PRIVY COUNCIL

Motilal

Vs.

Nanhelal

Privy Council Appeal No. 52 of 1929
(Lord Thankerton J. Sir Lancelot Sanderson and Sir Gerorge Lowndes. JJ.)

29.7.1930

JUDGMENT

SIR LANCELOT SANDERSON J.

1. This is an appeal from a decree of the Court of the Judicial Commissioner, Central Provinces, dated 8th April 1920, which reversed a decree of the District Judge of Hoshangibad dated 30th September 1924, and decreed the plaintiff's suit with costs.

2. The appeal is brought by Seth Motilal the son of Seth Sobhagmal, who was defendant 1 in the suit, and who is now dead, and Seth Lachmandas and Seth Manakchand, defendants 2 and 3 in the suit.

3. The respondents are the assignees of the plaintiff, Mt. Jankibai, widow of Govindram Chaudhari.

4. The plaintiff assigned all her interest in the subject-matter of the suit and in the decree appealed against, to the respondents, whose names by order of the Court dated 7th October 1927, were substituted for that of the plaintiff, as respondents in the appeal.

5. The material facts are as follows:

> On 9th July 1914, Mt. Jankibai, the plaintiff, had agreed to buy from Seth Jiwandas and the latter had agreed to sell to the former a four annas four pies share of mauza Raisalpur, including sir and khudkast lands, with cultivating rights in the sir, for Rs. 46,100. Mt. Jankibai paid Rs. 5,000 as earnest-money, but being unable to raise the balance of the purchase-money, arranged with Seth Sobhagmal (defendant 1) that he should have the benefit of her contract with

Jiwandas pay the balance, take the sale-deed in his name, and convey to her the said share at any time within ten years on her paying him (Sobhagmal) Rs. 41,100.

On 25th August 1914, Seth Sobhagmal accordingly took a sale-deed from Jiwandas and paid him the balance of the purchase-money. The full consideration for the sale was Rs. 46,000.

On 4th September 1914, two agreements were executed, one by Seth Sobhagmal in favour of Jankibai, and the other by the latter in his favour, stating the arrangement already mentioned.

On 18th March 1918, Seth Sobhagmal mortgaged a four anna share to defendants 2 and 3.

On 9th October 1919, Jankibai gave notice to Sobhagmal that she was prepared to pay him the price and called upon him to carry out his contract with her, but he took no notice of it.

6. Consequently the plaintiff instituted the present suit against Seth Sobhagmal and his mortgagees defendants 2 and 3). praying for a decree that the defendants should be ordered to execute a sale-deed in favour of the plaintiff for the said share of the said village with cultivating rights in the sir land, after obtaining sanction under the Central Provinces Tenancy Act for the transfer of the sir lands on payment by her of the sum of Rs. 41,100 and other sums that might be due under the agreement.

7. The plaint contained other alternative reliefs, which it is not necessary tomention in detail at present.

8. At the trial many issues were raised; most of them are not now material. The learned District Judge dismissed the suit. He came to the conclusion that the litigation was speculative and opposed to public policy; that it had bean engineered by Seth Nanhelal, respondent 1, to get the defendants out of the village, as they were undercutting him by lending grain and money at lower rates than he did in the village.

9. With regard to this ground, it is only necessary to say that it is not relied upon by the appellants in this appeal.

10. The plaintiff appealed to the Court of other Judicial Commissioner, which allowed the appeal, and on 8th April 1926, made a decree in the plaintiff's favor as follows:

"The decree of the lower Court is set aside and it is ordered that defendant 1 Sobhagmal shall apply within one month to a Revenue Officer for sanction to transfer to the plaintiff Jankibai the cultivating rights is the sir pertaining to the

share in the village of Raisalpur mentioned in the agreement of 14th September 1914, and further that within one month of receipt of that sanction ha shall convey to the plaintiff the said share in accordance with the terms of that agreement, after redeeming the mortgage on the share held by the other defendants, Seth Lachmandas and Manakchand and further that he shall pay the whole of the costs incurred by the plaintiff in both Courts by deduction from the amount to be paid to him for the transfer."

11. From this decree the appellants have appealed.

12. The first point urged on their behalf was that the agreements of 4th September 1914, between Mt. Jankibai and Sobhagmal did not cover the cultivating rights in the sir land, and therefore, that the plaintiff was not entitled to call for a conveyance thereof from Sobhagmal.

13. This is a question of construction.

14. The agreement signed by Sobhagmal may be taken for consideration of this matter. It is as follows:

"Deed of agreement executed in favour of Janki Chaudharan, widow of Govindram Chaudhari, caste Kurmi of mauza Raisalpur, tahsil and District Hoshangabad, by Seth Sobhagmal, son of Seth Giyanmalji, caste Oswal, of Ichchawar, Bhopal State, to the following effect :

You agreed to purchase a 4-anna 4-pie share of mauza Raisalpur, tahsil and District Hoshangabad, for Rs. 46,100, from Rai Bahadur Seth Jivandassji, son of Raja Gokuldassji, of Jubbulpore, and paid Rs. 5,000 as earnest money to the said Seth. But you could not arrange for the remaining amount and Seth Jivandassji would have recovered from you whatever damages there might have been, besides the earnest money. So you gave up, of your own accord, the earnest money and purchase rights in respect of the mauza and had the share of the village sold to me by Seth Jivandassji for Rs. 41,100 (in words, forty-one thousand and one hundred rupees). But I agree with you as follows : I will execute a sale deed in your favour in respect of the entire 4-anna 4-pie share of this mauza with sir and khudkhast at any time you pay in full within ten years Rs. 41,100 cash together with registration and other expenses of the sale deed and rental arrears that may be due to me from tenants. If you fail to pay the full amount within the stipulated period and take a sale-deed, the deed of agreement shall be held to have been null and void and (you) shall have no right left to get

a sale deed executed. If I fail to execute a sale deed after the full amount as above is paid, you may pay the amount in Court and get a sale deed executed by me through Court under this deed of agreement. So the deed of agreement is executed. It is true and may be of use when necessary. Mitti Bhadi Sudi 15, Samvat 1971, corresponding to 4th September 1914. By the pen of Amritlal, Agent, Raisalpur."

15. It is to be noted that this agreement was made on 4th September 1914, ten days after the deed by which Jiwandass sold the share in the village to Sobhagmal.

16. There is no doubt that by the last-mentioned deed the cultivating rights in the sir land were transferred by Jiwandass to Sobhagmal, with the sanction of the Revenue Officer.

17. The recitals in the agreement of 14th September 1914, the price which Mt. Jankibai was to pay, viz., Rs. 41,100, which, added to the Rs. 5,000 earnest money already paid by her, made up the total of Rs. 46,100, which corresponded to the purchase price of the sale-deed, and the operative words of the agreement go to show, in their Lordships opinion, that the subject-matter of the agreements of 4th September 1914, between Mt. Jankibai and Sobhagmal was the same as the subjet-matter of the sale dead of 25th August 1914.

18. As already stated, there is no doubt that by the said sale deed the cultivating rights in the sir land were conveyed to Sobhagmal, and their Lordships are of opinion that the true construction of the agreements of 4th September 1914, is that Sobhagmal agreed to transfer to Mt. Jankibai the cultivating rights in the sir land as well as the share in the village and the other matters specifically mentioned therein. It is to be noted that this opinion agrees with the construction placed upon the agreements by the learned District Judge, and that so far as can be ascertained from the judgment of the appellate Court in India, the above-mentioned construction was not disputed in that Court.

19. The next point on which the appellants relied was that a decree for specific performance of the agreements of 4th September 1914 should not be made, because such performance would necessitate an application by or on behalf of the defendants or one of them to the Revenue Officer for sanction to transfer the cultivating rights in the sir land, and that the Court had no jurisdiction to require the defendants or any one of them to make such an application.

20. The material section which was in force at the time of the agreement was Section

45(2), Central Provinces Tenancy Act (11 of 1898). That Act was repealed by the Central Provinces Act of 1920, and the corresponding section of the 1920 Act is Section 59(1), which is as follows :

> "If a proprietor desires to transfer the proprietary rights in any portion of his sir land without reservation of the right of occupancy specified in Section 49, he may apply to a Revenue Officer and, if such Revenue Officer is satisfied that the transferor is not wholly or mainly on agriculturist, or that the property is self-acquired, or has been acquired within the 90 years last preceding, he shall sanction the transfer."

21. In view of the above-mentioned construction of the agreements of 4th September 1914, viz., that Sobhagmal agreed to transfer the cultivating rights in the sir land, there was, in their Lordships' opinion, an implied covenant on his part to do all things necessary to effect such transfer, which would include an application to the Revenue Officer to sanction the transfer.

22. It is not necessary for their Lordships to decide whether in this case the application for sanction of transfer must succeed, but it is material tomention that no facts were brought to their Lordships' notice which would go to show that there was any reason why such sanction should not be granted.

23. In these circumstances their Lordships are of opinion that the appellate Court had jurisdiction under the provisions of the Specific Relief Act to make the decree against which the appeal is directed, and that the terms of Order 21, Rule 32 (4) are sufficient to provide for the decree being carried out.

24. Inasmuch as their Lordships are of opinion that the decree for specific performance of the agreements was properly made, it is not necessary to consider or express any opinion upon the point raised on behalf of the appellants with regard to the question of damages.

25. For these reasons their Lordships are of opinion that this appeal should be dismissed with costs, and they will humbly advise His Majesty accordingly.

Appeal dismissed.