

SUPREME COURT OF INDIA

Sita Ram

Vs.

Bharat Singh

C.A.No.8179 of 2016

(A.M.Khanwilkar and Ajay Rastogi,JJ.,)

17.09.2019

JUDGMENT

Ajay Rastogi,J.,

1. These appeals arise from the judgment dated 5th July, 2007 passed by the High Court of Allahabad in setting at naught the inter se rights of the litigating parties initiated under the Uttar Pradesh Zamindari Abolition and Land Reforms Act, 1950(hereinafter being referred to as the “Act, 1950”) arising from the registered deed of exchange dated 2nd March, 1974.

2. The brief facts of the case culled out from the record are that Smt. Chando and Sita Ram (since deceased) who were tenure holders of Plot No. 2902 ad-measuring 0.34 decimals situated in Village Mathura Bangar, Tehsil & District Mathura, U.P. sold the subject plot on transfer of consideration to late N.D. Chaudhary(father of respondent nos. 10 & 11) vide registered sale deed dated 24th January, 1973. Late Kesho Ram (father/grandfather of respondent nos. 1 to 8), who was tenure holder of plot nos. 2863 and 2888, with consent, exchanged his plots with plot no. 2902 owned by late N.D. Chaudhary by a registered deed of exchange dated 2nd March, 1974. As a result of the deed of exchange, plot no. 2902 ad-measuring 0.34 decimals was transferred in favour of late Kesho Ram and plot nos. 2863 and 2888 in favour of late N.D. Chaudhary.

3. That at the time of field partal (chakbandi) in the village for correction of revenue records conducted by the Assistant Consolidation Officer (ACO) late Kesho Ram(father/grandfather of respondent nos. 1 to 8) filed application under Section 9A(2) of the Uttar Pradesh Consolidation of Holdings Act, 1953 (hereinafter referred to as “the Act, 1953”) and prayed that his name be recorded on Plot No. 2902 by virtue of the exchange deed executed between him and late N.D. Chaudhary dated 2nd March, 1974.

4. It may be noticed that late N.D. Chaudhary who had exchanged his Plot No. 2902 with Plot Nos. 2863 and 2888 from late Kesho Ram also filed application in the consolidation proceedings and supported the case of late Kesho Ram who was the applicant in the proceedings for opening of mutation in his name in the revenue records.

5. At this stage Smt. Chando and Sita Ram who were the original tenure holders of Plot No. 2902 who had sold it to late N.D. Chaudhary, by a registered sale deed dated 24 th January, 1973, raised an objection regarding validity of the registered sale deed dated 24th January, 1973. The Consolidation Officer, after appraisal of the material on record, held that the sale deed dated 24th January, 1973 executed by Smt. Chando and Sita Ram in reference to plot no. 2902 in favour of late N.D. Chaudhary was genuine and valid and was jointly executed by Smt. Chando and Sita Ram and in regard to the exchange of plots, the Consolidation Officer held that the exchange was permissible only with permission of the Assistant Collector in terms of Section 161 of the Act, 1950 which, in the instance case, was not obtained by the parties. In the absence of permission which is pre-requisite, he is not entitled to be recorded as Bhumidar under the consolidation proceedings. When the matter travelled in appeal under Section 11 of the Act, 1953, it was observed that the registered sale deed dated 24th January, 1973 was not proved based on appreciation of evidence and further held that the deed of exchange dated 2nd March, 1974 was void for want of permission from the competent authority provided under Section 161 of the Act, 1950 and the appeal was consequently dismissed on 18th January, 1982.

6. The matter further travelled before the State Government in its revisional jurisdiction under Section 48 of Act, 1953 filed at the instance of late N.D. Chaudhary and late Kesho Ram before Deputy Director, Consolidation, Mathura, both the revision petitions came to be dismissed although authority did not record any finding regarding validity of the sale deed but from the order, it reveals that the authority proceeded on the premise that registered sale deed dated 24th January, 1973 was genuine and valid.

7. The order of the revisional authority dated 19 th July, 1984 came to be challenged by late Kesho Ram in a writ petition under Article 227 of the Constitution of India and taking note of the pleadings on record, the High Court vide impugned judgment dated 5th July, 2007 observed that the exchange deed dated 2nd March, 1974 was in contravention of Section 166 read with Section 167 of the Act, 1950 and any exchange in the absence of permission from Assistant Collector was void by virtue of Section 166 at the same time further observed that it was the State Government who could apply for cancellation if affected by the registered deed of exchange but it was not open to be questioned at the instance of the original tenure holder Smt. Chando and Sita Ram who are now being represented by their legal heirs of plot no. 2902 who had sold with their consent to late N.D. Chaudhary on 24th January, 1973 through a registered sale deed which was not a subject matter of challenge in appeal before us.

8. The moot question which has been raised for consideration is as to what will be the legal consequences if the registered exchange deed dated 2nd March, 1974 has been executed without following the procedure prescribed as provided under Section 161 of the Act, 1950.

9. Learned counsel for the appellants submits that the High Court in its supervisory jurisdiction under Article 227 of the Constitution of India has exceeded in its jurisdiction in

interfering with the concurrent finding arrived at by the consolidation authorities holding that late N.D. Chaudhary did not get his name mutated in the revenue records based on the registered sale deed dated 24th January, 1973 and at the time of initiation of the consolidation proceedings, he did not put forth any claim or filed any objection provided under Section 9A of the Act, 1953. At the same time, the exchange deed dated 2nd March, 1974 was executed without seeking permission from the competent authority (Assistant Collector) as provided under Section 161 of the Act, 1950 and such exchange being void, late Kesho Ram cannot claim any right over the plot in question to open mutation and in consequence the appellants hold a right over the subject plot no. 2902 even if it was sold by Smt. Chando and Sita Ram (predecessor in interest) jointly by registered sale deed dated 24th January, 1973.

10. Learned counsel further submits that the High Court has failed to appreciate the legal effect of Section 166 read with Section 167 of the Act, 1950 and the action once being held to be void by operation of law, they are entitled to hold their right and possession over plot no. 2902.

11. Per contra, learned counsel for the respondents, while supporting the finding recorded by the High Court, further submits that once plot no.2902 ad-measuring 0.34 decimals was sold by the appellants (predecessor in interest) jointly by the registered sale deed dated 24th January, 1973 to late N.D. Chaudhary, they have lost their rights and interest over the subject plot in question and whatever the default, if any, being committed by late N.D. Chaudhary, it will not give support to the present appellants in making their claim over the subject plot in question and further submits that the permission of the Assistant Collector even if not obtained would not take away rights of the parties which have been conferred on transfer of the property by the registered exchange deed dated 2nd March, 1974 and as per the scheme of the Act, 1950, transfers made prior to 3rd June, 1981 are not void but are voidable at the option of the suit to be filed by Gaon Sabha or land holder within the period of limitation. Indisputedly, no action was taken either by Gaon Sabha or land holder within the period of limitation. In the given facts and circumstances, no error has been committed by the High Court in the impugned judgment which may call for interference.

12. We have heard learned counsel for the parties and with their assistance perused the material available on record.

13. The deed of exchange between late N.D. Chaudhary (father of respondent nos. 10 and 11) and late Kesho Ram (father/grandfather of respondent nos. 1 to 8) was executed by the registered deed on 2nd March, 1974. Section 161, 166 and 167 of the Act, 1950 as existing prior to the amendment made on 3rd June, 1981 are ad infra:-

“Section 161 Exchange. [(1) A bhumidhar or sirdar may exchange with (a) any other bhumidhar or sirdar land held by him, or (b) any Gaon Sabha or local authority, lands for the time being vested in it under Sec. 117 Provided that no exchange shall be made except with the permission of an Assistant Collector who shall refuse permission if the difference between the rental value of land given in

exchange and of land received in exchange calculated at hereditary rates is more than 10 per cent of the lower rental value. (1-A) Where the Assistant Collector permits exchange he shall also order the relevant annual registers to be corrected accordingly.

(2)On exchange made in accordance with sub-section

(1)they shall have the same rights in the land so received in exchange as they had in the land given in exchange.”

“S. 166.Transfer made in contravention of this chapter to be void. Any transfer, made by or on behalf of a sirdar or asami in contravention of the provisions of this chapter shall be void.”

By U.P. Act 30 of 1975, the words “in contravention of this Chapter” were substituted by the words “in contravention of the provisions of this Act”.

“S. 167.Consequences of void transfers. [(1) Where a sirdar or asami has made any transfer in contravention of the provisions of this Act, the transferee and every person who may have thus obtained possession of the whole or part of the holding shall be liable to ejectment on the suit of the [Gaon Sabha or the land holder, as the case may be,]

(2)A decree for ejectment under sub-section (1) may direct the ejectment of the sirdar or asami from the whole or part of the holding as the court may, having regard to the circumstances of the case, direct].”

14. It may be relevant to refer Rule 338 of the U.P. Zamindari Abolition & Land Reforms Rules, 1952(hereinafter being referred to as the “Rules 1952”) for the purpose as under:-

“338. The suit applications and other proceedings specified in Appendix III shall be instituted within the time specified therein for them, respectively.

Appendix III (Rule 338)

Sl. No.	Section of the Act	Description of suit, application and other proceeding	Period of limitation	Time from which period begins to run	Proper court fees
19.	163	Suits for ejection of bhumidhar.	Six Years.	From the date of illegal transfer.	As in the Court Fees Act, 1870, on the year's revenue.
20.	167	Suits for ejection of a sirdhar or asami.	Do.	Ditto.	Ditto.

Substituted 2056/I-A-463-1952 dated 11th April, 1969”

15. It will be appropriate to take note of Sections 161, 166 and 167 amended by U.P. Act No. 20 of 1982(w.e.f. 3rd June, 1981) for better appraisal ad infra:-

“Section 161 Exchange. [(1) A Bhumidhar [* * *] may exchange with

(a) any other bhumidhar [* * *] land held by him, or

(b) any Gaon Sabha or local authority, lands for the time being vested in it under Sec.

117:

Provided that no exchange shall be made except with the permission of an Assistant Collector who shall refuse permission if the difference between the rental value of land given in exchange and of land received in exchange calculated at hereditary rates is more than 10 per cent of the lower rental value (1-A) Where the Assistant Collector permits exchange he shall also order the relevant annual registers to be corrected accordingly.

(2) On exchange made in accordance with sub-section (1) they shall have the same rights in the land so received in exchange as they had in the land given in exchange.

S. 166. Transfer made in contravention of this chapter to be void.- Every transfer made in contravention of the provisions of this Act shall be void.

S.167. Consequences of void transfers. (1) The following consequences shall ensue in respect of every transfer which is void by virtue of Section 166, namely-

(a) the subject-matter of transfer shall, with effect from the date of transfer, be deemed to have vested in the State Government free from all encumbrances;

(b) the trees, crops and wells existing on the land on the date of transfer shall, with effect from the said date, be deemed to have vested in the State Government free from all encumbrances;

(c) the transferee may remove other movable property or the materials of any immovable property existing on such land on the date of transfer within such time as may be prescribed.

(2)Where any land or other property has vested in the State Government under sub-section (1), it shall be lawful for the Collector to take over possession over such land or other property and to direct that any person occupying such land or property be evicted therefrom. From the purposes of taking over such possession or evicting such unauthorised occupants, the Collector may use or cause to be used such force as may be necessary.]”

16. It emerges from the pre amendment (U.P. Act No. 20 of 1982 w.e.f. 3rd June, 1981) scheme of the Act, 1950 that any transfer made in contravention of this Chapter referred to under Section 166 which includes Section 161 as well were not be automatically void but voidable and therefore, as a consequence of alleged void transfers under Section 167, a suit was required to be filed by the Gaon Sabha or the land holder, as the case may be, within limitation of six years from the date of illegal transfer as indicated in Appendix III annexed to Rule 338 of Rules, 1952 but after the U.P. Act No. 20 of 1982 amended w.e.f. 3rd June, 1981, the law has changed and every transfer made in contravention of this Act became void in view of Section 166 and in consequence of void transfer, the subject land is deemed to have been vested in the State Government by operation of law free from all encumbrances, and sub-section (2) of Section 167, authorises Collector/Competent Authority to take over possession with the use of force as may be necessary.

17. In the instant case, the exchange deed was executed on 2 nd March, 1974 indisputedly without permission from the Assistant Collector provided under Section 161 and its consequence was embedded under Section 167 of the Act, 1950 authorising the Gaon Sabha or the land holder to file a suit for ejectment within a period of six years from the date of alleged illegal transfer which in the instant case had expired in March 1980 much prior to the U.P. Act No. 20 of 1982 was amended w.e.f. 3rd June, 1981.

18. After the scheme of the Act has been referred to in extenso, it is clear that at least the amendment which has been made by the U.P. Land Laws (Amendment) Act, 1982 with effect from 3rd June, 1981 has no application on the case in hand.

19. The proceedings were initiated in the first instance when an application was filed by late Kesho Ram under Section 9A(2) of the Act, 1953 for obtaining mutation in his name in the year 1978 and late N.D. Chaudhary also joined him and filed an application

supporting the claim of late Kesho Ram.

20. It reveals from the record that the Consolidation Officer has declined the claim of late Kesho Ram for seeking the Bhumidari rights on the premise that the permission from the competent authority has not been obtained before the exchange deed was executed as mandated under Section 161 of the Act, 1950 and in its absence, no proceedings could be drawn claiming Bhumidari rights in his favour. Although the Settlement Officer has made adverse comments in reference to the registered sale deed dated 24th January, 1973, but that appears to be a factual manifest error committed in recording such finding.

21. To make it further clear that under the pre-amended scheme of the Act, 1950, the consequence for non-compliance of Section 161 of the Act, 1950 seeking permission from the Assistant Collector, was indeed the requirement of law and the effect of contravention and its consequence are embedded under Section 166 and 167 of the Act, 1950 but its consequential effect, in no manner, would take away or divest the rights and interest of the parties inter se conferred in reference to the sale deed which was originally executed in favour of late N.D. Chaudhary by late Smt. Chando and Sita Ram in reference to plot no. 2902 ad-measuring 0.34 decimals by the registered sale deed dated 24th January, 1973.

22. It is true that at one stage, late Smt. Chando and Sita Ram jointly raised objection in the consolidation proceedings initiated under Section 9A(1) of the Act, 1953 in reference to the registered sale deed dated 24th January, 1973 but as we have already observed that the registered sale deed dated 24th January, 1973 was genuine and duly executed by the parties and it is nowhere related in reference to the exchange proceedings which were initiated at a later point of time and this fact became clear that so far as the grievance of Smt. Chando and Sita Ram is concerned, after the sale deed was registered and executed on 24th January, 1973 in favour of late N.D. Chaudhary, the ownership rights with possession stands transferred. It is true that late N.D. Chaudhary had not initiated proceedings for claiming his Bhumidari rights under the Act, 1953 but that, in any manner will not, nullify his right of ownership vested on execution of a registered sale deed dated 24th January, 1973 and there is no prohibition or restriction to the contrary has been brought to our notice, if any, under the Act 1950.

23. At a later stage, late N.D. Chaudhary(father of respondent nos. 10 and 11) and late Kesho Ram(father/grandfather of respondent nos. 1 to 8) who was the tenure holders of plot no. 2683 and 2888 got their plot exchanged by registered exchange deed dated 2nd March, 1974 which indisputedly was in contravention of Section 161 of the pre-amended Act, 1950 where it was postulated that no exchange shall be made except with the permission of the Assistant Collector. Indisputedly, no permission was sought as contemplated under the mandate of law but under the pre-amended scheme of the Act, 1950, the effect of exchange in contravention to the provisions of the Act and its consequence as embedded under Section 166 and 167 of the Act, 1950 makes the action to be voidable and not void and it entails consequences of void transfers, in the first instance, it only confines to sirdar or asami and not applicable upon those who are claiming rights of Bhumidar. At the same time, any transfer which has been made in contravention of the provisions of this Act including permission from the Assistant Collector as required under

Section 161, the ejectment may be possible only on filing of a suit by Gaon Sabha or the land holder, as the case may be, and after the decree of ejectment being obtained under sub-section (1) of Section 167 of the Act, ejectment under sub-section (2) of Section 167 be permissible and for filing of the suit, the limitation has been provided under Appendix III annexed to Rule 338 of the Rules, 1952 of which reference has been made in terms thereof suit for ejectment could be filed within a period of six years from the date of the illegal transfer.

24. The deed of exchange in the instant case was executed between the parties on 2nd March, 1974 and the period of limitation for filing of the suit had expired in March 1980 much before the U.P. Act No. 20 of 1982 amended w.e.f. 3rd June, 1981 came into force. Indisputedly, no suit was filed either by Gaon Sabha or any land holder for ejectment as envisaged under Section 167(1) of the Act, 1950. That apart, even assuming for the sake of argument, the deed of exchange executed on 2nd March, 1974 even if considered to be void, taking note of the post amended provisions of the Act, 1950, it will still confine to the deed of exchange dated 2nd March, 1974 which was obtained without taking permission from the Assistant Collector as envisaged under Section 161 of the Act and at the best the rights to the parties on execution of exchange deed could not be given effect to and it remain inter se between parties to the exchange (late Kesho Ram and late N.D. Chaudhary) at the same time, so far as the subject plot which was once transferred by the original tenure holders, namely, Smt. Chando and Sita Ram who are throughout contesting the matter (plot no.2902 area 0.34 decimals) to late N.D. Chaudhary by a registered sale deed dated 24th January, 1973 which has been held to be genuine and valid, will not be under any legal impediment or having any effect on the rights of the parties, and the said transaction was not subject to compliance of Section 161 of the Act, 1950 and at least no rights of any kind over plot no. 2902 area 0.34 decimals could be claimed by the original tenure holders (appellants herein) and their grievance that late N.D. Chaudhary had not claimed his Bhumidari rights under the Act, 1953, suffice it to say, that no such provision to the contrary has been brought to our notice that if the holder has not taken steps for claiming Bhumidari rights under the Act, 1953 that will take away or divest from the legal rights conferred to the party in whose favour registered sale deed has been executed under the mandate of law.

25. We are of the view that at least late Smt. Chando and Sita Ram, whose legal representatives are contesting the case throughout are not holding any locus standi to claim benefit of the defect in the deed of exchange dated 2nd March, 1974 executed between different parties who are holders to their respective plots in their own rights and the procedure mandated under the law if not being followed of taking permission from the Assistant Collector as required under Section 161 of the Act, 1950, its consequences would not revive/restore the rights to the legal heirs of late Smt. Chando and Sita Ram (original tenure holders) over the subject property in question. That apart, the present appellants have never raised any plea for cancellation of the registered sale deed executed in favour of late N.D. Chaudhary dated 24th January, 1973 which was otherwise not the subject matter to be examined under the provisions of the Act, 1950.

26. The submission of learned counsel for the appellants that interference in the concurrent finding and the exchange deed being void as the permission from Assistant Collector has not been obtained and in consequence they are entitled for restoration/possession of plot no.2902 (area 0.34 decimals) which was originally sold by registered sale deed dated 24th January, 1973 to late N.D. Chaudhary is without substance for the reason that these are two separate transactions which has taken place of the subject plot in question. As regards the rights and interests which were transferred by the present appellants vide registered sale deed dated 24 th January, 1973 in favour of late N.D. Chaudhary was never the subject matter of scrutiny and there was no violation/contravention of the provisions of Act, 1950 or of any other law has been pointed out to us.

27. At the same time, so far as non-compliance of the mandatory requirement as envisaged under Section 161 of the Act, 1950 while executing the exchange deed dated 2nd March, 1974 is concerned, parties have to bear its consequences of the void transaction as provided under Section 166 read with Section 167 of the Act, 1950 but that will not give any preference to the appellants for restoration of their rights and to nullify the registered sale deed dated 24th January, 1973 executed after taking due consideration in favour of late N.D. Chaudhary.

28. In our considered view, the conclusions of the High Court in its judgment impugned are unassailable and does not call for our interference.

29. Consequently, the appeals fail and are accordingly dismissed. No costs.

30. Pending application(s), if any, stand disposed of.