

Baikunthi Devi and Others

Vs

Mahendra Nath and Another

Civil Appeal No. 743 of 1976

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

18.03.1977

JUDGMENT

KRISHNA IYER, J. –

1. This is short appeal raising a single point and challenges a decree for specific performance passed by the trial Court, reversed in appeal but restored by a Full Bench of the Allahabad High Court.
2. In Uttar Pradesh agricultural lands are subjected to consolidation proceedings under the relevant statute. During the pendency of the consolidation proceedings in a district there is a provision in the statute that there should not be transfers, gifts and sales so that complications and confusions in the court of consolidation proceedings may be obviated. There is nothing at all the Act which inhibits contracts for sale being entered into by owners of property.
3. In the present case, the facts are brief and the law is clear. One Jeewa Ram, who had a half share in a tract of land Ac. 6-00 in extent with a small house thereon, had entered into an agreement to sell his share of a consideration of Rs. 3000 to respondent 1. This agreement dated June 16, 1960 was sought to be enforced by a suit for specific performance although by that time Jeewa Ram had passed away and his daughter, the present appellant 1 became his legal representative. The demand for specific performance was made by the plaintiff-first respondent who, incidentally happens to be the nephew of the late Jeewa Ram. The suit itself was filed after the consolidation proceedings had come to a close. It so happened that as a result of the consolidation proceedings precisely the same land which was the subject matter of the agreement to sell, less a tiny bit of Ac. 0-06, was included in the chak allotted to Jeewa Ram and the first respondent.
4. The High Court took the view that since substantially the same land as was the subject matter of the agreement to sell (plus some other plot with which we are not concerned) has been allotted in the consolidation proceedings to Jeewa Ram there was no difficulty at all in enforcing specifically the agreement which was the basis of the suit. Nor do we see any valid objection to the view on the law and the facts taken by the High Court.
5. The only contention urged before us by Shri B. R. L. Iyengar, appearing for the appellants, is that on account of the consolidation proceedings even though the same lands may have been allotted in the new chak there was nevertheless a loss identity, the emergence of a new character, the incarnation of a new entity as it were. On account of this consequence, he urged that specific performance could not be granted as a discretionary relief. We are unable to perceive any force in this submission. Actually, a tiny bit of Ac. 0-06 of land was also due to the first respondent which he gave up. Section 12 (2) of the Specific Relief Act covers such a situation. The result is that the

first respondent is entitled to enforce specifically the contract in his favour. The consolidation proceedings having concluded there is no bar to a decree being granted in his favour. In this view, there is no merit in this appeal.

6. Even so, having regard to the close relationship between the parties and the length and expense of the litigation, we suggested to counsel on both sides that the first respondent may as well pay ex gratia a sum of Rs. 2000 over and above the consideration of Rs. 3000. Even independently of this, there is no material before us to hold that there is any prejudice sustained by appellant 2 onwards who are minors. We are also satisfied, prima facie, that the agreement which covers a half share of Jeewa Ram is to the benefit of the minors. It is a fortiori a case of benefit to the minors when as a result of this litigation, although on Court's suggestion, an additional sum of Rs. 2000 is being paid to the appellants. Both sides accept the decree with the modification that an extra sum of Rs. 2000 will be paid within six months from today. Counsel for the appellants agrees that the decree with the present modification, is in the interests of the minors and further that suit 7 of 1976 in the Court of the Munsif, Shikohabad filed by some of the appellants to set aside the agreement will be withdrawn. Such a step of withdrawal of that litigation will itself be in the interests of the minors so that wasteful expenditure on a suit with little or no chance can be saved.

7. Counsel for the appellants undertakes that possession will be made over to the first respondent within six months from today or within one week of the payment of the entire Rs. 2000 whichever date falls earlier. The appellants have necessarily to execute a conveyance deed pursuant to the agreement to sell and on the terms stipulated therein.

8. The appeal is dismissed subject to the above conditions and modifications but the parties will bear their costs throughout.

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