Raja Dhruv Dev Chand vs Harmohinder Singh & Anr on 1 March, 1968

Equivalent citations: 1968 AIR 1024, 1968 SCR (3) 339, AIR 1968 SUPREME COURT 1024

Author: J.C. Shah

Bench: J.C. Shah, V. Ramaswami, G.K. Mitter

PETITIONER:
RAJA DHRUV DEV CHAND

Vs.

RESPONDENT:
HARMOHINDER SINGH & ANR.

DATE OF JUDGMENT:
01/03/1968

BENCH:
SHAH, J.C.
BENCH:
SHAH, J.C.
RAMASWAMI, V.
MITTER, G.K.

CITATION:
1968 AIR 1024 1968 SCR (3) 339
CITATOR INFO :
R 1971 SC1756 (8)

ACT:
Contract Act, s. 56-Doctrine of frustration, if applies, to leases of agricultural land.

HEADNOTE:
The appellant obtained lease of a land in the undivided Punjab and carried on agricultural operations in it. Following the partition of India and allotment of the territory in which the lands were situate to Pakistan the appellant migrated to India. The appellant commenced an action for a decree for refund of the rent on the plea that the consideration for the lease failed, because the covenants of the lease had become impossible of performance

as a result of communal riots in that locality and the inability of non muslims to continue to reside in that are. The claim was decreed but the High Court reversed the decree. Dismissing the appeal this Court,

HELD : Where the property leased is not destroyed or rendered substantially and permanently unfit, the lessee cannot avoid that lease even if be does not or is unable to use the land for purposes for which it is let to him. Under a lease of land there is a transfer of right to enjoy that land. If any material part of the property be wholly destroyed or tendered substantially and permanently unfit for the purpose for which it was let out, because of fire, tempest, flood, violence of an army or a mob, or other irresistible force, the lease may, at the option of the lessee, be avoided. This rule is incorporated in s. 108(e) of the Transfer of Property Act and applies to leases of land to which the Transfer of Property Act applies, and the principle thereof applies to agricultural leases and to leases in areas to which the Transfer of Property Act is not extended. [345 D-F]

In the present case the relation between the appellant and the respondents did not rest in contract. It is true that the representative of the respondents-own-ars had accepted the tender of the appellant and had granted him a lease on agreed terms. But the rights of the parties did not after the lease was granted rest in contract. By s. 4 of the Transfer of Property Act the chapters and sections of the Transfer of Property Act which relate to contracts at.-- to be taken as part of the Indian Contract Act, 1872 . That section however cannot be read as enacting that the provisions of the Contract Act are to be read into the Transfer of Property Act. There is a clear distinction between a completed conveyance and an executory contract, and events which discharge a contract do not invalidate a concluded transfer. [342 E-H]

Granting that the parties at the date of the lease did not contemplate that there may be riots in the area rendering it unsafe for the appellant to carry on cultivation or that the crops grown by him may be looted, there was no covenant in the lease that in the event of the appellant being unable to remain in possession and to cultivate the land and to collect the crops, he will not be liable to pay the rent. Inability of the appellant to cultivate the land or to collect the crops because of widespread riots cannot in the event that transpired clothe him with the right to claim refund of the rent paid. [343 C-E]

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Paradine v. Jane. (1647) Aleyn. 26, Denny Mott and Dickson Ltd. v. James B. Fraser & Co. Ltd. [1944] A.C. 265, Satybrata Ghose v. Mugneeram Bangur & Co. & Anr. [1954] S.C.R. 310, Abdul Hashem & Anr. v. Balahari Mondal & Ors. A.I.R. 1952 Cal. 380, Tarabai Jivanlal Parekh v. Lala Padamchand A.I.R. 1950 Bom. 89), Alanduraiappar Koil

Chithakkadit by its Trustee M. Ramananda Nainar & Ors. v. T. S. A. Hamid and Anzr, A.I.R. 1963 Mad. 94, Sri Amuruvi Perumal Devasthanam v. K. R. Sabapathi Pillai & Anr. A.I.R. 1962 Mad. 132 and Inder Pershad Singh v. Campbell, L.I.R. 7 Cal. 474, referred to.
Parshotan Das Shankar Das v. Municipal Committee, Batala A.I.R. 1949 E.P. 301, overruled.

JUDGMENT:

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 407 of 1965. Appeal from the judgment and order dated September 23, 1959 of the Punjab High Court in R.F.A. No. 143 of 1952. Vikrani Chand Mahajan and Hardev Singh, for the appellant. B. P. Maheshwari, Sobhag Mal Jain and R. K. Maheshwari, for respondent No. 2.

The Judgment of the Court was delivered by Shah, J. The appellant obtained from the Court of Wards, Dada Siba Estate, a lease of five squares of land in Tahsil Okara, District Montgomery in the undivided Punjab for the Kharif season 1947 and Rabi season 1948. Following upon the partition of India in July 1947 and allotment of the territory in which the lands were situate to Pakistan, the appellant migrated to India.

An action commenced by the appellant against the Court of Wards in the Court of the Subordinate Judge, Kangra at Dharamsala for a decree for refund of the rent paid by him was decreed. But the High Court of Punjab reversed the decree holding that the doctrine of frustration of contract did not apply to leases of immovable property and that in any event on the facts proved there was no case of frustration established by the appellant. With certificate granted by the High Court, this appeal is preferred by the appellant. Raja Harmohinder Singh and Kanwar Rajinder Singh have now been substituted in place of the Court of Wards as the respondents.

The appellant claimed a decree for refund of the rent on the ground that the consideration for the lease failed, 'because the covenants of the lease had become impossible of performance as a result of communal riots in the District of Montgomery and the inability of non-Muslims to continue to reside in that area. The High Court rejected the contention.

The following findings of the High Court are not challenged before us:

> After obtaining possession of lands from the Court of Wards the appellant carried on agricultural operations for Kharit cultivation and "partly enjoyed benefit therefrom by taking- fodder etc." that the right to the demised land continued to remain vested in the appellant even after he migrated to India, that the lands demised with neither destroyed nor had they become permanently unfit for the purpose of agriculture, and that there was no agreement express or implied-that the rent was payable only if the appellant was able personally to attend to or supervise the agricultural operations.

Under the English common law the earlier asess laid down the rule of "absolute contract" that when a duty was cast upon a person who bound himself by contract absolutely to do a thing, he could not escape liability for damages for breach by proof that as events turned out performance was futile or even impossible : see Paradin v. Jane(1). This rule was later mitigated by an exception that if further fulfilment of the contract is brought to an abrupt stop by some irresistible and extraneous cause for which neither party is responsible, the contract shall terminate forthwith and the parties be discharged : see Denny, Mott and Dickson Ltd. v. James B. Fraser & Co. Ltd. (2) . The rationale of the doctrine of frustration under the English common law need not be considered, for in India by the provisions of the Indian Contract Act have turned a limited exception under the English common law into a positive general rule in s. 56 of the Indian Contract Act. Section 56, insofar as it is material provides "An agreement to do an act impossible in itself is void.

A contract to do an act which, after the contract is made, becomes impossible, or, by reason of some event which the promisor could not prevent, unlawful becomes void when the act becomes impossible or unlawful.

Under s. 56, where an event which could not reasonably have been in the contemplation of the parties when the contract was made renders performance impossible or unlawful, the contract is rendered void, and the parties are excused from performance of their respective obligations. Therefore where performance is rendered by intervention of law invalid, or the subject matter assumed by the parties to continue to exist is destroyed or a state of thing assumed to be the foundation of the contract fails, or does not happen, or where the performance is to be rendered personally and the person dies or is disabled, the contract stands discharged.

(1) (1647) Aleyn, 26.

(2) [1944] A.C. 265.

It has 'been held by this Court that the rule in s. 56 exhaustively deals with the doctrine of frustration of contracts, and it, cannot be extended by analogies borrowed from the English common law. In Satyabrata Ghose v. Mugneeram Bangur & Co. and A nr. (1), Mukherjea, J., observed at p. 3 19 :

"..... the doctrine of frustration is really an aspect or part of the law of discharge of contract by reason of supervening impossibility or illegality of the act agreed to be done and hence comes within the purview of section 56 of the Indian Contract Act. It would be incorrect to say that section 56 of the Contract Act applies only to cases of physical impossibility and that where this section is not applicable, recourse can be had to the principles of English law on the subject of frustration. It must be held also that to the extent that the Indian Contract Act deals with a particular subject, it is exhaustive upon the same and it is not permissible to import the principles of English

law dehors these statutory provisions."

No useful purpose will be served by referring to the judgments of the Supreme Court of the United States of America and the Court of Session in Scotland to which our attention was invited. Section 56 of the Contract Act lays down a positive rule relating to frustration of contracts and the Courts cannot travel outside the terms of that section. The view expressed by the East Punjab High Court in Parshotam Das Shankar Das v. Municipal Committee, Batala(2), that s. 56 of the Contract Act is not exhaustive of the law relating to frustration of contracts in India must be deemed not to be good law to that extent. We are unable to agree with counsel for the appellant in the present case that the relation between the appellant and the respondents rested in a contract. It is true that the Court of Wards had accepted the tender of the appellant and had granted him a lease on agreed terms of lands of Dada Siba Estate. But the rights of the parties did not after the lease was granted rest in contract. By S. 4 of the Transfer of Property Act the chapters and sections of the Transfer of Property Act which relate to contracts are to be taken as part of the Indian Contract Act, 1872. That section however does not enact and cannot be read as enacting that the provisions of the Contract Act are to be read into the Transfer of Property Act. There is a clear distinction between a completed conveyance and an executory contract, and events which discharge a contract do not invalidate a concluded transfer.

(1) [1954] S.C.R. 310.

(2) A.I.R. 1949 B.P. 301.

By its express terms s. 56 of the Contract Act does not apply to cases in which there is a completed transfer. The second paragraph of s. 56 which is the only paragraph material to cases of this nature has a limited application to covenants under a lease. A covenant under a lease to do an act which after the contract is made becomes impossible or by reason of some event which the promisor could not prevent unlawful, becomes void when the act becomes impossible or unlawful. But on that account the transfer of property resulting from the lease granted by the lessor to the lessee is not declared void.

By the agreement of lease the appellant undertook to pay rent for the year 1947-48 and the Court of Wards agreed to give on lease the land in its management. It is not claimed that the agreement of lease was void or voidable. Nor is it the case of the appellant that the lease was determined in any manner known to law. The appellant obtained possession of the land. He was unable to continue in effective possession on account of circumstances beyond his control. Granting that the parties at the date of the lease did not contemplate that there may be riots in the area rendering it unsafe for the appellant to carry on cultivation, or that the crops grown by him may be looted, there was no covenant in the lease that in the event of the appellant being unable to remain in possession and to cultivate the land and to collect the crops, he will not be liable to pay the rent. Inability of the appellant to cultivate the land or to collect the crops because of widespread riots cannot in the events that transpired clothe him with the right to claim refund of the rent paid.

Authorities in the Courts in India have generally taken the view that s. 56 of the Contract Act is not applicable when the rights and obligations of the parties arise under a transfer of property under a lease. In Abdul Hashem and another v. Balahari Mondal and Others(-'), the Calcutta High Court held that in a case where during the continuance of a tenancy, a notice was served on the tenant requiring him to place a part of the land under his tenancy at the disposal of the Land Acquisition Collector, and the Collector took possession of the premises let out to him, it was held that even though the occurrence was unforeseen and was not contemplated by the parties when the lease was created, the occurrence was not so fundamental as to be regarded in law to strike at the root and destroy the basis of the relationship of landlord and tenant.

In Tarabai Jivanlal Parekh v. Lala Padamehand(2) it was held that monthly tenants of residential premises from whose occupation the premises were requisitioned continued to remain the monthly tenants of the landlord as before and that by reason of the requisition there was no eviction by title paramount or a (1) A.I.R. 1952 Cal. 380.

(2) A.I.R. 1950 Bom. 89.

sup. Cl/68-9 frustration of adventure. The Court in that case observed that the doctrine of frustration did not apply where there is a lease whether the term is one for a fixed period or one which can be terminated by notice to quit, as the estate vested in the lessee by a lease is not extinguished by the order of requisition which is of a temporary nature. In Alanduraiappar Koil Chithakkadu by its Trustee M. Rama- nanda Nainar and Ors. v. T. S. A. Hamid and Another(1), a lessee of a shandy tope agreeing to pay an annual rent for a period of five years was held not to be entitled to remission merely for the reason that the shandy was hit by two cyclones during the period of lease and that for some period on account of the cyclone, "the shandy did not form properly or regularly and the lessee did not get any income". The Court held in that case that in the absence of any provision for remission on account of losses, no such remission can be granted by the Courts.

In Sri Amuruvi Perumal Devasthanam v. K. R. Sabapatlhi Pillai and another(1) the plaintiff Devasthanam granted a lease of lands in open auction to the defendant on the terms and conditions set out in the auction notices and a deed of lease was executed by the Devasthanam and the defendants. The Government of Madras thereafter promulgated Ordinance IV of 1952 which restricted the quantum of rent payable by the tenants to the landlords. The defendants remained in possession till after the expiry of the period of the lease, but neglected to pay rent and failed to comply with the terms of the lease. It was held that the plaintiff was held entitled to recover the stipulated rent from the defendants. Our attention was, however, invited to certain cases in which counsel claimed that the doctrine of frustration had been applied to leases. In Inder Pershad Singh v. Campbell(") the plaintiff agreed to cultivate indigo for the defendant for a specified number of years in certain lands with respect to a portion of which lands the plaintiff was a sub-tenant only. During the continuance of the contract, the plaintiff lost possession of those lands through his immediate landlord having failed to pay the rent, and having been in consequence ejected therefrom by the owner. In a suit by the plaintiff to have so much of the contract as related to those lands cancelled, on the ground that it had become impossible of performance through no neglect on his

part, it was held that the case fell within cl. 2 of s. 56 of the Contract Act. But between the parties to the litigation there was no relation of landlord and tenant. The plaintiff was unable to raise indigo and supply to the defendants because the plaintiff's landlord failed to pay the rent due, and the plaintiff was on that account ejected from the land. That case' (1).T.R. 1963 Mad. 94.

(2) A.T.R. 1962 Mad. 132.

(3) I.L.R. 7 Cal. 474.

does not, in our view, support the contention that the doctrine of frustration applies to the case of a lease. The case strongly relied upon by counsel for the appellant was Gurdarshan Singh and Anr. v. Bishen Singh(1). In that case a lease was executed on January 8, 1947 in respect of agricultural land situated in an area which on partition of India fell within West Pakistan. The Court found that possession of the demised land was not given to the lessee, and the landlord was on account of riots unable to deliver possession. Obviously on that finding the tenant was entitled to claim refund of the rent paid. But the Court proceeded to consider the question "whether the doctrine of frustration applies to a contract of lease of agricultural lands" and recorded an answer that the doctrine of frustration applies to leases. The Court observed at P. 13-

> "that the doctrine of frustration does apply to leases, but even if it does not apply in terms to a contract of lease of agricultural land the broad principle of frustration of contract applies to leases". We are unable to agree with that observation, and the observation at p. 11 that "According to Indian law, sales of land as also leases are contracts". Under a lease of law there is a transfer of right to enjoy that land. If any material part of the property be wholly destroyed or rendered substantially and permanently unfit for the purpose for which it was let out, because of fire, tempest, flood, violence of an army or a mob, or other irresistible force, the lease may, at the option of the lessee, be avoided. This rule is incorporated in s. 108(e) of the Transfer of Property Act and applies to leases of land, to which the Transfer of Property Act applies, and the principle thereof to agricultural leases and to leases in areas where , the Transfer of Property Act is not extended. Where the property leased is not destroyed or substantially and permanently unfit, the lessee cannot avoid the lease because he does not or is unable to use the land for purposes for which it is let to him. The appeal fails and is dismissed with costs.
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> Y.P. Appeal dismissed.
> (1) I.L.R. [1962] Punjab 5.