

Waman Vs. Baldevdas

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Court : Madhya Pradesh

Decided On : Feb-08-2000

Reported in : 2001(1)MPHT39; 2000(3)MPLJ328

Judge : Mr. Dipak Misra, J.

Acts : [Code of Civil Procedure \(CPC\), 1908](#) - Sections 47 and 115; Madhya Pradesh Samaj Ke Kamjor Vargon Ke Krishi Sambandhi Bhumi Dharkon K Ka Udhar Dene Walon Ke Bhumi Hadpane Sambandhi Kuchakron Se Paritran Tatha Mukti Adhiniyam, 1976 - Sections 2, 11, 12 and 14; Madhya Pradesh Samaj Ke Kamjor Vargon Ke Krishi Sambandhi Bhumi Dharkon K Ka Udhar Dene Walon Ke Bhumi Hadpane Sambandhi Kuchakron Se Paritran Tatha Mukti (Amendment) Adhiniyam, 1977; Madhya Pradesh Gramin Rin Vimukti Adhiniyam, 1982 - Sections 3 and 7; Madhya Pradesh Gramin Rin Vimukti (Amendment) Adhiniyam, 1983

Appeal No. : Civil Revision No. 182/95

Appellant : Waman

Respondent : Baldevdas

Advocate for Def. : Shri Hemant Chauhan, Adv.

Advocate for Pet/Ap. : Shri Neeraj Vegad, Adv.

Disposition : Revision dismissed

Judgement :

ORDER

Dipak Misra, J.

1. The respondent as plaintiff filed a Civil Suit No. 8-B/91 in the Court of Civil Judge, Class-I, Burhanpur for recovery of a sum of Rs. 10,375/-. It was pleaded in the plaint that the plaintiff had advanced a loan of Rs. 6,000/- to the defendant and the said amount was to carry interest at the rate of 2 % per month. It was further put forth in the plaint that the defendant had executed a promissory note in respect of the amount in question. As the defendant failed to pay the loan a notice was served on him and when no response came the suit was filed. The petitioner, did not contest the suit and eventually an ex parte decree was passed against him. The respondent sought to execute the decree in execution proceeding. In the decree a petition was filed under Section 47 of the Code of Civil Procedure contending, inter alia, that the decree passed by the concerned Court is a nullity in as much as it is hit by Section 14 of the Madhya Pradesh Samaj Ke Kamjor Vargon Ke Krishi Sambandhi Bhumi Dharkon Ka Udhar Dene Walon Ke Bhumi Hadpane Sambandhi Kuchakron Se Paritran Tatha Mukti Adhiniyam, 1976 (hereinafter referred to as 'Ad-hiniyam 1976') and Section 7, of the M.P. Gramin Rin Vimukti Adhiniyam, 1982 (in short 'Adhiniyam 1982'). The executing Court considered the objections raised by the defendant and came to hold that the defendant had not contested the suit to come within exceptions carved out in the aforesaid statutes and accordingly the execution was bound to proceed.

2. I have heard Mr. Neeraj Vegad, learned counsel for the petitioner and Mr. Hemant Chouhan, learned counsel for the respondent.

3. Learned counsel for the petitioner has referred to Sections 2 (f), 12 and 14 of the Adhiniyam, 1976. It is apposite to refer the said provisions:

'2. Definitions.--

(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 resell 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 repayment 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 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.

12. Lender of money not to enter into prohibited transaction of loan.-- (1) Notwithstanding anything contained in any enactment for the time being in force, no lender of money shall, on and from the date of publication of this Act in the Gazette, enter into a prohibited transaction of loan with a holder of agricultural land. (2) Any prohibited transaction of loan entered into in contravention of the provisions of sub-section (1) shall be absolutely null and void and no Court shall entertain any application or suit to enforce any claim of lender or money arising out of prohibited transaction of loan.

14. Bar of jurisdiction of Civil Courts.-- Subject to provisions of Section 11, no Civil Court shall have any jurisdiction to settle, decide or deal with any question which is by or under this Act required to be settled, decided or dealt with by the Sub-Divisional Office or the Collector.'

4. On a perusal of the aforesaid provisions it is quite clear that transaction with-holder of an agricultural land is prohibited and the controversy as far as the said transactions are concerned, cannot be agitated before the Civil Court. Holder of agricultural land is defined under Section 2 (c) of the Act:

'2 (c) 'holder of agricultural land' in the weaker sections of the people means a holder of land used for purposes of agriculture not exceeding eight hectares of unirrigated land or four hectares of irrigated land within the State whether as a Bhumiswami or an occupancy tenant or a Government lessee either in any one or all of the capacities together within the meaning of the Code.'

5. On a perusal of the plaint there is nothing in the plaint to show that the plaintiff himself had admitted that it was a transaction with the holder of an agricultural land. In absence of the same the Executing Court has no jurisdiction to question the validity of the decree and the Judgment-debtor cannot be permitted to take a plea of this nature to challenge the decree to be a nullity.

6. As far as the Adhiniyam, 1982 is concerned, learned counsel has referred to Section 7 which provides that no Civil Court shall have any jurisdiction to entertain or decide any question in respect of a debt to which provisions on the said Act apply. Section 3 (a) of the aforesaid Act deals with the debts which are advanced before the 16th August, 1982. In this connection, I may refer to Section 2 (e) which defines 'landless agricultural holder'. Section 2 (g) deals with 'marginal farmer', Section 2 (k) deals with 'rural artisan' and Section 2 (i) defines 'small farmer'. On a reading of the said provisions in proper perspective, I am of the considered opinion that the defendant having not raised the plea in the suit that the Section 7 of the Adhiniyam creates a jurisdictional bar and from averments in the plaint same is not discernable, the Executing Court could not have delved into the said realm to declare the decree a nullity. He has rightly refused to accede to the prayer of the petitioner/ judgment-debtor and the impugned order deserves the stamp of approval of this Court.

7. In view of the aforesaid analysis the civil revision, being devoid of merit, stands dismissed. However, there shall be no order as to costs.

8. Civil Revision dismissed.

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