SUREME COURT OF INDIA

Bara Singh

Vs.

Kashmira Singh

(K.N. Saikia, T.K. Thommen and N.M. Kasliwal JJ.)

12.09.1990

JUDGMENT

K.N. SAIKIA, J.

This first defendant's appeal by special leave is from the Judgment and Decree of the High Court of Punjab and Haryana in R.S.A. No. 1286 of 1969 dated 9.12. 1971. Respondents 4 to 6 Balwant Singh, Jagir Singh and Teja Singh, sons of Kehar Singh sold land measuring 38 Kanals 3 Marlas, being 3/5th share of 63 Kanals 11 Marlas of ances- tral land situated at village Maherna Kalan, Tehsil and District Ludhiana, as per sale deed dated June 4, 1964 in favour of the appellant (first defendant) for Rs. 14,000 as the vendors left their village Maherna Kalan and had not been cultivating the same and it was not yielding any prof- it. The sale deed contained a recital that the vendors sold the land with a view to purchase land in another village. On November 6, 1965 the vendors actually purchased 80 Kanals of Nehri land for Rs. 11,000. The parties are admittedly Jat Sikhs governed by Punjab Customs.

Respondents 1 to 3 filed a declaratory suit on August 3, 1966 in the Court of Sub-Judge, Ludhiana seeking a declara- tion that the sale of the suit land would not affect their reversionary rights after the death of respondents 4 to 6 as they were governed by the custom in the matter of alienation inasmuch as the suit land was ancestral in the hands of the alienors qua the plaintiffs (respondents 1 to 3) and that the sale was effected without consideration and without legal necessity; and respondents 4 to 6 (defendants 2 to 4) were restrained from alienating under the custom. The appellant averred, inter alia, that the sale was for consideration and legal necessity as it was an act of good management on the part of the alienors; that respondents 4 to 6 who were not sonless and were men of good character and sober habits; that migrating from their village they had settled elsewhere as they were neither cultivating the suit land nor were in a position to manage and cultivate the same; and that the alienors had actually purchased 80 Kanals of better quality Nehri land which showed that the sale was an act of good management on the part of the vendors. It was also contended that the land in suit was not ancestral qua the plaintiffs nor was it governed by customs and that the plaintiffs had no locus standi.

The respondents 4 to 6 being defendants 2 to 4 admitted the claims of the plaintiffs. The respondent No. 5 who was the brother of respondent No. 2, was impleaded as proforma defendant having the same interest as the plaintiffs. The Trial Court, inter alia held that the parties in respect of the sale of the suit land were governed by custom whereunder ancestral land could not be alienated except for

legal necessity or as an act of good management; that the suit land was ancestral qua the plaintiffs (respondents 1 to 3) and defendants 2 to 4 (respondents 4 to 6); that the sale was effected for consideration of Rs. 14,000 as stipulated in the sale deed; and that the sale was an act of prudent management on the part of the vendors and as such unimpeach- able. The suit having been dismissed and the first appeal therefrom having failed, the respondents 1 to 3 preferred R.S.A. No. 1286 of 1969 in the High Court of Punjab and Haryana wherein they sought to adduce additional and further evidence of a sale deed dated June 3, 1969 alleged to have been executed by respondents 4 to 6 in respect of the suit land. The High Court allowed the R.S.A. and set aside the sale holding that it was neither for any legal necessity nor could it be justified as an act of good management. The suit was accordingly decreed. The certificate to file Letters Patent Appeal having been refused, the appellant obtained special leave.

Mr. V.C. Mahajan, the learned counsel for the appellant, submits that whether the sale was or was not an act of good management having been a question of fact, the Trial Court and the first appellate court having arrived at a concurrent finding that it was an act of good management and as such unimpeachable, this concurrent finding could not have been set aside by the High Court in second appeal; that the sale deed dated June 3, 1969 which was never accepted and proved according to law was irrelevant for impeaching the sale and the High Court erred in law in taking it into consideration while determining whether the sale was an act of good man- agement.

Mr. Uma Dutta, learned counsel for the respondents, submits, inter alia, that the sale of the suit land measur- ing 38 Kanals 3 Marlas being on June 4, 1964 and the subse- quent purchase of 80 Kanals for Rs. 11,000 being on November 8, 1965 and that land also having subsequently been sold on June 3, 1969 for Rs.35,000 and there being no evidence to show that the suit land was less fertile or that the vendors had settled at village Pather, the High Court was correct in holding that the impugned sale was not an act of good man- agement.

The only question to be decided in this appeal, there- fore, is whether the High Court was correct in setting aside the concurrent finding that the impugned sale was an act of good management and not restricted by custom. It is common ground that the parties are governed by the local custom which restricts alienation. About the custom W.H. Rattigan in his 'A Digest of Customary Law in the Punjab' (14th Ed.) in Chapter IV at page 283 said: "Thus, while the unhampered exclusive use of property in a man's possession, whether ancestral or acquired, for his lifetime, with a free disposal of the income, is not denied, freedom of alienation, whether by gift or bequest, is in regard to ancestral immovable property, subject in most cases to certain restrictions."

A 'late Senior Judge of the Chief Court' in a leading case (Nos. 107 P.R. 1887, page 247) expressed generally that: respect of ancestral immovable properly in the hands of any individual. there exists some sort of residuary interest in all the descendants of the first owner. or body of owners, however, remote and contingent may be the proba- bility of some among such descendants ever having the enjoy- ment of the property. In short, the owner in possession is not regarded as having the whole and sole interest in the property, and power to dispose of it, so as to defeat the expectations of those who are deemed to have a residuary interest and who would take the property if the owner died without disposing of it. The limitations within which per- sons having or claiming to have such a residuary interest may prevent an owner in possession from defeating their expectations will be found to vary according to local cir- cumstances, which may either weaken or rebut the presumption that the owner has not an unrestricted power of disposition."

Sir Meredyth Plowden in Gujar v. Sham Das, 107P.R. 1887 also said:

"In respect of ancestral immovable property in the hands of any individual, there exists some sort of residuary interest in all the descendants of the first owner or body of owners, however remote and contingent may be the probability of some among such descendants ever having the enjoyment of the property. The owner in possession is not regarded as having the whole and sole interest in the property, and power to dispose of it, so as to defeat the expectations of those who are deemed to have a residuary interest, and who would take the property if the owner died without disposing of it." In the critical words of Chief Justice Sir Shadi Lal in Gujar v. Sham Das (supra) the issues before the Court were whether in a case, where the power of a sonless Jat proprie- tor to alienate ancestral land without necessity was in dispute, it was the duty of the alienee to prove a custom authorizing a transfer of the ancestral land in favour of stranger, and on whom lay the onus of proving that a sonless proprietor has powers to dispose of ancestral land without necessity; and the rest were mere deductions. In para 59 at page 291 of the Digest Rattigan states the restrictions on alienation of ancestral immovable property thus:

"Ancestral immovable property is ordinarily inalienable (especially amongst 'Jats' residing in the central districts of the Punjab), except for necessity or with the consent of male descendants, or, in the case of a sonless proprietor, of his male collaterals. "Provided" that a proprietor can alienate ancestral immovable property at pleasure if there is at the date of such alienation neither a male descendant nor a male collateral in existence (No. 36 P.R. 1895; No. 55 P.R. 1903, F.B.)"

In other words, the custom is that the ancestral immova- ble property is ordinarily inalienable especially amongst Jats residing in the Central Districts of Punjab, except for necessity and the other permissible reasons. An alientation as a bona fide act of good management has been treated as one of necessity and hence, valid.

At page 388 of the Digest we find the gloss: "In the case of a male proprietor, in the management of agricultural affairs a very strict economy and a very excel- lent management must not be insisted upon. Ordinary bona fide management is all that can be demanded (No. 70 P.R. 1894; No. 20 P.W.R. 1911; No. 40 P.W.R. 1911, and No. 25 P.R. 1911); 1922, 69 Ind. Case 521 (exchange of land). Where although no immediate necessity for a sale is established, if the sale has been held to be an act of good management, it is binding on the reversioners." The above statement has been commented upon as being a bit wide, and the suggested statement is that 'such a sale must be upheld'. In Mohammad Chiragh and Ors. v. Fatta & Ors., A.I.R. 1934 Lahore--452 where although no immediate necessity for sale was established, but there was a recital in the sale deed that the vendors intended to purchase other land with the proceeds of the sale, and a representation of that kind was made to the vendees which might have been believed by them in good faith, the High Court did not see any good grounds for interference with the findings of the learned District Judge that the sale was an act of good management which, it was observed; "was essentially a find- ing of fact." In Abdul Rafi Khan v. P. Lakshmi Chand & Ors., A.I.R. 1934 Lahore--998 where the members of the family, finding their position in the village precarious due to deteriorating relations between it and the tenants in the village sold their Land one by one as they found it diffi- cult to manage them or recover rent and the vendors moved to another place where they purchased certain land, it was held that the sale of the land was an act of good management and the vendee was not expected to see to the application of the money by the vendors to the purposes mentioned in the sale deed. Similarly in Dial Singh v. Surain Singh, A.I.R. 1937 Lahore--493, the question was whether a sale of ancestral land was for necessity. On April 3, 1934 Bhagwan Singh sold ancestral land for Rs.

1,500 the entire consideration being paid to him before the Sub Registrar. The object of the sale was the purchase of land in Bikaner and Gwalior States and actually since the sale Bhagwan Singh spent about Rs. 160 in buying about 100 bighas of land in Gwalior. The lower courts concurrently found that the sale was for. necessity. Before the District Judge it was urged that the money had not been actually spent on the purpose for which it was raised. But the learned District Judge held that this was admitted to be correct, that all that the alienee had to do was to see that the money was required for a legitimate purpose. The sole question, therefore, was whether the sale in order to buy land in Gwalior and Bikaner was an act of good management, which would be regarded as one of necessi- ty. The Division Bench held that no sufficient reason had been shown for dissenting from the concurrent finding of the courts below that the sale of land by Bhagwan Singh in the presence of his elder son was for necessary. In Gajjan Singh & Ors. v. Anna Singh, [1968] P.L.R. Vol. 70-195 it was held that no person could be tied down to the village where he had ancestral land unless it was shown that he was leaving the village or disposing of the land in the village on some false pretext. Where relations of a proprie- tor with his brother were strained and he sold the land to purchase land in some other village, the alienation was held to be an act of good management and that once a true repre- sentation was made by the vendor, the vendees were not to see the application of the money and they need not prove that the money in fact was utilised for a necessary purpose. It was further held that the land purchased with the sale proceeds of the ancestral land did not cease to be ancestral and it remained ancestral land.

In the instant case the vendee proved the ingredients of good management and the concurrent finding of the Trial Court and the first Appellate Court was that the impugned sale was an act of good management, and it was essentially a finding of fact. Applying the law as enunciated in the above decisions we do not find any infirmity therein. The submis- sions of the learned counsel for the respondents that in view of the subsequent sale of the land would go to show that it was speculative sale would be wholly irrelevant. There was evidence to show that even prior to the sale the vendors were not cultivating and as such not deriving any profit from the land. The distance of time between the impugned sale on June 4, 1964 and the purchase of 80 Kanals of land in the other village on November 6, 1965 was not such as to disprove that the sale was an act of good manage- ment and as such was for necessity. The Trial Court clearly found that the vendors left for and settled at the new village where they purchased 30 Kanals of land. The averment that the purchased land was subsequently sold on June 3, 1969 at Rs.35,000 besides having not been proved in accordance with law, was wholly irrelevant for the purpose of discharging the onus of the appellant- -vendee. The High Court was, therefore, in error in setting aside the concur- rent finding of fact in the facts and circumstances of the case, in Second Appeal.

In the result, this appeal is allowed, the impugned Order of the High Court is set aside and Decree of the lower courts in the suit restored. The parties being near rela- tions, we leave them to bear their' own costs. Y. Lal Appeal allowed.

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