

# SUPREME COURT OF INDIA

Suresh Chand

Vs.

Kundan (Dead) By Lrs.

(V.N. Khare and S.N. Phukan JJ.)

07.09.2000

## ORDER

1. Kundan and Mohar Singh were the co-sharers of plot No. 645 measuring 4 bighas 8 biswas situated at village Amarpur in the district of Bulandshahr. Kundan and Mohar Singh executed an agreement for sale of the said land in favour of the appellant on 8.4.1969. Since vendors did not execute the sale deed, the appellant brought a suit for specific performance of agreement for sale of the land. The said suit was dismissed by the trial court. However, the first appellate court allowed the appeal of the appellant and the suit for specific performance was decreed. Thereafter, defendant-Kundan and Mohar Singh, preferred a second appeal before the High Court. During pendency of the appeal before the High Court, Mohar Singh executed a sale deed with respect to his half share in the land in dispute, in favour of the appellant. Subsequently, second appeal filed by Kundan and Mohar Singh was dismissed by the High Court. Since Kundan did not execute the sale deed despite the decree, the appellant put the decree for execution. In the said execution case, Kundan filed an objection, inter alia, on the ground that what was agreed to be transferred was land and not the trees standing thereon, and that since the trees had not been agreed to be sold, the possession of the land cannot be delivered to the decree holder. The executing court upheld the objection of Kundan.

2. Aggrieved, the appellant filed a revision petition before the District Judge, Bulandshahr. The Additional District Judge, Bullandshahr who heard the matter was of the view that there were no existence of full grown trees on the land at the time of agreement for sale and thus by virtue of Section 8 of Transfer of the Property Act (hereinafter referred to as the 'Act'), the trees standing on the land shall deemed to be vested in the plaintiff. Consequently, the order of the executing court was set aside and the revision petition filed by the appellant was allowed. However, on the writ petition filed by Kundan before the High Court at Allahabad, the order passed by the revisional court was set aside and the case was sent back to the revisional court to enable the parties to arrive at some compromise between themselves. The High Court, however, held that if no compromise were arrived at between the parties, the appellant would be entitled to hold the land purchased by him and defendant-Kundan shall be entitled to reap the fruits of the trees standing on the land. In these terms the writ petition was disposed of. It is against the said judgment of the High Court, the appellant is in appeal before us.

3. Mr. E.C. Agrawala, learned Counsel appearing for the appellant referred to Sections 3 and 8 of the Act and Section 3(26) of the General Clauses Act. On the strength of these provisions, learned Counsel argued that when the land was agreed to be sold there were only some plants and saplings on the land and there were no existence of the trees on the land and during the long period of

litigation of 25 years if some plants and saplings have grown into full-fledged trees, the same would be treated as benefit arising out of the land, and in view of Sections 3 and 8 of the Act, the trees are now vested in the appellant. We find substance in the arguments of learned Counsel for the appellant. Section 3 of the Act defines the expressions 'immovable property' and 'attached to the earth'. They read as under:

Immovable property' does not include standing timber, growing crops or grass. 'attached to the earth' means-

- (a) rooted in the earth, as in the case of trees and shrubs;
- (b) imbedded in the earth, as in the case of walls or buildings; or
- (c) attached to what is so imbedded for the permanent beneficial enjoyment of that to which it is attached.

4. Section 8 of the Transfer of Property Act provides that:

Unless a different intention is expressed or necessarily implied, a transfer of property passes forthwith to the transferee all the interest which the transferor is then capable of passing in the property and in the legal incidents thereof.

Such incidents include, where the property is land, the easements annexed thereto, the rents and profits thereof accruing after the transfer.

5. Section 3(26) of the General Clauses Act defines 'immovable property' as under:

Immovable property' shall include land, benefits to arise out of land, and things attached to the earth, or permanent fastened to anything attached to the earth.

6. A perusal of Section 3(a) of the Act shows that all things attached with the earth are included in the land. Thus the standing trees being imbedded in the earth is part of the land. Section 8 of the Act provides that if there is any transfer of a property and unless there is any expressed or implied different intention appearing in the agreement, the interest in the property would also include anything attached with the land which is agreed to be sold. Thus when a vendor sells a property, he sells all his rights imbedded in the property unless it specifically or impliedly excluded. This Court in *Smt. Shantabai v. State of Bombay and Ors.* [1959] SCR 265 held that although the Transfer of Property Act does not define immovable property excepting saying that immovable property does not include standing timber, growing crops or grass but Section 3(26) of the General Clauses Act defines 'immovable property'. According to the said provision immovable property shall include land, benefits arising out of land and things attached to the earth, or permanent fastened to anything attached to the earth. As there is no special definition of immovable property, the general definition contained in the General Clauses Act would prevail and, therefore, trees are regarded as part of land because they are attached and rooted in the earth. In view of the said legal position, the trees, which at the time of agreement for sale were mere saplings on the land would vest in the transferee.

7. This matter can be examined from another angle. As noticed earlier that when the agreement for sale was entered into between the appellant and the defendant, no full fledged trees were in

existence on the land and there were only plants and saplings which, during the long period of litigation of 25 years have grown into full grown trees. The question, therefore, arises whether the land, which was agreed to be transferred, would also include subsequent full grown trees on the land. In *Divisional Forest Officer, Himachal Pradesh and Anr. v. Shri Daut and Ors.* this Court held as under:

There can be no doubt that trees are capable of being transferred apart from land, and if a person transfers trees or gives a right to a person to cut trees and remove them it cannot be said that he has transferred land. But we are concerned with a different question and the question is whether Under Section 11 of the Act trees are included within the expression 'right, title and interest of the land-owner in the land of the tenancy'. It seems to us that this expression "right, title and interest of the land-owner in the land" is wide enough to include trees standing on the land. It is clear that Under Section 8 of the Transfer of Property Act, unless a different intention is expressed or implied, transfer of land would include trees standing on it. It seems to us that we should construe Section 11 in the same manner.

8. The aforesaid decision makes it is (sic) clear that interest in the property also includes anything attached to the land including trees standing on the land. Where a vendor sells his right, title and interest in the land unless expressly or impliedly provided in the agreement, sale of the land would also include trees standing thereon. But where trees are sold for being cut and removed it does not mean that the land is also transferred along with the trees. It is open to the vendor while transferring the land to exclude the trees from sale if he wants to appropriate it by cutting and removing them. In the present case, there was no mention in the agreement that the saplings were not being sold along with the land. In the absence of any expressed or implied intention in the agreement, it would be taken that the land along with the saplings standing on the land which subsequently grown into trees were sold. The view taken by the High Court that unless the trees are sold separately, trees would not go with the land is erroneous.

9. For the aforesaid reasons, the appeal deserves to be allowed. Accordingly, the judgment under appeal is set aside and appeal is allowed. Since none has appeared on behalf of the legal representatives of the respondents, there shall be no order as to costs.

Contempt Petition (C) No. 146/1991

10. Learned Counsel seeks leave of this Court to withdraw the petition. The Contempt Petition is dismissed as withdrawn.