

BHAVSINGH (DEAD) BY LRS.

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v.

KESHAR SINGH AND ORS.

SEPTEMBER 10, 2003

[M.B. SHAH AND DR. AR. LAKSHMANAN, JJ.]

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Code of Civil Procedure, 1908 : Section 11.

Res Judicata—Land owner filed application claiming relief under a certain Act—Plea that the application was barred by principles of **res judicata** as the previous application filed by the land owner under a different Act was dismissed—The two Acts operated on different fields—Held : The cause of action and relief in the first and second proceedings are different—Hence, second proceeding not barred by principles of **res judicata**.

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M.P. Samaj Ke Kamjor Vargon Ke Krishi-Bhumi Dharkon Ka Udhar Dene Walon Ke Bhumi Hadapane Sambandhi Kuchakron Se Paritran Tatha Mukti Adhinyam, 1976—Scope and ambit of—Explained.

M.P. Anusuchit Jan Jati Rini Sahayata Adhinyam, 1967—Scope and ambit of—Explained.

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Words and Phrases :

"Prohibited transaction of loan"—Meaning of—In the context of Section (2)(f) of M.P. Samaj Ke Kamjor Vargon Ke Krishi-Bhumi Dharkon Ka Udhar Dene Walon Ke Bhumi Hadapane Sambandhi Kuchakron Se Paritran Tatha Mukti Adhinyam, 1976.

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The appellant filed an application before the sub-Divisional Officer (SDO) under Section 5 of the M.P. Samaj Ke Kamjor Vargon Ke Krishi-Bhumi Dharkon Ka Udhar Dene Walon Ke Bhumi Hadapane Sambandhi Kuchakron Se Paritran Tatha Mukti Adhinyam, 1976 (Act of 1977) contending that the transfer of the suit land by registered sale deed was a mortgage transaction as the said transfer was for loan amount. The SDO allowed the application rejecting the contention that the present proceedings were barred by the principles of *res judicata* on

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A the ground that the previous proceedings initiated by the appellant under the M.P. Anusuchit Jan Jati Rini Sahayata Adhiniyam, 1967 (Debt Relief Act) it was held that the transfer deed was not a mortgage deed and was not covered by the Debt Relief Act. The SDO further held that the transfer was null and void under Section 7(2) of the Act of 1977 being a "prohibited transaction of loan" as contemplated under Section B 2(f) of the Act of 1977. That order was confirmed in appeal.

However, the High Court held that the previous application filed by the appellant under the Debt Relief Act was decided against the appellant and it was held that the transaction was of sale and not of a mortgage. The High Court further held that in such a situation, the C principles of *res judicata* would be attracted otherwise, there would be no finality in the matter and the purchaser of the land would be subject to harassment all the time.

Allowing the appeals, the Court

D HELD : 1. The provisions of the M.P. Anusuchit Jan Jati Rini Sahayata Adhiniyam, 1967 (Debt Relief Act) and the M.P. Samaj Ke Kamjor Vargon Ke Krishi-Bhumi Dharkon Ka Udhar Dene Walon Ke Bhumi Hadapane Sambandhi Kuchakron Se Paritran Tatha Mukti Adhiniyam, 1976 (Act of 1977) operate in different fields. The Debt E Relief Act provides for relief to the debtor, who belongs to the Schedule Tribe, by scaling down the principal amount and the rate of interest as provided under the Schedule. As against this, the Act of 1977 is of wider amplitude and even if there is outright sale transaction by a debtor, it would be considered to be a 'prohibited transaction of loan' as F contemplated under Section 2(f) of the Act and that can be declared null and void under the provisions of the Act. The Legislature has specifically stated in the preamble that the Act of 1977 was for providing further relief to the holders of agricultural land from agricultural indebtedness by nullifying the land grabbing designs resorted to by money lenders. Therefore, it provides not only for nullifying of mortgage G deeds but also outright sale of land if conditions mentioned therein are satisfied. [616-D-F]

2. Further, the relief, which is required to be granted under the provisions of the Act of 1977, is altogether different from the relief, which is granted under the Debt Relief Act. One provides for declaring H the sale transaction to be null and void while the other provides only for

scaling down the amount of the debt and the interest. Therefore, even in the previous proceedings if it is held that the transaction was not a mortgage but a sale, that would not mean that in the present proceedings, the appellant cannot prove that the sale deed executed for the loan amount with a specific understanding that on refund of the amount, property was to be redelivered to the transferor. In this view of the matter even though in a previous proceeding there was a specific finding that the deed was not a mortgage (which is a fact), the present proceeding would not be barred by the principles of *res judicata*. The cause of action and reliefs in the first and second proceedings are altogether different. This is also provided under Section 3 of the Act of 1977 by giving over-riding effect to the provisions of the Act. It *inter alia* provides that the provisions of the Act and the Rules made thereunder shall have effect notwithstanding anything inconsistent therewith contained in any other law for the time being in force. [616-G-H, 617-A, B]

CIVIL APPELLATE JURISDICTION : Civil Appeal Nos. 13382-83 of 1996.

From the Judgment and Order dated 11.9.93/21.3.94 of the Madhya Pradesh High Court in M.P. No. 274/87 and in R.P. Bearing M.C.C. No. 550 of 1993.

Sushil Kumar Jain, Ms. Ruchi Kohli, Ms. Anjali Doshi, A.P. Dhamija, Anil Vyas, H.D. Thanvi and Ms. Pratibha Jain for the Appellant

Vivek Gambhir for the Respondent No.1.

S.K. Gambhir, M.P. Jha, Ram Ekbal Roy and Anil Kumar Chopra for the Respondent No. 2.

Ms. Pragati Neekhara and S.K. Agnihotri for the Respondents No. 3-4.

The Judgment of the Court was delivered by

SHAH, J. : These appeals are filed against the judgment and order dated 11.9.1993 and order dated 21.3.1994 passed by the High Court of Madhya Pradesh, Jabalpur Bench at Indore, in M.P. No. 274 of 1987 and in review petition bearing MCC No. 550 of 1993.

A By the impugned judgment and orders, the High Court allowed the writ petition filed by respondent No. 1 (deceased) and his son, respondent no. 2, namely, Narendra Kumar and set aside the order dated 11.2.1986 passed by the competent authority - SDO holding that the appellant was entitled for a declaration that the sale transaction in question was prohibited transaction of loan as contemplated under Section 2(f) 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 Adhiniyam, 1976 (M.P. Act No. 3 of 1977) (hereinafter referred to as 'the Act of 1977') and was null and void under Section 7(2) of the Act.

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C The order for handing over possession of the land in question admeasuring 9.71 acres situated in village Kanadia to the appellant Bhav Singh son of Bheraji was also set aside.

The aforesaid order was passed on an application filed by the appellant claiming relief under Section 5 of the Act of 1977 contending that the transfer of the land by registered sale deed dated 20.7.1960 for a sum of Rs. 2500 was a mortgage transaction as said transfer was for the loan amount. It was his contention that at the time of said transaction, it was agreed upon by the parties that whenever the appellant re-pays the amount of Rs. 2500 possession of the land in question would be redelivered to the appellant. It was his case that despite the fact that full amount had been repaid, the respondent has not restored the possession of the land mortgaged by him. That application was allowed by the S.D.O. by order dated 29th January 1982.

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Being aggrieved by the said order, respondents preferred appeal before the Collector, Indore, which was dismissed on 8th December, 1982. That order was challenged by filing Misc. Petition No. 724 of 1982 before the High Court of Madhya Pradesh at Indore. The High Court allowed the said petition and set aside the order of the SDO and remanded the matter directing that the case be disposed of on merits after holding fresh enquiry.

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During the fresh enquiry, as stated in the order, witnesses were examined on behalf of the parties and written arguments were also submitted before the SDO. After considering the written submissions made by the parties and appreciating the evidence which was led before him, the SDO rejected the contention that the present proceedings were barred by

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the principles of *res-judicata* on the ground that in the previous proceedings initiated by the appellant under the provisions of the M.P. Anusuchit Jan Jati Rini Sahayata Adhiniyam, 1967 (hereinafter referred to as 'Debit Relief Act'), it was held that the transfer deed was not a mortgage and was not covered by the Debt Relief Act. The contention that application was time barred was rejected taking into consideration relevant facts. No contention was raised that proper opportunity of leading evidence or cross-examining the witnesses was not given. SDO further held that there was a money lending transaction between the appellant and deceased respondent and that the aforesaid instrument was executed as a sale-deed but deceased - respondent No. 1 had assured the appellant that after the amount of loan is repaid, the land in question would be restored to him. He considered the evidence on record indicating that the appellant was to repay a sum of Rs. 2000 on account of the debt incurred by him from the respondent but because there was emergent need, he further took a loan of Rs. 500. Thus, the appellant owed a total sum of Rs. 2500, upon which the respondent was charging interest @ 1.5% per month. He also arrived at the conclusion that the market value of the land at the relevant time was much higher than Rs. 7000. Thereafter, the S.D.O. passed the impugned order holding that the transaction was null and void under Section 7(2) of the Act of 1977. That order was confirmed in appeal by the Additional Collector, Indore (MP) by judgment and order dated 27th February, 1987. He also negatived the contention that the proceedings were barred by the principles of *res-judicata* as both the Acts are different. He also negatived the contention that S.D.O. has not made proper enquiry and, therefore, the entire proceedings were unconstitutional.

That judgment and order was challenged by filing the writ petition before the High Court. The High Court arrived at the conclusion that previous application filed by the appellant under the Debt Relief Act was decided against the appellant and it was held that the transaction was of sale and not of a mortgage. In such a situation, the principles of *res-judicata* would be attracted otherwise there would be no finality in the matter and the purchaser of the land would be subject to harassment all the time.

Learned counsel Mr. Jain appearing on behalf of the appellant submitted that the aforesaid findings recorded by the High Court are, on the face of it, illegal and erroneous. He pointed out that the amplitude of the 'prohibited transaction' under the Act is much wider than what is

A provided under the Debt Relief Act. As against this, learned senior counsel Mr. Gambhir submitted that the High Court rightly arrived at the conclusion that the present proceedings are barred by the principles of *res-judicata* in view of the previous decision whereby the application filed by the appellant was rejected and it was held that the transaction between the parties was not a mortgage but outright sale.

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For appreciating the contention raised by the parties, we would first refer to Preamble as well as Section 2(f) of the Act 1977, which are as under :

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"An Act to better economic condition of holders of agricultural land in the weaker sections of *the people by providing further relief from agricultural indebtedness by nullifying the land grabbing designs resorted to in many a form by lenders of money* while and after extending credit to them and matters connected therewith.

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Whereas a holder of agricultural land in the weaker sections of the people is quite often compelled to seek loan from private money lending agencies to meet his various obligations of urgent nature;

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And whereas such private agencies seldom if ever advance loan to him without security of land, his only wherewithal;

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And whereas due to ignorance of niceties of law or urgency of financial need or both, he falls an easy prey to them *scarcely realizing the legal consequences arising out of the documents which he executes or which they get executed from him seemingly by way of security for the loan;*

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And whereas it is necessary to relieve the holders of agricultural land in the weaker sections of the people from *such exploitation by nullifying such past transactions of loan as also to put a stop to such transactions*".

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2. *Definitions.* — In this Act, unless the context otherwise requires, —

(f) "prohibited transaction of loan" means a transaction in which a lender of money advances loan to a holder of agricultural land against security of his interest in land, whether at the time of advancing the loan or at any time thereafter during the currency of the loan in any of the following modes, namely :

- (i) agreement to sell land with or without delivery of possession;
- (ii) *outright sale of land with or without delivery of possession accompanied by separate agreement to re-sell it;*
- (iii) *outright sale of land with or without delivery of possession with a distinct oral understanding that the sale shall not be acted upon if the loan is re-paid;*
- (iv) outright sale of land with or without delivery of possession with a condition incorporated in the sale deed to re-sell it on re-payment of the loan;
- (v) transaction in any modes other than those specified in clauses (i) to (iv) affecting interest in land including a fraudulent transaction or a transaction designed to defeat the provisions of any law regulating money lending or interest, for the time being in force, and includes all those transactions in which a lender of money has, after the appointed day but on or before the date of publication of this Act in the Gazette, obtained possession of land of the holder of agricultural land through court or by force or otherwise or obtained a decree for such possession towards satisfaction of loan."

From the aforequoted preamble of the Act, it is amply clear that the object of the Act is to provide further relief to the weaker sections of the people agriculturists from agricultural indebtedness by nullifying the land grabbing designs resorted to by the money lenders while and after extending credit to them. Section 2(f) defines the phrase "prohibited transaction of loan" and *inter alia* declares that a transaction of outright sale of land would also be covered by the phrase "prohibited transaction of loan" if there was a distinct oral understanding that the sale shall not be acted upon if the loan is repaid.

A Further, Section 6 provides for enquiry to be carried out by Sub-Divisional Officer on an application which may be filed by an holder of agricultural land who belongs to weaker section of the people. Sub-section (4) of Section 6 provides that, in that enquiry, for the purpose of ascertaining the true nature of transaction of loan, SDO shall collect, as far as may be, information with respect to the following facts, namely :

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- (i) *the amount of principal money;*
 - (ii) *the market value of the land at the time of transaction;*
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- (iii) *adequacy of the amount of principal money as consideration for sale in the context of then market value under clause (ii);*
 - (iv) whether the consideration shown in the document was paid in whole or in part privately or before the Sub-Registrar.
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- (v) whether possession of the land was actually delivered to the lender of money as per recitals in the said document. If not, when and in what manner the lender of money obtained possession of the land;
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- (vi) what were the terms of the actual agreement between the lender of money and the holder of agricultural land including the rate of interest;
 - (vii) the extent of urgency for the loan and the availability of other sources to the holder of agricultural land to obtain the same;
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- (viii) payment, if any, made by the holder of agricultural land to the lender of money towards the loan;
 - (ix) whether the lender of money is registered money lender or not;
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- (x) any other surrounding circumstances which the Sub-Divisional Officer may deem fit to consider.

Thereafter, Section 7 *inter alia* provides that if after enquiry, the SDO is satisfied that the transaction of loan in substance is a prohibited H transaction of loan, he shall declare such transaction to be void and pass

an order setting aside the transfer of land to the lender of money A
consequently restoring the possession of land to the holder of the agricultural
land.

After following the aforesaid procedure, the authorities below arrived
at the conclusion that during currency of loan transaction, sale deed was
executed by the appellant in favour of respondent No. 2. The SDO also B
arrived at the conclusion that there was a distinct oral understanding that
the sale shall not be acted upon if the loan is repaid. For this purpose, SDO
took into consideration that the appellant was indebted for a sum of Rs.
2000/- and thereafter he took further loan of Rs. 500 and for the said
amount sale deed was executed. It is stated in the sale-deed that appellant C
was agriculturist and the sale consideration was Rs. 2500 but it is not
mentioned that amount of Rs. 2500 was paid in cash. He arrived at the
conclusion that market value of the land at the relevant time was more than
Rs. 7000/-. Admittedly, the appellant belongs to Bagri community which
is a Schedule Tribe. He was entitled to get the benefit under the Act, if D
the transfer was for the loan amount with distinct oral understandings as
stated above.

Therefore, it cannot be said that the order passed by the SDO which
was confirmed in appeal by the Additional Collector was, in any way, E
erroneous on facts.

The next question would be - whether the present proceedings are
barred by principles of *res-judicata* presuming that principles of
res-judicata are applicable to such proceedings.

For appreciating this contention, it would be necessary to refer to the F
relevant provisions of the Debt Relief Act, under which previous application
was filed for relieving the appellant from the debt incurred by him. Under
the said Act, definition of the debt is given under Section 2(4), which reads
as under :

"2. In this Act, unless the context otherwise requires : G

(4) "Debt" includes;

(i) all liabilities owing to a creditor in cash, or kind, secured or H
unsecured, payable under a decree or order of a Civil Court

A or otherwise, and subsisting on the appointed date whether due or not due;

(ii) arrears of wages or salary subsisting on the appointed date."

B Section 8 of Debt Relief Act provides for filing of an application by the creditor and also the debtor. If the creditor has not filed his claim application against the debtor, sub-section (4) of Section 8 provides that debtor is discharged from his liability. Sub-section (3) empowers the debtor also to apply to the Debt Relief Court. Section 14 provides that the Court shall calculate the interest in accordance with the rate specified in the First
C Schedule or such lower rate of interest as may have been agreed between the parties. Section 14(4) also empowers the Debt Relief Court to reduce the principal amount determined under sub-section (1) in accordance with Second Schedule appended to the Act. Thereafter, the Act further provides for preparation of a scheme of repayment of the debt.

D Hence, it is apparent that the provisions of the Debt Relief Act and the Act of 1977 operate in different fields. Debt Relief Act provides for relief to the debtor, who belongs to Schedule Tribe by scaling down the principal amount and the rate of interest as provided under the Schedule. As against this, the Act of 1977 is of wider amplitude and even if there
E is outright sale transaction by a debtor, it would be considered to be prohibited transaction of 'loan' and that can be declared null and void under the provisions of the Act. The Legislature has specifically stated in the preamble that the Act was for providing further relief to the holders of agricultural land from agricultural indebtedness by nullifying the land
F grabbing designs resorted to by money lenders. Therefore, it provides not only for nullifying of mortgage deeds but also outright sale of land if conditions mentioned therein are satisfied.

G Further, the relief which is required to be granted under the provisions of the Act of 1977 is altogether different from the relief which is granted under the Debt Relief Act. One provides for declaring the sale transaction to be null and void while other provides only for scaling down the amount of the debt and the interest. Therefore, even in the previous proceedings if it is held that the transaction was not a mortgage but a sale, that would not mean that in the present proceedings, the appellant can not prove that
H the sale deed was executed for the loan amount with a specific understanding

that on refund of the amount, property was to be redelivered to the transferor. In this view of the matter, even though in a previous proceeding there was a specific finding that the deed was not a mortgage deed (which is a fact), the present proceeding would not be barred by the principles of *res-judicata*. The cause of action and reliefs in the first and second proceedings are altogether different. This is also provided under Section 3 of the Act of 1977 by giving over-riding effect to the provisions of the Act. It *inter alia* provides that the provisions of the Act and the Rules made thereunder shall have effect notwithstanding anything inconsistent therewith contained in any other law for the time being in force.

The learned counsel for the respondent submitted that enquiry held by the SDO was defective. In our view, no such contention was raised before the Additional Collector who heard the appeal. In any set of circumstances, from the written submissions which are reproduced in the judgment and order passed by the SDO, no such contention is appeared to have been taken. Hence, this contention is without any substance.

Learned counsel for the respondents lastly submitted that these appeals abate as the appellant has not brought on record all the heirs of the deceased respondent no. 1 as party-respondents. In the present case, it is admitted fact that the sale-deed were executed in favour of respondent No. 2. who is the son of deceased respondent No 1. The sale transaction was between the appellant and respondent No. 2. No doubt, it was for a loan given by respondent No. 1 but the question involved in this proceeding is for declaration of sale deed executed in favour of respondent No. 2 to be null and void and that can be granted even without bringing on record the other heirs of respondent No. 1. In the alternative, from the facts of the present case, it has been rightly pointed out by the learned counsel for the appellant that the estate is fully represented by respondent No. 2. Hence, there is no question of abatement of appeal. In this view of the matter, we have thought it fit not to issue notice to remaining legal heirs of respondent No. 1 on an application filed by the appellant.

In the result, the appeals are allowed. The impugned judgments and orders passed by the High Court are set aside and quashed. The judgment and order passed by the SDO is restored. There shall be no order as to costs.

V.S.S.

Appeals allowed. H