

GUJARAT HIGH COURT

Nadoda Khima Keshar

Vs.

State of Bombay

Civil Revision Application No. 201 of 1962

(P.N. Bhagwati, J.)

05.07.1966

JUDGMENT

P.N. Bhagwati, J.

1. This Revision Application arises out of a debt adjustment application preferred by the petitioner and it raises a short question of construction of Section 55(6)(b) of the Transfer of Property Act. On 26th April 1954 the petitioner executed a sale deed in favour of one Magan Jiva purporting to sell a field bearing Survey No. 136 situate in Wadhwan City, Surendranagar District. The price that was paid by Magan Jiva to the petitioner for the field was Rs. 2, 200/-. The petitioner thereafter preferred an application for adjustment of his debts under Section 4 of the Saurashtra Agricultural Debtors Relief Act 1954 in the Court of the Civil Judge, Junior Division, Wadhwan. Magan Jiva was impleaded as creditor No. 4 in the application. The petitioner alleged that the transaction embodied in the sale deed dated 26th April 1954 was in the nature of a mortgage and he claimed adjustment of the debt due under the mortgage and possession of the field from Magan Jiva. Magan Jiva contested the application and his contention was that the transaction was an outright sale and was not in the nature of a mortgage and the petitioner was, therefore, not entitled to maintain the application against him. The point at issue between the parties before the learned Civil Judge, therefore, was whether, the transaction which on the face of the sale deed dated 26th April 1954 appeared to be an outright sale was in the nature of a mortgage. Both the parties led evidence before the learned Civil Judge on this issue and after the evidence was closed, arguments were addressed to the learned Civil Judge on this point. At the hearing of the arguments an alternative contention was put forward on behalf of the petitioner and that is the contention which has been principally argued before me in the present Revision Application, namely, that even if the transaction embodied in the sale deed dated 26th April, 1954 was a sale, it was hit by Section 4 of the Saurashtra Attachment of Agricultural

Debtors Property (Temporary Exemptions) Act, 1954, which was in the force from 17th April 1954 to 31st July 1954 and Magan Jiva was therefore, entitled to a charge on the field for the purchase price paid by him to the petitioner under Section 55(6)(b) of the Transfer of Property Act and the debt under this charge should be adjusted and the possession of the field should be handed over to the petitioner. On the main contention the learned trial Judge after carefully considering the evidence came to the conclusion that the transaction was a transaction of outright sale and was not in the nature of a mortgage and the applicant was therefore, not entitled to adjustment of the mortgage debt as claimed by him. The alternative contention was also rejected by the learned Civil Judge on the ground that it was beyond the jurisdiction of the Courts under the Saurashtra Agricultural Debtors Relief Act 1954 to examine whether the transaction of sale was hit by any provision of law invalidating transfers of agricultural lands by agriculturist debtors and the learned Civil Judge accordingly declined to go into the question whether the transaction of sale was void by reason of Section 4 of the Saurashtra Attachment of Agricultural Debtors Property (Temporary Exemptions) Act, 1954. The learned Civil Judge in the result rejected the application of the petitioner against Magan Jiva. The petitioner thereupon preferred an appeal in the District Court, Surendranagar. It appears that in the meantime Magan Jiva died leaving him surviving respondents Nos. 4(1) to 4(9) as his heirs and legal representatives and respondents Nos. 4(1) to 4(9) were, therefore, impleaded as party respondents in the appeal. Before the lower appellate Court the same two contentions were urged on behalf of the petitioners and the lower appellate Court rejected both the contentions. The lower appellate Court held that the transaction embodied in the sale deed dated 26th April 1954 was a transaction of sale and was not in the nature of a mortgage and so far as the question of validity of the sale was concerned, the Courts under the Saurashtra Agricultural Debtors Relief Act, 1954, had no jurisdiction to examine that question. The lower appellate Court accordingly dismissed the appeal of the petitioner and the petitioner thereupon preferred The present Revision Application in this Court challenging the view taken by the lower appellate Court.

2. This being a Revision Application the conclusion of the lower appellate Court that the transaction evidenced by the sale deed dated 26th April 1954 was an outright sale and was not in the nature of a mortgage could not be assailed by the petitioner and the petitioner, therefore, confined his arguments to the alternative ground of relief and urged that the sale effected under the sale deed dated 26th April 1954 was void as being in contravention of Section 4 of the Saurashtra Attachment of Agricultural Debtors Property (Temporary Exemptions) Act, 1954, and Magan Jiva and on his death respondents Nos. 4(1) to 4(9) were, therefore, entitled to a charge on the field for the purchase money paid by Magan Jiva to the petitioner under Section 55(6)(b) of the Transfer of Property Act and this debt was liable to be adjusted under the provisions of the Saurashtra Agricultural Debtors Relief Act, 1954. The validity of this argument was disputed on behalf of respondents Nos. 4(1) to 4(9) and it was sought to be repelled by a twofold contention. The first contention was that the debt adjustment Court had no jurisdiction to go into the question of validity of a sale effected by a debtor in favour of a creditor and to decide whether it was binding on the debtor and the second contention was that in any event even if the sale was void

under Section 4 of the Saurashtra Attachment of Agricultural Debtors Property (Temporary Exemptions) Act, 1954, Section 55(6)(b) of the Transfer of Property Act had no application and respondents Nos. 4(1) to 4(9) were not entitled to a charge on the field under that section and the application was accordingly not maintainable. The second contention is in my view well-founded and it is, therefore, not necessary to examine the validity of the first.

3. The second contention proceeds on the assumption that the petitioner was at the date of the sale an agriculturist debtor within the meaning of the Saurashtra Attachment of Agricultural Debtors Property (Temporary Exemptions) Act, 1954, and the sale purported to be effected under the sale deed dated 26th April 1954 was, therefore, void under Section 4 of that Act. The question is whether the sale being void, Magan Jiva and on his death respondents Nos. 4(1) to 4(9) could claim to have a charge on the field for the purchase money under Section 55(6)(b) of the Transfer of Property Act. Section 55(6)(b) runs in the following terms:-

"55. In the absence of a contract to the contrary, the buyer and the seller of immovable property respectively are subject to the liabilities, and have the rights, mentioned in the rules next following, or such of them as are applicable to the property sold.

.....

(6) The buyer is entitled :-

.....

(b) unless he has improperly declined to accept delivery of the property, to a charge on the property, as against the seller and all persons claiming under him, to the extent of the seller's interest in the property, for the amount of any purchase-money property paid by the buyer in anticipation of the delivery and for interest on such amount; and, when he properly declines to accept the delivery, also for the earnest (if any) and for the costs (if any) awarded to him of a suit to compel specific performance of the contract, or to obtain a decree for its rescission."

The argument of Mr. Rawal, learned advocate appearing on behalf of the petitioner, based on Section 55(6)(b) was that the petitioner was the seller and Magan Jiva was the buyer of the field and since the sale was void and the property in the field was not transferred to Magan Jiva, Magan Jiva as the buyer was entitled to a charge on the field for the purchase money paid by him and on the death of Magan Jiva, respondents Nos. 4(1) to 4(9) became entitled to this charge as the heirs of Magan Jiva. This argument though at first blush attractive is in my view without substance for it overlooks the fact that not only was the sale void by reason of contravention of Section 4 of the Saurashtra Attachment of Agricultural Debtors Property (Temporary Exemptions) Act, 1954, but the contract preceding the sale was also void right from the inception and Section 55(6)(b) could not, therefore, have any application. It may be pointed out that it was not the case of the petitioner that the contract for sale of the field was entered into between the parties prior to the coming into force of the Saurashtra Attachment of Agricultural Debtors Property (Temporary Exemptions) Act, 1954, so that the contract was valid when it was made

but its performance was subsequently rendered unlawful by the coming into force of that Act. It was common ground between the parties that the contract was made at a point of time immediately preceding the execution of the sale deed and the Saurashtra Attachment of Agricultural Debtors Property (Temporary Exemptions) Act, 1954, was, therefore, in force not only at the date of the sale but also at the date of the contract. Now the sale of the field being prohibited by Section 4 of the Saurashtra Attachment of Agricultural Debtors Property (Temporary Exemptions) Act, 1954, the Contract was clearly a contract to do an act forbidden by law and was, therefore, void under Section 23 of the Contract Act. If the contract was void ab initio it is difficult to see how Section 55(6)(b) could apply so as to create a charge in favour of Magan Jiva on the field for the amount of the purchase money paid by him to the petitioner. The rule enacted in Section 55(6)(b) is one of the several rules enacted in Section 55 defining the rights and liabilities of the buyer and the seller of immovable property, subject to a contract to the contrary between them. If the various rules set out in Section 55 are scanned properly, it is clear that they postulate a valid contract of sale between the seller and the buyer and proceed to lay down the rights and liabilities of the seller and the buyer prior to the completion of the sale under the contract and also subsequent to the completion. There can be no question of any rights and liabilities between the seller and the buyer prior to the completion of the sale unless there is a binding and enforceable contract between them and where the sale is void and there is, therefore, no completed sale transferring title in the property to the buyer, no rights and liabilities can exist between the seller and the buyer if there is no valid and binding contract of sale between them. The rights and liabilities of the seller and the buyer can arise either out of a contract of sale or out of a completed sale and if there is neither a valid and binding contract of sale nor a valid and effective completed sale, there can be no rights and liabilities between the buyer and the seller. The rights and liabilities of the buyer and the seller specified in the various rules set out in Section 55 can, therefore, have relevance only where there is a valid and binding contract of sale between the parties. The opening part of Section 55 which uses the words "in the absence of a contract to the contrary" also reinforces the conclusion that the rights and liabilities particularised in the section postulate the existence of a valid and binding contract of sale between the parties which may provide to the contrary displacing any of these rights and liabilities. Clauses (a) to (e) of Section 55(1) clearly refer to the liabilities of the seller before the completion of the sale and these liabilities cannot possibly attach to the seller before the completion of the sale unless there is a preceding contract of sale under which the seller is bound to sell the property to the buyer. There is inherent evidence in the language of Section 55(6)(b) itself to indicate that the charge under that section cannot arise where there is no valid contract of sale between the parties.

4. The words "unless he has improperly declined to accept delivery of the property" and "when he properly declines to accept the delivery" show beyond doubt that the section clearly contemplates a contract between the parties with reference to which it can be said whether the buyer has properly or improperly declined to accept the delivery. The words "buyer" and "seller" would also have no meaning if the rules set out in Section 55 were held applicable in a case where the sale is void and the contract of sale is also void, in such a case it is difficult to see how

the person purporting to transfer the property can be said to be the seller and the person purporting to take the property in transfer can be said to be the buyer. The former would not be the seller because he does not sell the property nor does he agree to sell the property and the latter would not be the buyer for he does not buy the property or agree to buy the property. It is well-settled that the words "buyer" and "seller" are referable not only to the stage when the sale is completed but also to the stage of the contract of sale. Vide *Deep Chandra v. Sajjad Ali Khan*¹, and *Surendra Maneklal v. Bai Narmada*², But these words cannot possibly apply where there is neither a valid and binding contract of sale nor a valid completed sale. It is, therefore, clear that in order to attract the applicability of the various rules set out in Section 55 there must be a valid contract of sale between the buyer and the seller. Where there is such valid and binding contract, the buyer and the seller, that is, the person who has agreed to buy and the person who has agreed to sell have such of the rights and liabilities mentioned in the rules as are applicable to the stage prior to the completion of the sale unless the contract of sale provides to the contrary and on completion of the sale, they have those rights and liabilities mentioned in the rules which are applicable to the

¹ A.I.R. 1951 All 93

² A.I.R. 1963 Guj 239 : IV G.L.R. 833

stage of completed sale, subject again to any contrary provision which may be made by the contract of sale. Where, however, there is no completed sale and there is no valid and binding contract of sale between the parties, the rights and liabilities mentioned in the rules specified in Section 55 can have no application and no claim to a charge on the property purported to be conveyed under a void sale can be made by the person to whom the property is purported to be conveyed for the amount of purchase money paid by him under Section 55(6)(b). It must, therefore, be concluded that since the contract of sale in the present case was, void, Section 55(6)(b) had no application and Magan Jiva and on his death, respondents Nos. 4(1) to 4(9) had no charge on the field for the amount of purchase money paid by Magan Jiva to the petitioner and the application for adjustment of the debt representing the purchase money paid by Magan Jiva to the petitioner was accordingly not maintainable.

5. The learned Civil Judge and the lower appellate Court were in the circumstances right in rejecting the application of the petitioner against Magan Jiva and his heirs, respondents Nos. 4(1) to 4(9). The Revision Application, therefore, fails and the rule is discharged. There will be no order as to costs of the Revision Application.

Application dismissed.