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Sumitra Vs. State of Madhya Pradesh and ors.

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Court : Madhya Pradesh

Decided On : Sep-19-2005

Reported in : AIR2006MP13

Judge : L. Kochar, J.

Acts : Madhya Pradesh Anusuchit Jan Jati Tatha Anusuchit Jan Jati Rini Sahayata Adhiniyam 1967 - Sections 1, 1(4), 8, 8(6), 8(6A), 8(4), 14, 14(8), 14(8A), 14A, 22 and 28; Scheduled Caste and Scheduled Tribe (Prevention of Atrocities) Act, 1989 - Sections 3; Constitution of India - Article 226 and 227

Appeal No. : W.P. No. 1086 of 1988

Appellant : Sumitra

Respondent : State of Madhya Pradesh and ors.

Advocate for Def. : A.S. Kutumble, AAG, ;Mukesh Parwal, Adv. for No. 1 and ;S.K. Upadhyaya, Adv. for No. 3

Advocate for Pet/Ap. : M.I. Khan, Adv.

Judgement :
ORDER

L. Kochar, J.

1. Petitioner has filed this petition under Article 226/227 of the Constitution of India challenging the order Annexure-F dated 19-4-1988 passed by Sub Divisional Officer, Bagli District Dewas in Debt Relief Case No. 85/86 whereby ordered for delivery of possession of the disputed house which was mortgaged by Pyara & Devaji, the husband of respondent No. 1 and father of respondent Nos. 2, 3 and 4 with Maduji, the great grand father of the petitioner Sumitrabai.

2. The. factual matrix giving rise to this petition in short is that on 6-10-1959, respondent No. 3 late Deva and his brother Pyara, resident of village Hatpiplya, Sajjanganj Ward No. 4 Nagar Palika, Tehsil Bagli, District Dewas mortgaged their house in rupees two thousand with great, grand father of the petitioner named Moduji. A written, agreement was arrived between the parties to this effect which is Annexure-A, According to this agreement, late respondents Pyare and Devaji could live in the said house as tenants and they were required to payment amount of Rs. 25/- per month. But they did not made the payment, therefore, a civil suit was filed by late Moduram against Pyarelal and Deya and same was decreed by judgment and decree dated 16-1-1971 by Civil Judge, Class II, Bagli vide Civil Suit No. 33A/1969. Decree was passed in favour of late Moduram and defendants were directed to pay Rs. 900/- balance amount of rent and handover the vacant possession of the house to the .plaintiff. This is filed as Annexure-B. Against this judgment and decree defendants Pyarelal and Deva did not file any appeal before the competent Court having jurisdiction over the matter. In execution of the judgment-and decree, possession of the house was delivered to late Moduram. Both the parties belongs to Scheduled Caste community (Mochi).

3. By notification dated 30th June 1973 in exercise of the powers conferred by subsection (4) of Section 1 of the Madhya Pradesh Anusuchit Jan Jati Tatha Anusuchit Jan Jati Rini Sahayata Adhiniyam 1967 (12 of 1967) (for short as 'the Act' hereinafter) the State Government also made applicable this Act to the members of the Scheduled Caste Community and 15th August 1973 was the date made applicable of the Act for Scheduled Caste community also. Under the provisions of this Act, late Devaji filed an application U/S. 8 Sub-section (3) of the Act, before the Debt Relief Court, Kannod District Dewas and the same was registered as Case No. 2/75-76 and learned Debt Relief Court, by order dated 2-2-

1977 ordered that debt against Devaji i.e. Rs. 900/- as rent and decree for which was passed by the trial Court by judgment and decree dated 16-1-1971 stand discharged but possession of the house was already delivered to the creditor Moduji in pursuant to the judgment and decree passed by Civil Court as mentioned hereinabove. The Debt Relief Court ordered that the house was mortgaged by registered instrument, therefore, debtor Devaji, could initiate legal proceedings against, defendant late Moduji before the competent Civil Court in accordance with law. But the learned Debt Relief Court, on the application filed by Devaji under Section 8 of the Act ordered for his discharge of debt of Rs. 900/- towards decree of rent passed by the Civil Court and issued certificate to this effect as per provision under Section 28 of the Act.

4. Against this order dated 2-2-1977 passed by the Debt Relief Court, Kannod. Devaji went up in revision before the revisional Court under Section 22 of the Act and the said revision was also dismissed by order dated 23-7-1977 (Annexurc-D) by the learned Collector, Dewas. The learned Collector, Dewas relying on Division Bench judgment of this High Court passed in case of Kishanlal v. Shree Rajvaidya 1974 MPLJ (SN) 97, held that after execution of the sale deed in pursuant to the judgment and decree passed by the Civil Court and in view of the Division Bench judgment that Debt Relief Court has no jurisdiction under the provisions of the Act, ordered for delivery of possession to mortgagor on the ground that mortgage was extinguished, dismissed the revision of debtor, Devaji. In the case in hand, factual and legal position is better in favour of the petitioner than the case of Kishanlal (supra). In this case, Debt Relief Court has not issued any certificate regarding extinguishment of mortgage. The only certificate was issued regarding discharge of debt of Rs. 900/-.

5. Against the order passed by the Collector in revision dated 23-7-1977 late Devaji did not challenge the same before High Court under Article 226/227 of the Constitution of India and again filed application in the year 1984 before the Debt Relief Court after amendment by Act No. 23 of 1984 called as M.P. Anusuchit Jati Tatha Anusuchit Jan Jati Rani Sahayata (Sanshodhan Tatha Vidhimanya Karan) Adhiniyam, 1984. Both the counsels are not able to give exact date of filing of application before the Debt Relief Court (Annexure-E). This application was filed

on the ground that Debt Relief Court, by order dated 2-2-1977 discharged the debtor from the debt, therefore, possession of the house under mortgage should have been ordered to be given to the debtor Devaji/his legal heirs. It is also contended in this application that amended Act of the year 1984 had retrospective effect and the application should have been filed within one year from 6-12-1984 but the same could not be filed within one year and was filed after decision of the another civil suit filed by debtor Devaji which was decided on 7-8-1985. In this application (Annexure-E) following reliefs were sought :--

(i) From the defendants/non-applicants possession of the house shall be restored to the applicants/debtors;

(ii) Non-applicants shall be directed to pay mesne profits @ Rs. 50/- per month from 2-2-1977 regarding illegal use of the house by them, and;

(iii) Expenses of the litigation with any other appropriate relief.

6. On the basis of this application, the Debt Relief Court, by order dated 19-4-1988, ordered for delivery of possession of the mortgaged property to the respondents from the petitioner herein this petition and from non-applicants to the applicants in the application (Annexure-E). It appears that this order was passed on the basis of same order passed by the Civil Court dated 7-8-1985 in Civil Suit No. 199/1984 filed by Devaji and Others, the respondents herein this petition against the Legal Representatives of late Moduji. Civil suit was filed for restoration of possession of the mortgaged house on the ground that Debt Relief Court has discharged the Debtor from the debt, therefore, the Civil Court should order for delivery of possession of the house. Civil Court dismissed this civil suit on the ground of jurisdiction that the respondents were discharged from the debt by the Debt Relief Court, therefore, the same Court could pass the order for delivery of the possession and on the basis of this observation by the Civil Court in Civil suit, the Debt Relief Court ordered for restoration of possession of the house by order dated 19-4-1988 in favour of the respondents herein this petition.

7. The learned Counsel for the petitioner has submitted that both the parties belong to Scheduled Caste community, therefore, this Act would not apply. On

consideration, this Court is not agreeing with this proposition because in the enactment, there is no such provision making the Act non-applicable between the parties belonging to Scheduled Caste or Scheduled Tribe community. According to the preamble, aims and objects of the enactment are that the members of the Scheduled Caste & Scheduled Tribe community are raising loan from money lenders and because of exorbitant rates of interest, the original debtor is unable to repay the loan in his life time and the over swelling amount of loan is passed on from generation to generation keeping the families concerned in perpetual bondage of the creditors. The object is to give relief to the members of the Schedule Caste & Scheduled Tribe community from money lenders who is lending money on exorbitant rate of interest and the same is making condition of the debtors miserable. If intention of the legislation' would have been that the Act would not apply if both the parties belongs to the Scheduled Caste or Scheduled Tribe community, either specific provision would have been provided in the enactment or the provisions of the Act would have been formulated in such a way to give this interpretation as given in Section 3 of the Scheduled Caste & Scheduled Tribe (Prevention of Atrocities) Act, 1989 which is in the following Words :--

Section 3. Punishments for offences of atrocities :-- Whoever, not being a member of a Schedule Caste or a Scheduled Tribe,--

8. These words are clearly indicating that provisions are made applicable for the person who is not a member of Scheduled Caste or Scheduled Tribe community. Such kind of language/words are not used in the Act.

9. On going through the order dated 2-2-1977 passed by the Debt Relief Court (Annexure-C) in Case No. 2/75-76, it emerged that the Debt Relief Court has not discharged the debtor Devaji and Pyaraji; ancestors of the respondents from the debt of Rs. 2,000/- for which the house was mortgaged with the late Moduji, the great grand father of the petitioner. No certificate to this effect as per provision under Section 28 of the Act was also issued. Late Devaji and Pyaraji were discharged only from paying the decretal amount of Rs. 900/- which was towards the rent of the house. After amendment by Act No. 23 of 1984 first of all the

application was not filed within time as stated in the application itself filed by the respondents (Annexure-E). Secondly Debt Relief Court, by order dated 2-2-1977 did not discharge the ancestors Devaji and Pyaraji of the respondents from the debt amount of Rs. 2,000/- and no certificate to this effect was filed by the respondents before the Debt Relief Court who has passed the order dated 19-4-1988. Therefore, the respondents are not entitled for getting benefit of Amendment in Sec. 14 of the Act by M.P. Act No. 23 of 1984 making new provision i.e. Section 14 A. After amendment Section 14-A reads as under:--

Insertion of new Section 14-A.-- In the Principal Act, after Section 14, the following section shall be inserted, namely :--

14-A. Debt Relief Court to pass further order in certain cases .--

(1) Where claim of a creditor against his debtor shall be deemed to have been or is discharged under Sub-section (4) or subsection (6) of Section 8, as the case may be, but no order for re-delivery of possession of immovable property or for return of movable property pawned or pledged has been made by the Deb't Relief Court or where Debt Relief Court in the case of any secured loan has not passed any order for re-delivery to debtor of possession of immovable property which was mortgaged or charged, under Sub-section (8) of Section 14, the debtor may apply within one year of the commencement of the Madhya Pradesh Anusuchit Jati Tatha Anusuchit Jan Jati Rini Sahayata (Sanshodhan Tatha Vidhimanya Karan) Adhiniyam, 1984, make an application in writing to the Debt Relief Court for retransfer of possession of immovable property or, as the case may be, for return of movable property pawned or pledged, and thereupon such Court, notwithstanding anything in section 22 or any decision or order of the Collector in revision or of any Court in any other legal proceeding, may after giving an opportunity to the creditor of being heard, proceed to pass an order under Sub-section (6-A) of Section 8 or, as the case may be under subsection (8-A) of Section 14.

(Emphasis supplied).

Provided that the State Government may for mitigating hardship to members of Scheduled Castes or Scheduled Tribes, extend the period of limitation by one year by an order notified in that behalf, where it considers it necessary or expedient so to do.

(2) In relation to final order of the Debt Relief Court passed on an application referred to in Sub-section (1), the Collector may exercise revisional jurisdiction and the provisions of Section 22 shall apply mutatis mutandis to such proceedings in revision.

10. In the instant case, claim of the creditor/petitioner/great grand father of the petitioner against their debtors/respondents and their ancestors was not discharged as per provision of Sub-section (4) or Sub-section (6) of Section 8. The Debt Relief Court in both the orders mentioned hereinabove have nowhere given finding to this effect that claim of a creditor against his debtor deem to have been or was discharged and no certificate to this effect was issued as per provision under Section 28 of the Act. It is also manifest, that the order dated 19-4-1988 (Annexure-F) was not passed by the Debt Relief Court but the same has been passed by SDO, Bagli, District Dewas. He has also signed on this order in the capacity of SDO and at the top of the order the name of the Court is mentioned as SDO though the case number is mentioned as Rin Nivaran (Debt Relief) 85/86. Apart from this, this order is also not disclosing the fact of giving opportunity of hearing to the petitioners as required by the amended provision Section 14-A. Even in the order presence of petitioners' or any body else on their behalf is not mentioned. It appears that Devaji S/o Indorilal appeared personally before the SDO and produced the copy of the order dated 7-8-1988 passed by Civil Court in Civil Suit No. 199/84 and on the basis of observation made by the Civil Court that the said Court (Civil Court) has no jurisdiction and since Debt Relief Court discharged the plaintiff from the debt, therefore, Debt Relief Court was only competent Court to restore possession of the mortgaged property and the learned SDO has considered this observation as order passed by the Civil Court, directing the Debt Relief Court to restore the possession of the mortgaged house in favour of respondent/late Devaji S/o Indorilal. In this view of the matter, the order Annexure-F is also Illegal and passed in utter disregard of amended provision of

Section 14-A.

11. In consequence thereof, the impugned order passed by the Sub Divisional Officer dated 19-4-1988 in Debt Relief Case 85/86, directing for delivery of the possession of the house to the respondents is wholly illegal and without jurisdiction and the same is hereby quashed. The learned Counsel for the parties have submitted that possession of the house was already delivered to the respondents. Therefore, the respondent No. 1 Collector, Dewas and respondent No. 2 Debt Relief Court/SDO, Bagli are directed to get the restoration of the possession of the house in favour of the petitioner. Rest of the respondents are also directed to deliver possession of the house in question to the petitioner.

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