

Vijay Singh and Another

Vs

Tulsi Ram and Another

Civil No. 1348 of 1976

(V. R. Krishna Iyer, Jaswant Singh JJ)

25.02.1977

ORDER

1. This appeal, by special leave, leaves much to be desired in the matter of pleadings, issues and proof. Nevertheless, we are not inclined to interfere with the dismissal of the second appeal, in limine, by the High Court, challenging the decree. The judgment of this Court which merely confirms the High Court's judgment can be abbreviated since elaborate reasoning and discussion are otiose. Therefore, we will be brief although we have heard arguments at great length from Counsel on both sides.

2. A pre-emption action was brought by the plaintiffs-respondents based on Section 4 of the Punjab Pre-emption Act, 1913 which still prevails in the State of Haryana where the land in dispute is situate. Admittedly there was a registered sale deed executed by Kabul Singh, who is respondent 2 before us, purporting to be the absolute owner of the land. If really there was a sale, the action for pre-emption was entitled to succeed. The contention in defence was that the property was an ancestral property in the hands of Kabul Singh and his sons. There was a custom allegedly prevailing in the locality whereby Kabul Singh, the father, could not alienate the ancestral property without family necessity and since there was no family necessity in this case the sale was void. To buttress up this contention the parties, the vendors and vendees, went through the exercise of getting a collusive decree shortly after the present pre-emption action was instituted. It was a consent decree and a collusive one as held by the courts of fact. We proceed on that footing. We are satisfied that in any case that decree cannot bind the plaintiffs. The substantial contention that the alienation was void because the property was ancestral did not form the subject-matter of any issue nor was any such custom proved in this case. Therefore, it is clear that, on the pleadings as they are, the finding of the court that there has been a real sale is correct.

3. Shri Tarkunde, arguing for the appellants, urged that the evidence on the side of the plaintiffs itself is that the sale was not real and that Kabul Singh continued to be the owner. The evidence of Kabul Singh also is on record that the sale is fictitious. Counsel on both sides have given their explanations and made their comments on the testimony so delivered, but the basic failure in the case is that the voidness of the sale to the vendees that give rise to the pre-emption right has not been found and, indeed, has not been the subject-matter in issue. On the other hand, questions like the vendees being tenants of the vendor after the sale, seem to have been gone into. Strictly speaking, they are irrelevant to the decision of the case.

4. It seems true that in an endeavor to out-wit the and reforms law Kabul Singh, the second respondent, perhaps, tried to sell to his close relations 30 acres of land in dispute at a concessional rate. This endeavour to extricate the property from the clutches of the land ceiling legislation has

landed him in worst trouble because the pre-emption right of the plaintiffs thereby came into being. There may be a ring of truth in the explanation of Shri Tarkunde that many landlord who held surplus lands in that locality were scared of the impending land ceiling law and were trying to over-reach the legislation by 'scare' sales as it were. We are not concerned with the motivation behind the transaction but with the factum of the sale. The very purpose of defeating the land law involves the reality of the sale. We are constrained to hold that on the materials before us, especially the pleadings, issues and findings, the plaintiffs are entitled to succeed, as they have done. Of course, the plaintiff was also trying a clever game by instituting the present action on the last day of limitation so that persons with priority over him in the exercise of the pre-emptive right, namely, the sons of Kabul Singh, may not enforce their right. Moreover, his evidence also is far from frank or straightforward; but the penalty for untrue testimony is not dismissal of a suit which otherwise has to be decreed. In these circumstances, the High Court was right in dismissing the second appeal and we too, in turn affirm the decree of the first appellate Court.

5. The circumstances of the case are such that unclean hands are visible on both sides and the wages of sin in court is denial of costs throughout. Therefore, while dismissing the appeal, we direct that parties will bear their own costs throughout.

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