AFR

HIGH COURT OF CHHATTISGARH, BILASPUR

Second Appeal No.423 of 2002

1. Ramlal, S/o Munshi Sao, age 55 years, Occupation Agriculture.

2. Smt. Girja Devi, W/o Ramlal, aged about 50 years.

Both R/o Village Jamdih, P.S. Dhaurpur, Tehsil Lundra, District Surguja, C.G.

(Defendants)
---- Appellants

Versus

1. Piyari Bai (Died and deleted)

2. Asaru, S/o Sunder, age 46 years.

Both R/o Village Jamdih, Tehsil Lundra, Distt. Surguja, C.G.
(LRs of original Plaintiff.)

3. The State of Chhattisgarh, through Collector, Ambikapur.
(Proforma dfd. No.3)
---- Respondents



| | |
|---|---|
| For Appellants: | Mr. A.K. Prasad, Advocate. |
| For Respondent No.2: | None present, though served. |
| For Respondent No.3 / State: - | Mr. Ashish Surana, Panel Lawyer. |
| *Amicus*: | Mr. Hari Agrawal, Advocate. |

Hon'ble Shri Justice Sanjay K. Agrawal

Judgment On Board

29/11/2018

1. The substantial questions of law involved, formulated and to be answered in this defendants' second appeal are as under: -

> “1. Whether on the basis of the evidences available on record, the two Courts below were justified in holding that the suit filed by the plaintiff was not barred by limitation?
>
> 2. Whether the two Courts below were justified in holding that the defendants have not perfected their title over the suit property by way of adverse possession?”

(For the sake of convenience, parties would be referred as per their status shown in the trial Court.)

2. Sunder – original plaintiff (who died during the pendency of suit) filed a suit for declaration and permanent injunction in relation to the lands described in Schedule A of the plaint stating inter alia that Sumer Sai – grand-father of the original plaintiff, who died before the settlement operations, patta was prepared in the name of his son Nahkul Ram. The original plaintiff is son of Nahkul Ram. It was pleaded that father of the original plaintiff namely Nahkul Ram had no right to execute mortgage deed in favour of Ram Prasad on 10-3-1945 for a period of nine years and it was agreed that after the lapse of said period, if an amount of ₹ 200/- is repaid, the land shall be returned back to the plaintiff's father by said Ram Prasad and as such, the amount of mortgage was paid by the plaintiff to Ram Prasad in the year 1955-56 and possession was taken from him. It was further pleaded that since the defendants tried to interfere with possession in the suit lands, the institution of suit for declaration of title and permanent injunction was necessitated. It is pertinent to mention here that during the pendency of first appeal, application seeking relief of possession was filed and that was granted by the first appellate court as recorded in paragraph 21 of the judgment of the first appellate court.



3. The defendants / appellants herein filed their written statement denying the averments made in the plaint stating inter alia that since the aforesaid mortgage was conditional mortgage and there was a condition that if the amount of mortgage is not repaid within a

period of nine years from its date, the said mortgage shall become sale and that will amount to sale of the said property. It was further pleaded that after the lapse of period of mortgage, none has claimed the return of property from Ram Prasad, therefore, he became the absolute owner of the suit land and in partition, the property fell in the share of Ramwriksh – his brother and after death of Ramwriksh, the suit land was succeeded by his wife & son namely Smt. Shivratiya Devi & Durga Prasad, respectively, and his daughter Kum. Sita, and they sold the suit land by registered sale deed dated 14-12-1968 to the defendants and since then, they are in exclusive possession of the suit land. It was also pleaded that the plaintiff, who remained absconded for a fairly long time since 1945-46, returned to the village in the year 1983 and initiated a proceeding under Section 170-B of the M.P. Land Revenue Code, 1959 which was decided against him on 29-6-1983. The plea of suit having been barred by limitation and the plea of adverse possession were also setup by the defendants before the trial Court.



4. The trial court after appreciating oral and documentary evidence on record, decreed the suit holding that the plaintiffs are legal representatives of the original plaintiff and are owners of the suit land, but also granted permanent injunction in favour of the plaintiffs subject to payment of ₹ 200/- as amount of mortgage. In appeal preferred by the appellants / defendants, the first appellate court substantially agreed with the finding recorded by the trial court and dismissed the suit resulting into filing of second appeal under

Section 100 of the CPC in which substantial questions of law have been framed which have been set-out in the opening paragraph of this judgment.

5. Mr. A.K. Prasad, learned counsel for the appellants/defendants, would submit that both the courts below are absolutely unjustified in holding that the suit is not barred by limitation. The suit was basically a suit for redemption of mortgage and it was not a bare suit for declaration of title and possession and, therefore, Article 61 of the Limitation Act, 1963 would be applied and for which a period of 30 years is prescribed and the said 30 years has come to an end in the year 1983 and the suit was filed on 20-1-1988. Therefore, both the courts below are absolutely unjustified in holding the suit to be within limitation and in granting the suit filed by the plaintiff. Mr. Prasad would further submit that the present defendants came in possession over the suit land by registered sale deed dated 24-12-1968 and they remained in possession adverse to the knowledge of the plaintiffs and on the date of institution of suit, they had already perfected their title by adverse possession, therefore, the finding recorded by both the courts below that they have not perfected their title by adverse possession is liable to be set aside.



6. Mr. Hari Agrawal, learned *amicus*, would bring to the notice of the court that the suit was essentially a suit for declaration of title and permanent injunction originally brought and subsequently by the order of the first appellate court dated 10-8-2002, the relief of possession sought was granted by the first appellate court. Mr. Agrawal would submit that it is the case of the plaintiff that his father

had no right to mortgage the entire suit property as such, the condition that if mortgage amount is not repaid, it will amount to sale, that is void and would bring to the notice of the court the decision rendered by the Madhya Pradesh High Court in the matter of **Haji Fatma Bee v. Prahlad Singh**[1]. He would also bring to the notice of the court that under Form No.46 of Appendix A prescribed under Order 6 Rule 3 of the CPC, the relief of redemption of mortgage was not claimed, therefore, by no stretch of imagination, the suit can be said to be that of suit for redemption of mortgage. Therefore, it was outrightly a suit for declaration of title and possession and as such, Article 65 of the Limitation Act, 1963 would be applicable in which the defendants were required to plead and establish adverse possession and they have failed to establish the same, as the two courts below have held, the trial court is absolutely justified in granting decree for possession holding that the defendants have failed to establish the plea of adverse possession. Therefore, both the courts below are absolutely justified in dismissing the suit of the plaintiffs.



7. I have heard learned counsel for the appellants and the *amicus* and considered their submissions and also went through the records of two courts below with utmost circumspection.

**Answer to the first question of law**: -

8. Original plaintiff Nahkul Ram brought a suit for declaration of title and permanent injunction against defendant Ramlal, who is purchaser of the suit property by registered sale deed dated 24-12-

1 AIR 1985 MP 1

1968, stating that his father, who had mortgaged the suit land by registered mortgage deed dated 10-3-1945 for nine years, had no right to make mortgage subject to the condition of redeem of payment of ₹ 200/- and since his father had no right to make mortgage as the plaintiff had his right and interest over the suit property, therefore, the mortgage is illegal. It was also pleaded that mortgage money was paid by the plaintiff and the suit land was obtained back by the plaintiff and he is continuing in possession. In the said suit, the defendant took a plea that he has purchased the suit property on 24-12-1968 from Smt. Shivratiya Devi, Durga Prasad, Kum. Usha & Kum. Sita and since then, he is in possession and as such, the suit has become barred by limitation. He has also, in paragraph 15 of the written statement, pleaded that he is in possession for a continuous period of 12 years, therefore, he has perfected his title by way of adverse possession. The relief of possession was directed to be introduced by the order of the first appellate court. Issue No.6 was framed by the trial court, but it was answered in negative by the trial court which was affirmed by the first appellate court. The defendant who is purchaser of the suit land did not plead before the trial court and did not raise any plea before the first appellate court that it was a suit for redemption of mortgage in which Article 61 of the Indian Limitation Act, 1963 would attract. He has simply pleaded that the suit is barred by limitation and he has perfected his title by way of adverse possession which the court has not found favour with. It is pertinent to mention here that it was purely a suit for declaration of title and

permanent injunction as it appears from the averment of the plaint in which it is quite apparent that neither mortgagee nor his LRs were impleaded as party defendant in the suit and only the subsequent purchaser from the said mortgagee has been impleaded as party defendant. Even otherwise, the relief of redemption of mortgage was not claimed in the said suit by the plaintiff which goes to show that it was a bare suit for declaration of title, permanent injunction and possession.

9. The submission of Mr. Prasad, learned counsel for the appellants/ defendants, is that if the suit is barred by limitation then specific pleading is not required to be raised specifically in view of Section 3 of the Limitation Act, 1963.



10. In the matter of **Narne Rama Murthy v. Ravula Somasundaram and others**[2], the Supreme Court has clearly held that when limitation is the pure question of law and from the pleadings itself it becomes apparent that the suit is barred by limitation, then it is the duty of the court to decide limitation at the outset even in the absence of a plea. It was further held that in cases where the question of limitation is a mixed question of fact and law and the suit does not appear to be barred by limitation on the face of it, then the facts necessary to prove limitation must be pleaded, an issue raised and then proved.

11. Likewise, in the matter of **Food Corporation of India and others v. Babulal Agrawal**[3], the Supreme Court has laid down the duty of the court in relation to the bar of limitation under Section 3 of the

2 (2005) 6 SCC 614
3 (2004) 2 SCC 712

Limitation Act, 1963 and held as under: -

> "12. … A suit filed beyond limitation is liable to be dismissed even though limitation may not be set up as a defence. The above position as provided under the law cannot be disputed nor has it been disputed before us. But in all fairness, it is always desirable that if the defendant would like to raise such an issue, he would better raise it in the pleadings so that the other party may also note the basis and the facts by reason of which suit is sought to be dismissed as barred by time. It is true that the court may have to check at the threshold as to whether the suit is within limitation or not. There is always an office report on the limitation at the time of filing of the suit. But in case the court does not prima facie find it to be beyond time at that stage, it would not be necessary to record any such finding on the point, much less a detailed one. In such a situation at least at the appellate stage, if not earlier, it would be desired of the defendant to raise such a plea regarding limitation. In the present case except for making a passing reference in the list of dates/synopsis, no such ground or question has been raised or framed on the point of limitation. It is quite often that question of limitation involves question of facts as well which are supposed to be raised and indicated by the defendant. The objecting party is not supposed to conveniently keep quiet till the matter reaches the Apex Court and wake up in a non-serious manner to argue that the court failed in its duty in not dismissing the suit as barred by time. The trial court may not find the suit to be barred by time and proceed with the case but in that event the court would not be required to record any such finding unless any plea is raised by the defendant. ..."



12. Reverting to the facts of the present case in light of the nature of the suit and the duty of the party to raise the plea of limitation, it is quite vivid that the defendants did not raise any specific plea that the suit is barred by limitation being covered under Article 61 of the Limitation Act, 1963 and simply raised a general plea of limitation as vague as it can be that the suit is barred by limitation which the courts below have not found favour with, as in the present case, plea of limitation was not pure question of law, rather it was mixed question of law and fact which was required to be pleaded

specifically by party taking the plea.

13. In the first appeal also, though a specific ground in the memo of appeal was raised, but it was not argued that the suit as framed and filed was barred by Article 61 of the Limitation Act, 1963. Even the defendant and his witnesses have not said any word about the plea of limitation in their statement adduced before the trial court, as such, the defendants cannot be allowed to make capital out of Section 3 of the Limitation Act, 1963, especially when the plea of limitation, in the instant case, appears to be a mixed question of fact and law for which there is no specific pleading raised and established by adducing evidence before the trial court and particularly, when the nature of suit brought before the trial court clearly appears to be a suit for declaration of title and permanent injunction in which the court has clearly returned the finding that the suit is within the period of limitation. Even the cause of action of the plaintiff was based on Ex.D-7 i.e. the order of the Sub Divisional Officer (Revenue), rejecting his application under Section 170-B of the M.P. Land Revenue Code, 1959.



14. Thus, in view of the aforesaid discussion, the first substantial question of law is answered against the defendants and in favour of the plaintiffs.

**Answer to the second question of law**: -

15. Both the courts below have held that the plaintiff's father – Nahkul Ram and the plaintiff were aboriginal tribe belonging to Nahkul and they were Nahkul Gond and as such they were aboriginal tribe and their lands cannot be transferred with prior permission of the

Collector under Section 165(6) of the M.P. Land Revenue Code, 1959. Therefore, the plea of adverse possession would not be applicable and the defendants cannot perfect their title by way of adverse possession. The plaintiff filed suit on 20-1-1988 in which original defendant No.1 Ramlal, who is purchaser of the suit property from the legal representatives of Ramwriksh on 24-12-1968 vide Ex.D-2, had set up the plea of adverse possession.

16. Section 165(6) of the Code as originally stood prior to amendment states as under:-

> "165(6): Notwithstanding anything in sub-section (1) the right of Bhumiswami belonging to a tribe which has been declared to be an aboriginal tribe by the State Government by a notification in that behalf for whole or part of the area to which this Code applies, shall not be transferred to a person not belonging to such tribe without the permission of Revenue Officer not below the rank of Collector, given for reasons to be recorded in writing."



17. Sub-section (6) of Section 165 of the Code was substituted by M.P. 61 of 1976 w.e.f. 29.11.1976 which states as under:-

> "165(6) Notwithstanding anything contained in sub-section (1) the right of Bhumiswami belonging to a tribe which has been declared to be an aboriginal tribe by the State Government by a notification in that behalf, for the whole or part of the area to which this Code applies shall-
>
> (i) in such areas as are predominately inhabited by aboriginal tribes and from such date as the State Government may, by notification, specify, not be transfered nor it shall be transferable either by way of sale or otherwise or as a consequence of transaction of loan to a person not belonging to such tribe in the area specified in the notification;
>
> (ii) in areas other than those specified in the notification under clause (i), not to be transferred or be transferable either by way of sale or otherwise or as a consequence of transaction of loan to a person not

> belonging to such tribe without the permission of a Revenue Officer not below the rank of Collector, given for reasons to be recorded in writing.
>
> *Explanation*.-For the purposes of this sub-section the expression “otherwise” shall not include lease.”

18. Section 165(6) of the Code prohibits transfer of land belonging to an aboriginal tribe, therefore, it should not be restricted to transfers which are valid according to the Transfer of Property Act or any other law. The term “transfer” is not defined in the Chhattisgarh Land Revenue Code. The object behind enactment of the provision is to see that the aboriginal tribes, basically downtrodden and mostly nomadic by nature, do always have land with them, so that they have a settled position in their life and sustain themselves by agriculture.



19. In the matter of **Pandey Orson v. Ram Chander Sahu and others**[4] the Supreme Court considered term 'transfer' occurring in Section 71A of the Chhotanagpur Tenancy Act, 1908, as that was not defined in the Act. That provision was the beneficial piece of legislation intended to protect the weaker sections of citizens who could not protect their land otherwise. Their Lordships chose to adopt liberal construction so as to give full effect to the legislative purpose and held as under:-

> “In S. 71A in the absence of a definition of transfer and considering the situation in which exercise of jurisdiction is contemplated, it would not be proper to confine the meaning of transfer to transfer under the Transfer of Property Act or a situation where transfer has a statutory definition. What exactly is contemplated by transfer in S. 71A is where possession has passed from one to another and as a physical fact the member of the Scheduled Tribe who is entitled to hold possession has

4 AIR 1992 SC 195

> lost it and a non-member has come into possession would be covered by transfer and a situation of that type would be amenable to exercise of jurisdiction within the ambit of S. 71A. ”

20. The Madhya Pradesh High Court in the matter of **Chambaram S/o Gangaram v. Chanda and others**[5] while considering the word 'transfer' occurring in Section 165(6) of the Code has held that it has to be assigned an extended meaning so as to cover every contingency which results in depriving the aboriginal holder of his title in favour of any non-aboriginal tribe and further held that acquisition of title by non-aboriginal by adverse possession by extension of title of aboriginals as a result of adverse possession is not recognized under Section 165(6) of the Code and held as under:-



> “13. The definition in Section 5, Transfer of Property Act itself suggests that it is meant for 'following sections' of the Transfer of Property Act. It is also not exhaustive of all modes of transfers and there may be modes of transfer which would not come within the special modes discussed in Transfer of Proeprty Act. (See, Amir Bibi vs. Aropiam and others[6] and Bhagwatibai vs. Bhagwandas[7]).
>
> 14. The term 'transfer' also occurs in sections 4 and 5 of the M.P. Ceiling on Agricultural Holdings Act, 1960. In Jagdish vs. State of M.P. and others, Second Appeal No.8/1992, decided on 12-10-1992, this Court departed from the definition of 'Transfer of Property' as given in section 5 of the Transfer of Property Act, 1882, and held that-
>
> > “The transfer in any form whatsoever and howsoever styled, if it has the result of effecting the holding held by the holder, it was covered”.
> >
> > “Keeping in view the Legislative intent and objective behind enactment it is clear that such decrees which would have the effect of

5 1993 M.P.L.J. 80
6 AIR 1919 Madras 1113
7 AIR 1927 Sind 206

> extinguishing the title of the holder and vesting the same in someone else, though not falling within the ordinary meaning of the phrase 'transfer of property' would be 'transfers' within the meaning of the term as used in sections 4 and 5 of the Act."

16. Any other interpretation of the term 'transfer' occurring in section 165(6) of the M.P. Land Revenue Code, 1959, would defeat the purpose behind its enactment and would open gates for tricks and designs being adopted by unscrupulous lands greedies to deprive aboriginals of the land held by them. It is a judicially noticeable fact that aboriginals are liberally granted land by the State, mostly on priority basis, with the object of settling them and for their upheaval. If only the theory of extinction of title of the aboriginals and acquisition of title in non-aboriginals by resort to the plea of 'adverse possession' was to be recognised it would not be difficult to find out cases where non-aboriginals would purchase the land though prohibited by law and then file suits of the nature as is at hand, compelling or persuading the aboriginal holders in conceding to the claim and thereby securing transfer of title in disguise.

17. This Court is definitely of the opinion that the term 'transfer' as occurring in section 165(6) of the Code is not to be given restricted meaning, also not to be read in the light of the definition given in section 5 of the Transfer of Property Act. It has to be liberally construed, assigning an extended meaning so as to cover every contingency which results in depriving the aboriginal holder of the title and vesting the same in any non-aboriginal. That interpretation only would satisfy the Legislative intent and the laudable public purpose behind."



21. The Supreme Court in the matter of **Keshabo and another v. State of M.P. and others**[8] while considering the nature and object of the MP Land Revenue Code qua the provisions contained in Section 165(6) as it stood prior to 1976 amendment, held that MP Land Revenue Code is a welfare legislation made to protect the ownership rights in the land of the Scheduled Tribe. It was observed as under:-

> "It is welfare legislation made to protect the ownership rights in the land of a Scheduled Tribe to effectuate the

8 (1996) 7 SCC 765

> constitutional obligation of Articles 39(b) and 46 of the Constitution read with the Preamble. Economic empowerment of a tribal to provide economic democracy is the goal. Prevention of their exploitation due to ignorance or indigency is a constitutional duty under Article 46. Agricultural land gives status to the tiller. Therefore, any alienation of land in contravention of the above objectives is void."

22. In the matter of **Murlidhar Dayandeo Keshkar v. Vishwanath Pandu Barde and another**[9], the Supreme Court while dealing with refusal to alienate permission to the Scheduled Tribe to non-tribal under the Bombay Revenue Code held that right to development is an inalienable right by virtue of which every human person is entitled to participate in contribution to and to enjoy economic, social, cultural and political development, in which all human rights and fundamental freedom can be fully realised. It was held as under:-



> "The prohibition from alienation is to effectuate the constitutional policy of economic empowerment under Articles 14, 21, 38, 39 and 46 read with preamble of the Constitution. Accordingly it was held that refusal to permit alienation is to effectuate the constitutional policy."

23. Similarly, in the matter of **R. Chandevarappa and others v. State of Karnataka and others**[10] while considering Section 43(5) of the Karnataka Revenue Code, the Supreme Court held that once relevant rules prohibit alienation of property granted to depressed class for all times to come, it cannot be got over by grant made contrary to statutory rules and prohibiting clause is absolute in its term and held as under:-

> "6. Having given our anxious considerations to the respective contentions, the first question that arises for

9 1995 Supp (2) SCC 549
10 (1995) 6 SCC 309

> determination is what would be the nature of the right given to the assignee Dasana Rangaiah Bin Dasaiah. Article 39(b) of the Constitution of India envisages that the State shall in particular direct its policy towards securing that the ownership and control of the material resources of the community are so distributed as best to subserve the common good. Admittedly, Scheduled Castes and Scheduled Tribes are the weaker sections of the society who have been deprived of their economic status by obnoxious practice of untouchability and the tribes living in the forest area far away from the civilised social life. To augment their economic status and to bring them on par into the main stream of the society, the State with a view to render economic justice envisaged in the Preamble and Articles 38 and 46 of the Constitution distributed the material resources, namely, the land for self-cultivation. It is an economic empowerment of the poor. It is common knowledge that many a member of the deprived classes live upon the agriculture either by cultivation on lease hold basis or as agricultural labour. Under these circumstances, the State having implemented the policy of economic empowerment to do economic justice assigned lands to them to see that they remain in possession and enjoy the property from generation to generation."



24. The Supreme Court in the matter of **Lincai Gamango v. Dayanishi Jena**[11] relying upon the matter of **Amrendra Pratap Singh v. Tej Bahadur Prajapati**[12] has held that no right can be acquired by adverse possession on such inalienable property, adverse possession operates on an alienable right. It was also held that non-tribal would not acquire a right or title on the basis of adverse possession. It was held as under:-

> "7. We find both these reasons given by the High Court are not sustainable. Coming first to the second point, we find that there is a decision of this Court directly on the point. It is reported in Amrendra Pratap Singh v. Tej Bahadur Prajapati. The matter related to transfer of land falling in tribal area belonging to the Schedule Tribes. The matter was governed by Regulations 2, 3 and 7-D of the Orissa Scheduled Area Transfer of Immovable Property (By Scheduled Tribes) Regulations, 1956 viz. the same Regulations which govern this case also. The

11 (2004) 7 SCC 437
12 (2004) 10 SCC 65

question involved was also regarding acquisition of right by adverse possession. Considering the matter in detail, in the light of the provisions of the aforesaid Regulations, this Court found that one of the questions which falls for consideration was 'whether right by adverse possession can be acquired by a non-aboriginal on the property belonging to a member of aboriginal tribe? In context with the above question posed, this Court observed in para 23 of the judgment as follows : (SCC p. 80)

> "23.....The right in the property ought to be one which is alienable and is capable of being acquired by the competitor. Adverse possession operates on an alienable right. The right stands alienated by operation of law, for it was capable of being alienated voluntarily and is sought to be recognised by doctrine of adverse possession as having been alienated involuntarily, by default and inaction on the part of the rightful claimant....."



25. In the matter of **Ram Karan (Dead) Through Legal Representative and others v. State of Rajasthan and others**[13] the Supreme Court while considering the transfer prohibited by proviso to Section 42 of the Rajasthan Tenancy Act, 1955 held that transfer of landholding by member of Schedule Caste in favour of person not belonging to Schedule Caste being forbidden and unenforceable, such transfer would unlawful under Section 23 of the Contract Act as it is statutorily barred.

26. The Supreme Court in the matter of **Rajasthan Housing Board v. New Pink City Nirman Sahkari Samiti Ltd.**[14] relying upon the matter of **Lincai Gamango** (supra) and **Amrendra Pratap Singh** (supra) has held that transfer between Schedule Caste and non-Scheduled Caste is void under Section 42 of the Rajasthan Tenancy Act, 1955 being prohibited by law and held as under:-

> “26. In the instant case, the transaction is ab initio void,

13 (2014) 8 SCC 282
14 (2015) 7 SCC 601

that is, right from its inception and is not voidable at the volition by virtue of the specific language used in Section 42 of the Rajasthan Tenancy Act. There is declaration that such transaction of sale of holding “shall be void”. As the provision is declaratory, no further declaration is required to declare prohibited transaction a nullity. No right accrues to a person on the basis of such a transaction. The person who enters into an agreement to purchase the same, is aware of the consequences of the provision carved out in order to protect weaker sections of Scheduled Castes and Scheduled Tribes. The right to claim compensation accrues from right, title or interest in the land. When such right, title or interest in land is inalienable to non-SC/ST, obviously the agreements entered into by the Society with the Khatedars are clearly void and decrees obtained on the basis of the agreement are violative of the mandate of Section 42 of the Rajasthan Tenancy Act and are a nullity. Such a prohibited transaction opposed to public policy, cannot be enforced. Any other interpretation would be defeasive of the very intent and protection carved out under Section 42 as per the mandate of Article 46 of the Constitution, in favour of the poor castes and downtrodden persons, included in the Schedules to Articles 341 and 342 of the Constitution of India.”



27. Reverting to the facts of the present case in the light of principle of law laid down by the Supreme Court and the Madhya Pradesh High Court in above-stated judgments (supra) construing the word “transfer” occurring in Section 165(6) of the Code, liberally giving it extended meaning to further the object of legislature behind enacting the said provision, it would appear that the perfection of title by invoking the plea of adverse possession based on Article 65 of the Limitation Act, 1963 to land belonging to aboriginal tribe would amount to “transfer” by operation of law within the meaning of Section 165(6) of the Code, as this interpretation only furthers the object of the legislature rather than defeats it, taking the other view of the matter, would deprive the aboriginal to be his title, vesting land in favour of non-aboriginal tribe and the same is void

being prohibited and forbidden by law and being opposed to public policy within the meaning of Section 23 of the Indian Contract Act, 1872. Section 2(g) of the Indian Contract Act, 1872 also provides that an agreement which is unenforceable by law is said to be void.

28. In view of the facts of the present case in light of the judgments of the Supreme Court in **Amrendra Pratap Singh** (supra), **Lincai Gamango** (supra) and **Rajasthan Housing Board** (supra), it is quite apparent that transfer of property belonging to aboriginal tribe is prohibited by Section 165(6) of the Chhattisgarh Land Revenue Code, 1959 and adverse possession operates on an alienable right, adverse possession cannot be acquired on inalienable property of aboriginal tribe, as the plaintiff is aboriginal tribe belonging to Nakul tribe. Therefore, following the principles laid down in the above-stated judgments, both the courts below are absolutely justified in holding that since the plaintiff is a member of aboriginal tribe and his land cannot be transferred without the permission of the Collector under Section 165(6) of the M.P. Land Revenue Code, 1959, the defendant has not acquired title by way of adverse possession, is a finding of fact based on the evidence available on record. I do not find any perversity or illegality in the said finding recorded by the courts below. Resultantly, the second appeal deserves to be and is accordingly dismissed leaving the parties to bear their own cost(s).



29. The second substantial question of law is also answered against the defendants and in favour of the plaintiffs.

30. Decree be drawn-up accordingly.

31. This court appreciates the assistance rendered by Mr. Hari Agrawal, Advocate, who extended legal assistance to this court on short notice.

Sd/-
(Sanjay K. Agrawal)
Judge

Soma

HIGH COURT OF CHHATTISGARH, BILASPUR

Second Appeal No.423 of 2002

Ramlal and another

Versus

Asaru and another

Head Note

Property right of aboriginal tribe cannot be lost by proving the plea of adverse possession in view of Section 165(6) of the Chhattisgarh Land Revenue Code, 1959.

छत्तीसगढ़ भू–राजस्व संहिता, 1959 की धारा 165(6) के परिपेक्ष्य में प्रतिकूल कब्जे के अभिवाक् को सिद्ध कर आदिम जनजाति के संपत्ति के अधिकार को समाप्त नहीं किया जा सकता।