

Balak Ram Vs. Surat Ram and ors.

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Court : Himachal Pradesh

Decided On : Sep-14-1956

Judge : Ramabhadran, J.C.

Acts : [Code of Civil Procedure \(CPC\) , 1908](#) - Order 23, Rule 3; ;[Easements Act, 1882](#) - Sections 52 and 62; ;[Transfer of Property Act, 1882](#) - Sections 5 and 10

Appeal No. : Second Appeal No. 4 of 1956

Appellant : Balak Ram

Respondent : Surat Ram and ors.

Advocate for Pet/Ap. : B.D. Kashyap, Adv.

Disposition : Appeal dismissed

Judgement :

Ramabhadran, J.C.

(1) In this second appeal by Balak Ram, defendant No. 3, his learned counsel urged that the Courts below have erred in enforcing the terms of the compromise entered into by Kashi Ram and Ruldu (defendants 1 and 2 on one side and Mansu, father of Surat Ram, plaintiff-respondent, on the other, in the Court of the District Judge of Ghund on 26-4-1946. That compromise related to 11 bighas and 5 biswas of land as well as a residential house, situated in village Bassa Baghain.

Both the land as well as the house were sold by Kashi Ram and Ruldu in favour of Balak Ram (the present appellant) on 26-12-1952.

Surat Ram contended that the sale was against the terms of the compromise and, consequently, would not bind him. The trial Court (Subordinate Judge of Theog) granted Surat Ram a decree for possession of the house in dispute. As regards the land, the plaintiff was granted a declaration that the sale effected by defendants 1 and 2 in favour of defendant No. 3 was null and void and would not affect the plaintiff's 'reversionary' rights under the compromise of 26-4-1946. On an appeal being taken by Balak Ram to the learned District Judge (Kashi Ram having absented himself both at the trial and in the appeal to the learned District Judge), the decree for possession of the house in question was maintained.

As regards the declaratory decree in respect of the land, the lower appellate Court slightly Varied the decree of the trial Court, i.e., in this way that for the words 'reversionary rights of the plaintiff under the compromise', the words 'rights of the plaintiff under the compromise' were substituted. Hence, this second appeal by Balak Ram. Here, too, Kashi Ram has not appeared. The contest was confined to Balak Ram, defendant, on one side, and Surat Ram, plaintiff, on the other.

(2) It would be convenient to split up the arguments, advanced by the learned counsel for the parties, into two portions, i.e., one portion relating to the house in question and the other regarding the land in suit.

(3) Let us take up the question of the house first.

(4) Mr. Kashyap for the appellant argued that the Courts below have erred in overlooking the terms of the decree Ex. P-3 passed by the District Judge of Ghund on 26-4-1946. He pointed out that under the terms of the decree, Kashi Ram and Ruldu were to hold the house in dispute, 'as owners'. As the learned District Judge has rightly pointed out, the decree (Ex. P-3) was not correctly prepared, i.e., it is not in accordance with the terms of the compromise.

A perusal of the terms of the compromise (Ex. P-4) shows clearly that Kashi Ram and Euldu were merely permitted to reside in the house in question. It was

specifically mentioned therein that ownership would remain vested in Mansu. Obviously, it is not open to the appellant to take advantage of the error that has crept into the decree. As was held by a Division Bench of the Calcutta High Court in *Amrita Sundari Devi v. Sherajudin Ahamed*, AIR 1915 Cal 464 (A)--which has been referred to by the lower appellate Court-

"A consent decree cannot have greater validity than the compromise itself."

(5) It is, therefore, quite clear that under the terms of the compromise, Kashi Ram had only a right of residence in the house in question. Mr. Kashyap for the appellant invited my attention to the statement of the plaintiff at the trial to the effect that the house had been given to Ruldu for his life for residential purposes. As already remarked, under the terms of the compromise, the house in question was given to Ruldu and Kashi Ram for residential purposes, although the period was not specified.

I fail to see how, under the circumstances, Kashi Ram validly could have sold the house in question to Balak Ram, appellant. Under the provisions of Sections 52 and 62 of the Easements Act, the licence in favour of defendants 1 and 2 stood revoked, consequent to the sale. The result is that the plaintiff would be entitled to the possession of the house. In *Suraj Baksh Singh v. Bhugga*, AIR 1933 Oudh 302 (B), a learned Judge of that Chief Court indicated that:

"The house tenants in the village of Wazirnagar, Pargana Misrikh, District Sitapur, have no power to execute a usufructuary mortgage of their right to reside in the house, as they have no transferable rights in the house and ahata. They are mere licensees occupying the house as an appurtenant to the holding and the license to reside in the house must be deemed to be revoked under Section 62, Easements Act, where the license is granted for a specific purpose and the purpose is abandoned or has become impracticable."

On the same analogy, it can be said here that the purpose for which the license had been granted became impracticable, when the house was sold to Balak Ram.

(6) I may, in passing, point out that an application, purporting to be under Order 6, Rule 17, was put in by Balak Ram, defendant, on 15-12-1954, requesting the trial Court to permit him to amend his written-statement in this way that an additional plea was to be taken to the effect that before the sale in question, a Panchayat was convened, where Surat Ram was given the option of purchasing the property in question.

It was after his refusal to do so, that the sale in favour of Balak Ram was effected. This application was disallowed, and in my opinion rightly, by the trial Judge on 18-12-1954. Bearing in mind that the written-statement had been filed by Balak Ram as early as 10-4-1954, it was, obviously, an after-thought to plead, nearly 8 months later, that the sale had taken place after giving the first refusal to Surat Ram.

(7) In view of what has been said above, I hold that the Courts below were right to granting the plaintiff a decree for possession of the house in question.

(8) That brings us to the second portion of the arguments advanced to this Court, i.e., in respect of the land in question, measuring 11 bighas 5 biswas. Before the Courts below, it was urged--as was urged here also--that Clause 2 of the compromise (Ex. P-4) was void and inoperative, since it was hit by the provisions of Section 10 of the Transfer of Property Act. This contention, however, was not accepted by either of the Courts below.

In repelling this contention, the learned District Judge has pointed out, firstly, that the provisions of the Transfer of Property Act were not in force in Ghund State at the time the compromise was entered into (26-4-1946). In the second place, he has pointed out that even if the general principles of that enactment were applied to the facts of the present case, still the terms of the compromise, having been incorporated in the decree of the District Judge of Ghund, the same would be protected by Section 2 (d) of the Transfer of Property Act.

In the third place, the learned District Judge, in agreement with the view of the trial Court, held that there was no 'transfer' of property within the meaning of Section 10 of the aforesaid Act. In coming to this conclusion, he has pointed out that

before the District Judge of Ghund, Kashi Ram and Ruldu had claimed that they had been the owners of the land since long. As mentioned by the learned District Judge in the opening portion of the judgment, Kashi Ram and Ruldu were the former owners of the land in question.

Somehow, they incurred the displeasure of the Ruler of the State, who turned them out and confiscated their land. Mansu, father of Surat Ram, plaintiff, paid Nazrana to the Ruler and obtained a grant of this land. In 1945, Kashi Ram and Ruldu filed a suit against Mansu as well as the Ghund State in respect of the land and house in question. It was during the pendency of that suit that the compromise of 26-4-1946 was arrived at. Under these circumstances, I find considerable force in the remark of the learned District Judge that Kashi Ram and Ruldu were not utter strangers to this property. It amounted to a settlement of some disputed and doubtful claims.

Mansu deemed it proper to recognise the claim, of Kashi Ram and Ruldu and agreed to deliver possession to them, subject to certain conditions. Particularly, a mention has been made by the District Judge to the wording of Clause 1 of the compromise running as follows:--"Yeh keh arazi mutdaviya ka malik badustur muddain bazumra ziman 1 wah 2 ra-hainghe." In coming to his conclusion, the learned District Judge has relied, inter alia, upon *Kambinayani Timmaji v. Kambinayani Subbaraju*, ILR 33 Mad 473 (C); *Sohan Lal v. Bhag-wan Singh*, AIR 1929 All 788 (D) ; and *Gurdit Singh, v. Babu*, AIR 1953 Punj 282 (E).

(9) Mr. Kashyap for the appellant cited a series of rulings in support of his contention that Clause 1 of the compromise, which imposed a restraint on the powers of alienation by Kashi Ram and Ruldu, was void under Section 10 of the Transfer of Property Act.

The rulings cited by him include *Lal Sripat Singh v. Lal Basant Singh*, AIR 1914 Oudh 213 (F); *Nand Singh v. Pratap Das*, AIR 1924 Lah 674 (G); *Pratap Das v. Nand Singh*, AIR 1924 Lah 729 (1) (H); *Teja Singh v. Moti Singh*, AIR 1925 Oudh 125 (I); *Asghari Begam v. Mulla Baksh*, AIR 1929 All 381 (J); *Raj Deo Rai v. Brahmdeo Rai*, AIR 1937 All 235 (K); *Trichino-poly Varthaga Sangam Ltd. v. Shanmughasun-daram*, AIR 1939 Mad 769 (L); *Roshan Lal v. Arjan Dev*, AIR

1942 Pesh 68 (M); Prithmi Chand v. Sundar Das Sital Mal, AIR 1946 Pesh 12 (N); and Parmodh Singh v. Labh Singh, AIR 1955 Punj 49 (O).

(10) In AIR 1942 Pesh 68 (M), Mir Ahmad, J., merely held that:

"The Transfer of Property Act does not apply to the N.W.F.P., but the principles underlying its sections are used by the Courts there, as principles of equity, justice and good conscience under Section 28, Frontier Law and Justice Regulation."

(11) In AIR 1946 Pesh 12 (N), Ram Labhaya, J., observed that:

"Section 10, Transfer of Property Act, applies to transfers, and family settlements are not covered by the expression 'transfer' occurring in the section."

"Therefore, a condition of the family settlement, which prohibits alienation altogether is surely not hit by Section 10, Transfer of Property Act, but creating, as it does, an absolute restraint on alienation, it is repugnant to public policy and would be invalid and unenforceable on general principles of law."

There, it would appear that in 1915, there was a family settlement to which one Chandu Mal, his father, Kishan Das, and his son Bhagwan Dass were parties. A certain share in the house was allotted to Chandu Mal subject to the proviso that he would have no power to alienate it by sale or mortgage. It was not clear why this condition was imposed upon Chandu Mal.

(12) In AIR 1925 Oudh 125 (I), it appears that a grant was made and under its terms, the grantee could sell or mortgage to the nearest relatives and on their refusal to pattidars and never to strangers. Consequently, it was held that the restriction on alienation, being absolute, was void. In the present case, as already remarked, there was no grant in favour of defendants 1 and 2. On the other hand, it was a settlement of disputed claims.

(13) AIR 1929 All 381 (J), refers to a case of transfer by deed. Obviously, in such a case, the provisions of Section 10 of the Transfer of Property Act would come into play.

(14) AIR 1924 Lah 674 (G), also relates to a case of relinquishment of a portion of certain land by a Mahant, while AIR 1924 Lah 729 (1) (H), relates to a case of surrender of certain portion of the area in dispute there.

(15) In AIR 1937 All 235 (K), the facts were: "A compromise between A and B had two main clauses. No. 1 provided that B was to hold the property for his life and held no right to transfer it except for necessity (zarurat) and if his other property proves insufficient. No. 2 provided that if B died without leaving any heirs (aulad) of his body or legal widow, then A would become owner and the other heirs of B would have no right to succeed." Under those circumstances, Bennet, J., held that: "The restraint was void and unenforceable under Section 10."

In the present case, as learned counsel for the respondent pointed out, under Clause 3 of the compromise of 1946, defendants 1 and 2 and after their death their descendants could remain in possession of the land and on their dying issueless, their widows could remain in possession as life tenants. It was only after the extinction of all such heirs that the ownership was to revert to the plaintiff. The terms were certainly liberal in favour of the defendants and their descendants and cannot be deemed to be opposed to public policy.

(16) In AIR 1939 Mad 769 (L), the facts were: "A partition deed among father and his sons provided that certain houses, which had been used as the family residence, should be held by them as tenants-in-common. The deed restrained the sons, during as well as after the life-time of the father from alienating their share to stranger to the family but gave a right to sell within the family at a maximum price which was far below the real value of the share of each son. There was no obligation to buy at that price." Under those circumstances, a Special Bench of that High Court held:

"That the restriction on alienation amounted to an absolute restriction and, therefore, was void under Section 10."

The facts of the present case are clearly different and, therefore, the above ruling would not be applicable here.

(17) In AIR 1955 Punj 49 (O), Kapur, J., held that:

"Where in a deed of compromise, an absolute estate of inheritance is created in favour of a person, any subsequent clause which purports to restrict that interest is invalid, and the person, in whose favour any property passes under the compromise, takes an absolute estate as if the deed contained no such restrictive condition."

At the risk of repetition, it may be pointed out that in the present case no estate was created in favour of defendants 1 and 2. Their already existing rights were recognised to some extent and a compromise was arrived at. The case appears to be on all fours with that discussed in AIR 1953 Punj 282 (E), which has been relied upon by both the Courts below. There, the facts were that a gift was made in favour of a pichhlag son. This was objected to by certain collaterals of the donor.

Eventually, an agreement was arrived at between the parties, whereby the donee or his descendants would have no right to sell or mortgage the property. Under those circumstances, a Division Bench of that High Court held that the agreement amounted to a compromise, and not to a transfer and, consequently, the restrictions on alienation, contained in Section 10 of the Transfer of Property Act, would not be applicable.

(18) In view of all that has been said above, I see no reason to interfere with the decision of the learned District Judge, who has already modified the decree of the trial Court in this way that the declaration, granted by the trial Court, would merely save the rights of the plaintiff under the compromise, Ex. P-4. Learned counsel for the appellant contended that the declaration, as modified by the District Judge, was vague. I do not, however, agree. Reading the judgment of the learned District Judge as a whole, it is obvious what the rights of the plaintiff, under the compromise, are. It was not necessary to reproduce in the declaration the entire wording of the compromise.

(19) One other point was argued by Mr. Kashyap and that was that a declaration should not have been granted in favour of the plaintiff, since being entitled to ask for further relief, he has omitted to do so. Reliance was placed on the proviso to

Section 42, Specific Relief Act.

Mr. Chhabil Das for the respondent pointed out that under the terms of the compromise, defendants 1 and 2 and after their death, their sons, if any, and failing such sons, their widows, could remain in possession of the land in question for the rest of their lives. Consequently, it was not open to the plaintiff to ask for possession of this land--Kashi Ram and Ruldu being alive.--I agree, under these circumstances, that the declaration was not barred by the proviso to Section 42, Specific Relief Act.

(20) It may not be, out of place, to point out that Kashi Ram, defendant No. 1, did not contest the suit, and defendant 2 Ruldu, while admitting the factum of the compromise, pleaded ignorance of its terms. Apparently, at the time the land was sold to Balak Ram, he was not informed of the compromise or its terms.

(21) For above reasons, I see no force in this appeal.

ORDER

(22) This second appeal is dismissed with costs, payable to the contesting respondent (Surat Ram, respondent No. 1).

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