 of the Act reads :

2(4); "Debt" includes:--

- (i) all liabilities owing to a creditor in cash, or kind, secured or unsecured, payable under a decree or order of a civil Court or otherwise, and subsisting on the appointed date whether due or not due.
- (ii) arrears of owing or salary subsisting on the appointed date.

This provides that all liabilities owing to a creditor in cash or kind secured or unsecured payable under a decree or order of the Civil Court subsisting on the appointed date whether due or not due will be included within the meaning of the word "debt". In order, therefore, to bring any transaction within the mischief of this definition what is required is that there should be all liabilities owing to a creditor. This liability may be in cash or kind may be secured or unsecured or may be in a decree or order of civil Court; but it should be subsisting on the appointed date. In view of this if we examine the petitioner's case it is not in dispute that on the date this Act was extended to the members of the schedule caste the execution was pending. This execution was of a decree of a civil Court which was based on a compromise. The compromise decree which was put to execution starts:

and it also provided that interest at the rate of Re. 1 % per month will be payable on this amount of Rs. 1500 and after the instalments were enumerated this decree further read :

This clearly goes to show that the petitioner was the creditor and there was a liability in his favour which was settled and in the decree of a Court Rs. 1500 plus interest was payable to the petitioner. This amount, according to the compromise

decree was to be paid in instalments and in default of instalments what was provided for was an alternative mode of payment i.e. the payment in kind by way of transfer of the agricultural lands enumerated in the decree in favour of the petitioner. In this view of the matter it could not be disputed that on the date this Act was extended to the members of the schedule castes there was a subsisting liability in favour of the creditor and that liability was for payment of cash or in the alternative in the kind by way of transfer of agricultural lands. It was subsisting on that date is not in dispute as admittedly the deed of transfer was executed by the civil Court on 28-2-75 when in fact this Act had already come into force. Thus, on the date this Act was extended to the members of the schedule caste it could not be disputed that the liability in favour of the petitioner was subsisting.

The only contention advanced by Learned Counsel for the petitioner was that on the date this Act was extended to schedule castes the liability in terms of instalments had come to an end and even in the objections filed by the respondent no. 1 had been disposed of and what remained was merely a decree for specific performance of the contract. But this contention could not be accepted in view of specific recital in the compromise decree which clearly indicated that in the event of any default in the payment of instalment, the judgment debtor shall transfer the property indicated in the decree in lieu of the sum that remains outstanding against him; as it is stated:

Thus, the decree for execution of the sale deed was a mode of payment in case of default made by the judgment debtor and in view of the wide definition of. "debt" provided under sub clause (4) of section 2 of the Act, it could not be contended that this would not be covered in that definition. Consequently, in our opinion, the Presiding Officer of the Debt Relief Court was right in exercising jurisdiction.

In result, this petition is without any substance and is hereby dismissed with costs. The respondent no. 1 shall be entitled to costs of this petition. Counsel fee Rs. 100 if certified.