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ilam Chand and Another Vs. Mam Chand

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Court : Allahabad

Decided On : May-19-1998

Reported in : 1998(3)AWC1814

Judge : P.K. Jain, J.

Acts : Specific Relief Act, 1963 - Sections 20; Uttar Pradesh Consolidation of Holdings Act, 1953 - Sections 30; Transfer of Property Act, 1882 - Sections 54; Indian Contract Act, 1872 - Sections 56

Appeal No. : Civil Revision No. 741 of 1984

Appellant : ilam Chand and Another

Respondent : Mam Chand

Advocate for Pet/Ap. : H.N. Sharma, Adv.

Judgement :

P.K. Jain, J.

1. Heard Sri Harsh Narain Sharma, learned counsel for therevisionists. None appeared for the opposite party (defendant).

2. Revisionists filed Suit No. 2 of 1981 for specific performance of the contract on the basis of an alleged agreement to sell certain plots of land for a sum of Rs.

66,000. During the pendency of the suit, the defendant-opposite party moved an application for amendment of the written statement which was allowed. The defendant had taken a plea that the plots of land in respect of which there was an agreement to sell between the parties had been allotted to some other person during consolidation proceedings and, therefore, no decree for specific performance of contract could be passed. After such amendment was carried out in the written statement, the revisionists-plaintiffs moved application for amendment of the plaint as contained in Annexure-1 to the affidavit filed with the present revision application. In the amendmentapplication, the revisionists alleged that the defendant has amended his written statement taking up plea that during consolidation proceedings the plots mentioned in the disputed agreement to sell have been allotted to some other person and in its place defendant has been allotted new plots. Therefore, in respect of the plots mentioned in the agreement to sell, no decree for specific performance could be passed. It was also stated in the amendment application that the plaintiffs had been advised that the plaintiffs, in the alternative, can claim a decree for sale of the newly allotted plots of land to the defendant. Therefore, the proposed amendments have become necessary. By the proposed amendments, the plaintiffs wanted to add para 7/A in the plaint wherein they stated that during the pendency of the suit. In order to frustrate the suit of the plaintiffs, the defendant in collusion with the consolidation authorities/officials and also in collusion with his wife, Smt. Raja Del, got the entire plots of land mentioned in the agreement to sell transferred to the chak of Smt. Raja Del. the wife of the defendant and also got his new chak created out of the plots originally existing in the name of Smt. Raja Del although the defendant is still in possession of the disputed plots of land. The defendant, therefore, cannot take advantage of this situation. It was also stated that such an objection was taken by the plaintiffs before the consolidation court and an appeal Babu Ram v. Raja Dei, being Appeal No. 358 is pending for disposal. Another para 7B was proposed to be added by the said amendment stating therein the new numbers of the plots allotted to the defendant during the consolidation 'proceedings and further alleging that the plaintiffs were ready to purchase these plots of land for the same amount viz., Rs. 66,000 and that there was no legal obstacle in passing a decree for specific performance with regard to these plots of land. In the prayer clause, the plaintiffs

proposed to add relief (B) being consequential or alternate relief in view of the amendments as contained in newly added paras 7A and 7B in the plaint.

3. The defendant-opposite party filed objections as contained in Annexure-2 to the affidavit wherein he contested the amendment application on the ground that by proposed amendments the nature of the suit shall be changed and that there was no agreement to sell in respect of the newly allotted plots to the defendant and in respect of them no suit was maintainable.

4. The trial court by the impugned order dated 14.9.84 rejected the application for amendment.

5. Learned counsel appearing for the revisionists contends that the learned trial court has exceeded its jurisdiction in holding that decree in respect of the newly allotted plots to the defendant during consolidation, proceedings cannot be passed and that the Court below has failed to take into consideration the fact that the plaintiffs-revisionists categorically alleged collusion and fraud between the defendant and his wife on account of which the plots mentioned in the agreement to sell were got allotted in the chak of the defendant's wife whereas the plots originally existing in the name of the defendant's wife were included in the chak allotted to the defendant and this was got done in order to frustrate the suit of the plaintiffs.

6. So far as the first contention of the learned counsel for the revisionists is concerned, as already pointed out above, a specific objection was raised on behalf of the defendant-opposite party that since there was no agreement to sell in respect of the plots Included in the newly allotted chak of the defendant, no suit for specific performance in respect of such land was maintainable. The Court was, therefore, bound to dispose of such a question. There is no dispute that the plaintiffs suit was in respect of certain plots of land as mentioned in the alleged agreement to sell. Admittedly, these plots were allotted to the wife of the defendant during consolidation proceedings. The defendant was no more owner of the plots of land which were mentioned in the agreement to sell and by virtue of these plots having been included in the chak allotted to the defendant's wife, he could not have executed or he could not beforced to execute sale deed in respect of the

plots of land Included in the chak of the wife of the defendant. There was no contract to sell between the plaintiffs and the defendant with regard to the newly allotted plots of land. Therefore, no decree for specific performance of contract could be passed in respect of the plots of land included in the newly allotted chak of the defendant. The above view taken by me is supported from the decision of the Supreme Court in Satyabrata Ghose v. Mugneeram Bangur and Co., AIR 1954 SC 44, wherein the Supreme Court laid down the following proposition :

'According to the Indian Law, which is embodied in Section 54 of the T. P. Act, a contract for sale of land does not of itself create any interest in the property which is the subject-matter of the contract. The obligations of the parties to a contract for sale of land are, therefore, the same as in other ordinary contracts and consequently the doctrine of frustration is applicable to contracts for sale of land in India.'

7. A Full Bench of this Court in Mahendra Nath and another v. Smt. Baikunthi Devi and others, AIR 1976 All 150, had held as follows :

'In view of Section 30 of the U. P. Consolidation of Holdings Act, a tenure-holder gets the same rights, Interests and liabilities in the original holdings cease after the allotment of the chak. But a person who has got only a contract for sale or has got a decree for the specific performance of the contract, has got no interest in the land. He can only enforce the contract compelling the other side to execute the sale deed falling which the Court might execute a sale deed for the defendant, but the rights and liabilities under the contract do not attach to the land. The key words in Section 30 of the U. P. Consolidation of Holdings Act are 'the rights, title, Interests and liabilities in their respective holdings shall cease.' The question of ceasing of the interests would arise only when the plaintiff had an interest in the land, but till the sale deed was executed, the plaintiff could not get any right in the land.'

8. The view taken by the Full Bench in Mahendra Nath's case was affirmed by the Apex Court in Smt. Baikuntht Devt v. Mahendra Nath, AIR 1977 SC 1514. There is yet another case Piarey Lal v. Hori Lal, AIR 1977 SC 1226, in which the Court had held that 'the agreement for sale in the said case did not give rise to any interest

'in' the original holdings of the defendant as tenant-holder. Consequently, there was no occasion for the transfer of any such liability 'in' the new land or the chak of the defendant so as to attract clause (b) of Section 30 of the Act. Thus, when he lost his original land as a result of the scheme of consolidation and his rights, title and interest ceased in that property by virtue of clause (a) of Section 30 of the Act, the agreement for sale became void within the meaning of Section 56 of the Contract Act.'

9. A number of decisions were considered by this Court in the case of Surat Ram v. Vijaya and others, 1981 ACJ 282, and it was held that 'the principle laid down in the above decision Piarey Lal v. Hari Lal, (supra) is that the rights of the previous tenure-holder ceased in the plots which he had contracted to sell. Consequently, it was Incapable of being converted. The doctrine of frustration would come into play and the contract would not be capable of being specifically enforced.'

10. In view of the above settled position of law, and in view of the specific plea taken by the defendant-opposite party in his objection, the Court below was bound to decide objection and there is no illegality or infirmity in the conclusion arrived at by the Court below. By disposing of the objection raised by the defendant, it cannot be said that the Court below has exceeded its jurisdiction. Impugned order, therefore, cannot be challenged on this ground.

11. There, however, appears to be some substance in the second contention of the learned counsel for the revisionists. In the amendment application as pointed out earlier, the revisionists had taken a specific pleathat in order to frustrate the suit of the plaintiffs, the defendant in collusion with his Wife and the consolidation authorities and officials got the plots of land involved in the agreement to sell in question included in the chak of his wife Smt. Raja Del whereas the plots of land existing in the name of Smt. Raja Del wife of the defendant were got included in the chak of the defendant. This aspect of the matter has not been considered by the trial court and this requires consideration by the Court below. If by a collusive act of the defendant and his wife and consolidation authorities, the plaintiffs' right to have a decree of specific performance is thwarted or frustrated, then plaintiffs can amend their plaint suitably. It is stated in the amendment application that the

plaintiffs had filed appeal against the collusive order of inclusion of plots in question in the chak allotted to the defendant's wife which was pending for decision. The result of the said appeal is not known. Therefore, it is expedient in the interest of justice that the matter be sent back to the trial court for disposal of the amendment application afresh by considering above aspects of the matter as also result of the appeal filed by the plaintiffs before the appellate consolidation authority.

12. In the result, revision is allowed. Impugned order dated 14th September, 1984 rejecting plaintiffs amendment application (70-A-1) is set aside and the trial court is directed to dispose of the amendment application and its objection afresh in the light of the observations made above after affording opportunity of being heard to the parties.

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