

Devi Prasad Rai and Another

Vs

Kanhaiyalal Mukharya and Others

Civil Appeal No. 918 of 1971

(Ranganath Misra, S. Natarajan JJ)

12.08.1986

JUDGMENT

RANGANATH MISRA, J. –

1. The plaintiffs and defendant 1 were partners of a firm constituted under a partnership deed dated September 12, 1936. Defendant 1 who was owner of certain vacant site with a structure standing upon a part of it had agreed to allow the said property to be used by the firm for raising a cinema exhibition hall by the firm and had undertaken not to alienate the property during the subsistence of firm. The initial term of the partnership was forty years and the same was extended to fifty years and as it appears, in 1982, parties have made its life to be at will with a provision that if some of the partners fall out for any reason, the remaining may continue the firm business. The original deed stipulated that after the term of forty years expired, defendant 1 could pay for the construction and take over the building.

2. Notwithstanding the restriction in the partnership deed, defendant 1 alienated the property in favour of defendant 2 by a registered sale deed dated March 20, 1963. Thereupon the plaintiffs filed a suit for declaration that the sale was null and void and they alternately claimed for pre-emption.

3. The trial court dismissed the suit but held that the plaintiffs were entitled to the value of the construction from defendant 2 and asked the same to be determined in the execution proceedings. On appeal by the plaintiffs, the High Court found that title to the property had always remained with defendant 1 and the same could be alienated unfettered by the contractual obligations under the partnership deed but possession of the property was with the firm and the alienee was not entitled to possession on the basis of title. The High Court further held that the alienation was not void but was a voidable transaction. It held :

As a result of the discussion aforesaid, differing from the trial Judge we hold that the appellants are entitled to a declaration that the sale deed dated March 20, 1963 is not binding on them during the subsistence of the partnership. This declaration is granted without adjudicating upon the question of title to the lands as between the first and the second respondents...

Defendants 1 and 2 - the transferor and the transferee - are in appeal.

4. At the hearing, appellant 1 got represented by a different counsel and instead of challenging the judgment of the High Court asked us to give him the relief of reconveyance of the sale - a relief which in this suit cannot be granted.

5. Two points were sought to be made out by learned counsel for the second appellant -

(i) with the efflux of time of fifty years, the partnership was to come to an end and even under the decree of the High Court, the alienee would have his right; and

(ii) in view of the public notice (Ex. P-11) issued by the partners of the plaintiff-firm, the restrictive clause would indeed be no more invocable.

6. We have pointed out that a fresh partnership deed of 1982 has taken away the time factor and the firm is now one at will. The validity of the new agreement is not for us to determine and we do not propose to enter into it.

7. The public notice was not by all the plaintiffs or the firm as such and, therefore, it would not be proper to invoke the principle which appellant 2's counsel wanted us to rely upon. The High Court dealt with this notice and refused to rely upon it as an act of the firm.

8. Both the contentions failing, the appeal has to be dismissed. Parties shall bear their own costs in the appeal.

</html