

Jambu Rao Satappa Kocheri

Vs

Neminath Appayya Hanammannaver

Civil Appeal No. 932 of 1965

(J. C. Shah, V. Ramaswami – I JJ)

10.04.1968

JUDGMENT

SHAH, J.-

The appellant agreed to sell to the respondent Survey Nos. 5 & 12 of village Pattihal in District Belgaum, Mysore State, admeasuring 41 acres 26 gunthas of jirayat land for Rs. 32,000/-. The appellant having failed to execute a conveyance of the land, the respondent commenced an action in the Court of the Civil Judge, Senior Division, Belgaum, for a decree for specific performance of the agreement and for possession of the land. The trial court dismissed the suit holding that the agreement, if enforced, would result in "transgression of the provisions of the Bombay Tenancy and Agricultural Lands Act, 1948." In appeal, the High Court of Mysore granted a decree for specific performance. With certificate granted by the High Court, this appeal has been preferred by the appellant.

The trial court and the High Court have concurrently found that the appellant failed to prove that the contract was abandoned by mutual agreement, and nothing more need be said about the plea raised by the appellant. Two questions survive for decision in this appeal :

- (1) Whether enforcement of the contract would result in transgression of the provisions of the Bombay Tenancy and Agricultural Lands Act, 1948; and
- (2) Whether the civil court had jurisdiction to entertain the suit for specific performance.

By s. 5 of the Bombay Tenancy and Agricultural Lands Act 67 of 1948, as it stood at the relevant time, it was provided :

"(1) For the purposes of this Act, the ceiling area of land shall be -

- (a) 48 acres of Jirayat land, or
- (b) 24 acres of seasonally irrigated land or paddy or rice land, or
- (c) 12 acres of perennially irrigated land.

(2) Where the land held by a person consists of two or more kinds of land specified in sub-section (1), the ceiling area of such holding shall be determined on the basis of one acre of perennially irrigated land being equal to two acres of seasonally irrigated

land or paddy or rice land, or four acres of jirayat land."

Section 34(1) of the Act provided :

"Subject to the provisions of section 35, it shall not be lawful, with effect from the appointed day, for any person to hold, whether as owner or tenant or partly as owner and partly as tenant, land in excess of the ceiling area."

The expression "to hold land" is not defined in the Tenancy Act. It is defined in the Land Revenue Code, and by virtue of s. 2(21) of the Tenancy Act it has the same meaning which it has under the Bombay Land Revenue Code, 1879, i.e., "to be lawfully in possession of land, whether such possession is actual or not" : S. 3(11) of the Bombay Land Revenue Code, 1879. Section 35 provided that :

"Where on account of gift, purchase, assignment, lease, surrender or any other kind of transfer inter vivos or by bequest except in favour of recognised heirs and land comes into the possession of any person and in consequence thereof, the total land held by such person exceeds the area, which he is authorised to hold under section 34, the acquisition of such excess land shall be invalid.

#Explanation."##

The material part of s. 84C provided :

"(1) Where in respect of the transfer of acquisition of any land made on or after the commencement of the Amending Act, 1955, the Mamlatdar suo motu or on the application of any person interested in such land has reason to believe that such transfer or acquisition is or becomes invalid under any of the provisions of this Act, the Mamlatdar shall issue a notice and hold an inquiry as provided for in section 84B and decide whether the transfer or acquisition is or is not invalid.

(2) If after holding such inquiry, the Mamlatdar comes to a conclusion that the transfer or acquisition of land is invalid, he shall make an order declaring the transfer or acquisition to be invalid.

(3) On the declaration made by the Mamlatdar under sub-section (2), -

"(a) the land shall be deemed to vest in the State Government, free from all encumbrances lawfully subsisting thereon on the date of such vesting, and shall be disposed of in the manner provided in sub-section (4);

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The appellant resisted the claim of the respondent for specific performance of the agreement of sale on the plea that the respondent was already holding 31 acres 2 gunthas of jirayat land, and by acquiring 41 acres 26 gunthas of jirayat land, the respondent's holding would exceed the ceiling prescribed by the statute.

The evidence on the record about the area of lands held by the respondent at the relevant time is obscure. The agreement was dated July 20, 1958. On April 1, 1960 the respondent filed a statement

in the Court that, barring lands which were liable to be excluded in determining whether the holding exceeded the ceiling, he was in possession of 11 acres 1 guntha of jirayat land. If that holding were to be taken into account, and if in pursuance of a decree for specific performance the respondent acquired possession of the land agreed to be sold, his total holding would exceed the ceiling. In the trial court the parties proceeded to trial on the footing that if the agreement was enforced specifically, the holding of the respondent would exceed the ceiling area. In appeal, the High Court observed that there was no evidence that the respondent was a holder of land in excess of the ceiling area on the date of the agreement nor was there evidence to show that he was holding an area of land in excess of the ceiling area on the date of the suit or even at the date of the statement dated April 1, 1960, and therefore s. 34 had no relevance. The High Court observed in the last paragraph of the judgment that they had not recorded any finding about the actual area of jirayat land in the possession of the respondent at any point of time either on the date of the suit or on April 1, 1960, and the question was left open as desired by the parties. Since in the trial court the parties chose to go to the trial on the footing that if the contract is specifically enforced, having regard to the holding of the respondent, the total area would exceed the ceiling, we proceed to decide the appeal on that footing.

By s. 23 of the Contract Act, consideration or object of an agreement is unlawful if it is forbidden by law; or is of such a nature that, if permitted, it would defeat the provisions of any law; or is fraudulent. Both the parties to the contract are agriculturists. By the agreement the appellant agreed to sell jirayat land admeasuring 41 acres 26 gunthas for a price of Rs. 32,000/-. The consideration of the agreement per se was not unlawful, for there is no provision in the Act which expressly or by implication forbids a contract for sale of agricultural lands between two agriculturists. Nor is the object of the agreement to defeat the provisions of any law. The Act has imposed no restriction upon the transfer of agricultural lands from one agriculturist to another. It is true that by s. 35 a person who comes to hold, after the appointed day, agricultural land in excess of the ceiling, the lands having been acquired either by purchase, assignment, lease, surrender or by bequest, the acquisition in excess of the ceiling is invalid. The expression "acquisition of such excess land shall be invalid" may appear somewhat ambiguous. But when the scheme of the Act is examined, it is clear that the Legislature has not declared the transfer or bequest invalid, for s. 84C provides that the land in excess of the ceiling shall be at the disposal of the Government when an order is made by the Mamlatdar. The invalidity of the acquisition is therefore only to the extent to which the holding exceeds the ceiling prescribed by s. 5, and involves the consequence that the land will vest in the Government.

By the acquisition declared invalid under s. 35, the land does not revert to the transferor or the testator; the land is deemed to be of the ownership of the person acquiring it by transfer or by bequest and on the Mamlatdar making the order, the land in excess of the ceiling vests in the Government. It only will mean that the purchaser will not be entitled to hold the land in excess of the ceiling and the excess will be at the disposal of the Government.

An agreement to sell land does not under the Transfer of Property Act create any interest in the land in the purchaser. By agreeing to purchase land, a person cannot be said in law to hold that land. It is only when land is conveyed to the purchaser that he holds that land. Undoubtedly the respondent was holding some area of land at the date of the agreement and at the date of the suit, but on that account it cannot be inferred that by agreeing to purchase land under the agreement in question his object was to hold in excess of the ceiling. It was open to the respondent to transfer or dispose of the land held by him to another agriculturist. The Act contains no general restrictions upon such transfers, and unless at the date of the acquisition the transferee holds land in excess of the ceiling,

the acquisition to the extent of the excess over the ceiling will not be invalid. There is nothing in the agreement, nor can it be implied from the circumstances, that it was the object of the parties that the provisions of the Act relating to the ceiling should be transgressed. The mere possibility that the respondent may not have disposed of his original holding at the date of the acquisition of title pursuant to the agreement entered into between him and the appellant will not, in our judgment, render the object of the agreement such, that, if permitted, it would defeat the provisions of any law. The Court, it is true, will not enforce a contract which is expressly or impliedly prohibited by statute, whatever may be the intention of the parties, but there is nothing to indicate that the Legislature has prohibited a contract to transfer land between one agriculturist and another. The inability of the transferee to hold land in excess of the ceiling prescribed by the statute has no effect upon the contract, or the operation of the transfer. The statutory forfeiture incurred in the event of the transferee coming to hold land in excess of the ceiling does not invalidate the transfer between the parties.

We hold that a contract for purchase of land entered into with the knowledge that the purchaser may hold land in excess of the ceiling is not void, and the seller cannot resist enforcement thereof on the ground that, if permitted, it will result in transgression of the law.

There is no substance in the argument that the civil court had no jurisdiction to entertain and decree a suit for specific performance of an agreement to sell land. Section 70 of the Act sets out the duties and functions of the Mamlatdar and, amongst the duties and functions which the Mamlatdar for the purpose of the Act shall discharge or perform is the duty and function to decide under s. 84C whether a transfer or acquisition of land is invalid and to dispose of the land as provided in s. 84C. Section 85 of the Act excludes from the jurisdiction of the civil court proceedings to settle, decide or deal with questions which are required by s. 70(mb) to be settled, decided or dealt with by the authorities specified in that behalf. Power to decide whether the transfer or acquisition is invalid under s. 84C and to dispose of the land as provided in that section is undoubtedly conferred upon the Mamlatdar, and the civil court has no jurisdiction in that behalf. But there is nothing in cl. (mb) of s. 70 which excludes the jurisdiction of the civil court to entertain a suit for specific performance of a contract to sell land. An inquiry under s. 84C to determine whether the transfer or acquisition is invalid may be made only after the acquisition of title pursuant to a decree for specific performance or otherwise. The civil court has no jurisdiction to determine whether the acquisition is invalid, but there is nothing in s. 70 or in other provisions of the Act which excludes the civil court's jurisdiction to decree specific performance of a contract to transfer land.

The appeal therefore fails and is dismissed with costs.

Appeal dismissed.##

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