

Sardha Ram (Dead) By Lrs.

Vs

Nakli Singh and Others

Civil Appeal No. 836 of 1974

(Kuldip Singh, M. H. Kania, S. Ranganathan JJ)

26.10.1989

JUDGMENT

RANGANATHAN, -

1. Nawal Singh sold 102 bighas of land to Nathu Ram for Rs. 8000 by a sale dated February 11, 1952. He also executed a sale deed in respect of 90 bighas of land to Sardha Ram for a sum of Rs. 4500 on October 28, 1952. There were recitals in the two sale deeds regarding the necessity for the sale. The first sale deed stated :

"(1) The land is banjar qadim. According to the law in force, it is obligatory to break and cultivate this land. Otherwise the government would give it out by auction to some other person.

(2) I need money to bring other land under the plough to sink a new well and for other agricultural works, such as purchases of bullocks etc."

The recitals in the second sale deed dated October 28, 1952 ran as follows :

"I have absolutely sold the aforesaid banjar qadim land ... for meeting my own needs, repairing the well, installing a persian wheel, purchasing camel, and reclaiming the aforesaid banjar qadim jungle land."

2. Nawal Singh's heirs filed suits for setting aside the sales on the ground that they were governed by Punjab agricultural customs in matters of alienation, that the land was ancestral and that the alienation had been made without legal necessity and, therefore, would not affect their reversionary rights on the death of the vendor. Both suits were consolidated and tried together. The suits were dismissed by the sub-judge and the first appeals were dismissed by the senior subordinate Judge. Second appeals were preferred which came up for hearing before a learned Single Judge of the High Court. The learned judge held that the sale in favour of Nathu Ram was without legal necessity except to the extent of a sum of Rs. 1000 which was actually utilised by the vendor for the sinking of a new well in his remaining lands, and that the sale in favour of Sardha Ram was entirely without necessity.

3. There were appeals against the order of the learned Single Judge to a Division Bench of the same High Court. The Division Bench held that, so far as the sale in favour of Nathu Ram was concerned, the learned Single Judge had fallen into an error in upsetting the concurrent findings of fact of the courts below. The court proceeded to observe :

"The courts below found and on evidence that bulk of Nawal Singh's land was banjar qadim. It has been further found that under the Punjab Utilisation of Lands Act, notices were issued to Nawal Singh that if the land was not broken up it would be taken under that Act and leased out to third party. There were no irrigation facilities available for the land and to sink a well money was needed. There is ample evidence on the record on which these evidences are based. The vendor has come into the witness box and stated that the money was raised for this purpose. The statement of the vendee was accepted by the courts of fact. In this situation, there was no justification to displace the judgments of the court below with regard to the sale in favour of Nathu Ram (Ex. D-3). The rule is firmly settled that the vendee either established the existence of necessity in fact or a bona fide inquiry that there was necessity for the sale. If he satisfies either one of the two requirements the sale would be held for necessity or an act of good management, as the case may be It cannot be denied that for an agriculturist to bring under his plough his land is a matter of necessity and if some land is sold to bring the bulk of the land under cultivation, it would certainly be an act of necessity as well as an act of good management. We are, therefore, clearly as of the view that the learned Single Judge was not justified in upsetting the sale in favour of Nathu Ram."

4. However, in respect of sale in favour of Sardha Ram, the bench observed that the real difficulty was that there was no evidence that the money was advanced for the purpose of breaking up of the land but for the mere recital in the sale deed which was not sufficient for the purpose.

Unfortunately, neither the Vendee nor the witness had stated that the land was sold by Nawal Singh to break up his banjar qadim land. The only fact proved was that Nawal Singh had a lot of banjar land but that was of no consequence by itself. The decision of the learned Single Judge was therefore upheld in respect of the sale in favour of Sardha Ram. The vendor has accepted the decision in regard to the sale in favour of Nathu Ram. Sardha Ram has preferred the present appeal before us.

5. The learned counsel for the appellant contended that there was really no difference in the factual position so far as the two sales are concerned and that the Division Bench has erred in upsetting the sale in favour of Sardha Ram while upholding it in the case of Nathu Ram. The High Court overlooked that even assuming that there was no evidence to show that Sardha Ram had made enquiries as to the necessity for the sale, factual necessity for the sale had been established by the evidence on the record which was common to both the sales. After hearing both sides, we are of opinion that this contention has to be accepted. It is an admitted fact that the alienor owned about 1100 bighas of land. It was also an established fact that, of this, 973 bighas was banjar qadim and the remaining land was of inferior quality. The land was also under mortgage. It is also common ground that the provisions of the East Punjab Utilisation of Lands Act (Act 38 of 1949) as amended by Ordinance 15 of 1950 were in force in the area. Under the provisions of this Act, a notice could be given requiring a land holder to bring uncultivated land under cultivation after reclamation within a period of 30 days from the date of issue of a notice in that regard. Failing this, the area could be resumed by the Government and leased out to some other cultivators or society for cultivation for a period of at least 8 years. The appellant had examined the development clerk in the office of the Deputy Commissioner, Karnal (DW 1) to show that a notice had issued to Nawal Singh under the provisions of the said Act on May 8, 1951, in respect of his banjar land measuring 976 bighas.

6. The learned Single Judge overlooked the notice of May 8, 1951 and, mistakenly referring to

another notice issued on October 15, 1954 to Sardha Ram, thought that the compulsions under the Act arose only after the sales of 1952. The Division Bench, however, has accepted the correct position while dealing with the sale in favour of Nawal Singh. Having done this, we fail to see how the bench could have held that the sale in favour of Sardha Ram was not actuated by the same grounds of necessity. The question for consideration is whether if Nawal Singh, faced by the notice under cultivation they would be leased out to some other party, decided that it would be in the best interests of the holdings as a whole to sell a portion of the land so that sale proceeds may be utilised for the reclamation of the major part of the remaining land, it could not be said that such a sale was justified by necessity. We think that the answer must be in the affirmative. The learned Single Judge expressed the view that non-compliance with the notice would result only in a temporary lease of the land to outsiders and this consequence was not sufficient to justify the sale of a portion of the lands on grounds of necessity. We, therefore, agree with the Division Bench on this. A land owner receiving a notice under the said Act has two options before him. He can either own his helplessness to reclaim the land and permit it to be leased out by the Government to other persons for cultivation for a substantial period. Or he may decide that he should made an attempt to made at least a part of the lands fertile by selling a portion of the land and reclaiming the rest with the help of the sale proceeds. A bona fide decision taken by him to exercise the latter option cannot be said not to be an act of good management. We think that if the sale in favour of Nathu Ram in the same circumstances was a valid sale (and we agree with the Division Bench on this), it is very difficult to say that the sale in favour of Sardha Ram was not. The necessity for both the sales was the situation arising out of the receipt of the notice under the Punjab Land Utilisation Act. Indeed we think that the findings of the trial court and first appellate court on this issue were findings of fact which did not call for interference by the High Court.

7. Learned counsel for the respondent drew our attention to the findings of the learned Single Judge that, according to DW 2, the vendor was a "drunkard given to licentious habits." The trial court and first appellate court have examined the entire evidence and recorded a finding to the contrary. That apart, all that DW 2 said was : "The character of Nawal Singh is bad. He drinks and is also a womaniser". DW 2, however, also said that Nawal Singh had sold the land for managing the work of cultivation. It is, therefore, difficult to draw from DW 2's testimony the inference that the sale of the land had been necessitated by the immoral activities of the vendor and that there was no real necessity to sell the land. The Division Bench, rightly, has attached no importance to this aspect of the case.

8. For the reasons mentioned above we are of opinion that the sale in favour of Sardha Ram was a valid sale and is not liable to be impugned by the representatives or the successors-in-interest of Nawal Singh. This appeal is therefore allowed and the judgment of the first appellate court is restored. In the circumstances, however, we make no order as to costs.

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