PETITIONER:
NAMDEO

Vs.

RESPONDENT:
COLLECTOR, EAST NEEMAR, KHANDWA & ORS.

DATE OF JUDGMENT22/08/1995

BENCH:
RAMASWAMY, K.
BENCH:
RAMASWAMY, K.
HANSARIA B.L. (J)

CITATION:
1996 AIR 973 1995 SCC (5) 598
JT 1995 (6) 137 1995 SCALE (4)831

ACT:

HEADNOTE:

JUDGMENT:

J U D G M E N T

K. RAMASWAMY, J:

Leave granted.

The appellant is a subsequent purchaser from Devi Prakash son of Laxman Prasad. The case of Rama Krishna, the original owner, is' that he had obtained loan from Laxman Prasad, admittedly a money-lender, by an oral mortgage of 12 acres and 20 gunthas of land. Laxman Prasad had delivered 4 acres and odd and got the sale deed executed for 8 acres 30 gunthas of the land in the name of his minor son Devi Prakash. Therefore, he comes within the provisions of M.P. Samaj Ke Kamjor Wargon Ke Krishi Bhumidharakon Ka Udhar Dene Walon Ke Bhumi Hadapane Sambandhi Kuchakron Se Paritran Tatha Mukti Adhiniyam [for short, 'the Act']. The Sub-divisional Officer by his order dated August 27, 1982 recorded a finding that:

"Applicant's witness No.2 Ram Krishna Matharam and applicant's witness No.3 Kadulal have supported this statement. Alongwith this, non-applicant Eknath (one of the subsequent purchasers) has admitted that upon execution of the instrument of the transaction possession continued and remained with Ram Krishna. It is thus clear from the testimony of these witnesses that for several years after the transaction effected in 1964, Ram Krishna was in possession of the disputed land. It is noticeable that in Khasra 1969-70 also, his partial possession has been shown. Thus from these facts it appears prima facie that the transaction in question was a prohibited transaction of loan because, if it was a transaction of real sale,

then Laxman Prasad and Devi Prakash must have taken the land in their possession soon after the execution of the instrument of transaction."

Thus, it was declared that the initial sale dated March 17, 1964 and the subsequent sale deed executed by Devi Prakash in favour of the appellant and another sale deed in favour of Eknath on May 23, 1974 are void and directed the appellant and Eknath to deliver possession of the lands to Rama Krishna. On appeal it was confirmed. When the appellant and another challenged under Article 226 in Misc. Petition No.1276/83 and another, the Division Bench of M.P. High Court by order dated March 4, 1991 upheld the orders of the tribunals. Thus this appeal by special leave.

Shri P.P.Rao, the learned Senior counsel has contended that the Act has no application for the reason that the land covered by 1964 sale deed relates to 12 acres 20 gunthas while the Act would become applicable when sale transactions are covered within a specified extent of land declared in the Act. We find no force in the contention.

Section 2(c) of the Act states that:

(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."

A reading thereof indicates that a holder of an agricultural land not exceeding 8 hectares of unirrigated land or 4 hectares of irrigated land within the State as a Bhoomiswami or occupancy tenant or a Government lessee either in any one or all of the capacities together is a holder of agricultural land. It is seen that the Sub-Divisional Officer had recorded a finding that what remained in possession of Lakshman Prasad and his son Devi Prasad was 8 acres 20 gunthas and, therefore, it is within the specification of 4 hectares of irrigated land. The Act thereby clearly becomes applicable to the lands in this case.

It is next contended that the Act applies only to sale transactions effected from the appointed date, namely, January 1, 1971 as specified in Section 2(a). Since the original transaction had taken place in 1964, the Act cannot be applied retrospectively. It is seen that the Sub-Divisional Officer recorded that though sales were effected only in 1974 but the document which purported to have been a sale deed of 1964 was not really intended to be a conveyance. The finding recorded by the Tribunals below was that Ram Krishna never intended to sell the land; and Laxman Prasad, being a money lender, made the document as if a sale deed, which was intended to be a mortgage deed.This fact gets corroboration from the finding and revenue entries that the owner remained in possession of the lands. Therefore, even if the sales were effected in 1974, the Act becomes applicable to such transactions.

The further contention is that there was an agreement of sale by Devi Prasad with the appellant in the year 1969 and that sale deed was executed in 1974, it dates back to the date of agreement and, therefore, the Act is inapplicable. We find no force in the contention. An agreement of sale does not convey any right, title or

interest. It would create only an enforceable right in a court of law and parties could act thereon. The right, title and interest in the land of Devi Prasad stood extinguished only on execution and registration of the sale deed and admittedly it was done in 1974. Therefore, the sale deeds are within the prohibited period.

It is also urged that the Sub-Divisional Officer has to consider and record a finding, as enjoined under s.6 of the Act relating the conditions enumerated in sub-s.(4) thereof. The authorities have not considered, more particularly, with reference to the urgency of the loan, availability of other sources; also the market value of the land at the time of the transaction and the adequacy of the consideration passed under the documents. It is true that the enumerated circumstances are required to be considered in juxtaposition with the power under s.4 of the Act, which reads:

> "4. All prohibited transactions of loan to be subject to protection and relief under this Act.
>
> It is hereby declared that all claims in relation to a prohibited transaction of loan subsisting on the appointed day or entered into thereafter but on or before the date of publication of this Act in the Gazette shall, notwithstanding anything contained in the Code or any other enactment for the time being in force or any decree or order, if any, of any court or authority, be subject to protection and relief in accordance with the provisions of this Act."

On recording a finding by the authority that the transaction in question was a prohibited transaction of loan, it would be entitled to declare, under s.7, that the sale is a void sale or unenforceable. The authorities have recorded the findings that Rama Krishana never intended to sell the land, he had obtained loan of a sum of Rs.2000/- and odd, and he repaid the amount with interest. These considerations obviously weighed with the authorities and the High Court had agreed with the finding by the statutory authorities that the Sub-Divisional Officer had substantially complied with the provisions in sub- s.(4) of s.6 of the Act. So, the non-consideration of the above-mentioned circumstances did not cause any failure of justice. Of course, it would have been better to record findings qua these also.

It is brought to our notice that under sub-s.(2) of s.7 an attempt has to be made by the authority to find out what was the actual consideration that had passed and what was the prevailing price of the lands at the date of sale. The authorities are then entitled to direct the moneylender to pay the difference to the holder of the agricultural land. The object of the Act is to see that the debtor gets adequate consideration for his land. No such attempt was made by the authorities, and so, the order passed is illegal. We find no force in the contention. It is seen that sub-s.(1) of s.7 mandates that when the Sub-Divisional Officer is satisfied that the transaction of loan is not a prohibited transaction of loan, he shall dismiss the application or close the proceedings. But if he records a finding that the transaction is of loan "in substance" and is a prohibited transaction of loan, he should declare such transaction to be void, should pass an order, setting aside the transfer of the land to the creditor or money-lender's

nominee or subsequent seller and he should restore possession of the land to the debtor, i.e., holder of the agricultural land. Sub-s.(2) comes into operation only when no positive finding under s.7(1) is recorded. Clause (b) of Section 7 (1) (ii) states that:

> "(b) where in his opinion it is not feasible to restore the possession of land, pass order directing the lender of money to pay the difference of price under sub-s.(2)."

In the aforesaid situation only the authorities are required to go into the questions envisaged in sub-s.(2) and other follow-up action mentioned in that behalf in sub-section (4) of s.6 of the Act. Since the finding of the authorities was that there was no adequate consideration and the sale was within the prohibited period, the findings recorded are under s.7(1) (a) of the Act; consequently, the need to make enquiry as is necessary under clause (b) of s.7 (1) (ii) read with sub-s. (4) of S.6, does not arise.

The final submission is that since 1974 the appellant has been in possession of the lands and he has improved the land, he is prepared to pay the prevailing market value as on date and a direction in this behalf may be given. Learned counsel for the contesting respondents has stated that his client is interested to get back possession of the land, and not money. In view of the finding that the transaction is vitiated, because of which it was set aside exercising power under s.7(1) (a) of the Act, we do not think that we will be justified to interfere with that order and give a direction to pay the market value.

The appeal is accordingly dismissed. No costs.