

NON-REPORTABLE

IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO. 5040 OF 2009

YASHCHANDRA (D) BY LRS.

...APPELLANT(S)

Versus

THE STATE OF MADHYA PRADESH
& ORS.

...RESPONDENT(S)

J U D G M E N T**Deepak Gupta, J.**

1. The State of Madhya Pradesh enacted the Madhya Pradesh Ceiling on Agricultural Holdings Act, 1960 (hereinafter referred to as 'the Act'). The Bill in this regard was published on 15th September, 1959 and the Act was published on 1st October, 1960 after receiving the assent of the President of India. Section 7 of the Act provided the maximum extent of land to be held by a person and when the Act was initially passed, a land holder was not entitled to hold land in excess of 28 standard acres. Standard acre was defined under Section

2(n) of the Act to mean one acre of perennially irrigated land or two acres of seasonally irrigated land or three acres of dry land. Section 4 of the Act provided that any transaction of land by the land holder by way of sale, gift, exchange, partition etc. could be verified by the competent authority, provided such transfer of land had been made after the date of publication of the Bill i.e. 15.09.1959. Sub-section 2 of Section 4 of the Act provided that this section would not apply to a transfer made by the land holder who does not hold land in excess of the ceiling area on the date of transfer. Section 5 of the Act restricts the transfer or sub-division of land after the coming into force of the Act till final order under Section 11 of the Act is passed unless the permission of the Collector in writing is taken before entering into the transaction.

2. One Phoolchand was the owner of 72 acres 75 decimals of land. Admittedly, this was dry land and, therefore, he was entitled to hold 84 acres of dry land under the Act. The Act was amended in the year 1972. We are only concerned with the Amendment Act of 1972 and the Second Amendment Act of 1972. Both these Acts came into force from 7th March, 1974. The maximum extent of holding was changed and where the

holder of the land was a member of the family of less than 5 members, the family was entitled to retain 15 standard acres of land, and 18 standard acres of land where a family consisted of more than 5 persons. As per this amendment, Phoolchand was at the most entitled to retain 18 standard acres or 54 acres of dry land. Vide Second Amendment Act, 1972, Section 4 of the Act was amended and the competent authority was entitled to set aside any transaction entered into after 24th January, 1971 and before the appointed day, which is 7th March, 1974.

3. After the Act was amended, Phoolchand filed his return and in his return he did not say that he had leased out any land to Yashchandra, the original plaintiff who was also the original appellant before this Court, who is deceased and is now represented by his legal representatives. It is the admitted case of the parties that Yashchandra was related to Phoolchand. Yashchandra filed a petition before the competent authority under the Act claiming that he was an occupancy tenant on the eastern part of the land of Phoolchand measuring 25 acres and claimed that this land had been leased out to him vide lease deed dated 21st November, 1968 on a rental of Rs. 500/- per annum. He further claimed that since he was in

occupation of the land he had got the rights of occupancy tenant under Section 169 of the Madhya Pradesh Land Revenue Code, 1959 (hereinafter referred to as 'the Code'). The competent authority rejected the objections and declared 20.88 acres of land of Phoolchand as surplus under the Act.

4. Thereafter, Yashchandra filed a suit for declaration of his occupancy rights in the suit land on the same grounds. In this suit he claimed that Phoolchand had transferred 24 acres of land to him in 1968. In this suit a written statement was filed and in the written statement the State denied that Phoolchand had created any lease in favour of Yashchandra. However, it was admitted that the plaintiff was in cultivating possession of the land. The State, however, took the plea that the alleged transaction of lease is a sham transaction set up with an intention to defeat the provisions of the Act. Phoolchand was defendant in the suit but did not contest the same. He did not file any written statement. The trial court dismissed the suit. Yashchandra filed an appeal and the first appellate court allowed the appeal mainly on the ground that a lease was created by the document in question and, as such, the plaintiff had obtained occupancy rights. An appeal was

filed by the State and the High Court came to the conclusion that the alleged deed was a sham transaction. It relied upon the evidence of the plaintiff himself to come to the conclusion that the plaintiff was not in possession of the land. This judgment is challenged before us.

5. Shri Puneet Jain, learned counsel for the appellants has basically raised two issues- the first is that since the transaction in question is of the year 1968, the competent authority had no jurisdiction to invalidate the same either under the un-amended provisions of the Act or under the amended provisions of the Act. He submits that when the transaction took place, the holding of Phoolchand was less than the maximum prescribed limit and such a transfer was permissible under section 4(2) of the Act. He further submits that after the Amendment Act of 1972, the competent authority could only look into the validity of those documents or transactions which had been entered into after 24th January, 1971.

6. This argument seems attractive on first blush. However, when we carefully peruse the original document, we notice that by this document [Annexure P-2] Phoolchand states that he

has received Rs.2000/- from Yashchandra and that he has permitted Yashchandra to enclose and cultivate 1/3rd of his land measuring 24 acres and cultivate the same and only Rs. 500/- would be deducted. Even after payment of the full amount of Rs. 2000/-, Yashchandra would be entitled to cultivate the land for a period of 10 years. This document is signed only by Phoolchand and it is neither witnessed by anybody nor registered. This document transfers an interest in immovable property of more than rupees hundred. It may be true that under the provisions of the Code oral leases of agricultural holdings are permissible, but once the lease is created by a document then the same has to be registered under the Registration Act. This document is an unregistered document. The courts below have come to the conclusion that this document is an ante-dated document. Therefore, this document cannot be looked into for deciding whether this document creates any right, title or interest in the appellants. In our view, in the absence of any registration or any attesting witness, the document could have easily been manipulated by Phoolchand and the plaintiff by ante-dating it.

7. The second issue raised by Shri Puneet Jain, learned counsel for the appellants is that the aforesaid document can be looked into for the collateral purpose for deciding the possession of the plaintiff. In this regard, Shri Jain, learned counsel also relied upon the written statement wherein it is mentioned that the cultivating possession of the plaintiff is admitted. No doubt, this one sentence in the written statement gives the impression that possession of the plaintiff is admitted, but if we read the written statement as a whole we find that the stand of the State is that the document is a sham document, at best a mortgage deed and the possession of the plaintiff is in the nature of a mortgagee.

8. One of the issues framed was whether the plaintiff had become a cultivating farmer of the land in question and while answering this issue the trial court has discussed the question whether the plaintiff was in possession of the land or not. It has been found that the plaintiff was not in possession of the land. In fact, the plaintiff himself had admitted that he is not in possession of the land and cultivation on his behalf is carried out by a servant. It was also stated that one relative was managing the cultivation of the land. The trial court held

that the plaintiff had failed to prove that he was in possession because he failed to mention the name of the persons who were owning the neighbouring lands nor could he give any details thereof. The servant Buda and the relative Amlok Chand were not examined by the plaintiff. Therefore, even as per the stand of the plaintiff he was not in personal cultivating possession and hence, he could not have got occupancy rights of a tenant in the land which can only be given to a person who is actually cultivating the land.

9. In view of the above discussion we find no error in the judgment of the High Court and the appeal is dismissed accordingly. Pending application(s), if any, stands disposed of.

.....J.
(MADAN B. LOKUR)

.....J.
(DEEPAK GUPTA)

New Delhi
September 20, 2017