

IN THE BOARD OF REVENUE FOR RAJASTHAN AJMER

1. Revision/LR/3763/2005/Ajmer.

Smt. Asha Devi Agarwal wife of Om Prakash Agarwal Mahajan
resident of Near Bus Stand, Madanganj-Kishangarh Tehsil
Kishangarh Distt. Ajmer.

...Petitioner.

Versus

1. Ratna alias Ratan Lal son of late Shri Nathu Mina resident of
Farasiya Tehsil Kishangarh Distt. Ajmer.
2. Ramgopal)
3. Ganpat)
4. Satyanarain) sons of Bhagirath
5. Hanuman)
6. Jagdish)
All residents of Sabzi Mandi, Opp. Maszid, Madanganj-
Kishangarh Tehsil Kishangarh Distt. Ajmer.
7. Shyam Sunder Sharma) sons of Nityanand Sharma resident
8. Suresh Sharma) of Madanganj-Kishangarh Distt.
Ajmer.
9. State of Rajasthan through Tehsildar, Kishangarh.
10. Kisturi Devi widow of Dhanna Lal
11. Sunil Kumar son of Dhanna Lal
12. Vinod son of Dhanna Lal
All by caste Mina residents of village Farasia Tehsil
Kishangarh Distt. Ajmer.

...Non-petitioners.

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S.B.

Shri Bajrang Lal Sharma, Member

Present:-

Shri Purna Shankar Dashora, counsel for the petitioner.
Shri Rohit Soni, counsel for the non-petitioner No.1
Shri Ajit Singh, counsel for the non-petitioners No. 10 to 12

Date: 10.5.2013

J U D G M E N T

The revision petitions mentioned hereinabove have been filed under section 84 of the Rajasthan Land Revenue Act, 1956 (in short 'the Act') being aggrieved by the common judgment passed by Additional Divisional Commissioner, Ajmer on 16.6.2005 in appeals numbering 117/2003, 118/2003 and 119/2003. The parties, facts and the legal issues involved in these cases are similar, therefore, they are being disposed of by this common judgment. A copy of the judgment may be kept on each file separately.

2. The factual matrix of the case is that Ghasi Ram, Dhanna sons of Deepa by caste Mina and Ratna son of Nathu Mina were co-tenants of old khasra No. 682 (new No. 255/2) measuring 14 bighas 15 biswas in village Farasia Tehsil Kishangarh Distt. Ajmer in the year 1962 (Svt. 2019). This entire land was sold on 6.2.1962 through a registered sale deed to Bhagirath son of Ram Prasad Agarwal (father of the non-petitioners No. 2 to 6) by Ghasi son of Deepa. The mutation No. 209 on the basis of this sale deed dated 6.2.1962 was opened but rejected by Tehsildar on the basis that the sellers belong to scheduled tribes community and the buyers are non-scheduled tribe (General caste) persons. On the same sale deed, the Patwari opened mutation No. 325 again on the order of Tehsildar which was examined by the Inspector Land Records who made a specific comment on the mutation that the buyers of the land belong to non-scheduled tribes persons. The Patwari also put a note on mutation No. 325 that mutation No. 209 had already been rejected regarding the sale deed in question dated 6.2.1962. Despite the note of the Patwari and comments of the Inspector Land Records, the Tehsildar sanctioned this mutation on 23.11.1967 in favour of the buyer, Bhagirath son of Ram Prasad Agarwal. Subsequently, Bhagirath son of Ram Prasad Agarwal sold this disputed land to Nityanand son of Gangadutt (father of the non-petitioners No. 7 and 8) through a registered sale deed dated 29.11.1967 and on the basis of the second sale deed, mutation No. 344 village Farasia was also sanctioned in favour of Nityanand on 12.6.1968. Nityanand also sold this land to the petitioner, Asha Devi wife of Om Prakash Agarwal on 6.7.1974 and on the basis of the third sale deed a mutation was again sanctioned on 16.7.1974 by Tehsildar, Kishangarh. One Ratna, non-petitioner No.1, filed an application before Collector, Ajmer to submit reference regarding the disputed land on the basis that the land has been sold in violation of section 42-B of the Act which was rejected by the Collector. Thereafter Ratna filed three appeals of mutation No. 325, 344 and 338 of village Farasia before Collector, Ajmer in the year 2001 which were rejected on the sole ground of limitation. The Collector explicitly held that Ratna had knowledge of the sale of the disputed land much before 1992 when

he filed reference application and filed objections while conversion order on this land was passed. Being aggrieved by the judgment passed by the Collector on 6.6.2003, Ratna filed three appeals before Additional Divisional Commissioner, Ajmer which were partly accepted on 16.6.2005 and the order of Collector were quashed and set aside and the matter was remanded to the Collector for examination of validity of mutations No. 325, 344 and 338 of village Farasia and to see whether the mutations are ab-initio void? Being aggrieved by the judgment passed by Additional Divisional Commissioner, Ajmer, these revision petitions have been preferred before this court.

3. During adjudication of these revision petitions, Kisturi Devi widow of Dhanna, Sunil Kumar and Vinod Kumar sons of Dhanna filed three applications under Order 1 Rule 10 of the Civil Procedure Code before this court requesting that Dhanna Lal had one-third share in the disputed land at the time of first sale that was on 6.2.1962. Dhanna Lal has been alleged to be minor in the year 1962 and his share of land has been sold by Ghasi. Consequently his share of land has been mutated in favour of other parties arbitrarily on the basis of registered sale deed executed only by Ghasi on 6.2.1962. The applicants urged the court to implead them as party in these proceedings.

4. This court has heard the learned counsels of the parties on the application filed by legal heirs of deceased Dhanna under Order 1 rule 10 of the Civil Procedure Code. This court is of the considered view that as per jamabandi Svt. 2019, Dhanna son of Deepa was the co-tenant in disputed land situated in khasra No. 255/2 measuring 14 bighas 15 biswas in village Farasia. In the reply filed by the petitioner on the application under Order 1 Rule 10 of the Civil Procedure Code, it has been stated that the plea of minority taken by the applicants is baseless. If Dhanna Lal was not minor on the date of sale, his land could not have been sold by Ghasi (brother of Dhanna). This is also an accepted fact that the disputed land was sold only by Ghasi on 6.6.1962. Dhanna never executed any sale deed of his share. In view of this court, the applicants Kisturi Devi and others who are the natural heirs of deceased Dhanna have, a

prima facie case in thier favour and have direct interest in the disputed land. Therefore, their applications under Order 1 Rule 10 of the Civil Procedure Code in these revision petitions are accepted and they are made parties in these revision petitions.

5. Heard the learned counsels of the parties on the merits of these cases.

6. Mr. P.S. Dashora, counsel appearing for the petitioner contended that Ratna had the knowledge of the sale of the disputed land made in favour of Bhagirath on 6.2.1962 because he filed a reference application before Collector and he also filed objections when a part of this disputed land was converted for industrial purpose in the year 1980. The learned advocate further argued that the order passed by District Collector, Ajmer was a just and reasonable order which did not warrant any interference at the stage of second appeal because no appeal after lapse of some thirty five years could be entertained. The learned advocate vehemently argued that at the time of sale on 6.2.1962 Mina caste was not notified in the list of scheduled tribes in Ajmer District. On 6.7.1978 Mina caste has been added first time to the list of scheduled tribes for Ajmer District. Since the first sale deed was executed in the year 1962 such a sale was not prohibitive and the provisions of section 42(b) were of no consequence in this case, therefore, the mutation No. 325 was rightly sanctioned. The Tehsildar also made a specific remark to this effect while sanctioning the mutation.

7. Mr. Dashora further submitted that Dhanna Lal was minor at the time of sale. Therefore, his brother Ghasi as head of the family and his guardian executed the sale in favour of Bhagirath. The learned advocate also argued that under the provisions of the Hindu Minority and Guardianship Act, the minor has a right to get such transactions declared void from the competent court because such transactions are voidable. He also contended that Nathu had no right on this land, his entry in the revenue record was erroneously made by the settlement/ revenue department officials. The learned advocate finally urged the court that the petitioner is being unnecessarily harassed by Ratana and others after lapse of about fifty years. If they have any grievance they could file a regular suit for

their rights. The learned advocate referred to AIR 1990 (SC) 991, 2009 RBJ (16) 410, AIR 1989 (AP) 132, 1981 RRD 571, 1984 RRD 380, 2003(1) RRT 709, 1990 RRD 528 and AIR 1996 (SC) 2371 in support of his contentions. He requested the court to accept the revision petitions.

8. Mr. Rohit Soni, appearing for non-petitioner No. 1 contended that the sale of disputed land is void ab-initio as the disputed land was in tenancy of Mina community who have been provided absolute protection under section 42(B) of the Act. And the first sale deed in the year 1962 has been executed by Ghasi, only one co-tenant, therefore, such a sale deed was void ab-initio. The learned advocate emphatically argued that on the date of sale, Ratna was entered as one-third share holder in the disputed land and he did not sell the land, therefore, his share could not be transferred to anybody without his consent. He also argued that nowhere this issue was raised earlier that Ratna's entry in the land record has been erroneously made by settlement officials. He argued that Ghasi could have applied before the competent court for deletion of Ratna's name but as long as Ratna's entry in the land revenue existed Ratna's share could not have been transferred. The learned advocate finally urged the court that sale deed executed on 6.2.1962 was a void document and had no legal enforceability. And only to a person of scheduled tribe. He reiterated that Ghasi could sell only his one-third share and could transfer only that share. And such a sale could not have been executed in violation of section 42(b) of the Act as it was expressly forbidden by law.

9. Mr. Ajit Singh appearing for the legal heirs of deceased co-tenant Dhanna Lal (non-petitioners No. 10 to 12) contended that Dhanna Lal had one-fourth share in the disputed land on the day of first sale i.e. 6.2.1962. Therefore, the legal representatives of Dhanna Lal are entitled for one-third share on the disputed land. He also argued alternatively that if Dhanna Lal is presumed to be minor then only in certain circumstances his share could be transferred and that too by his mother, the natural guardian. He further argued that in Ajmer District all Mina are Bhil-Mina and they write Mina as their caste, therefore, they were very much in the list of scheduled

tribe right from the day of merger of Ajmer district in the State of Rajasthan and such a transaction was manifestly hit by section 42-B of the Act which provides absolute prohibition in sale of land belonging to scheduled tribes persons to non-scheduled tribe persons. The learned advocate also submitted that mutation No. 209 of village Farasia, on the basis of sale deed executed on 6.2.1962, was already opened but rejected by Tehsildar on the basis that buyers were not scheduled tribes, therefore, mutation No. 325 could not have been sanctioned again by Tehsildar. If the purchaser had any grievance against the order of mutation No. 209 he could have filed an appeal in the competent court or the Tehsildar could have reviewed his own order and recalled the order of mutation No. 209. Therefore, the mutation No. 325 is manifestly an illegal and void mutation and there is no limitation for assailing a void transaction. Therefore, all the mutations involving the disputed land should be quashed and the disputed land should be restored to the original tenants whose name existed as on 6.2.1962 in the revenue records.

10. I have given thoughtful consideration to the rival contentions raised by learned counsels of the parties and have also carefully perused the record available on file and the legal pronouncements cited by the learned counsels.

11. Indisputably the disputed land was entered in the name of Ghasi and Dhanna sons of Deepa and Ratna son of Nathu by caste Mina in the year 1962 (Svt. 2062) from the land record it was prima facie clear that the disputed land belonged to Mina community. The first sale deed executed of the disputed land was solely by Ghasi on 6.2.1962 in favour of Bhagirath son of Ram Prasad Agarwal. This is also an accepted fact that Bhagirath son of Ram Prasad Agarwal is a non-scheduled tribe person and on the basis of sale deed, mutation No. 209 was initiated by Patwari but finally rejected by the Tehsildar on the ground that the buyer of the disputed land are non-scheduled tribe person and such a sale is in contravention of section 42(b) of the Act. In backdrop of these facts, prima facie this seem to be a complex case wherein the following legal issues emerge:-

(1) When the mutation No. 209 of village Farasia once rejected by Tehsildar on merits, mutation No. 325 could not have been sanctioned as Tehsildar became functus officio to act on mutation No. 325 based on the same sale deed.

(2) Whether the Mina community was in the list of scheduled tribes in Ajmer district as on 6.2.1962 and the sale executed by Ghasi was forbidden under the law and was void ab-initio?

(3) At the time of first sale i.e. 6.2.1962, the disputed land was entered in co-tenancy of three persons, namely, Ghasi and Dhanna sons of Deepa and Ratna son of Nathu Mina, whereas the sale deed was executed only by Ghasi. Therefore, the sale was void.

(4) Whether Dhanna was minor at the time of first sale i.e. 6.2.1962 and Ghasi could sell Dhanna's share as his guardian?

(5) Whether name of Ratna son of Nathu was erroneously entered in the land records and without getting the land records corrected such a sale could not be given effect?

(6) Whether under the revision jurisdiction of this court the validity of mutation No. 325, 344 and 338 of village Farasia can be examined by this court?

On the legal issues enlisted hereinabove, the inference of this court after scanning the record available on file and perusal of relevant case laws is as under:-

ISSUE NO.1: This fact is fully supported by a note written by Patwari on mutation No. 325 that mutation No. 209 was already rejected on the basis of this sale deed dated 6.2.1962. When a sale deed was given effect by revenue department officials and a Tehsildar applied its mind and decided the mutation on merits rejecting it, the Tehsildar had powers to either review its judgment or the aggrieved

party could have assailed this order of Tehsildar passed on mutation no 209 in appeal but certainly the Tehsildar did not have any power to decide the same mutation afresh. The action of the Tehsildar while attesting the mutation No. 325 of village Farasia was not legally justified. If such a practice is allowed to perpetuate then there will be no end to exercise the jurisdiction again and again on the same matter. Consequently no decision will attain finality. The Civil Procedure Code provides doctrine of res-judicata, a legal provision under section 11 of the Civil Procedure code to curb such practices. The provision of section 11 of the Civil Procedure Code is reproduced here for ready reference:-

"11. Res-judicata- No court shall try any suit or issue in which the matter directly and substantially in issue has been directly and substantially in issue in a former suit between the same parties, or between parties under whom they or any of them claim, litigating under the same title, in a court competent to try such subsequent suit or the suit in which such issue has been subsequently raised and has been heard and finally decided by such court".

The above provision of law is mandatory in nature and not directory. This doctrine pertains to public policy which is in larger interest of substantive justice. This court is aware that generally this provision of law is applied to the suits and appeals pending before the courts and these particular cases pertain to summary proceedings of mutations. In view of this court, if a mutation, which is a quasi-judicial proceeding, is once decided on merits, the Tehsildar ceases its jurisdiction to decide the same mutation again. If such practice is not curbed, such mutations will never attain finality and the Tehsildars will continue misusing their jurisdiction on one or the other pretext. In these circumstances, in view of this court the order passed on mutation No. 325 by Tehsildar on the basis of sale deed executed on 6.2.1962 is a nullity and of zero consequence. The aggrieved party had only one choice to file an appeal before the competent forum against mutation No. 209 or file an application for review.

ISSUE NO.2: Indisputably on 6.2.1962 Ghasi and Dhanna sons of Deepa and Ratna son of Nathu by caste Mina were the co-tenants of

the disputed land in village Farasia. This also factually true that Ajmer district was merged in the State of Rajasthan on 1.11.1957, prior to this date Ajmer was a centrally governed territory and was not the part of Rajasthan State. This court has perused the Presidential Amendment Act, 1956 referred as the Scheduled Castes and Scheduled Tribes Orders (Amendment) Act, 1956 (Act No. 63 of 1956) which came into being on 25.9.1956. As per this Amendment Act following tribes through out the State of Rajasthan were notified as scheduled tribes:-

- (i) Bhil
- (ii) Bhil Mina
- (iii) Damor, Damariya
- (iv) Garasia (Excluding Rajput Garasia)
- (v) Mina
- (vi) Sehriya, Sahariya

Ajmer which was a centrally governed territory became part of Rajasthan State on 1.11.1957. On the very date the laws governing the State became effective in Ajmer territory also. Therefore, Minas were in the list of scheduled tribe for Ajmer district also on the day Ajmer became part of Rajasthan State. Mr. Dashora appearing for the petitioner has strongly contended that Mina community of Ajmer district was notified as scheduled tribe in the year 1978 and prior to 1978 provisions of section 42-B of the Act were not operative in Ajmer district. In opinion of this court as per the presidential notification Minas were in the notified list of scheduled Tribes through out the state of Rajasthan. This court has also been apprised that Mina community in Ajmer district was getting all the benefits available to scheduled tribe communities in the State of Rajasthan right from the date it became part of the greater Rajasthan. In these circumstances, this court is of the considered view that Mina community was enlisted in the Presidential notification for scheduled tribes issued for Rajasthan State as on 6.2.1962.

If Minas were in the Scheduled Tribes in Ajmer District since November 1, 1957 then the sale executed on 06.02.1962 was prohibited under section 42 b of the Act. Section 42 of the Rajasthan

Tenancy Act, 1955 was first amended on 22.9.1956 and the following provisions were inserted:-

"Provided that no khatedar tenant being a member of scheduled caste or scheduled tribe was so transferred his rights in the whole or part of his holding to any person who is not a member of scheduled caste or scheduled tribes."

The above provision was in force till 1.5.1964 and on 1.5.1964 section 42 of the Act was further amended. The amendment in the Tenancy Act affected in the year 1964 is as under:-

"General Restrictions on sale, gift and bequest - The sale, gift or bequest of a khatedar tenant of his interest in the whole or part of his holding shall be void, if-

- (a) deleted w.e.f. 11.11.1992
- (b) such sale, gift or bequest is by a member of Scheduled Caste in favour of a person who is not a member of the Scheduled Caste, or by a member of Scheduled Tribe in favour of a person who is not a member of the Scheduled Tribe;
- (bb) such sale, gift or bequest, notwithstanding anything contained in clause (b) , if by a member of Saharia Scheduled Tribe in favour of a person who is not a member of the said Saharia Tribe
- (c) omitted"

The amendment in 1964 was effected because prior to 1964 the prohibition on transfer for certain classes of tenants existed but despite this absolute bar registration of sale deeds continued to be done under Registration Act. Therefore, just to forbid registration of such transactions of sale, such transactions were declared void in the statute book.

The Hon'ble Division Bench of Rajasthan High Court in the case of Ramchandra Vs. Om Prakash reported in 1978 RLW 444 has explicitly held that the sale in question being in contravention of proviso to section 42 which categorically forbids the sale of a member of scheduled caste or scheduled tribe in favour of persons who are not member of that class, is therefore, forbidden by law

within the meaning of section 23 of the Indian Contract Act and it is well settled that where a contract which a party seeks to enforce is expressly or by implication forbidden by any law, no court will lend its assistance to give it effect. The Division Bench further held that such a sale is void and not merely voidable.

In a recent judgment, the Hon'ble High Court has held in Smt. Soni and ors. Vs. Board of Revenue and ors. (2008 RRD 681) has further reiterated its view as under:-

"Having given the thoughtful consideration, this court is of the opinion that the weight of the authorities or precedents is clearly in favour of the petitioners wherein it has been categorically laid down that after insertion of proviso in section 42 of the Rajasthan Tenancy Act w.e.f. 22.9.1956, in view of clear prohibition contained in said proviso, transfer of land by sale, gift or bequest by a member of Scheduled Caste or Tribe to a member of other caste not being Scheduled Caste or Scheduled Tribe is void being prohibited by law and thus being against the public policy and as per section 23 of the Indian Contract Act, such sales could not be enforced against the members of Scheduled Caste and Scheduled Tribes. Of course the words "such sale shall be void" came on the statute book w.e.f. 1.5.1964, but the effect remains the same for the period between 22.9.1956 to 1.5.1964 also, namely that persons of such other caste cannot claim or cannot seek to enforce any such right transferred to them by a member of Scheduled Caste or Scheduled Tribe in the agricultural land of which they were khatedar tenants, if sale or gift or bequest is prohibited by law as was position contained in proviso to section 42 between 22.9.1956 to 1.5.1964. The respondents naturally cannot claim any benefit on the basis of such alleged sale deed in their favour made on 16.9.1957."

...emphasis added

In light of the judgment passed by Hon'ble High Court on this issue. This court is of the view that the sale in question which was executed on 6.2.1962 by Ghasi Mina in favour of Bhagirath Agarwal was a void sale because the disputed land exchanged hands from tenants belonging to scheduled tribes to the general caste persons which was prohibited under section 42-b of the Act and such a sale did not have any enforceability and no court can lend its assistance to such a contract of sale.

ISSUE NO.3: This is also an accepted fact that in the year 1962 the disputed land situated in village Farasia was entered in co-tenancy

of Ghasi and Dhana sons of Deepa and Ratna son of Nathu Mina in the revenue records. This land was sold solely by Ghasi to Bhagirath son of Ram Prasad Agarwal on 6.2.1962. Here a question has been raised before this court that whether Ghasi was competent to sell the entire land? This is a settled position of law that Ghasi did not have rights to sell the entire land because he had only one-third share in this land and he could not transfer better title than what he had. Therefore, how Tehsildar could give effect to such a sale which was not executed by all the co-tenants? In considered opinion of this court the sale executed on 6.2.1962 was a flawed sale and such a sale does not confer right, title to the buyer. In view of this court the mutation sanctioned on the basis of such a sale deed was bad and does not provide any right title to the buyer. In view of this court Ghasi had only one third share in the disputed land and he could sell his one third share that too to a person of scheduled tribe only.

ISSUE NO.4: This fact has been mentioned in the sale deed executed on 6.2.1962 by Ghasi that Dhanna is minor and was of 16 years of age. Now this question arises whether if Dhanna was a minor at the time of sale then who was his guardian? Whether his mother was alive or Ghasi was the only person looking after his interests and could act as a guardian? In this case, this is a matter of enquiry and the record does not have adequate material to prove that whether Dhanna was minor or his mother was alive at the time of sale and Ghasi could act as guardian to Dhanna. When an application was filed by the legal heirs of Dhanna to be impleaded as party in this case, the petitioner has stated in its reply that plea of minority taken by legal heirs of Dhanna is baseless. If the statement of the petitioner is taken as true then Ghasi could not sell Dhanna's share as he was major at the time of sale.

ISSUE NO.5: When Bhagirath son of Ram Prasad purchased the disputed land from Ghasi, the jamabandi of village Farasia manifestly showed the name of Ratna son of Nathu as a co-tenant of one-third share. The learned advocate for the petitioner has emphatically argued that Ratna's name was wrongly entered in the

land records and he had nothing to do with the disputed land and it was an error on the part of Settlement Department. In such circumstances this is a settled position that when Ratna's name existed in the current jamabandi no sale could have been given effect at least to the extent of his share. If his name was erroneously entered in the land records, there should have been proceedings to delete his name first and then such a sale could have been executed. In view of this court Ratna's name existed at the time of sale and he had one-third share in the disputed land. Therefore, this sale deed was bad in the eyes of law.

ISSUE NO.6 This court is aware that the revision jurisdiction as provided under section 115 of the Civil Procedure Code is very restrictive in nature. In complex circumstances of this case, this court has carefully perused the provisions made under section 84 of the Act which provide as under:-

"84 -Power of Board to call for records and revise order- The Board may call for the record of any case of a judicial nature or connected with settlement in which no appeal lies to the Board if the court or officer by whom the case was decided appears to have exercised a jurisdiction not vested in it or him by law, or to have exercise jurisdiction so vested, or to have acted in the exercise of its or his jurisdiction illegally or with material irregularity, and may pass such orders in the case as it thinks fit."

The above provision empowers the revisional court to pass such orders as it thinks fit looking into the circumstances of the case. In view of this court, the revision jurisdiction under section 84 of the Act provides that the Board of Revenue has wider revisional jurisdiction than provided under section 115 of the Civil Procedure code. In the circumstances of this case, it is very significant to mention here that when an appeal was filed before the learned Collector against mutation No. 325 which was rejected by him solely on the ground of limitation, the learned Collector was apprised that sale deed executed on 6.2.1962 was in contravention of section 42(b) of the Act and it was alleged to be a void sale even in such circumstances the learned Collector dismissed the appeal solitarily on limitation. This court is of the view that the Collector is under

statutory obligation to ensure that the land records are maintained as per the provisions made in the laws regulating tenancies of land in the State. Despite of this obligation, the learned Collector chose not to exercise its jurisdiction vested in him in a judicious manner. He was expected to examine this case on merits. He was the most appropriate person to examine this issue that whether Mina tribe was in the list of Presidential Notification as on 6.2.1962 at the time of sale or not. The Additional Divisional Commissioner, whose court was the second appellate court, also had all the relevant record before it but it also remitted the case to the Collector.

12. This is a travesty of justice that a sale which was executed in the year 1962 is yet to be examined by the competent courts in summary proceedings. The first sale was conspicuously a flawed sale but the authorities ignored the basic provisions of law and sanctioned the mutation. Even the appeal was dismissed summarily. The justice delivery system has utterly failed in this case. In such circumstances, this court finds it appropriate to invoke its jurisdiction provided under section 84 of the Act and to examine the merits of the case and mutations attested in compliance of the first sale and subsequent sale deeds.

13. The learned advocate representing the petitioner strongly argued that the first sale deed was executed in favour of Bhagirath son of Ram Prasad in the year 1962 and the petitioner is the third bonafide buyer who is being harassed by the non petitioners even after 50 years of the first sale. In this regard, this court is of the view that when the first sale deed was a nullity, the rights of the third buyer will be no different; in void transactions the issue of limitation takes a back seat and becomes an obscure issue. Hon'ble Supreme Court of India has observed in *Balvant N. Viswamitra Vs. Yadav Sadashiv Mule* (2004) 8 SCC 706) as under:-

"9. The main question which arises for our consideration is whether the decree passed by the trial court can be said to be 'null' and 'void'. In our opinion, the law on the point is well settled. The distinction between a decree which is void and a decree which is wrong,

incorrect, irregular or not in accordance with law cannot be overlooked or ignored. Where a court lacks inherent jurisdiction in passing a decree or making an order, a decree or order passed by such court would be without jurisdiction, nonest and void ab initio. A defect of jurisdiction of the court goes to the root of the matter and strikes at the very authority of the court to pass a decree or make an order. Such defect has always been treated as basic and fundamental and a decree or order passed by a court or an authority having no jurisdiction is a nullity. Validity of such decree or order can be challenged at any stage, even in execution or collateral proceedings."

In light of the pronouncement of Apex Court mentioned hereinabove, this court is of the view that a void order can be examined at any stage on merits and the issue of limitation will not be in focus.

14. As discussed above, this court holds that the judgments passed by both lower courts suffer from grave legal and jurisdictional errors. Therefore, the impugned judgments passed by learned Collector and Additional Divisional Commissioner are quashed and set aside. The mutation No. 325 sanctioned by Tehsildar, Kishangarh is also quashed and set aside. The Tehsildar is directed to restore the disputed land in the name of the persons whose names it existed before the first sale i.e. on 6.2.1962. Since the first sale was void and the mutation No. 325 has already been quashed, subsequent sale to Nityanand and to the petitioner can not be hold good, Consequently subsequent mutations numbering 344 and 338 of village Farasia also fall automatically. The revision petitions preferred by the petitioner are disposed of accordingly.

Pronounced.

(Bajrang Lal Sharma)
Member