

SUPREME COURT OF INDIA

Krishan Pal Singh

Vs.

Babulal

C.A.No.1339 of 1966

(M. B. Shah, V. Ramaswami and A. N. Gover JJ.)

08.09.1969

JUDGMENT

RAMASWAMI, J.

1. This appeal is brought by special leave from the judgment of the Allahabad High Court dated December 6, 1966 in Execution Second appeal No. 886 of 1961.

2. Respondent No. 1 obtained a decree-against Shri Sheora-tan Singh, ancestor of the appellants, for specific performance of an agreement to sell plots, which became Bhoomidari plots by operation of the U. P. Zamindari Abolition and Land Reforms Act, 1950 (hereinafter referred to as the Act.) The decree was obtained on August 19, 1966. The-appeal filed against decree was also dismissed. Later on the decree-holder, respondent No. 1 transferred the decree for specific performance in favour of respondent No. 2. Respondent No. 2 executed the decree. Thereafter the judgment-debtors, the present appellants, filed an objection under Section 47 of the Civil Procedure Code on the ground that the sale deed could not be executed in view of Section 154 of the Act. The contention of the appellants was that the original decree-holder Babulal had more than 36 acres of land and he could not acquire more land in view of Section 154 of the Act. The Munsiff allowed the objection on the ground that the original decree-holder possessed more than 30 acres of land and, therefore, the decree for specific performance could not be enforced against the judgment-debtors and respondent No. 2 was holding the rights of respondent No. 1 as a transferee. Respondent No. 2 filed an appeal in the Court of Civil Judge, Budaun against the order of the Munsiff.

The appeal was allowed and it was held by the Civil Judge that respondent No. 2 was entitled to execute the decree for specific performance. The appellants preferred a second appeal before the Allahabad High Court which was dismissed.

3. Section 154 of the Act as it stood at the material time read as follows:

"No bhumidar shall have the rights to transfer, by sale of gift, any land other than tea gradens, to any person (other than an institution established for charitable purpose) where such person shall as a result of the sale of gift, become entitled to land which together with land if any held by himself or together with his family, will, in the aggregate, exceed 30 acres in Uttar Pradesh.

Explanation:--

For the purposes of this section, the transferee shall, unless proved to the contrary, be presumed to be joint with the members of his family mentioned in Explanation I.

Explanation I:

For the purposes of this section, a family shall include, in case it is joint family, the transferee himself, his father and his mother, his male licence descendants, and his wife or husband as the case may be."

Later the section was amended Act No. 37 of 1958 by which the following section was substituted:

"No bhumidar shall have the right to transfer, by sale or gift, any land other than the tea gardens to any person (other, than an institution established for a charitable purpose) where such person shall, as a result of the sale or gift, become entitled to land which together with his family, will, in the aggregate, exceed 12 1/2 acres in Uttar Pradesh.

Explanation- For the purpose of this section a family shall include the transferee himself, his wife, or husband, as the case may be, and his minor children."

4. It was contended on behalf of the appellant that the decree being unexecutable by the decree-holder in view of Section 154 of the Act the decree continued to be so unexecutable inspite of he transfer to respondent No.2. In other words it was said that respondent No. 1 could not transfer to respondent No.2 better rights than he himself had under the decree. Reference was made to Order 21 Rule 16 of the civil Procedure Code which states:

"where a decree or, if a decree has been passed jointly in favour of two or more persons, the interest of any decree-holder in the decree is transferred by assignment in writing or by operation of law, the transferee may apply for execution of the decree to the Court which passed it; and the decree may be executed in the same manner and subject to the same conditions as if the application were made by such decree-holder;

Provided that, where the decree of such interest as aforesaid, had been transferred by assignment notice of such application shall given to the transferor and the judgment-debtor and the decree shall no, be executed until the Court has heard their objections (if any) to its execution:

Provided also that, where a decree for the permanent of money against two or more persons has been transferred to one of them, it shall not be executed against the others."

5. Reference was also made to Section 49 of the CPC which states that every transferee of a decree shall hold the same subject to the equities (if any) which the judgment-debtor might have enforced against the original decree-holder. It is true that under this section the assignee of a decree stands in no better position than the assignor and takes subject to all equities and defences subsisting at the

time of assignment which the judgment debtor could have asserted against it, notwithstanding the assignee may have no notice thereof. In the present case, however: the bar imposed under Section 154 of the Act cannot be considered an equity which the judgment-debtor was entitled to enforce against the original decree-holder within the meaning of Section 49, C.P.C. Nor is it possible to consider the bar imposed by sec 154 as a condition for the execution of the decree within the meaning of Order 21, Rule 16, C.P.C. In the present case the bar impend by Section 154 of the Act was a bar personally imposed on respondent No. 1 but the respondent No.2 who was the assignor of the decree was competent to execute the decree as the area of his land did not exceed the statutory limit imposed by Section 154 of the Act. The object of the Legislature in enacting Section 154 of the Act is to place a ceiling on the land holding. The policy of the Legislature in enacting Section 154 of the Act was that nobody should hold more than 50 acres of land. It is not, therefore, possible to apply the bar of Section 154 of the Act to the case of the respondent. We are of opinion that the High Court was right in holding that respondent No. 2 is entitled to execute the decree for specific performance against the appellants The appeal accordingly fails and is dismissed with costs.