

IN THE HIGH COURT OF MADHYA PRADESH  
AT JABALPUR

BEFORE

HON'BLE SHRI JUSTICE VIVEK JAIN

ON THE 24<sup>th</sup> OF NOVEMBER, 2025

CIVIL REVISION No. 1223 of 2025

***BALMUKUND KHAMPARIA AND OTHERS***

*Versus*

***SMT.MEERA DEVI KESHWARWANI AND OTHERS***

.....  
**Appearance:**

*Shri Siddharth Gulatee- Senior Advocate Shri Rohit Raghuwanshi- Advocate for the petitioner.*

*Shri Amit Mishra Panel Lawyer for the respondents.*  
.....

**ORDER**

By way of this revision, the petitioner has called into question, order dated 15-10-2025, (Annexure P/1), passed by the trial court, whereby the application of the petitioner under order 7 rule 11 CPC has been dismissed.

2. Learned counsel for petitioners/ defendants no. 1 and 2 has vehemently argued before this court that the trial court has gravely erred in rejecting the application for rejection of plaint under order 7 rule 11 CPC. It is argued that the suit was not maintainable and the trial court has gravely erred in rejecting the application under order 7 rule 11 CPC. It is contended that the suit has been filed by the plaintiff seeking declaration of title, permanent injunction and cancellation of sale deed dated 24-06- 2025 on the ground that there is an earlier sale deed by the present petitioners in favour of the plaintiff executed in the year 1993. It is argued that the said sale deed was executed in violation of mandatory provisions of section 5(3) of Urban Land Ceiling and Regulation Act 1976 (for short Ceiling Act 1976). It

is argued that the said Act of 1976 was enacted by the Parliament and as per Section 5(3), any sale, mortgage, gift or transfer in any other manner after commencement of the Act was prohibited and in the present case the transaction took place in the year 1993 and therefore, it was obviously a prohibited transaction and a transaction which was void ab-initio and therefore no suit could have been filed on basis of such a void transaction.

3. It is argued that though the defendants No. 1 to 4 may have sold the property to the plaintiff in the year 1993 but the provisions of Section 43 for Transfer of Property Act (for short "T.P. Act) would not apply in the present case, even though later on the land was declared freed from ceiling by Collector, District Jabalpur on 23-04-2025 because the concept of feeding the estoppel under section 43 of TP Act would not apply where the same transaction is a void transaction and is void ab-initio in such cases Section 23 of Indian Contract Act would apply with full force because it was something which was forbidden by law and therefore, it was not a simplistic case of a person selling the land without any title and subsequently acquiring the title so that Section 43 of TP Act would apply, but it was a case where not only title was not available to the vendor but also that the sale had been barred by law. In support of his contentions, counsel for petitioner relies on judgment of the Hon'ble Supreme Court in *Saurav Jain v. A.B.P. Design, (2022) 18 SCC 633*, to submit that feeding the estoppel principle under Section 43 of TP Act would not apply in cases of transactions prohibited by law. He further relies on judgment of Supreme Court in *Hardev Singh v. Gurmail Singh, (2007) 2 SCC 404*, to submit that the person who is entitled to object

to invocation of principle of feeding the estoppel is the vendor of the sale deed and no other person, and therefore the petitioners have validly raised the objection which ought to have been sustained by the trial court.

4. A further ground is taken that the suit was not maintainable as the civil courts have no jurisdiction to entertain the suit as per Section 30(5) of Ceiling Act, 1976.

5. A third ground is taken that the suit is barred by limitation.

6. Upon hearing counsel for the petitioner at a length and on perusal of the record, it is seen that the plaintiff-present respondent No. 1 has purchased suit land from defendants No. 1 to 4, two of whom, i.e. defendants No. 1 and 4 have come up in the present revision. The sale took place in the year 1993 and there was a notification in terms of Section 10(3) of Ceiling Act, 1976 issued on 06-02-1987 whereby the declaration was published in the official gazette and by force of Section 10(3), the land is deemed to have vested absolutely in the State from the date of notification i.e. 06-02-1987 and it was argued by the petitioners before this court that by force of Section 5(3), the sale transactions was barred by law. Relevant Sections 5(3), 10(3) and 30(5) of Ceiling Act, 1976 are as under:-

*“5(3) In any State to which this Act applies in the first instance and in any State which adopts this Act under clause (1) of article 252 of the Constitution, no person holding vacant land in excess of the ceiling limit immediately before the commencement of this Act shall transfer any such land or part thereof by way of sale, mortgage, gift, lease or otherwise until he has furnished a statement under section 6 and a notification regarding the excess vacant land held by him has been published under sub-section (1) of section 10; and any*

*such transfer made in contravention of this provision shall be deemed to be null and void.*

*10.(3) At any time after the publication of the notification under subsection (1), the competent authority may, by notification published in the Official Gazette of the State concerned, declare that the excess vacant land referred to, in the notification published under sub -section (1) shall, with effect from such date as may be specified in the declaration, be deemed to have been acquired by the State Government and upon the publication of such declaration, such land shall be deemed to have vested absolutely in the State Government free from all encumbrances with effect from the date so specified.*

*30(5) Save as provided in this section, no court shall entertain any suit, application or other proceeding for injunction or other relief against the competent authority to restrain him from taking any action or making any order in pursuance of the provisions of this section.”*

7. It is true that as per Section 5(3), sale transactions are prohibited but the question that arises for determination is that whether the vendee cannot take benefit of Section 43 of TP Act or can take benefit of Section 43 in case the landholder sells the land which is the subject matter of Ceiling Act, 1976 to a third person and subsequently the land gets released from ceiling. In the present case, it is undisputed between the parties that subsequently the Collector, Jabalpur has passed an order dated 23-04-2025 declaring the land to have been released from Ceiling Act, 1976 in view of the detailed reasons as mentioned in the said order which is not relevant for the purpose of this revision.

8. Section 43 of TP Act is as under.

*“43. Transfer by unauthorised person who subsequently acquires interest in property transferred.—Where a person 3 [fraudulently or] erroneously represents that he is authorised to transfer certain immovable property and professes to transfer such property for consideration, such transfer shall, at the option of the transferee, operate on any interest which the transferor may acquire in such property at any time during which the contract of transfer subsists. Nothing in this section shall impair the right of transferees in good faith for consideration without notice of the existence of the said option.”*

9. As per Section 43, where a person represents by fraud or error that he is authorized to transfer certain immovable property and such property is transferred for consideration, then such transfer shall at the option of transferee, operate on any interest which the transferor may acquire in such property. The said section is based upon the principle of “feeding the estoppel” and as per necessary result of the aforesaid provision, it infers that no person can wriggle out of his obligations to honour a transfer which though initially could not be enforced against him due to his defect of title, but subsequently when he perfects his title, then it can be enforced against him. This principle is founded on equity.

10. Learned counsel for the petitioner though admitted that after execution of sale deed in the year 1993, the land has been released from Ceiling Act 1976 on 29-04-2025 but submits that Section 43 would not apply because the initial transaction was void and barred by law and therefore after getting the land released from ceiling, the petitioners have sold the land to defendant No. 5 on 24.04.2025 and for this reason also the plaint had to be rejected.

11. A heavy reliance was placed by learned counsel for the petitioner in the case of *Saurav Jain (supra)*. By placing reliance on the aforesaid judgment, it has been argued that in such cases of Ceiling Act 1976, Section 43 of T. P. Act would not apply because the sale transaction was prohibited by law. However, upon going through the said judgment, it is seen by this court that in this case land was declared surplus under Ceiling Act 1976 and thereafter part of the land was transferred by the State Government to Moradabad Development Authority prior to it being released from ceiling and Moradabad Development Authority had got a right, title and interest in the land when it had not been released from ceiling and it was duly a land vested in the State under the Ceiling Act. Moradabad Development Authority claimed right because it did not derive title from the erstwhile owner. In the present case, the petitioners may have sold the land to defendant No. 5 but the defendant No. 5 derives title from the petitioners who are the owners of the land and therefore the judgment in the case of *Saurav Jain (supra)* has absolutely no applicability to the present case because in this case it is the petitioners who have transferred the land to two different sets of persons and now want to get over their liability by stating that the transfer made to earlier purchaser would be void while the transfer made to later purchaser who has paid more amount or quantum of consideration, would be valid.

12. The exact issue came up for consideration before the Hon'ble Supreme Court in the case of *Tanu Ram Bora v. Promod Ch. Das, (2019) 4 SCC 173*. In the said case, the land had been declared surplus in the year

1988 and a sale was executed by the erstwhile owners on 06.01.1990 but the land was declared freed from Ceiling Act on 14-09-1990 after execution of the sale deed. Therefore, the facts of the said case are exactly similar to the present case and in that case the Hon'ble Supreme Court has applied Section 43 T.P. Act and has held as under:-

***6.3. Section 43 of the Act reads as under:***

***“43. Transfer by unauthorised person who subsequently acquires interest in property transferred.— Where a person fraudulently or erroneously represents that he is authorised to transfer certain immovable property and professes to transfer such property for consideration, such transfer shall, at the option of the transferee, operate on any interest which the transferor may acquire in such property at any time during which the contract of transfer subsists.***

***Nothing in this section shall impair the right of transferees in good faith for consideration without notice of the existence of the said option.”***

***6.4. Section 43 of the TP Act provides that where a person fraudulently or erroneously represents that he is authorised to transfer certain immovable property and professes to transfer such property for consideration, such transfer shall, at the option of the transferee, operates on any interest which the transferor may acquire in such property at any time during which the contract of transfer subsists. Thus, if at the time of transfer, the vendor/transferor might have a defective title or have no title and/or no right or interest, however subsequently the transferor acquires the right, title or interest and the contract of transfer subsists, in that case at the option of the transferee, such a transfer is valid. In such a situation, the transferor cannot be permitted to challenge the transfer and/or the transferor has no option to raise the dispute in making the transfer.***

***6.5. The intention and objects behind Section 43 of the TP Act seem to be based on the principle of estoppel as well as the equity. The intention and objects seem to be that after procuring the money (sale consideration) and transferring the land,***

*thereafter the transferor is estopped from saying that though he has sold/transferred the property/land on payment of sale consideration, still the transfer is not binding on him. That is why Section 43 of the TP Act gives an option to the transferee and not the transferor. The intention of Section 43 of the Act seems to be that nobody can be permitted to take the benefits of his own wrong. In the facts and circumstances of the case, Section 43 of the Act would come into play and protect the rights of the original plaintiff.*

13. Not only the above, but earlier in the case of ***Ram Pyare versus Ram Narayan reported in 1985(2) SCC 162***, it has been held by the Hon'ble Supreme Court as under:-

*4. The decision in Dhani Ram v. Jokhu was approved by another Division Bench of the same court consisting of S.D. Khare and R.B. Misra, JJ., in Ram Swarup v. Deputy Director, Consolidation [ILR (1971) 1 All 698]. In the latter case the learned Judges expressed the further opinion that in a situation like the one before them, there was no reason why recourse should not be had to Section 43 of the Transfer of Property Act to feed the title as it were, if the necessary conditions were fulfilled. We agree with the reasoning of the learned Judges in Ram Swarup v. Deputy Director, Consolidation [ILR (1971) 1 All 698]. In that case, the matter was remanded to the Deputy Director of Consolidation to consider the question of the applicability of Section 43 of the Transfer of Property Act and proceed to dispose of the matter in accordance with law. In the present case, the facts speak for themselves and we do not think that it is necessary to remand the case to the lower courts for a decision on the question of the applicability of Section 43 of the Transfer of Property Act. The amount of deposit under Section 134 of the U.P. Zamindari Abolition Act was made on October 28, 1961 and it was on the same day that the sale deed was executed by Matbar Mal. It is clear that Matbar Mal erroneously represented to the vendee that he was authorised to transfer the property and*



*professed to transfer such property for consideration. The very execution of the sale deed on the same day as the deposit of the requisite amount under Section 134 is significant enough to establish that the sale deed was the result of an erroneous representation by Matbar Mal. It is also clear that the present plaintiffs who are the sons of the vendor, Matbar Mal cannot possibly claim to be transferees in good faith which indeed they do not claim to be. Section 43 clearly applies to the situation. The learned counsel for the respondents however attempted to disclaim the applicability of Section 43 of the Transfer of Property Act by referring to Jumma Masjid v. Kodimaniandra Deviah [AIR 1962 SC 847 : 1962 Supp (1) SCR 554 : (1962) 2 SCJ 303] . He invited our attention to the following observations of the learned Judges:*

*“Now the compelling reason urged by the appellant for reading a further exception in Section 43 is that if it is construed as applicable to transfers by persons who have only spes successionis at the date of transfer, it would have the effect of nullifying Section 6(a). But Section 6(a) and Section 43 relate to two different subjects, and there is no necessary conflict between them; Section 6(a) deals with certain kinds of interests in property mentioned therein, and prohibits a transfer simpliciter of those interests. Section 43 deals with representations as to title made by a transferor who had no title at the time of transfer, and provides that the transfer shall fasten itself on the title which the transferor subsequently acquires. Section 6(a) enacts a rule of substantive law, while Section 43 enacts a rule of estoppel which is one of evidence. The two provisions operate on different fields, and under different conditions, and we see no ground for reading a conflict between them or for cutting down the ambit of the one by reference to the other. In our opinion, both of them can be given full effect on their own terms, in their respective spheres. To hold that transfers by persons who have only a spes successionis at the date of transfer are not within the protection afforded by Section 43 would destroy its utility to a large extent.”*

*We are unable to see in what manner these observations can possibly assist the respondents. In the same decision, it has been observed later, referring to the decision of the Madras High Court in Official Assignee, Madras v. Sampath Naidu [AIR 1933 Mad 795 : 38 Mad LW 610 : (1933) 65 Mad LJ 588] :*

*“This reasoning is open to the criticism that it ignores the principle underlying Section 43. That section embodies, as already stated, a rule of estoppel and enacts that a person who makes a representation shall not be heard to allege the contrary as against a person who acts on that representation. It is immaterial whether the transferor acts bona fide or fraudulently in making the representation. It is only material to find out whether in fact the transferee has been misled. It is to be noted that when the decision under consideration was given, the relevant words of Section 43 were, ‘where a person erroneously represents’, and now, as amended by Act 20 of 1929, they are ‘where a person fraudulently or erroneously represents’, and that emphasises that for the purpose of the section it matters not whether the transferor acted fraudulently or innocently in making the representation, and that what is material is that he did make a representation and the transferee has acted on it. Where the transferee knew as a fact that the transferor did not possess the title which he represents he has, then he cannot be said to have acted on it when taking a transfer. Section 43 would then have no application and the transfer will fail under Section 6(a). But where the transferee does act on the representation, there is no reason why he should not have the benefit of the equitable doctrine embodied in Section 43, however fraudulent the act of the transferor might have been.”*

14. Prior to that in case of *Jumma Masjid v. Kodimaniandra Deviah*, reported in AIR 1962 SC 847, a four Judge Bench of the Hon’ble Supreme Court had held that Section 43 of T.P. Act embodies a rule of estoppel and

enacts that a person who makes a representation shall not be allowed to allege the contrary against the person who has acted on that representation.

15. Therefore, this court is not impressed with the ground of the petitioner that the suit must fail and the plaint be rejected as the sale was void in terms of Section 5(3) of Ceiling Act 1976. In view of Section 43 of T.P. Act, the petitioners being the vendor are estoppel from taking this objection.

16 The other issue of jurisdiction being not vested in the court under section 30(5) of Ceiling Act 1976 was also raised before this court. The said provision provides that no court shall entertain any suit or proceeding etc. against the competent authority to restrain the competent authority from taking any action or making any order in pursuance to provisions of this Section. Therefore, the bar to institution of suit is only against the competent authority under the Ceiling Act and a civil suit in the matter of private title between two private persons is not barred more so when the question of land being under Ceiling Act is no longer existence as the Collector has already ordered the land to be released from ceiling prior to institution of the suit. Therefore this ground of the petitioner also holds no force.

17. So far as limitation is concerned, the trial court has rightly held that since the sale deed to defendant No. 5 has been executed on 24.06.2025, and the land has been released from ceiling on 29-4-2025, therefore the issue that whether the suit is barred by limitation would be a mixed question of law and facts. Looking to these facts, it is evident to this court that the issue of

limitation would be a mixed issue of law and facts and therefore this issue should be tried along with other issues and it was not something which could have been decided at the outset without recording any evidence.

18. Consequently, finding no error in the order of the trial court in rejecting the application under Order 7 Rule 11 CPC, while granting liberty to the petitioners to raise the issue of limitation in the written statement, the Revision petition is *dismissed*.

(VIVEK JAIN)  
JUDGE

MISHRA