

SUPREME COURT OF INDIA

Ram Karan (Dead) Through LRs.

Vs.

State of Rajasthan

C.A.No.5853 of 2014

(Sudhansu Jyoti Mukhopadhaya and Kurian Joseph JJ.)

30.06.2014

JUDGMENT

SUDHANSU JYOTI MUKHOPADHAYA, J.

1. Leave granted.
2. This appeal is directed against the judgment and order dated 2nd February, 2012 passed by the Division Bench of the High Court of Judicature for Rajasthan, Jaipur Bench, Jaipur in D.B. Civil Special Appeal (Writ) No.557/2002. By the impugned judgment the High Court dismissed the appeal preferred by the appellant and upheld the order dated 23rd May, 2002 passed by the learned Single Judge in S.B. Civil Writ Petition No.639 of 1996.
3. The factual matrix of the case is as follows:

The suit property is an agricultural land admeasuring 10 bighas 13 biswa situated in village Med, Jaipur, Rajasthan. The said land was sold by its recorded Khatedar, Dalu (hereinafter referred to as the vendor) to Ram Karan (since deceased) and Mahendra Kumar who belong to upper caste vide a registered sale deed dated 12th January, 1962. Ram Karan and Mahendra Kumar (hereinafter referred to as the vendee) were both landless persons on the date of sale of disputed land. The said vendees had been in cultivator

possession of the disputed land prior to 12th January, 1962.

4. Subsequently, Gram Panchayat allowed the land to be mutated in the name of the vendee, Ram Karan and Mahendra Kumar. It was mutated on 10th September, 1966 and they became Khatedar.

5. After lapse of more than 31 years, Tehsildar, Viratnagar, District Jaipur, instituted Case No.1681/1993 before the Assistant Collector, Shahpura, District Jaipur, u/s 175 of the Rajasthan Tenancy Act, 1955 (hereinafter referred to as the, ~Act) seeking ejectment of the vendee. The said suit was filed on the ground that the vendor; Dalu belonged to a Scheduled Caste category (Nayak) and consequently the disputed land could not be sold to the vendees who belonged to an upper caste of ~Mahajan. The contention was that the sale was void being in contravention of Section 42 of the Rajasthan Tenancy Act, 1955 (hereinafter referred to as, ~the Act). The Tehsildar also moved an application u/s 112 of the Act for appointment of a receiver. The Assistant Collector by order dated 1.1.1994 rejected the application made by Tehsildar for appointment of receiver to take possession of the suit land. He held that the vendee had been in possession and cultivating the suit land for 32 years and had otherwise matured rights by adverse possession. He further held that there was no prima facie case in favour of the State and also the balance of convenience was in favour of the vendee.

6. Against the aforesaid order dated 1.1.1994, the Tehsildar filed an appeal before Revenue Appellate Authority and the same was registered as Appeal No.9 of 1994. The Revenue Appellate Authority by order dated 28th January, 1994 held that in order to effectuate the social objective u/s 42 of the Act, the State Government has enhanced the time for instituting suit u/s 175 so that old cases of sale may be reopened. The appeal was allowed and order dated 1.1.1994 passed by the Assistant Collector was set aside.

7. The Tehsildar was appointed as receiver of the said land having Khasra nos.2307, 2308, 2309, 2310, 2311, 2318, 2326, 2327, 2328 total 9 Tulka 25 hectares.

8. The Vendee, Ram Karan and Mahendra, challenged the aforesaid order dated 28.4.1994 in revision before the Board of Revenue which remain pending.

9. During the pendency of the proceedings u/s 175 of the Act, the Tehsildar filed a reference under Rule 82 of the Land Record Rules before 1st Additional Collector, Viratnagar, District Jaipur seeking cancellation of the mutation dated 10.09.1963. The same was registered as Reference No.261/94/LR/Jaipur of 1994. The ground taken was that the sale deed executed by the vendor, Dalu was in contravention of provisions of Section 42 of the Act.

10. On 26.06.1994, the appellant-vendee moved an application before the Collector, Jaipur seeking to stay reference proceedings till the adjudication of the proceedings u/s 175 of the Act or to consolidate the reference and the proceedings u/s 175 of the Act. In reply to the notice on reference the appellant-vendee stated that the sale deed executed on 12.01.1962 by Dalu is not in breach of Section 42 of the Act. It was, inter alia, contended that the proceedings u/s 175 of the Act was pending and consequently the reference was liable to be dismissed as the same was not maintainable.

11. The First Additional Collector vide his order dated 19.10.1994 directed to place the matter before the Board of Revenue for passing orders to cancel the mutation in favour of the vendee and held that the transfer was in breach of Section 42 of the Act and there was no limitation for a reference to the Board. It was further held that a pending application for ejection u/s 175 of the Act is no bar to a reference.

12. On 26.06.1995, the Single Member, Board of Revenue held that the vendor, Dalu being Nayak by caste was from Scheduled Caste category and the sale deed executed being in favour of General category person, the mutation carried out on the basis of said sale deed was null and void. He further held that the sale deed dated 12.01.1962 was void being in contravention of Section 42 of the Act and, therefore, consequent mutation was illegal. The Member, Board of Revenue set aside the sanction for mutation granted by the Gram Panchayat and directed striking off the names of the vendees, Ram Karan and Mahendra and in their place the name of the vendor/heirs was directed to be recorded.

13. Against the aforesaid order dated 26.06.1995, the Vendees filed Special Appeal No.1A/95RLAct/Jaipur before the Division Bench of the Board of Revenue. The Division Bench of the Board of Revenue by order dated 16.11.1995 affirmed the order of the Single Member and dismissed the appeal.

14. The appellant-vendees subsequently filed S.B. Civil Writ Petition No.639 of 1996 challenging order dated 19.10.1994 passed by the Additional Collector; order dated 26.06.1995 passed by the Single Member of the Board of Revenue and order dated 16.11.1995 passed by the Division Bench of Board of Revenue.

15. Learned Single Judge of the High Court by order dated 23.05.2002 dismissed the writ petition and held that as the sale deed was executed in violation of Section 42 of the Act, the dismissal of application u/s 175 of the Act does not create any right in favour of the vendees.

16. Against the aforesaid order dated 23.05.2002, the vendee preferred D.B. Special Appeal (Writ) No.557 of 2002. The Division Bench of High Court by impugned judgment and order dated 2.2.2012 dismissed the same. The Division Bench held that the vendor, Dalu, was a member of Scheduled Caste category and further held as follows:-

Coming to the submission that no steps were taken by the respondents u/s 183 of the Tenancy Act, in our considered opinion, even if no action was taken, power could have been exercised to annul mutation as transaction was illegal and void u/s 42 of the Tenancy Act. There was no effect of dismissal of the application u/s 175 of the Tenancy Act being barred by limitation as no right has accrued in favour of the appellants on the strength of sale deed which was void. The power has been rightly exercised and there is no infirmity or illegality in the orders which have been impugned in the intra-court appeal.

17. Learned counsel for the appellants submitted as follows: Transfer of land by Scheduled Caste in favour of a non Scheduled Caste prior to 1964 may be voidable but not void ab initio.

Proviso to Section 42 inserted by Section 4 of the Rajasthan Tenancy (Second Amendment) Act No.28 of 1956, giving Section 42 retrospective has been declared violative of Article 19 of the Constitution of India by the Rajasthan High Court in *Triveni Shyam Sharma v. Board of Revenue & Ors.*, [AIR 1965 Raj.54] which having not challenged reached finality. In view of such decision, the registered sale deed dated 12.01.1962 executed prior to 1.5.1964 cannot be held to be void.

The suit filed by the Tehsildar, Viratnagar after about 31 years of the sale is barred by limitation u/s 175 of the Act.

18. On the other hand, learned counsel for the respondents-State referred to legislative history of Section 42 and contended as follows: The sale deed dated 12.01.1962 was covered u/s 42 of the Act and therefore void.

Void sale deed does not create any right in favour of the appellants Mutation proceeding had not created any right or title in favour of the appellants

19. For determining the issues, it is desirable to notice the Legislative History of Section 42, as amended from time to time.

Original Section 42 came into force w.e.f. 15.10.1955 reads as under: Section 42-Sale or Gift-Except with the general or special permission of the State Government, no khatedar tenant shall have the right to transfer by sale or gift his interest in the whole or a part of his holding to any person who at the date of such transfer is already in possession of land which together with the land so transferred will exceed 90 acres of un irrigated or 30 acres of irrigated land.

Explanation- If such land is partly irrigated and party un-irrigated, one acre of irrigated land, shall, for calculating the area of land for the purposes of this Section, be deemed to be equivalent to three acres of un- irrigated land.

20. The Act was for the first time amended by Act No.27 of 1956 dated 22.09.1956. By this amendment Section 42 remained untouched. The Act was again amended by the Rajasthan Tenancy (Second) Amendment Act, 1956 (Act 28 of 1956) which came into force on 22.09.1956. By this amendment Act a proviso to Section 42 was added as under:

Provided that no khatedar tenant being a member of Scheduled Caste or a Scheduled Tribe shall so transfer these rights in the whole or a part of his holding to any person who is not a member of a Scheduled Caste or a Scheduled Tribe.

Thereafter, Section 42 was amended and substituted w.e.f. 1.05.1964 as under:

Section 42 General restriction on sale, gift and bequest- The sale, gift or bequest by a khatedar tenant of his interest in the whole or part of holding shall be void if:

It is not a survey number except when the area of the survey number so sold, gifted or bequeathed is in excess of the minimum area prescribed for the purpose of sub-sec.(1) of Sec.53, in which case also the area not transferred shall not be fragment:

Provided that this restriction shall not apply if the area so transferred becomes merged into a contiguous survey number.

Provided further that the restriction shall not apply if the sale, gift or bequest is of the entire interest of a tenant in the survey number; such sale gift or bequest is by a member of a Scheduled caste in favour of a person who is not a member of the scheduled caste, or by a member of a schedule tribe in favour of a person who is not a member of the schedule tribe.

21. Subsequently, the said Section was amended by Rajasthan Act 15 of 1970 w.e.f. 18.08.1970; Rajasthan Act 22 of 1992 w.e.f. 11.11.1994 and Rajasthan Act 18 of 1999 w.e.f. 30.09.1999. On such amendments Section 42 reads as below:

42. General restrictions on sale, gift and bequest- The sale, gift or bequest by a khatedar tenants of his interest in the whole or part of his holding shall be void, if

[(a)...deleted w.e.f. 11.11.1992]

(b) such sale, gift or bequest is by a member of Scheduled Caste in favour of a person who is not a member of the Scheduled Caste, or by member of a Scheduled Tribe in favour of a person who is not a member of the Schedule Tribe.

[(c) Omitted by Raj. Act 15 of 1970, published in Raj. Gaz. Ext., Part IV (ka),

dated 18.8.1970 and shall always be deemed to have been omitted].

(bb) Such sale, gift or bequest, notwithstanding anything contained in clause (b), is by a member of Saharia Scheduled Tribe in favour of a person who is not a member of the said Saharai tribe. [inserted vide Rajasthan Act 18 of 1999 with effect from 30.09.1999]

22. According to respondents, sale deed in question was registered on 12.01.1962. The second amendment in Section 42 by which a proviso was added to Section 42 was brought into force on 22.9.1956 and the sale in question had been effected on 12.01.1962 which is much later to coming into force of the second Amendment in Section 42 of the Act. Since after 22.09.1956 there was clear prohibition in making any sale by a member of Scheduled Castes or Schedules Tribes in favour of a person who was not member of Scheduled Castes or Scheduled Tribes, the transfer made on 12.01.1962 is against the said prohibition as well as provisions of Section 23 of the Contract Act.

23. So far as amendment made by Act No.12 of 1964 dated 1.5.1964 in Section 42 is concerned the only change made was that a declaration was given that the sale, gift or bequest by a khatedar tenant in violation of Section 42 shall be void.

24. The amendment Act No. 12 of 1964 though brought into force on 1.05.1964 after the alleged sale on 12.1.1962, the fact remains that even the earlier proviso which was added to Section 42 by second Amendment Act No. 28 of 1956, also prohibits any transfer of interest in holding by a Member of Scheduled Castes or Scheduled Tribes to any person who was not a member of Scheduled Castes or Scheduled Tribes. The second amendment Act No.28 of 1956 which came into force on 22.09.1956 was in force at the time of alleged sale, The sale being forbidden by law and being opposed to public policy within the meaning of Section 23 of the Contract Act, 1872, it was not enforceable by law in view of proviso to Section 42. Section 2 of the Contract Act, 1872 also provides that an agreement which is not enforceable by law is said to be void.

25. Hence, the question that arises for our consideration is whether in view of proviso to Section 42 inserted by Second Amendment Act No.28 of 1956, the sale deed executed on 12.01.1962 is void or not.

26. Learned counsel for the appellant referred to Division Bench of the Rajasthan High Court decision in *Triveni Shyam Sharma v. Board of Revenue & Ors*, AIR 1965 Raj.54 and submitted that in view of the said decision, retrospective effect of proviso having been declared *ultra vires* is not applicable to the sale in question. But such submission cannot be accepted.

27. In the case of *Triveni Shyam Sharma*(Supra), the Division Bench of the Rajasthan High Court considered the effect of amendment on sale of proprietary right prior to the Second amendment and held as follows: 10. The main question for determination is whether the sale of the proprietary right made by Gyarsia in favour of the petitioner became invalid on account of the subsequent legislation, namely the addition of the proviso to Section 42 by the Second Amendment Act. A perusal of the language of the proviso which was added to Section 42, would show that if it is read without the context of the deeming clause, it cannot be said that it was to be applied retrospectively. The difficulty was created only because of the words shall be deemed always to have been so added inserted in Section 4 of the second Act while introducing the proviso.

28. The Division Bench of the Rajasthan High Court further held: 14.....It is contended by him that the proviso was added for the protection of the interests of the members of the Scheduled tribe and, therefore, it was saved by this Clause. In our opinion, this contention is not tenable because even, according to Clause (5), reasonable restrictions on the fundamental rights embodied in Article 19(1)(f) can be imposed only for the protection of the interests of the members of the scheduled tribe. The word 'interests' appearing in the said Clause refers to subsisting interests and not to those interests which cease to exist even before the law is enacted. The term 'protection' is also suggestive of subsisting interests. If the interests already cease to exist, there would remain nothing which may be protected by law. In the case of interests which cease to exist, it would be revival of the interests and not the protection thereof. In a case like the present one, where Gyarsia had already transferred his interests before the second Act came into force, the deeming clause, if held to be valid, would not protect the vendor, but would tend to deprive the vendee, i. e., the petitioner of the rights and interests which had already vested in him. The deeming clause would not, therefore, be saved by Clause (5) and it would be violative of Article 19(1)(f) of the Constitution of India.

15. In this view of the matter there seems to be no force in the contention raised by learned counsel for the contending respondents, because Gyarsia had parted with his Khatadari rights in the property long before the proviso was added to Section 42. The insertion of the proviso could not revive his interest merely because the deeming clause rendered its operation retrospective. His interest had already ceased to exist and there remained nothing to be protected by law. We, therefore, hold that the deeming clause was violative of Article 19 in so far as it resulted in divesting the petitioner in whom the vendor's rights and interests had vested before the second amendment.

18. Learned counsel for the respondents has urged that according to Clause (b) of the amended section, the sale in favour of the petitioner was void since he was not a member of a Scheduled Caste or a Scheduled Tribe. It would suffice to say that while substituting Section 42, the Legislature took good care in not making the change to operate retrospectively. The plain reading of Section 3 would show that the new Section 42 was substituted in place of the old one with effect from the date this amended Act came into force namely, 1st May, 1964. This Act also does not seek to validate the deeming clause appearing in Section 4 of the second Act, which was invalid from the very date it was introduced, as held above. The Constitution (Seventeenth Amendment) Act, 1964, protects the Rajasthan Tenancy Act, 1955 as it stood on the date the said amendment of the Constitution of India, came into force.

29. The Rajasthan Tenancy (Second) Amendment Act, 1956 (Act 28 of 1956) came into force on 22.09.1956. The vendor executed the sale deed in favour of the vendee, predecessor in interest of the appellant on 12.01.1962 i.e. after the second amendment. The appellants cannot claim that their right was created much prior to the second amendment i.e. before proviso to Section 42 was inserted. Counsel for the respondents rightly contended that the alleged sale deed dated 12.01.1962 was effected much after the date of coming into force (22.09.1956) of proviso to Section 42. There was clear prohibition in making any sale by a member of Scheduled Castes or Scheduled Tribes in favour of person who was not member of Scheduled Castes or Scheduled Tribes since after 22.09.1956. The transfer made on 12.01.1962 was against the said prohibition.

30. Section 23 of the Indian Contract Act, 1872 reads as follows: 23. What consideration and objects are lawful, and what not."The consideration or object of an agreement is lawful, unless it is forbidden by law; or is of such a nature that, if permitted, it would defeat the provisions of any law; or is fraudulent; involves or implies, injury to the person or property of another; or the Court regards it as immoral, or opposed to public policy.

In each of these cases, the consideration or object of an agreement is said to be unlawful. Every agreement of which the object or consideration is unlawful is void."

31. In the present case, the sale deed in question was alleged to be made when it was forbidden by law (proviso to Section 42). Therefore, the appellant cannot derive advantage of decision rendered by the Rajasthan High Court in Trivei Shyam Sharma(Supra).

32. To determine the second issue in relation to limitation, it is desirable to notice the relevant provisions of the Act. Section 175 of the Act deals with ejection for illegal transfer or sub-letting and reads as follows:

175. Ejection for illegal transfer or sub-letting.-

(1) If a tenant transfers or sub-lets, or executes an instrument purporting to transfer or sublet, the whole or any part of his holding otherwise than in accordance with the provisions of this Act and the transferee or sub-lessee or the purported such part in pursuance of such transfer or sub lease, both the tenant and any person who may have thus obtained or may thus be in possession of the holding or any part of the holding, shall on the application of the land holder, be liable to ejection from the area so transferred or sub-let or purported to be transferred or sub-let.

(2) To every application, under this Section the transferee or the sub-tenant or the purported transferee or the sub-tenant, as the case may be, shall be joined as a party.

(3) On an application being made under this section, the court shall issue a

notice to the opposite party to appear within such time as may be specified therein and show cause why he should not be ejected from the area so transferred or sublet or purported to be transferred or sub-let.]

(4) If appearance is made within the time specified in the notice and the liability to ejection is contested, the court shall, on payment of the proper court fees, treat the application to be a suit and proceed with the case as a suit:

Provided that in the event of the application having been made by a Tehsildar in respect of land held directly from the State Government no court-fee shall be payable.

(5) If no such appearance is made or if appearance is made but the liability to ejection is not contested the court shall pass order on the application as it may deem proper.

33. As per Schedule 3 read with Section 214 of the Act the limitation for filing a suit for any illegal transfer was 30 years. The relevant entry which was in Rajasthan Tenancy Act, 1967 Edition reads as follows: |S.NO. |Section of |Description of suit, application |Period of | |Act |or appeal |Limitation | |1 |2 |3 |4 | |66 |175 |Application for ejection for |Thirty years | | |illegal transfer or sub-letting | |

|Time from which period |Proper Court fees |Court/officer competent| |begins to run | |to dispose of | |5 |6 |7 | |Date of transfer or |50 Paise |Assistant Collector | |sub-lease | | |

34. Counsel for the appellants referred to decision of this Court in Nathuram v. State of Rajasthan, (2004) 13 SCC 585 and in the said case this Court held:

4. The contention urged by the appellants counsel is that by virtue of Section 42 of the Rajasthan Tenancy Act, any transaction made in contravention has been declared to be void and, therefore, the period of limitation is not applicable and that the authority should have held that the [pic]appellants are entitled to get possession. It may be noticed that for taking an action under Section 175 of the Act, the procedure as prescribed under sub-section 4(A) of Section 175 has to be adopted. It is also to be noticed that under Section 214 of the Rajasthan

Tenancy Act, period of limitation is prescribed for initiating action under Section 175. Under Section 214, it is stated that:

214. (1) The suits and applications specified in the Third Schedule shall be instituted and made within the time prescribed therein for them and every such suit instituted or application made after the expiry of the period of limitation so prescribed shall be dismissed:

Under the Third Schedule, in clause 66, for an application for ejection for illegal transfer or sub-letting, the period of twelve years is originally prescribed for filing such an application from the date of transfer or sub-lease. The provision relating to the period of limitation was later on amended with effect from 5-10-1981 and the period was prescribed as 30 years. So far as the present transaction is concerned, the period of limitation applicable is twelve years. The transfers being one on 2-4-1964 and another on 4-5-1964, the proper application should have been filed within twelve years, but it was filed before the Sub-Divisional Officer only on 22-11-1976. In that view of the matter, the proceedings were initiated beyond the period of limitation. Therefore, it was barred by limitation and the finding of the SDO is correct which has been rightly confirmed by the authorities right up to the High Court.

35. Learned counsel for the appellants also referred to decision of this Court in *State of Punjab v. Bhatinda District Cooperative Milk Producers Union Ltd.*, (2007) 11 SCC 363. In the said case this Court while noticed that no period of limitation was prescribed under the statute held:

18. It is trite that if no period of limitation has been prescribed, statutory authority must exercise its jurisdiction within a reasonable period. What, however, shall be the reasonable period would depend upon the nature of the statute, rights and liabilities thereunder and other relevant factors.

19. Revisional jurisdiction, in our opinion, should ordinarily be exercised within a period of three years having regard to the purport in terms of the said Act. In any event, the same should not exceed the period of five years. The view of the High Court, thus, cannot be said to be unreasonable. Reasonable period, keeping in view the discussions made hereinbefore, must be found out from the

statutory scheme. As indicated hereinbefore, maximum period of limitation provided for in sub-section (6) of Section 11 of the Act is five years.

36. In the present case, no action was taken either by the Vendor or by the State for more than 31 years. The sale deed was executed on 12.01.1962 and the land was mutated in the name of the appellants predecessor in interest on 10.09.1963. It was after about 31 years, on 6.07.1993 the suit was filed by the Tehsildar, Viratnagar being Case No.1681 of 1993. In the said suit for the first time an application was filed for appointment of receiver. The said application was rejected by the Assistant Collector, Shahpura vide order dated 1.1.1994 holding that the vendee has been in possession and cultivating the suit land for 32 years.

37. In view of the position of law, as noticed above, it is not necessary to see whether the petition for cancellation of mutation was filed on time or not. The decision of this Court in Nathu Ram (supra) relates to Section 42 of the Act and the transaction made in contravention with the provisions of the said Act. In the said case similar plea were taken by the parties, having noticed sub-section 4(A) of Section 175 and Section 214 of the Act, this Court held that as the transaction was made much beyond the period of 12 years, the proceeding was beyond the period of limitation and, therefore, barred by limitation.

38. In State of Punjab & Ors. v. Bhatinda District Cooperative Milk Union Ltd. (supra) this Court held that if no period of limitation has been prescribed, statutory authority must exercise its jurisdiction within a reasonable period. However, what shall be the reasonable period would depend upon the nature of the statute, rights and liabilities thereunder and other relevant factors. In the present case, neither any objection was raised nor was any application filed by vendors for restoration of land in their favour. The suit was filed by the Tehsildar, Viratnagar after more than 31 years. No ground is shown to file such petition after long delay nor it was mentioned as to whether the vendors i.e. original landholders made any application for restoration of land in their favour.

39. In view of the matter, we hold that the suit being filed beyond the reasonable period was fit to be dismissed. The Additional Collector rightly dismissed the suit being barred by limitation.

40. Counsel for the appellant submitted that under notification dated 20.09.1977 Nayak were not declared as Scheduled Castes and, therefore, there was no occasion for the Tehsildar to file a suit in the year 1993 i.e. 16 years after notification dated 20.09.1977 on the ground of violation of Section 42.. This question has not been dealt with by the High Court and the fact aforesaid has not been disputed by the respondents.

41. Therefore, it is clear that the proceeding for restoration of land initiated by the Tehsildar, Viratnagar was barred by limitation and was not maintainable. We, accordingly, set aside the impugned judgment dated 2.02.2012 passed by the Division Bench of the Rajasthan High Court as well as judgement and order dated 23.05.2002 passed by the Single Judge. The appeal is allowed. No costs.