

Ehsanul Haq Vs. Mohd. Umar and anr.

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Court : Allahabad

Decided On : Feb-12-1973

Reported in : AIR1973All425

Judge : S. Malik, J.

Acts : Specific Relief Act, 1877 - Sections 18; [Transfer of Property Act, 1882](#) - Sections 6

Appeal No. : Second Appeal No. 4379 of 1964

Appellant : Ehsanul Haq

Respondent : Mohd. Umar and anr.

Advocate for Def. : S.P. Srivastava and ;Rama Shanker Mishra, Adv.

Advocate for Pet/Ap. : S.J. Haider, Adv.

Disposition : Appeal dismissed

Judgement :

S. Malik, J.

1. This is a defendant's appeal against the judgment dated 28-9-1964 of the Additional Civil Judge, Faizabad, dismissing the appellant's appeal and confirming the judgment and decree dated 17-7-1963 passed by the Additional Munsif

- Akbarpur, decreeing the plaintiff-respondent's suit for specific performance of a contract entered into between him and defendant No. 1.
2. The relevant facts are that defendant-respondent No. 2 who was defendant No. 1 in the trial Court entered into the agreement dated 1.2.4-1958 (Ex. 2) with the plaintiff thereby agreeing to sell to the plaintiff the property in suit which is house property. The property had been declared to be evacuee property and it was duly auctioned as such. The auction was completed on the 14th of April, 1958. Subsequently, the sale certificate was issued on the 19th of March, 1959 declaring that defendant No. 1 who was the highest bidder had become its owner with effect from the 1st of February, 1959. It appears that after obtaining the sale-certificate defendant No. 1 executed a sale-deed on 24-0-59 in favour of defendant No. 2.
3. According to the plaintiff he had been trying to persuade defendant No. 1 to carry out the agreement entered into between them, but ultimately he came to know that surreptitiously he had executed the sale-deed in favour of defendant No. 2. With these allegations the suit was filed on the 12th of April, 1961. It may also be mentioned that both the courts below have found that defendant No. 2 got the sale-deed executed in his favour by defendant No. 1 knowing full well about the agreement entered into between defendant No. 1 and the plaintiff.
4. The courts below have held that, as appears from a perusal of Ex. 2, defendant No. 1 had already made the highest bid in the auction sale for the property and therefore, had acquired an 'imperfect title' to the same within the meaning of Section 18 of the Specific Relief Act, 1877 and on his finding decreed the plaintiff's suit keeping in view the other facts already narrated.
5. The only question raised in this Court was whether keeping in view the facts of the case it could be said that on the date of the agreement defendant No. 1 had an 'imperfect title' within the meaning of Section 18 of the Specific Relief Act, 1877.
6. In the Act of 1963 in Section 13 which replaced Section 18 of the old Act, before the words 'having only an imperfect title thereto' the words 'no title or' were added. This change was probably made to clarify the law as the old Section 18 and the new Section 13 are based on the well-known rule of estoppel sometimes referred

to as feeding the grant by estoppel.

7. The Calcutta High Court in the case of Prem Sukh Gulgulia v. Habib Ullah, (AIR 1945 Cal 3551 held that transfers of non-existent or as it is conveniently called, after acquired property, provided they are not of the nature contemplated in Section 6(a) are perfectly valid. The transfer would be regarded in a court of justice as contract to transfer after the vendor had acquired title and would fasten upon the property as soon as the vendor acquired it. A contract of sale of property which is not of the vendor's at the time of the contract, but which the vendor thinks of acquiring by purchase later on, is not bad in law. I respectfully agree with the view taken by the Calcutta High Court.

8. In my view also, an agreement to sell of the nature entered into between the parties, is a valid agreement and is, therefore, enforceable in law unless it is shown that the agreement is hit by the provisions of Section 6(a) of the Transfer of Property Act or by any other law. Learned counsel for the appellant has not been able to show me any provision of law which would make such an agreement, as was entered into in this case, invalid.

9. The learned counsel for the appellant has relied on Section 6(a) of the Transfer of Property Act and specially on the words. '..... any othermere possibility of a like nature cannot be transferred' in support of his contention that the agreement in question in the instant case is hit by Section 6(a) of the Transfer of Property Act.

10. To be more explicit, the question to be answered is whether the chance of defendant No. 1 becoming the owner of the property, he agreed to sell to the plaintiff, so that he may execute a valid sale-deed in respect of the same, was as remote as in the two cases mentioned, namely, of the heir apparent or of a relation obtaining a legacy on the death of a living kinsman. The third category, relied upon, must be 'of a like nature'.

11. In my view, the question must be answered in the negative as in this case the possibility of the defendant's (No. 1) acquiring the property he had agreed to sell, was neither so remote nor of the same category as enumerated in Section 6(a) of the Transfer of Property Act which deals with cases of the nature of 'Spes

Successionis', a mere chance of succession. Though in this case the execution of the sale-deed might have depended on the ultimate sanction of the Custodian General, the auction-purchaser had paid a portion of the sale-price and the sanction did not depend on a mere chance or whim of the Custodian General. The Custodian General having sanctioned the auction sale, defendant No. 1's inchoate right to the property had matured into a perfect right to execute the sale-deed in the plaintiff's favour.

12. I am further of the view that the addition of the words 'no title or' before the words 'imperfect title' merely clarifies the law and does not change it. This view is supported by Sub-section (a) of Section 18 of the Specific Relief Act, 1877. It lays down

'If the vendor or lessor has subsequently to the sale or lease acquired any interest in the property, the purchaser or lessee may compel him to make good the contract out of such interest.'

To my mind, the words 'any interest' appearing in Sub-section (a) of Section 18 make it clear that at the time of agreement the vendor may not have had any interest in the property at all. If a contrary view is taken, the result would be that no contract of sale even if valid can be enforced and specific performance claimed before the new Act of 1963 came into force, if the contract was entered into before the prospective vendor had got a deed of transfer in his favour. A reference may here be made to the following portion of Section 54 of the Transfer of Property Act:--

'..... a contract for the sale of immovable property is a contract that a sale of such property shall take place on terms settled between the parties. It does not of itself, create any interest in or charge on such property.' On the date of the agreement the prospective vendor cannot be said to have 'any interest in or charge on such property.'

From the deed (Ex. 2) it appears that in this case the vendor had already made the highest bid and, therefore, the courts below came to the conclusion that though at the time of the agreement he had no title to the property in suit, he nevertheless

had an 'imperfect title' within the meaning of Section 18 of the Specific Relief Act.

13. From what has been discussed. I see no reason to differ from the view taken by the courts below. The appeal is dismissed with costs. The stay order dated 4-8-1965 is hereby vacated.

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