

Jagdish Chandra (Dead) by Lrs.

Vs

Brij Mohan and Others

Civil Appeal No. 1546 of 1970

((Syed M. Fazal Ali, P. S. Shinghal JJ)

06.02.1978

JUDGMENT

FAZAL ALI, J. -

1. This is a defendant's appeal by special leave and is directed against the judgment dated May 15, 1969 of the Allahabad High Court upholding the decree passed by the District Judge in favour of the plaintiff for a specific performance of a contract of sale.

2. The facts of the case lie within a very narrow compass and may be briefly stated thus :

2A. The defendant Jagdish Chandra purchased the lands in dispute for a consideration of Rs. 6000 by a sale deed dated July 12, 1958 including the Bhumidhari land from Ata Ilahi Khan who was the proprietor of the said lands. The sale deed in favour of the defendant Jagdish Chandra contained a stipulation that the vendor would be entitled to repurchase the property for the consideration mentioned in the sale deed within five years from the date of the execution of the sale deed. On December 18, 1958 Ata Ilahi Khan sold his right of repurchase of the land under the sale deed above-mentioned to Bir Narain, Mangal Singh and Mukanda Singh. Thereafter, a few years later on May 21, 1962 Ata Ilahi Khan again sold his right of repurchase in respect of the aforesaid property to Brij Mohan and Chandrapal Singh, plaintiffs 1 and 2. It would thus be seen that while selling the property to the defendant Jagdish Chandra Ata Ilahi Khan had clearly incorporated an agreement to resell the land within five years on payment of the consideration of the sale deed itself. Armed with the sale deed executed by Ata Ilahi Khan in favour of the plaintiffs, the respondents filed the present suit for specific performance of the contract of sale contained in the sale deed executed by Ata Ilahi Khan in favour of the defendant Jagdish Chandra. The plaintiffs sought to enforce that part of the contract which contained the right of the vendor to repurchase the property from Jagdish Chandra within five years.

3. The suit was tried by the Second Additional Civil Judge, Muzaffarnagar who dismissed the suit holding that the plaintiff's sale deed was not legally enforceable. The plaintiffs then filed an appeal to the Court of the District Judge, Muzaffarnagar against the judgment of the Additional Civil Judge. The District Judge disagreed with the view taken by the trial Court and decreed the plaintiffs' suit holding that the agreement relied upon by the plaintiffs was capable of being enforced. The defendant Jagdish Chandra unsuccessfully preferred an appeal to the High Court which was dismissed and the decree of the District Judge was upheld by the High Court. Thereafter, the

plaintiffs came up to this Court and after being granted special leave the present appeal has been placed before us for hearing.

4. Mr. Manchanda, learned Counsel, appearing for the appellant submitted two points before us. In the first place, he urged that in view of a prior sale deed executed by Ata Ilahi Khan in favour of Bir Narain and others dated December 18, 1958, the vendor had no right to execute a sale of the right of repurchase on July 21, 1962 in favour of the plaintiffs, because the vendor had parted with his title in favour of Bir Narain and if he had sold anything to the plaintiffs it was merely a bag of wind. So far as this point is concerned, the District Judge reversed the finding arrived at by the trial Court and came to a finding of fact that the sale deed in favour of Bir Narain was a sham transaction and did not pass any title to the vendees Bir Narain and others. The District Judge further held that Bir Narain himself appeared as a witness in the suit and clearly deposed that he had surrendered his interest and had no title at all. In this connection, the District Judge observed as follows :

When once, it has been found that Bir Narain and others had no valid transfer made in their favour because of the want of a title to convey in their vendor, it is too much to say that they would be possessing the right to take back the land in the consequence of repurchase Further, the three vendees, Bir Narain, Mukanda Singh and Mangal Singh, were the attesting witnesses of the sale deed which specifically stated that whatever rights they possessed under the sale deed dated December 20, 1958 had been relinquished or surrendered When Bir Narain (PW 5) has declared on sworn testimony that he and the other vendees had acquired any right under the sale deed Ex. A-20 it is difficult to accept the respondent's contention that the right to repurchase vested in Bir Narain and others. In that view the finding of the learned Additional Civil Judge is incorrect.

5. This finding of fact has been affirmed by the High Court and it is not possible for us to go behind these findings of fact in this appeal by special leave. For these reasons, therefore, the first contention raised by the learned Counsel for the appellant must be overruled.

6. Another point of law which has been argued by Counsel for the appellant was that as Ata Ilahi Khan or the plaintiffs were possessed of the Bhumidhari land which exceeded the limit of 12.5 acres, the sale was invalid under the provisions of Section 154 of the U.P. Zamindari Abolition and Land Reforms Act, 1950 (hereinafter referred to as the Act). Section 154 of the Act as it stood when the transaction was entered ran thus :

154. Restrictions on the transfer by a bhumidhar - (1) Save as provided in sub-sections (2) and (3), no bhumidhar shall have rights to transfer by sale or gift, any land other than tea gardens to any person other than an institution established for a charitable purpose, where such person shall, as a result of the sale or gift, become entitled to land which together with land, if any, held by himself or together with his family, will in the aggregate, exceed 12. 5 acres in Uttar Pradesh.

7. It is manifest that before section can apply it must be found as a fact that the person to whom the property is transferred must have held an aggregate of 12.5 acres of land in U.P. which was increased to 30 acres at the relevant period. In the instant case, the District Judge has returned another finding of fact that the defendant was not able to show by producing the khatauni or any other document that the plaintiffs 1 and 2 who were the transferees had land exceeding 12. 5 acres. In this connection, the District Judge found as follows :

On the point of fact as well, the plea is not supported by evidence. The defendant did not produce the khatauni to prove that the plaintiffs 1 and 2 would, in the result of the sale deed become entitled to land exceeding 12. 5 acres.

8. Thus, on the finding of fact recorded by the District Judge and as affirmed by the High Court, it was established that the transferees, namely, the plaintiffs did not have lands exceeding 12.5 acres so as to fall within the mischief of Section 154 of the Act. In this view of the matter the second contention raised by Counsel for the appellant also fails and it is not necessary for us to examine further the consequences of violation of the provisions of Section 154 of the Act. Mr. Manchanda submitted that in view of the statutory prohibition contained in Section 154 of the Act, the Court would not exercise its discretion for enforcing the contract which is prohibited by law. In view, however, of the finding of fact referred to above that the total bhumidhari land possessed by the plaintiffs did not exceed 12.5 acres or 30 acres, as the case may be, the question of application of Section 154 of the Act does not arise, and, therefore, it is not necessary for us at all to go into the question as to whether or not the Court should have exercised its discretion in passing a decree for specific performance.

9. The result is that the contentions raised by Mr. Manchanda fail and the appeal is dismissed, but in the circumstances without any order as to costs.

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