

Ramditta Vs. Dhani Ram and ors.

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Court : Himachal Pradesh

Decided On : Nov-23-1954

Judge : Ramabhadran, J.C.

Acts : Specific Relief Act, 1877 - Section 12; ;Mandi Regulation, 1975 - Section 3

Appeal No. : Second Appeal No. 1 of 1953

Appellant : Ramditta

Respondent : Dhani Ram and ors.

Advocate for Def. : D.N. Vaidya, Adv.

Advocate for Pet/Ap. : Kirti Ram Tewari and; D.R. Chaudhary, Adv.

Disposition : Appeal dismissed

Judgement :

Ramabhadran, J.C.

1. This is a second appeal by a plaintiff and it arises out of a suit for specific performance of an agreement to exchange lands. The trial Court dismissed the suit on the ground that there was no complete agreement to exchange inter partes. It also found that the plaintiffs-land had considerably deteriorated in quality, while the defendant had effected improvements on his lands. ' On that score also, the Subordinate Judge was of the opinion that it would not be equitable to decree

specific performance. The plaintiff then went up in appeal to the learned District Judge, who affirmed the decision of the Subordinate Judge. Hence, this second appeal.

2. I have heard learned counsel for the parties. The main point for determination here is whether there was a completed agreement between the parties regarding the exchange of their lands. Learned counsel for the appellant argued that under Section 3 of Mandi Regulation 2 of 1975 Samvat, only sales, mortgages, gifts or exchanges needed the previous sanction of the Darbar. His contention was that an agreement to exchange did not require any such sanction. Reliance was placed by him on--'Madho Singh v James R. R. Skinner', AIR 1842 Lah 243 (A), where, with reference to the provisions of the Punjab Alienation of Land Act, a Division Bench of that High Court held that the operation of Section 3, Punjab Land Alienation Act, 1900, was limited to sales and mortgages.

3. I am unable, however, to accept this contention. The clear and unambiguous language of Section 3 of Mandi Regulation 2 of 1975 Samvat leaves no room for doubt that no land could be exchanged without the previous sanction of the Darbar. This is a Mandi case and it must be decided with reference to the law then in force here and not with reference to the provisions of the Punjab Land Alienation Act, or any other Act. I find considerable force in the argument of the learned counsel for the respondent that, having regard to the statutory prohibition of exchanges (without the previous sanction of the Mandi Darbar), any agreement between the parties as to the exchange of their land would be only an inchoate agreement. My attention was drawn in this connection, to--'Ambika Prasad v. Mt. Naziran Bibi', AIR 1939 All 64 (B), where it was held that:

'A decree for specific performance of a contract of sale can be passed only on proof of the fact that there was a completed agreement of sale between the plaintiff and the defendant. Where there has been no completed agreement of sale between the parties and all that is relied on is a promise by one party to sell his share in a village to the plaintiff, if, and when he decides to transfer it, such a promise is not equivalent to a completed agreement of sale and cannot form the basis of a suit for specific performance.'

Learned counsel for the respondent also cited--'Gobardhan Lal v. Sheo Narayan', AIR 1929 Pat: 202 (C), where a Division Bench of that High Court, with reference to a case arising under the Guardians and Wards Act, pointed out that :

'A certificated guardian can enter into a contract with an intending purchaser, but such a contract is subject to sanction being accorded to the proposed transaction and that, when the sanction has been accorded, the contract becomes a completed contract by virtue of that sanction.'

It is obvious from the above that till such time as the contract is sanctioned by the Court, it is an inchoate contract. In--'Tarini Kumar v. Srish Chandra', AIR 1925 Cal 1160 (D);, it was held by a Division Bench of that High Court that A decree for specific performance of a contract to sell would not be granted in favour of the person contracting with the guardian of the minor proprietor, who entered into the contract without the previous sanction of the Court.

4. It is, therefore, clear that in the absence of the previous sanction of the Darbar, the transaction in question would not amount to a completed agreement for exchange.

5. It was next urged by the learned counsel for the appellant that the statements of the parties were recorded on 24-10-1996 Samvat and the orders of His Highness in that connection amounted to a sanction. This point was considered by the Courts below, who have rightly pointed out that His Highness merely directed that the parties should put in a proper application for sanction and the same along with the necessary documents should be dealt with according to law. This obviously cannot be interpreted as according sanction. Under these circumstances, I concur with the view of the Courts below that the proposed exchange was not sanctioned by His Highness. The transaction, therefore, did not mature into a completed contract and, therefore, could not be specifically performed.

6. Lastly, it was argued by learned counsel that the Courts below have erred in holding that the plaintiff's land has suffered serious deterioration. It is unnecessary to go into this point in view of my finding that there has been no completed agreement. The result is the second appeal fails and is rejected with

costs.

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