

Kripa Vs. Sufeda

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Court : Rajasthan

Decided On : May-24-1988

Reported in : 2(1988)WLN(Rev)148

Judge : Jagdish Sharan Verma, C.J. and ; Inder Sen Israni, J.

Appeal No. : D.B. Civil Special Appeal Nos. 1, 5 and 7 of 1988

Appellant : Kripa

Respondent : Sufeda

Disposition : Appeal dismissed

Judgement :

Inder Sen Israni, J.

1. The above mentioned three appeals arise out of different suits filed for specific performance and are disposed of by common judgment as identical questions arise in all these appeals Appellants entered into an agreement for sale in respect of different portions of agricultural land, situated in district Alwar, on June 10, 1986 which were between permanent allottees of those lands. These lands were earlier evacuee properties and were transferred to Slate, the allotment of which was governed by Rajasthan Land Revenue (Permanent Allotment of Evacuee Agricultural Land) Rules, 1963 (here in after referred to as 'the Rules'). The first

contention of Shri H C Rastogi learned Counsel for the appellants is that the agreement to sell itself was void and illegal in as much as it went against the specific provisions of allotment in Sub-rules (5) & (7) of Rule 5 of the Rules. It is pointed out that the allottee could not sell, mortgage or in any other manner transfer or part with the possession of the whole or any part of land or his interest in the same so long as the full price of the land together with the interest due, if any and all out standings of the land were paid in full. Admittedly the respondents paid the loan installments and interest etc. to the State after they entered into agreement for sale. It is therefore, contended that since agreement itself was void, the subsequent sale also becomes illegal.

2. We do not find any force in this contention of the learned Counsel as the agreement to sell stands on different footing than the sale of land as far as Sub-rule (5) of the Rule 5 is concerned it prohibits the parting with the possession of the whole or any part of the land or interest of the allottee in the same. Evidently an agreement to sell does not transfer interest of the allottee in the land. In the agreement itself one of the conditions mentioned is that the respondent was to pay balance of installments, if any as well as the loan of the rehabilitation department, which the respondents have done as per the agreement itself. This point has been dealt with in detail by the learned Single Judge and we, therefore, find no substance in this contention.

3. The next contention of the learned Counsel is that the respondents were not ready and willing to perform their part of the contract in as much as they did not purchase the stamp paper and did not submit the draft of the sale-deed to the appellants to show that they were ready and willing to perform their part of contract. A reference in this respect has been made to the case of Mst. Suraj Bid v. Nuwab Mohammed 1969 RLW 597. This contention of the learned Counsel has also no substance as it cannot be said that merely because the stamp paper were not purchased and handed over to the appellants, it can be said that the respondent was not prepared to perform his part of the contract. Readiness and willingness of person to perform the contract cannot be judged in isolation from the other facts and circumstances and background of the whole matter. In this case the fact that the respondents paid the installments and loan etc. to the State as per

terms and conditions laid down in the agreement and obtained no due certificate a suit was filed and an injunction was obtained restraining appellants/allottees from selling the property in dispute, amply proves that they were ready and willing to perform their part of the contract. It was, therefore, merely a formality for the respondents to have purchased stamp papers and get a draft of sale-deed prepared and hand-over the same to the appellant when they knew that they were not willing to perform their part of the contract. This contention of the appellants, therefore, has no force.

We do not find any infirmity in the order of the learned single judge and the appeals are hereby dismissed

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