

Jit Singh and ors. Vs. Piara and anr.

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Court : Punjab and Haryana

Decided On : Mar-11-2003

Reported in : AIR2003P& H258

Judge : M.M. Kumar, J.

Acts : Punjab Package Deal Properties (Disposal) Act, 1976 - Sections 18; Punjab Package Deal Properties (Disposal) Rules, 1976 - Rule 6; ;[Evidence Act, 1872](#) - Sections 115; [Transfer of Property Act, 1882](#) - Sections 41 and 53A

Appeal No. : Second Appeal No. 447 of 2003

Appellant : Jit Singh and ors.

Respondent : Piara and anr.

Advocate for Def. : Mr. Ashok Singla

Advocate for Pet/Ap. : Ashok Singla, Adv.

Disposition : Appeal dismissed

Judgement :

M.M. Kumar, J.

1. This is defendant's appeal filed under Section 100 of the Code of Civil Procedure, 1908 (for brevity 'the Code'), challenging the judgment and decree

dated 6-11-2002 passed by the learned Addl. District Judge, Kapurthala reversing the findings of facts returned by the Add. Civil Judge (Sr. Division), Sultanpur Lodhi in his judgment and decree dated 17-9-1997. The Appellate Court has held that sale deed Ex. D1 dated 11-1-1993 does not transfer any right or title to the defendant-appellant because the sale deed had been executed on 11-1-1993 by one Jagir Singh the power of attorney of the plaintiff-respondent which was cancelled on 24-11-1992. It has further been found that the plaintiff-respondent is a member of a Scheduled Caste who had purchased the suit land in a restricted auction held on 27-1-1977. According to the terms of the restricted auction, the plaintiff-respondent could not have transferred or alienated any right in the suit land for a period of 20 years to a vendee belonging to non-Scheduled caste. There has been a red ink entry in the jamabandi for the year 1988-89 which clearly stated that the suit land could have been sold only to a member of a Scheduled Caste and that too, after a period of 20 years. The learned Addl. District Judge has also referred to Rule 6(8) of the Punjab Package Deal Properties (Disposal) Rules, 1976 (for brevity 'the rules') which imposes a restriction on the right of a person who have purchased land in a restricted auction from alienating the same for a period of twenty years. The Rule further provides that the auction purchaser cannot alienate or mortgage with possession or transfer the land for a period of 20 years. These findings of facts are sought to be assailed by the defendant-appellant in the instant appeal.

2. Mr. Ashok Singla, learned counsel for the defendant-appellant has argued that issue No. 1 is whether sale deed dated 11-1-1993 executed by defendant-respondent 2 in favour of defendant-appellants Nos. 3 to 8 is fictitious and without consideration and whether the plaintiff-respondent 1 is entitled for declaration as prayed for'. According to the learned counsel, the sale deed was not challenged on the ground that no transfer could have taken place within a period of 20 years and that too to a non-scheduled Caste, The learned counsel has also argued that the plaintiff-respondent would not be entitled to enjoy the fruits of this litigation as he himself has committed fraud and violated Rule 6(8) of 'the Rules'. He has further argued that under Section 53-A of the [Transfer of Property Act, 1882](#) (for brevity 'the Act'), the defendant-appellant is entitled to protect his possession under the agreement to sell as possession of the suit land was delivered to the defendant-

appellant in the part-performance of the agreement to sell. The learned counsel has also argued that the period of 20 years has now passed and therefore, he is entitled to retain the possession. Another argument raised by Sh. Ashok Singla is that under Section 41 of 'the Act', the plaintiff-respondent being ostensible owner was not entitled to avoid the transfer of the land in dispute.

3. I have thoughtfully considered the submissions made by the learned counsel for the defendant-appellant and have reached the conclusion that this appeal is devoid of merit and the same is thus liable to be dismissed. Rule 6(8) of the Rules categorically provides that a person like the plaintiff-respondent who has purchased the land in restricted auction cannot for 20 years alienate, transfer mortgage with possession any such land or part of the land wholly or partly in any manner in favour of a person who is not a member of a Scheduled Caste. Rule 6(8) is reproduced hereunder for facility of reference :

6. Sale of land or property by auction :

(2) Land to be sold by public auction

(3) to (7)

(8) Bar on the alienation of the land purchased in restricted auction :--

(i) Where any land has been sold in restricted auction, the auction purchaser shall not be entitled to lease, transfer, sell, mortgage with possession or otherwise alienate or part with the land wholly or partly, so purchased, in any manner, in favour of a person who is not a member of the Scheduled Castes or Backward Classes for a period of twenty years; provided that the land may be pledged in favour of a Government or Semi-Government Corporation or Co-operative financing institution for securing loan for effecting improvements on the said land.

(ii) An auction purchaser in restricted auction shall cultivate the land so purchased or through any member of the Scheduled Castes or Backward Classes only.

(iii) If an auction purchaser in restricted auction violates any of the conditions, mentioned in Clauses (i) and (ii) above, the Tehsildar (Sales) or Naib-Tehsildar

(Sales) shall be competent to cancel the sale, forfeit the amount already paid, and resume the land, after giving due notice to him.

4. A perusal of the above Rule shows that for a period of 20 years an embargo has been imposed on an auction purchaser Scheduled Caste from alienating, transferring or mortgaging with possession or in any manner part with the land wholly or partly to a person who does not belong to Scheduled Caste. A limited permission has been granted by the Rule in favour of such an auction purchaser for pledging the land, in favour of a Government or Semi-Government Corporation or Co-operative financing institution for securing loan and that too for effecting improvement on the land. It is well-settled that there cannot be any estoppel against a Statute. Moreover, in the jamabandi for the year 1988-89 Ex. P3, there is a red ink note stating that the suit property cannot be sold for a period of 20 years. It has further been found by the learned Lower Appellate Court that the power of attorney dated 25-5-1988 Ex. D2/a executed in favour of one Jagir Singh was cancelled on 24-11-1992, therefore. Jagir Singh could not have executed the sale deed on 11-1-1993. The defendant-appellant can also not claim that he is a bona fide purchaser of the suit land because with reasonable caution and care, he could have ascertained from the red ink note in the jamabandi for the year 1988-89 that the land could not be sold for a period of 20 years. He had proceeded to purchase the suit land at his peril and risk and therefore, cannot take any benefit of the sale deed. It is well-settled that there cannot be any estoppel against a statute. This proposition of law has been repeatedly followed and reiterated in the following judgments of the Supreme Court viz. *State of Punjab v. Hardyal* (1985) 2 SCC 629 : (AIR 1985 SC 920), *Inder Sain Mittal v. Housing Board, Haryana*, (2002) 3 SCC 175 : (AIR 2002 SC 1157). Therefore, in view of the bar created by Rule 6(8) of the Rules the sale deed Ex. D1 dated 11-1-1993 is of no consequence, therefore, no occasion is provided to interfere with the findings of facts recorded by the learned Lower Appellate Court.

5. The argument of the learned counsel that under Section 53-A of the Act, there was a part performance of agreement to sell dated 25-5-1988 Ex. D2(P14) executed by the plaintiff-respondent in favour of the defendant-appellant inasmuch as the defendant-appellant had been given the possession of the suit land would

not require any serious consideration for the simple reason that Section 53-A of the Act pre-supposes the existence of a lawful contract between the parties. It is not conceivable to enter into a contract in violation of any express provision of law as provided by Rules 6(8) of the Rules. Such a contract would be a still born contract and would not have any legal force. Section 23 of the Indian Contract Act, 1872 (for brevity 'Contract Act') provides that consideration or object of an agreement would be unlawful if it is forbidden by law or is such a nature that if permitted, it would defeat the provisions of law. Section 23 of the Contract Act reads as under :--

23. What considerations and objects are lawful, and what not.-

The consideration or object of an agreement is lawful, unless it is forbidden by law:

is of such a nature that, it permitted, it would defeat the provision of any law; or is fraudulent or

involves injury to the person or property of another; or

the Court regards it as immoral or opposed to public policy.

In each of these cases the consideration or object of an agreement is said to be unlawful. Every agreement of which the object or consideration is unlawful is void.

Illustrations

(a) to (f).....

(g) A being agent for a landed proprietor, agrees for money, without the knowledge of his principal to obtain for B a lease of land belonging to his principal. The agreement between A and B is void, as it implies a fraud by concealment by A on his principal.

(h) A promises B to drop a prosecution which he has instituted against B for robbery, and B promises to restore the value of things taken. The agreement is void, as its object is unlawful.

(i) As estate is sold for arrears of revenue under the provisions of an Act of the Legislature, by which the defaulter is prohibited from purchasing the estate B, upon an understanding with A, becomes the purchaser and agrees to convey the estate too A upon receiving from him the price which B has paid. The agreement is void, as it renders the transaction, in effect, a purchase by the defaulter, and would to defeat the object of the law.

(j) & (k)

6. The aforementioned provisions has been subject matter of a catena of judgments of the Supreme Court. In the case of Lachoo Mal v. Radhey Shyam (1971) 1 SCC 619 : (AIR 1971 SC 2213) the Supreme Court interpreted the words 'if permitted it would defeat the provisions of any law used in Section 23 of 'Contract Act'. Holding that it refers to performance of an agreement which necessarily entails transgression of the provisions any law their Lordships observed as under :

'What makes an agreement, which is otherwise legal, void is that its performance is impossible except by disobedience of law. Clearly no question of illegality can arise unless the performance of the unlawful act was necessarily the effect of an agreement.....'

7. An agreement between two parties for wielding influence with government authorities by one to secure a decision in favour of the other has been held as opposed to public policy and hence unlawful and void. The aforementioned view has been taken by the Supreme Court in Rattan Chand Hira Chand v. Askar Nawaz Jung (1991) 3 SCC 67 : (1991 AIR SCW 496). Similar contracts to stifle and withdraw prosecution or give no evidence against accused charged with offence of public nature has been held to be one founded on an unlawful consideration and, therefore, void in State of U. P. v. Kapil Deo Shukla, AIR 1973 SC 494. Similar view has been taken by the Supreme Court in Gurmukh Singh v. Amar Singh (1991) 3 SCC 79 : (1991 AIR SCW 874).

8. In the instant case express provision of Rule 6(8) of the Rules have been violated by the agreement to sell dated 25-5-88 which prohibited the sale, transfer

or alienation in any manner of suit property before the expiry of a period of 20 years. The period of 20 years was to expire on 27-1-1997, therefore, no reliance could be placed on the agreement dated 25-5-88. Even statutory guidance can also be ascertained from illustration (1) appended to Section 23 of the 'Contract Act' which clearly shows that if consideration of an agreement is unlawful then such agreement is void. The argument is absolutely misconceived and is thus liable to be rejected.

9. The other argument of the learned counsel based on Section 41 of the Act would also suffer for similar malady because Section 41 expressly provides that if the vendee after taking reasonable care to ascertain that the vendor had a power to make the transfer and had acted in good faith then he could have transferred the land. Section 41 of the Act reads as under :

41. Transfer by ostensible owner :

Where, with the consent, express or implied of the persons interested in immoveable property, a person is the ostensible owner of such property and transfers the same for consideration, the transfer shall not be voidable on the ground that the transferor was not authorised to make it; provided that the transferee, after taking reasonable care to ascertain that the transferor had power to make the transfer, had acted in good faith.

10-11. A perusal of Section 41 makes it abundantly clear that vendee must have acted in good faith after making reasonable enquiry. The appellant-vendee in the present case could have easily ascertained that there is a bar created by Rule 6(8) of the Rules from transferring, alienating and mortgaging with possession or parting with the land in dispute wholly or partly. The vendee could have easily found from the red ink entry also in the jamabandi Ex. P3 which clearly indicated that the land in dispute could not be sold for 20 years. On the bare perusal of Section 41 of the Act. it is evident that the defendant-appellant did not act in good faith. Therefore, I have no hesitation in rejecting the argument raised by the learned counsel on behalf of the defendants-appellant. The appeal is without merit and is thus liable to be dismissed.

12. For the reasons recorded above, this appeal fails and the same is dismissed.

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