

SUPREME COURT OF INDIA

Kartar Singh

Vs.

Union of India

C.A.No.1387 of 1967

(K. S. Hegde and A. N. Grover, JJ.)

28.01.1971

JUDGEMENT

HEGDE, J.:-

1. This appeal by certificate arises from a writ petition filed by the appellant in the High Court of Punjab and Haryana. That writ petition was summarily dismissed yet it became necessary for the High Court to grant a certificate under Art. 133 (1) (a) of the Constitution as the property in dispute was worth more than Rs. 20,000/-.

2. The family of Mahant Janki Nath was the owner of the properties with which we are concerned in this appeal. On May 3, 1945, Mahant Janki Nath as the karta of his family mortgaged those properties in favour of one Fauzdar for Rs. 4,000/-. Necessary mutation was effected in the revenue records. Mahant Janki Nath sold a portion of the mortgaged properties to Islam Din on October 12, 1946. He sold the remaining portion to Ali Mohd. and two others on November 29, 1946. The vendees of both those deeds migrated to Pakistan after the partition of India. Hence the properties purchased by them became evacuee properties. On November 12, 1949 the appellant purported to

purchase the same property from some of the heirs of Janki Nath.

Thereafter on December 29, 1959, he deposited with the competent officer Rs. 4,000/- due to Fouzdar who had also become an evacuee. The competent officer thinking that the property in question was a composite property received the same and allowed the mortgage in favour of Fouzdar to be redeemed, being ignorant of the fact that the properties in question had been sold to certain evacuees. The Tehsildar (Sales) cum-Managing Officer, Gurdaspur by his order dated January 31, 1966 held that the property in question is evacuee property and not composite property. The appellant appealed to the Assistant Settlement Commissioner against the order of the Tehsildar. The Assistant Settlement Commissioner set aside the order of the Tehsildar on the ground that it was without jurisdiction because the property in question had already been declared composite. The Respondent No. 7 herein took up the matter in appeal to the the Chief Settlement Commissioner as a portion of that land had been allotted to him. The Chief Settlement Commissioner accepted that appeal. He held that the property in question was not composite property as its original owner had sold the property to muslim evacuees after mortgaging the same to Fouzdar. He further held that the property having vested with the Government, the order of the competent officer allowing the redemption of the property was without jurisdiction. This order was confirmed by the Chief Settlement Commissioner. That order was challenged , by the appellant in the writ petition referred to earlier.

3. The only point urged by Mr. S. P. Sinha, the learned Counsel for the appellant was that the respondent was estopped from contending that the appellant had no right in those properties in view of S. 41 of the Transfer of Property Act. Apart from the fact that this is a prima facie untenable plea, the same has not been taken in the writ petition. Hence we are not called upon to consider that plea.

4. In the result this appeal fails and the same is dismissed with costs.

Appeal dismissed.