

Smt. Kalawati

Vs

Bisheshwar

Civil Appeal No. 963 of 1964

(J. C. Shah, S. M. Sikri, J. M. Shelat JJ)

17.08.1967

JUDGMENT

SHELAT, J. -

This appeal by certificate raised the question of construction of cl. (b) of s. 23(1) of the U.P. Zamindari Abolition and Land Reforms Act, 1 of 1951 (hereinafter referred to as the Act) and the effect of its deletion by section 6 of the U.P. Land Reforms (Amendment) Act, XX of 1954 and later by section 3 of U.P. Land Reforms (Amendment) Act XVIII of 1956.

Some of the relevant facts may first be set out :

Prior to June 14, 1952 Kapurthala Estate was the owner of the mango grove in suit. On June 14, 1952 the Estate sold the said grove to the appellant. A notice to quit was thereafter served on the respondent - tenant but as he failed to deliver possession the Kapurthala Estate and the appellant filed on May 12, 1954 the suit out of which this appeal arises. On October 1, 1959 the Kapurthala Estate withdrew from the suit leaving the appellant the sole plaintiff. The respondent-tenant raised several defences in his written statement. The Trial Court raised several issues amongst which Issue No. 7 was : "Whether any rights have accrued in law in favour of plaintiff No. 2 under the sale deed dated 14th June 1952." The Trial Court tried that as a preliminary issue and held that the sale deed in favour of the appellant was void, that she did not acquire thereunder any interest in the said property, and in that view dismissed the suit. In appeal the learned Civil Judge, Mohanlalganj, held that the sale deed was not void and that after the deletion of cl. (b) of section 23(1) by Amendment Act, XX of 1954 the appellant was entitled to maintain the suit despite withdrawal by the Kapurthala Estate. Consequently, he remanded the case to the Trial Court for deciding the rest of the issues. Against that order the respondent filed an appeal in the High Court contending once again that the said sale was void and conferred no right, title or interest in the appellant, and being void from its inception, remained void for all time and could not be taken into consideration in spite of the deletion of the said clause (b). The learned Single Judge, who heard that appeal dismissed it holding that the said sale was a valid transfer, that cl. (b) of section 23(1) only provided a ban against recognition for any of the purposes under the Act and that after its deletion first by Act XX of 1954 and then by Act XVIII of 1956 the appellant could maintain the suit though the Kapurthala Estate had withdrawn therefrom. The Division Bench of the High Court which heard the Special Appeal against the judgment of the learned Single Judge differed from the view of section 23(1)(b) taken by him, allowed the appeal and dismissed the suit.

Counsel for the respondent contended (i) that the effect of section 23(1)(b) was that transfers made after July 7, 1949 were void for any purpose whatsoever; and (ii) that in any event withdrawal by

the Kapurthala Estate from the suit must date back from the inception of the suit and therefore the Division Bench was correct in dismissing the suit. To appreciate these contentions it is necessary to read first some of the provisions of the Zamindari Abolition Act.

The object of the Act declared by its long title is to provide for abolition of the Zamindari system involving intermediaries between the tiller of the soil and the State for acquisition of their rights, title and interest and to reform the law relating to land tenure consequent upon such abolition and acquisition. Section 3(12) defines an "intermediary" to mean with reference to any estate a proprietor, under-proprietor, sub-proprietor, the kadam, permanent lessee in Avadh and permanent tenure-holder of such estate or part thereof. Clause 13 defines an "intermediary grove" to mean grove land held or occupied by an intermediary as such. Section 4 authorises the State Government to declare by notification that as from the date to be specified, all estates shall vest in the State and as from the date so specified all such estates shall stand transferred to and vest in the State except as therein provided. Section 6 lays down the consequences of the vesting and provides inter alia that all rights, title and interest of all the intermediaries in every estate in such area as may be notification be specified shall cease and be vested in the State. Section 18 deals with settlement of certain lands with intermediaries as bhumidhars and provides that subject to certain sections therein set out all lands in possession of or held or deemed to be held by an intermediary as sir, khudkasht or an intermediary's grove on the date immediately preceding the date of vesting shall be deemed to be settled by the State Government with such intermediary who shall be entitled to take or retain possession as a bhumidhar hereof. Section 23(i) reads as follows :

"Notwithstanding anything contained in any law, no transfer, by way of sale or gift of any estate or part thereof -

(a) made on or after the first day of July, 1948 shall be recognised for the purpose of assessing the amount of rehabilitation grant payable to the intermediary;

(b) Notwithstanding anything contained in any law, no transfer by way of sale or gift of any estate or part thereof made after the seventh day of July 1949, shall be recognised for any purpose whatsoever and the estate shall be deemed to continue to vest in the transferor."

Chapter III of the Act deals with compensation payable to the intermediary and its assessment and sections 73 and 74 in Chapter IV provide for rehabilitation grant payable to such intermediary. By section 6 of the Act XX of 1954 the legislature repealed cl. (b) of section 23(1). In 1956, the legislature passed another Amendment Act XVIII of 1956 which by section 3 provided that "section 6 of the U.P. Land Reforms (Amendment) Act 1954 deleting cl. (b) of sub-section 1 of section 23 shall in the matter of assessment and payment of compensation or rehabilitation grant be deemed to have had the effect from the date of the commencement of the Principal Act."

As aforesaid, Kapurthala Estate sold the property in question to the appellant before July 1, 1922 when the Act came into operation. Therefore as the law then stood the sale was a valid transaction and vested in the appellant all the right, title and interest which the Kapurthala Estate possessed in the said land, subject of course to such rights, if any, which the respondent had as a tenant under any tenancy law in force then. The question is what was the impact of the Act which was brought into force after the said sale. Did the Act prohibit any such sale or declare such sale to be void and of no effect though valid when made before the Act came into force ? Leaving aside for the time being cl. (b) of section 23(1) there is otherwise nothing in the Act which provides that a transfer validly

effect prior to July 1, 1952 shall be void and will have no effect. There is also nothing in the Act touting the consequence of such a transfer under the Transfer of Property Act.

The learned Single Judge of the High Court held that what section 23(1)(b) did was only to preclude recognition of a sale made on or after July 7, 1949 for any purpose whatsoever, that is, for any of the purposes under the Act but did not render such a sale void. Therefore "for purposes under the Contract Act the transfer was not invalid and a transfer of property had taken place; but for purposes of the U.P. Zamindari Abolition and Land Reforms Act, primarily for assessment of compensation and calculation of rehabilitation grant, the transfer was not to be recognised but the does not mean that transfer was declared void." The sale, according to him, was thus a valid transfer but it could not be recognised by the courts until the ban in cl. (b) existed. He observed that as the deletion of clause (b) Act XX of 1954 was prospective, so far as the courts were concerned it was a case of devolution of property with effect from October 10, 1954. Consequently, withdrawal in 1959 by Kapurthala Estate from the suit did not affect its maintainability, the appellant being on the record as the second plaintiff and the ban against recognition of the sale in her favour having been already removed before the withdrawal.

The Division Bench of the High Court disagreed with this view and held that the words "any purpose" in cl. (b) were wide enough to include all purposes, that therefore the sale could not be recognised, that even if those words were given a restricted meaning as the learned Single Judge did, viz., for any purpose under the Act it made no difference, for, no court could recognise the transfer for any purpose under the Act. Therefore, on July 1, 1952 when the Act came into force the question would arise as to who became the bhumidhar under the Act, the Kapurthala Estate or the appellant. Since clause (b) placed a ban against recognition of that transfer for any purpose under the Act it was the Kapurthala Estate which became the bhumidhar as a clause (b) provided that in the case of a transfer made after July 7, 1949 the estate was to be deemed to continue to vest in the transferor. Accordingly it was the Kapurthala Estate which became the bhumidhar and was entitled to the rights of a bhumidhar and not the appellant. This position continued till October 10, 1954 when clause (b) was deleted. But since the amendment was prospective it did not serve any useful purpose for it enacted transfers made after and not before the amendment was enacted. Therefore, the Kapurthala Estate remained the bhumidhar under section 18 and such bhumidhar the Kapurthala Estate alone could sue the respondent for eviction. According to the Division Bench section 3 of Act XVIII of 1956 which retrospectively deleted clause (b) from the commencement of the Act did not help the appellant, for the deletion was for a limited purpose, viz., for assessment and payment of compensation and rehabilitation grant. It did not therefore change the position so far as the question as to who became the bhumidhar on July 1, 1952 is concerned. Kapurthala Estate continued to remain the bhumidhar and its withdrawal from the suit rendered the suit non-maintainable as the appellant could not continue the suit as she was not the bhumidhar. In this view, the Division Bench held that the Kapurthala Estate was the intermediary on June 30, 1952 and bhumidhar from July 1, 1952 and this position was not affected by the repeal of cl. (b). The Estate and not the appellant therefore could claim bhumidhar rights under section 18 to evict the respondent.

Counsel for the respondent in support of this view argued that the effect of cl. (b) was that the transfer was void from its inception and therefore neither the prospective deletion of that clause in 1954 nor the retrospective deletion thereof in 1956 conferred the status of bhumidhar on the appellant. That being the position, he argued that the appellant was not entitled to maintain the suit after withdrawal by the Kapurthala Estate therefrom. In our opinion, it is not possible to accede to these contentions.

There is a clear distinction between a transaction being void that is, non-existent from its very inception and a ban against its recognition. Indeed when it is said that such a transaction is not to be recognised for any purpose whatsoever it postulates that the transaction does exist and is valid but is not to be recognised. Recognition means, according to Jowitt's Dictionary of English Law, p. 1486, an acknowledgment. According to the Shorter Oxford English Dictionary, (3rd ed.) Vol. II, p. 1673, recognition means : "The action or fact of perceiving that some thing, person, etc., is the same as one previously known; the mental process of identifying what has been known before; the action or fact of apprehending a thing as having a certain character belonging to a certain class." There is thus a clear distinction between a transaction being void and one though valid and existent which is not to be recognised or acknowledged. The legislature also appears to be fully aware of the distinction between a void transaction and one which is not to be recognised. In sections 24 and 166 the legislature has declared certain transactions therein set out void and of no effect as against cl. (b) of section 23(1) where it provides only a bar against recognition. That being so it is impossible to say that the bar of recognition in cl. (b) to a transfer made after July 7, 1949 means that such a transfer is void. The sale in favour of the appellant was therefore valid and did have the effect of conveying and vesting the ownership of the property in the appellant.

What then is the true effect of cl. (b) ? The sale in favour of the appellant transferred all rights of ownership of Kapurthala Estate in the appellant and therefore the appellant became the Zamindar in respect of that property. Section 4 of the Act abolished rights and vested those rights in the State. Under section 18 the zamindar who is the intermediary would become the bhumidhar and therefore by reason of the sale in her favour it was the appellant who became entitled to the bhumidhar's rights. But for cl. (b) of section 23(1) it would be the appellant who would have to be recognised as such bhumidhar and it would be she who would be entitled to the rights of compensation and rehabilitation grant under Chapter III and IV as an intermediary, the right to retain possession of the property and to evict a tenant therefrom. That is the simple position emerging from sections 4, 18 and 23(1)(b).

In the earlier part of its judgment the Division Bench expressed its inability to appreciate as to why the legislature went out of its way to enact cl.(b). For it did not matter to the State as to whether it was the transferor or the transferee who became the bhumidhar. But the legislature had a clear purpose in enacting cl. (b) and it is because the learned Judges failed to appreciate that purpose that they allowed themselves to deviate from the true construction and object of that clause. The legislature was aware that transfers of zamindari properties had taken place before the Act came into force and as a result it would be the transferees thereunder who would be the intermediaries and therefore bhumidhars under section 18 with rights inter alia to compensation and rehabilitation grant. The purpose of the legislature however was to recognise the original owners, that is, the transferors as persons entitled to the rights of bhumidhars and therefore provided in cl. (b) that no such transfer is to be recognised "for any purpose whatsoever". Though therefore such a transfer made the transferee an intermediary and therefore a bhumidhar under section 18 clause (b) laid down a bar against its recognition. The words "any purpose whatsoever" were used in cl. (b) as cl. (a) of s. 23(1) provided that a transfer made on or after July 1, 1948 was not to be recognised for the purpose only of assessing rehabilitation grant payable to an intermediary. But there are purposes under the Act other than payment of rehabilitation grant such as compensation payable under Chapter III and other rights of a bhumidhar provided in other parts of the Act. When section 23(1) is read as a whole it is clear that with respect to transfers made after July 7, 1949 the legislature wanted to lay down a bar against its recognition for all these purposes also and hence advisedly used the words "for any purpose whatsoever", that is, for all purposes under the Act. The Division Bench therefore was not right in saying that cl. (b) did not serve any useful purpose and that it did not

appreciate why the legislature had enacted that clause. It is because this was the purpose of enacting clause (b) that the legislature also enacted a deeming provision under which the estate is to be deemed to continue to vest in the transferor. The impact of cl. (b) on the transfer made after July 7, 1949 is that though the transferee by reason of such transfer becomes the intermediary and a bhumidhar under section 18, it bars recognition of his rights as such bhumidhar for any of the purposes of the Act whatsoever. Instead, as a result of the deeming provision in the clause, the transferor continues to have those rights notwithstanding the transfer. If the clause had rendered such a transfer void, and therefore non-existent, the transferor would have remained the owner of the property and would have the rights of a bhumidhar under s. 18 and there would not have been any necessity of enacting the deeming provision under which the property though transferred is deemed to continue to vest in such transferor.

In this view the sale in favour of the appellant was not void but a valid sale. It was she who became the intermediary and it was her rights as such intermediary which section 4 abolished. By virtue of the combined effect of section 4 and 18 she became the bhumidhar. But for clause (b) her rights as such bhumidhar would have been recognised and she would have been entitled to the rights as such bhumidhar under the Act. But by reason of the bar against recognition of the sale no court can recognise and give effect to those rights. As a property is deemed to continue to vest in the transferor it is he who can exercise those rights. As a result of the deletion of cl. (b) as from October 19, 1954 the bar against recognition is removed and the transferee can enforce his rights as from the date. The deletion of cl. (b) by Act XX of 1954 was however prospective. Therefore, for the period between July 1, 1952 and October 10, 1954 the rights of the transferee under the Act such as the right to compensation and rehabilitation grant, would still not be recognised. To remove this difficulty the legislature by section 3 of the Amendment Act 1956 made the deletion of cl. (b) retrospective from the date of the commencement of the Act with regard to the right of the transferee to compensation and rehabilitation grant.

The position which emerges from this discussion is that when the suit was filed though the appellant was the intermediary and the bhumidhar under section 18, her right to evict the respondent could not be recognised. As the estate was deemed to continue to vest in the transferor, Kapurthala Estate had to join in the suit as a co-plaintiff. From October 10, 1954 the bar was removed and the appellant became entitled to maintain the suit in her own right and the withdrawal of Kapurthala Estate as plaintiff No. 1 did not affect the maintainability of the suit. The contention of Mr. Shukla that the withdrawal must be deemed to date back to the institution of the suit has in our views no force. No such order was made by the Trial Court which ordered the withdrawal. The withdrawal therefore took place after the bar under clause (b) against recognition of the appellant's rights was deleted and the appellant therefore had the right to maintain the suit.

The appeal is allowed; the judgment and decree of the Division Bench of the High Court are set aside, the suit is restored and the Trial Court is directed to proceed with the suit in accordance with law. The respondent will pay to the appellant costs through out.

Appeal allowed.

Y. P.s

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