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**IN THE HIGH COURT OF CHHATTISGARH AT  
BILASPUR**

**SECOND APPEAL NO. 251 OF 2005**

**APPELLANT  
PLAINTIFF**

Amar Nath Singh  
S/o <sup>Late</sup> Bodham Singh,  
aged about 50 years, Cast-  
Knawar, R/o Village -  
Turna, P.S. & Tehsil  
Ambikapur, Distt. -  
Surguja, (C.G.)

**VERSUS**

**RESPONDENTS  
DEFENDANTS**

1. Ramsundar, S/o Late Kalyan Singh, aged about 22 years, Cast- Gond,
2. Shyambar Singh, S/o Late Kalyan Singh, aged about 18 years,
3. Pathango Bai W/o Late Kalyan Singh, aged about 56 years, Caste- Gond,
4. Rajnandan Singh S/o Late Kalyan Singh, aged about 45 years,
- ✓ All are R/o of Village - Amalibhatti, P.S. & Tehsil - Ambikapur, District - Sarguja, (C.G.)
- ✓ 5. Shri D. R. Mandavi, Deputy Collector & Anuvibhagey Adhikari, Ambikapur,
- ✓ 6. State of C.G. through the Collector, Sarguja. [C.G.]

P.R. No. 1333/05  
Presented by Shri. Rakesh Pandey  
dated 02-05-05

W/o  
12/5/05

Jailal Singh

**MEMO OF SECOND APPEAL UNDER SECTION 100 OF THE  
CODE OF CIVIL PROCEDURE, 1908.**

AFR

(21)

HIGH COURT OF CHHATISGARH, BILASPUR

Second Appeal No. 251 of 2005

Amar Nath Singh

Vs.

Ramsundar and others

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ORAL ORDER

31.8.2005

SUNIL KUMAR SINHA, J.

(1) Shri Rakesh Pandey, counsel for the appellant. Heard on admission.

(2) The plaintiff, who has lost in both the Courts, has filed this Second Appeal under Section 100 of the C.P.C., challenging the legality and validity of the impugned judgment and decree dated 14.2.2005, passed in Civil Appeal No. 16-A/2004 by the First Additional District Judge, Ambikapur, arising out of the judgment and decree dated 19.7.2001, passed in Civil Suit No. 161-A/1998 by Additional Civil Judge, Class-I, Ambikapur, District Surguja (C.G.).

(3) The plaintiff's case is that he is the real purchaser of the suit lands. He belongs to Knawar caste. This land was purchased by him from a person belonging to Gond caste, therefore, the provisions of Section 165 (6) of the M.P. Land Revenue Code, 1959 (for short the Code) were not attracted in his case. Even after

this, the Sub-Divisional Officer, respondent No.5, took cognizance in the matter and opened an enquiry under Section 170-B of the Code and ultimately, directed the lands to be reverted back to the possession of the seller-Advasi, holding that the purchaser was only an ostensible purchaser and the actual purchaser of the land was respondent No.4 and in this manner, the appellant/plaintiff who has been shown to be the actual purchaser of the land was only a Benamidar.

(4) Alongwith the other issues, learned trial Court framed issues No. 5 & 6 in relation to the application of provisions of Section 170-B of the Land Revenue Code and also in relation to ouster of the jurisdiction by virtue of necessary implications of Section 257 of the said Code. Both these issues were replied against the plaintiff and it was held that the provisions of Section 170-B of the Code were rightly applied in this case and the provisions of Section 257 of the said Code will also apply and the Civil Courts' jurisdiction is barred. The suit was dismissed.

(5) Against the aforesaid dismissal by the trial Court, the plaintiff filed an appeal before the lower appellate court and the lower appellate court also dismissed the appeal of the plaintiff, confirming the judgment and decree passed by the trial Court.

(6) I have heard learned counsel for the appellant at length.

(7) There is no doubt that Section 257 (I) & (I-1) of the M.P. Land Revenue Code creates a bar against the entertainment of civil jurisdiction to try any claim to set aside transfer by Bhoomiswami under sub-Section (1) of Section 170 and clauses (a) and (b) of sub-

Section (2) of Section 170-A as well as any matter covered under Section 170-B of the said Code.

(8) However, even if a bar is created by a special statute, the civil Courts may entertain the civil suits under peculiar circumstances. The exception has been laid down by the old decision of the Privy Council, reported in the matter of Secretary of State -Vs.- Mask & Co, A.I.R. 1940 Privy Council, 105. It laid down that the exclusion of civil jurisdiction must be explicitly expressed or clearly implied. Even where it is so excluded, civil courts have jurisdiction to examine the cases where provision of Act are not complied or statutory tribunal does not act according to the fundamental principles of judicial procedure.

It has further been held by the Apex Court while dealing with a matter under the Madhya Bharat Abolition of Jagirs Act, where the civil jurisdiction was barred, that the order of Tehsildar could not be challenged in the civil courts except on the ground that it was a "nullity". (Please see A.I.R. 1979 SC, 1936 Raghunath (dead) by Lrs. -Vs.- Kanahiya (dead) by Lrs.)

(9) In the facts and circumstances of the case, I find that the plaintiff could not establish before the civil court that the order of S.D.O. was either without jurisdiction or a nullity in the eye of law or the S.D.O. has complied with the provisions of Section 170-B of the Code without complying with the provisions of the fundamental principles of judicial procedure.

(10) A perusal of section 100 C.P.C. makes it clear that the scope and exercise of jurisdiction by the High Court in the second appeal under section 100 is limited to the substantial questions of law

framed at the time of admission of the appeal or additional substantial questions of law framed at the later stage after recording reasons for the same. This makes it clear that the existence of substantial questions of law is sine qua non for the exercise of jurisdiction under the amended provisions of section 100 C.P.C. (Please see (2004) Vol. V SCC 762 -Thiagarajan and others -Vs- Sri Venugopala Swamy B. Koil and others)

(11) As to which would constitute a substantial question of law, it has been observed by the Apex Court in case of Santosh Hazari - Vs- Purushottam Tiwari (Deceased) by L.Rs. (2001) 3 SCC 179 that:

*"A point of law which admits of no two opinions may be a proposition of law but cannot be a substantial question of law. To be "substantial" a question of law must be debatable, not previously settled by law of the land or a binding precedent, and must have a material bearing on the decision of the case, if answered either way, insofar as the rights of the parties before it are concerned. To be a question of law involved in the case there must be first a foundation for it laid in the pleadings and the question should emerge from the sustainable findings of fact arrived at by court of facts and it must be necessary to decide that question of law for a just and proper decision of the case. An entirely new point raised for the first time before the High Court is not a question involved in the case unless it goes to the root of the matter. It will, therefore, depend on the facts and circumstance of each case whether a question of law is a substantial one and involved in the case, or not; the paramount overall consideration being the need for striking a judicious balance between the indispensable obligation to do justice at all stages and*

*impelling necessity of avoiding prolongation in the life of any lis."*

*(Emphasis supplied)*

(12) In the opinion of this Court, no substantial question of law is involved in the appeal.

(13) The appeal has no merit. It is dismissed. There shall be no orders as to costs.

Sd/-  
Sunil Kumar Sinha  
Judge