

Raghubir Singh and Others

Vs

State of U.P. and Others

Civil Appeal No. 662 of 1985

(K. Ramaswamy, S.P. Bharucha JJ)

17.04.1996

JUDGMENT

1. This appeal arises from the judgment of the High Court of Allahabad dated September 14, 1984 in which, upon a writ petition, is set aside the order of the First Additional District Judge, Nainital in a Ceiling Appeal.

2. The third respondent was the tenure-holder of agricultural land situated in Village Gumsani and Village Bichpuri. She transferred 64 bighas of the land in Village Gumsani to appellants Nos. 1 to 3 by a registered sale deed dated 10th May, 1974. On the same date, she transferred 64 bighas of the land in Village Bichpuri to the fourth appellant. In response to a notice under Section 10 (2) of the U. P. Imposition of Ceiling on Land Holding Act, 1960, (hereinafter referred to as the 'Act') the third respondent filed objections. The appellant sought to be made parties thereto and were impleaded. The prescribed authority did not accept as valid the transfers made by the third respondents in favour of the appellants, as aforesaid, and appeals were filed from his order. It is enough to state that the appeals were dismissed all the way and upon special leave petition filed by the appellants before this Court, the following order was passed :-

"Upon hearing counsel, the Court dismissed the Special Leave Petition. But so far as the surplus land to be surrendered is concerned, the Prescribed Authority shall decide as to which land should be required to be surrendered, after hearing the tenure holder Smt. Mohinder Kaur as a transferee and Gurdev Singh's Legal Representative and in accordance with the Section 12 (A) of the imposition of ceiling of Land Holding Act 1960, as also the agreement dated 16-1-1974 and the sale deed between the tenure holder Smt. Mohinder Kaur and Gurdev Singh relating to the transferee of the land."

3. The third respondent thereupon elected to surrender the land which had been transferred by her to the appellants. The appellants objected, but the prescribed authority overruled the same. The Ceiling Appeal was filed which was allowed by the Additional District Judge. Against his order, the third respondent filed the writ petition upon which the order under appeal was passed.

4. Learned counsel for the appellants drew our attention to the terms of the order of this Court aforesaid and the provisions of Section 12-A of the said Act. The relevant provisions, upon which emphasis was laid read thus :

"S. 12-A. In determining the surplus land under Section 11 or Section 12, the Prescribed Authority shall as far as possible accept the choice indicated by the tenure-holder to the plot or plots, which he and other members of his family, if any, would like to retain as part of the ceiling area applicable to him or them under the provisions of this Act, whether indicated him in his statement under Section 9 or in any subsequent proceedings :-

Provided that -

(d) where any person holds land in excess of the ceiling area including land which is the subject of any transfer or partition referred to in sub-section (6) or sub-section (7) of Section 5, the surplus and determined shall, as far as possible, be land other than land which is the subject of such transfer or partition, and if the surplus land includes any land which is the subject of such transfer or partition, the transfer or partition shall, in so far as it relates to the land included in the surplus land, be deemed to be and always to have been void, and-

(i) it shall be open to the transferee to claim refund of the proportionate amount of consideration, if any, advanced him to the transferor, and such amount shall be charged on the amount payable to the transferor under Section 17 and also on any land retained by the transfer within the ceiling area, which shall be liable to be sold in satisfaction of the charge, notwithstanding anything contained in Section 153 of the Uttar Pradesh Zamindari Abolition and Land Reforms Act, 1950 :

(ii) any part to the portion (other the tenure-holder in respect of whom the surplus land has been determined) whose land is included in surplus land of the said tenure-holder, shall be entitled to have partition re-opened,"

5. Learned counsel submitted that having regard to proviso (d), the surplus land in the hands of the third respondent had to be determined, excluding therefrom that land which had been the subject matter of transfer to the appellants.

6. Reliance was placed by the learned counsel for the appellants upon the decision of this Court in *Ravindra Singh v. Phool Singh*, (1995) 1 SCC 251 : (1994 AIR SCW 5038). It has been held that a combined reading of Section 5 (6) and Clause (d) of the proviso to Section 12-A shows that (para 6 of AIR):

"any transfer of land made after 24-1-1971 shall be ignored and such transferred land shall be included in the holding of the transferor except where such transfer is saved by the proviso to sub-section (6) of Section 5."

7. This Judgment very correctly, with respect, sets out the effect of Section 12-A and Clause (d) of its proviso. The provisions thereof apply to transfers which have not been found to be bad in law.

8. In the instant case, as aforesaid, the transfers of land by the third respondents to the appellants were held to be void and therefore, there was no transfer in the eye of the law. Learned counsel emphasised that they have been held to be void by reason of the provisions of Section 5 (8) which says that no tenure-holder may transfer any land held by him during the continuance of proceedings for determination of surplus land in relation to such tenure-holder and every transfer made in contravention of this sub-section would be void. It seems to us quite irrelevant whether the transfer

was held to be void under this or any provision. The fact is that it was held to be void and that has become final. Since there is no transfer in the eye of the law there is no occasion to apply Section 12-A and Clause (d) of the proviso.

9. The appeal is accordingly dismissed. No order as to costs. Appeal dismissed.