

Ch. Manphool Singh Vs. Ch. Ram Bilas

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Court : Allahabad

Decided On : Apr-01-1947

Reported in : AIR1948All99

Appellant : Ch. Manphool Singh

Respondent : Ch. Ram Bilas

Judgement :

Sinha, J.

1. This is a preemptor's appeal, and the only question is whether a certain transaction arms the vendee with a right to resist pre-emption.
2. The sale-deed in dispute was executed on 17th June 1942, for a sum of Rs. 4000. On 16th June 1942 that is, a day earlier, the vendee acquired from the vendors some property under an exchange. The land which was conveyed by the vendors, appears to be protected land, within the meaning of Section 24, of the Regulation of Agricultural Credit Act (Act 14 [xiv] of 1940). It is this section which is the fruitful source of controversy in this case.
3. The learned Munsif found that the necessary steps, which were required for an alienation within the meaning of this Act, were not taken. The learned Civil Judge held otherwise.

4. An application for permission to alienate the property was made by the vendors, Mt. Chando and Sheoraj Singh, to the learned Sub-Divisional Officer, which was allowed.

5. The learned Counsel for the appellant contends that what was permitted by the learned Sub-Divisional Officer was a sale of the property and not an exchange. The alienation is, therefore, affected by the prohibition contained in Section 24 of the Act. That section provides that:

A proprietor who wishes to make a permanent alienation of the whole or any part of his protected land shall apply for permission to the assistant collector in charge of the sub-division, in which his protected land or that part of it which is assessed to the largest amount of local rate, is situated.

A 'permanent alienation' has been defined to mean:

A transfer by sale, exchange, or gift but does not include a transfer by gift for a charitable purpose or a transfer by will.

6. The above makes it clear that the Legislature treated a sale or an exchange alike. This appears to be in consonance with the provision in the Transfer of Property Act. Section 54 says:

'Sale' is a transfer of ownership in exchange for a price paid or promised or part-paid and part-promised.' An 'exchange' has been defined thus:

When two persons mutually transfer the ownership of one thing for the ownership of another, neither thing or both things being money only, the transaction is called an 'exchange'.

7. The two transactions are, in one important particular, similar. Both speak of a permanent alienation of the property; the only difference is that, in the case of a sale, the return for the transfer of property is cash; in the case of an exchange the return is some property.

8. In the case before me, the property conveyed by the vendors was lost to them for all time to come, with this difference that, instead of getting some cash in

return, they got some property. The U.P. Regulation of Agricultural Credit Act was enacted for the benefit of agriculturists. Section 24 was intended to throw a special cloak of protection over them by prohibiting permanent alienation, unless certain specific conditions were fulfilled. The prohibition affected the property, which the vendors sought to convey. It was so far as the Act was concerned immaterial whether the return came to them in cash or in kind. Viewed in any light, the transaction of exchange, after the necessary permission of the Sub-Divisional Officer sanctioning alienation, was a good transaction.

9. It now remains to consider whether the, exchange, properly effected, constituted a bar to the claim for pre-emption. It has been conceded before me that the exchange came into being a day earlier than the sale in dispute. Section 20, Agra Pre-emption Act, lays down:

No suit for pre-emption shall lie where prior to the institution of such suit, the purchaser has transferred the property in dispute to a person having a right of pre-emption equal or superior to that of the plaintiff or has acquired an indefeasible interest in the mahal Which, if existing at the date of the sale or foreclosure would have barred the suit.

(The italics are mine)

10. The matter was considered in *Tara Chand v. Radha Swami* : AIR1934 All343 . A line of distinction has been drawn between a transaction on the basis of which the pre-emption is resisted, ejected prior to the sale and one brought about subsequent to it. It has been held that if it precedes the sale, it is enough to arm the vendee with a right of resisting the suit, even though it conveys a defeasible interest. If, on the other hand, it came into existence after the sale, the vendee must acquire an indefeasible interest before he is entitled to claim (resist?) pre-emption. Sulaiman C.J. delivering the judgment of the Court, observed as follows at page 307:

The position of the vendee, who is resisting the claim of pre-emptor on the ground that he himself is a co-sharer, must of a necessity be similar. If a pre-emptor can maintain a suit on the strength of a defeasible title, the vendee in the same way

can resist the claim on the ground of a defeasible interest if it existed at the time of the sale.

11. The transaction of exchange, whatever its character, if carried out with the permission of the Assistant Collector, armed the vendee with a right to resist pre-emption. The learned Civil Judge has found that such a permission was obtained by the vendors. The materials on the record support the conclusion he has reached.

12. I might mention that the learned first Civil Judge has said in his judgment that the vendors, in their application for permission presented on 26th May 1942, included both the items of property - the one embraced by the sale-deed and the other by exchange. If this is so, both are parts of the same transaction, and the case comes within the dictum of law laid down by this Court in *Randhir Singh v. Randhir Singh* : AIR1937 All665 and the plaintiff is out of Court.

13. I, therefore, think that the view taken by the Court below is correct, and I dismiss this appeal with costs.

14. Leave to file a Letters Patent Appeal is refused.

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