

Ram Pyare

Vs

Ram Narain and Others

Civil Appeal No. 1994 (N) of 1971

(O. Chinnappa Reddy, E. S. Venkataramiah, Sabyasachi Mukharji JJ)

15.02.1985

JUDGMENT

O. CHINNAPPA REDDY. J. -

1. Matbar Mal, who had Sirdari rights over the disputed land, deposited an amount equal to ten times the land revenue payable on the land in order to acquire Bhumidhari rights. This he could do under Section 134 of the U.P. Zamindari Abolition and Land Reforms Act, 1950 as it then stood. The deposit was made on October 28, 1961. On the same day, Matbar Mal sold the land to the present appellant. On October 30, 1961, a certificate to the effect that he had acquired Bhumidhari rights was issued to Matbar Mal under Section 137 of the U.P. Zamindari Abolition and Land Reforms Act, 1950. Thereafter the Sons of Matbar Mal filed the suit out of which the present appeal arises for cancellation of the deed of sale executed by Matbar Mal on October 28, 1961 in favour of the defendants. The suit was dismissed by the Court of the Additional Munsif and the appeal by the plaintiffs was also dismissed by Court of the Temporaries Civil and Sessions Judge, Deoria. On second appeal by the plaintiffs, however, a Single Judge of the High Court of Allahabad allowed the appeal following a Division Bench judgment of the same Court in Dhani Ram v. Jokhu (Section Appeal No. 4276 of 1964) and decreed the suit. The defendant has preferred this appeal by special leave under Article 136 of the Constitution

2. The ground on which the second appeal was allowed by the High Court was that the Sirdar who deposited the requisite amount acquired Bhumidhari rights not from the date of deposit but from the date of the grant of the Bhumidhari certificate, and, therefore, Matbar Mal who executed the sale deed on October 28, 1961 had no right to execute the same on that day as he acquired Bhumidhari rights will effect from October 30, 1961 only, which was the date of the issuance of the Bhumidhari certificate.

3. Before the U.P. Zamindari Abolition and Land Reforms Act, 1950 was amended in 1962, Section 134 insofar as it is relevant stood as follows :

134(1) If a sirdar belonging to the class mentioned in clause (a) of Section 131 pays or offers to pay to the credit of the State Government an amount equal to ten times the land revenue payable or deemed to be payable on the date of application for the land of which he is the sirdar, he shall, upon an application duly made in that behalf to an Assistant Collector, be entitled with effect from the date on which the amount has been deposited, to a declaration that he has acquired the rights mentioned in Section 137 in respect of such land

Section 137 insofar as it is relevant then stood as follows :

137(1) If the application has been duly made and the Assistant Collector is satisfied that the applicant is entitled to the declaration mentioned in Section 134, he shall grant a certificate to that effect.

(2) Upon the grant of the certificate under Sub-Section (1) the sirdar shall from the date thereof -

(a) become and be deemed to be a Bhumidhar of the holding or the share in respect of which the certificate has been granted, and

#(b) * * *##

There was some conflict of opinion in the Allahabad High Court on the question whether the tenant depositing the amount equivalent to ten times the land revenue and obtaining a Bhumidhari certificate, obtained Bhumidhari rights from the date of deposit, the date of declaration or the date of certificate. The conflict was resolved by the Legislature which enacted Act 21 of 1962 which amended Section 137 of U.P. Zamindari Abolition Act among other provisions of various other enactments. In Section 137 sub-section (2) of the U.P. Zamindari Abolition Act, for the words "from the date thereof" were substituted the words and figures "from the date thereof" were substituted the words and figures "from the date on which the amount referred to in Section 134 has been deposited". Unfortunately the amending Act, which in the case of certain amendments provided that the substituted words shall be deemed always to have been so substituted, did not so provide in the case of the amendment of Section 137(2) of the U. P. Zamindari Abolition Act. The result was that in cases where the amount had been deposited and a certificate obtained on different dates before the coming into force of the 1962 amending Act, the position still was that the tenure holder acquired Bhumidhari rights with effect from the date of issuance of the Bhumidhari certificate. It was so held in Dhani Ram v. Jokhu by a Division Bench of the Allahabad High Court. It was following this decision in Dhani Ram case that the learned Single Judge of the High Court in the present case allowed the second appeal.

4. The decision in Dhani Ram v. Jokhu was approved by another Division Bench of the same court consisting of S. D. Khare and R. B. Misra JJ. in Ram Swarup v. Deputy Director, Consolidation (ILR (1971) 1 All 698). In the latter case the learned Judges expressed the further opinion that in a situation like the one before them, there was no reason why recourse should not be had to Section 43 of the Transfer Of Property Act to feed the title as it were, if the necessary conditions were fulfilled. We agree with the reasoning of the learned Judges in Ram Swarup v. Deputy Director, Consolidation (ILR (1971) 1 All 698). In that case, the matter was remanded to the Deputy Director of Consolidation to consider the question of the applicability of Section 43 of the Transfer Of Property Act and proceed to dispose of the matter in accordance with law. In the present case, the facts speak for themselves and we do not think that it is necessary to remand the case to the lower courts for decision on the question of the applicability of Section 43 of the Transfer of Property Act. The amount of deposit under Section 134 of the U.P. Zamindari Abolition Act was made on October 28, 1961 and it was on the same day that the sale deed was executed by Matbar Mal. It is clear that Matbar Mal erroneously represented to the vendee that he was authorised to transfer the property and professed to transfer such property for consideration. The very execution of the sale deed on the same day as deposit of the requisite amount under Section 134 is significant enough to establish that the sale deed was the result of an erroneous representation by Matbar Mal. It is also clear that the present plaintiffs who are the sons of the vendor, Matbar Mal cannot possibly claim to be transferees in good faith which indeed they do not claim to be. Section 43 clearly applies to the situation. The

learned counsel for the respondents however attempted to disclaim the applicability of Section 43 of the Transfer of Property Act by referring to *Jumma Masjid v. Kodimaniandra Deviah* (AIR 1962 SC 847 : 1962 Supp 2 SCR 554 : (1962) 2 SCJ 303). He invited our attention to the following observations of the learned judges :

Now the compelling reason urged by the appellant for reading a further exception in Section 43 is that if it is construed as applicable to transfer by person who have only spes successionis at the date of transfer, it would have the effect of nullifying Section 6(a). But Section 6(a) and Section 43 relate to two different subjects, and there is no necessary conflict between them : Section 6(a) deals with certain kinds of interests in property mentioned therein, and prohibits a transfer simpliciter of those interest. Section 43 deals with representations as to title made by a transferor who had no title at the time of transfer, and provides that the transfer shall fasten itself on the title which the transferor subsequently acquires. Section 6(a) enacts a rule of substantive law, while Section 43 enacts a rule of estoppel which is one of evidence. The two provisions operate on different fields, and under different conditions, and we see no ground for reading a conflict between them or for cutting down the ambit of the one by reference to the other. In our opinion, both of them can be given full effect on their own terms, in their respective spheres. To hold that transfers by persons who have only a spes successions at the date of transfer are not within the protection afforded by Section 43 would destroy its utility to a large extent.

We are unable to see in what manner these observations can possibly assist the respondents. In the same decision, it has been observed later, referring to the decision of the Madras High Court in *Official Assignee, Madras v. Sampath Naidu* ((1933) 65 Mad LJ 588 : AIR 1933 Mad 795 : 38 Mad LW 610) :

This reasoning is open to the criticism that it ignores the principle underlying Section 43. That section embodies, as already stated, a rule of estoppel and enacts that a person who makes a representation shall not be heard to allege the contrary as against a person who acts on that representation. It is immaterial whether the transferor acts bona fide or fraudulently in making the representation. It is only material to find out whether in fact the transferee has been misled. It is to be noted that when the decision under consideration was given, the relevant words of Section 43 were, "where a person erroneously represents", and now, as amended by Act 20 of 1929, they are "where a person fraudulently or erroneously represents". and that emphasises that for the purpose of the section it matters not whether the transferor acted fraudulently or innocently in making the representation, and that what is material is that he did make a representation and the transferee has acted on it. Where the transferee knew as a fact that the transferor did not possess the title which he represents he has, then he cannot be said to have acted on it when taking a transfer. Section 43 would then have no application and the transfer will fail under Section 6(a). But where the transferee does act on the representation, there is no reason why he should not have the benefit of the equitable doctrine embodied in Section 43, however fraudulent the act of the transferor might have been.

5. In the circumstances of the present case, we have no doubt that the provisions of Section 43 of the Transfer of Property Act are clearly attracted and that is sufficient to non-suit the plaintiffs. The appeal is, therefore, allowed with costs. The judgment of the High Court is set aside and that of the lower appellate court restored. Shri S. N. Kacker, senior advocate, was kind enough to assist us as *amicus curiae*. We are grateful to him for his assistance.

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