

Jagdish Chander (Dead) By L. Rs vs Brij Mohan & Ors on 6 February, 1978

Equivalent citations: 1978 AIR 1318, 1978 SCR (2) 805, AIR 1978 SUPREME COURT 1318, 1978 2 SCC 361, 1978 ALL. L. J. 652, 1978 REVDEC 114, 1978 U J (SC) 151, 1978 2 SCR 805

Author: Syed Murtaza Fazalali

Bench: Syed Murtaza Fazalali, P.N. Shingal

PETITIONER:

JAGDISH CHANDER (DEAD) BY L. RS.

Vs.

RESPONDENT:

BRIJ MOHAN & ORS.

DATE OF JUDGMENT 06/02/1978

BENCH:

FAZALALI, SYED MURTAZA

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FAZALALI, SYED MURTAZA

SHINGAL, P.N.

CITATION:

1978 AIR 1318

1978 SCR (2) 805

1978 SCC (2) 361

ACT:

Transfer of Property Act, (Act 4 of 1882) ss. 6, 1955 (2) read with ss. 15 and 17 of the Specific Relief Act--Contract of agreement to repurchase the lands, assignability--Whether specific performance can lie.

U.P. Zamindari Abolition and Land Reforms, Act 1950, s. 154--Restrictions on the transfer by a Bhumidari--Powers of the Court to exercise its discretion in passing the decree for specific performance.

HEADNOTE:

One Ata-Ilahi Khan executed a sale deed in favour of the appellant, Shri Jagdish Chander on 12-7-1968 and the latter took possession of the suit lands. On the same day by an agreement, Jagdish Chander agreed to reconvey the suit lands

specifically to Ata-Ilahi Khan or his heirs, if the amount of consideration was repaid to him within a period of five years. On 18-12-1959, Ata-Ilahi Khan transferred his right to repurchase through a sale deed in favour of one Bir Narain and others. Thereafter, Ata-Ilahi again transferred his 'right to repurchase through another sale deed dated 21-7-1962 in favour of the plaintiffs-respondents. The suit for specific performance filed by the respondents on the basis of the sale deed dated 21-7-1962 failed. But the first appellate Court reversed the judgment of the trial Court and decreed the suit. The High Court affirmed the said appellate judgment.

Dismissing the appeal by special leave, the Court.

HELD : I. Supreme Court cannot go behind the findings of fact in appeal by special leave under Art. 136. [807 D-E]

In the instant case, the right to repurchase did not vest in Bir Narain and others as per the sale deed dated 18-12-1958 in their favour but with the plaintiffs. [807 E]

2. Before s. 154 of the U.P. Zamindari Abolition and Land Reforms Act 1950 can apply, it must be found as a fact that the person to whom the property is transferred must have held an aggregate of 121/2 acres or 30 acres as the case may be at the relevant period. [807 G-H]

In the instant case the plaintiffs did not have lands exceeding 121/2 acres so as to fall within the mischief of s. 154 of the Act. [807 H, 808 A-B]

[The Court applied "non-liquet" as to whether the Courts below should have exercised their discretion to passing a decree for specific performance]

JUDGMENT:

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 1946 of 1970.

Appeal by Special Leave from the Judgment and Order dated 15-5-1969 of the Allahabad High Court in Second Appeal No. 2653 of 1967.

S. C. Manchanda and S. T. Aneja for the Appellants. M. S. Gupta for Respondents Nos. 1 and 2. I. S. Sawhney for Respondent No. 3.

The Judgment of the Court was delivered by 13-119 SCI/78 FAZAL ALI, J. This is a defendant's appeal by special leave and is directed against the judgment dated 15th May, 1969 of the Allahabad High Court upholding the decree, passed by the District Judge in favour Of the plaintiff for specific performance of a contract of sale :

The facts of the case lie within a very narrow compass and may be briefly slated thus.

The defendant Jagdish Chander purchased the lands in dispute for a consideration of Rs. 6000/- by a sale deed dated 12th July, 1958 including the Bhumidhari land from Ata Ilahi Khan who was the proprietor of the said lands. The sale deed in favour of the defendant Jagdish Chander contained a stipulation that the vendor would be entitled to repurchase the property for the consideration mentioned in the sale deed within five years from the date of the execution of the sale deed. On 18th December, 1958 Ata Ilahi Khan sold his right of repurchase of the land under the sale deed above mentioned to Bir Narain, Mangal Singh and Mukanda Singh. Thereafter, a few years later on 21st May, 1962 Ata Ilahi Khan again sold his right of repurchase in respect of the aforesaid property to Brij Mohan and Chandrapal Singh, plaintiffs No. 1 & 2. It would thus be seen that while selling the property to the defendant Jagdish Chander Ata Ilahi Khan had clearly incorporated an agreement to resell the land within five years on payment of the consideration of the sale deed itself. Armed with the sale deed executed by Ata Ilahi Khan in favour of the plaintiffs, the respondents filed the present suit for specific performance of the contract of sale contained in the sale deed executed by Ata Ilahi Khan in favour of the defendant Jagdish Chander. The plaintiffs sought to enforce that part of the, contract which contained the right of the vendor to repurchase the property from Jagdish Chander within five years.

The suit- was tried by the Second Additional Civil Judge, Muzaffarnagar who dismissed the suit holding that the plaintiff's sale deed was not legally enforceable. The plaintiffs then filed an appeal to the Court of the District Judge. Muzaffarnagar against the judgment of the Additional Civil Judge. The District Judge disagreed with the view taken by the trial Court and decreed the plaintiffs' suit holding that the agreement relied upon by the plaintiffs was capable of being enforced. The defendant Jagdish Chander unsuccessfully preferred an appeal to the High Court which was dismissed and the decree of the District Judge was upheld by the High Court. Thereafter, the plaintiffs came up to this Court and after being granted special leave the present appeal has been placed before us for hearing.

Mr. Manchanda, learned counsel, appearing for the appellant submitted two points before us. In the first place, he urged that in view of a prior sale deed executed by Ata Ilahi Khan in favour of Bir Narain and others dated 18th December, 1958, the vendor had no right to execute a sale of the right of repurchase on 21st July, 1962 in favour of the plaintiffs, because the vendor had parted with his title in favour of Bir Narain and if he had sold anything to the plaintiffs it was merely a bag of wind. So far as this point is concerned, the District Judge reversed the finding arrived at by the trial Court and came to a finding of fact that the sale deed in favour of Bir Narain was a sham transaction and did not pass any title to the vendees Bir Narain and others. The District Judge further held that Bir Narain himself appeared as a witness in the suit and clearly deposed that he had surrendered his interest, and had no title at all. In this connection, the District Judge observed as follows "When once, it has been found that Bir Narain and others had no valid transfer made in their favour because of the want of a title to convey in their vendor, it is too much to say that they would be

possessing the right to take back the land in the consequence of repurchase..... Further, the three vendees, Bir Narain, Mukanda Singh and Mangal Singh, were the attesting witnesses of the sale deed which specifically stated that whatever rights they possessed under the sale deed dated 20th December, 1959 had been relinquished or surrendered..... then Bir Narain (P.W. 5) has declared on sworn testimony that he and the other vendees had acquired any right under the sale deed Ex.A-20 it is difficult to accept the respondent's contention that the right to repurchase vested in Bir Narain and others. In that view the finding of the learned Additional Civil-Judge is in correct".

This finding of fact has been affirmed by the High Court and it is not possible for us to go behind these findings of fact in this appeal by special leave. For these reasons, therefore, the first contention raised by the learned counsel for the appellant must be overruled. Another point of law which has been argued by counsel for the appellant was that as Ata Ilahi Khan or the plaintiffs were possessed of the Bhumidhari land which exceeded the limit of 12-21/2 acres, the sale was invalid under the provisions of section 154 of the U.P. Zamindari Abolition and Land Reforms Act, 1950 (hereinafter referred to as the Act). Section 154 of the Act as it stood when the transaction was entered ran thus "154. Restrictions on the transfer by a bhumidhar (1) Save as provided in sub-sections (2) and (3). no bhumidhar shall have rights to transfer by sale or gift, any land other than tea gardens to any person other than an institution established for a charitable purpose, where such person shall, as a result of the sale or gift, become entitled to land which together with land, if any, held by himself or together with his family, will in the aggregate, exceed 121/2 acres in Uttar Pradesh".

It is manifest that before the section can apply it must be found as a fact that the person to whom the property is transferred must have held an aggregate of 121 acres of land in U. P. which was increased to 30 acres at the relevant period. In the instant case, the District Judge has returned another finding of fact that the defendant was not able to show by producing the khatauni or any other document that the plaintiffs No. 1 and 2 who were the transferees had land exceeding 121 acres. In this connection, the District Judge found as follows "On the point of fact as well, the plea is not supported by evidence. The defendant did not produce the Khatauni to prove that the plaintiffs No. 1 and 2 would, in the result of the sale deed become entitled to land exceeding 121/2 acres".

Thus, on the finding of fact recorded by the District Judge and as affirmed by the High Court, it was established that the transferees, namely, the plaintiffs did not have lands exceeding 121/2 acres so as to fall within the mischief of section 154 of the Act. In this view of the matter the second contention raised by counsel for the appellant also fails and it is not necessary for us to examine further the consequences of violation of the provisions of section 154 of the Act. Mr. Manchanda submitted that in view of the statutory prohibition contained in section 154 of the Act, the court would not exercise its discretion for enforcing the contract which is prohibited by law. In view, however, of the finding of fact referred to above that the total bhumidhari land possessed by the plaintiffs did not exceed 121/2 acres, or 30 acres, as the case may be, the question of application of section 154 of the Act does not arise, and, therefore, it is not necessary for us at all to go into the question as whether or not the

court should have exercised its discretion in passing a decree for specific performance.

The result is that the contentions raised by Mr. Manchanda fail and the appeal is dismissed,, but in the circumstances without any order as to costs.

S.R. Appeal dismissed.