Abdul Hakim vs Jan Mohammad And Ors. on 24 July, 1950

Equivalent citations: AIR1951ALL247, AIR 1951 ALLAHABAD 247

ORDER

Bind Basni Prasad, J.

1. This is an appeal from the judgment & decree of the learned Civil Judge of Basti upholding the decree of the learned Munsif of Bansi by which he partially decreed a claim for preemption. The relevant facts are as follows:

2. On 14-9-1944, Hari Prasad & Bhawa, defts. 10 & 11 sold certain Zamindari property to the defts. 1st party. There were originally seven vendees, one of them died during the pendency of the suit & his heirs, seven in number, were substituted in his place.

3. A perusal of the sale-deed shows that the sale of the vendees was in specified shares. Half of the property was sold to Abdul Hakin, minor,, deft. 7, who is applt. l in this Ct., & the remaining half was told in equal shares to the rest of the vendees. The sale consideration was RS. 17,000. Some of the vendees were co-sharers with the vendors but some were strangers. On 1-11-1944,, the stranger vendees executed a deed of exchange in favour of the defts. second party & those vendees who were co-sharera from before the sale. The pltfs. assailed this exchange on the ground of fraud & also that it was void so far as Abdul Hakim, applt. I, was concerned as it was executed by an unauthorised person on his behalf. It was also contended that the exchange was invalid as the necessary sanction required by Section 12, U. P. Regulation of Agricultural Credit Act, 1940, had not been obtained.

4. The claim was resisted on a variety of grounds. Learned Munsif held that the pltfs. had a right to pre-empt the property, that there was no bar of estoppel as against them, that the exchange was not invalid for want of sanotion as required by the U. P. Regulation of Agricultural Credit Act, 1940, because the revenue Ct. subsequently gave the sanction. It held, however, that as the deed of exchange on behalf of Abdul Hakim, minor was executed by his grand uncle, Abdul Jalil, so it was void.

5. On these findings, he decreed the claim of pre-emption in respect of half of the property sold to Abdul Hakim on payment of Rs. 8,500.

6. The delts. went up in appeal & the learned Civil Judge upheld the findings of the trial Ct. & dismissed the appeal.

7. In this Ct. this appeal has been filed by Abdul Hakim, minor, & Nand Lal who was one of the persons in whose favour the deed of exchange was executed. Other defts. are pro forma aresps.

8. The first point taken on behalf of the applts. is that having regard to Articles. 13(l) & 19(l)(f), Const. Ind, the right of pre-emption no longer exists & the Agra Pre-emption Act, 1922, should fee deemed abrogated. These articles provide as follows :

> "13. (1) All laws in force in the territory of India imediately before the commencement of this Constitution, in so far as they are inconsistent with the provisions of he Part, shall, to the extent of such inconsistency, be void.
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> 19. (1) All citizens shall have the right..... (f) to acquire, hold & dispose of property;"
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> "Clause (5) of Article 19, however, provides as follows :
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> "(5) Nothing in sub Clauses (d), (e) & (f) of the said clause shall affect the operation of any existing law In so far as it imposes, or prevents the State from making any law imposing, reasonable restrictions on the exercise of any of the rights conferred by the said sub-clauses either in the interests of the general public or for the protection of the interests of any Schedule Tribe."

9. The whole question, therefore, is whether he Agra Pre-emption Act, 1922, imposes a reasonable or unreasonable restriction on the right of the citizens to acquire, hold & dispose of the property.

10. It may be said at the outset that according to Article 872(2), the President is empowered to make such adaptations & modifications in the laws in force in the territory of India immediately before the commencement of the Constitution, whether by way of appeal or amendment as may be necessary of expedient. It has not been shown to me that in exercise of the powers conferred by Article 372, the President nas repealed the Agra Proemption Act, 1922. On the other hand, by virtue of Clause (l) of Article 372, the Agra Pre-emption Act continues in force. I am unable to see how in the face of Article 872 (l) it can be argued that the Agra Pre-emption Act is not in force now.

11. Assuming that it is open to the applts. to argue this point on the basis of the provisions of Article 13(l), I see no substance in it. It cannot be said that the law of pre-emption so far, at least, as this province is concerned imposes any unreasonable restrictions on the right to acquire & dispose of the property.

12. The law of pre-emption is not an innovation. It has been in existence in this country for a long time. The fundamental reason behind it is that a stranger should not be allowed to enter into the joint property so far as it is possible. Its aim is to prevent the fragmentation of the Zamindari property & to help in its consolidation. We are all aware of the disputes which arise when a Zamindari property is held by a large number of co-sharers. Consolidation of Zamindari helps in its better management & increased production of wealth. It avoids litigation. Formerly, the law of pre-emption in this province was contained in the customary rules & in the Mahomedan law. In 1922 statutory recognition was given effect to this principle. The enactment of the Agra Pre-emption Act, 1922, is a recognition of the principle that the right of pre-emption is for the benefit of the

society & that it is reasonable to give effect to that right. There is nothing inherently wrong in pre-emption. Far greater restrictions on transfer have been made by other laws. The U. P. Tenancy Act forbids the transfer of tenancy. The Bundelkhand Land Alienation Act imposes far more stringent restrictions on transfer of land. The Hindu law restricts the right of widows & daughters in making alienations. What is reasonable or unreasonable is not an abstract matter. It varies from time to time, place to place & people to people. It depends upon the view which the society at a particular time entertains on a particular subject. Many matters regarded as reasonable by the society at one time are subsequently regarded by the same society as unreasonable. Opinions of the society change. The time has not come when the rule of pre-emption is regarded by " the society as unreasonable. It is a rule which is fold, by a large number of persons. They regard it as a precious right. I am not aware of any effort in the State Legislature or in the public of this province for the abrogation of the law of pre-emption. The enjoyment of the right of property protected by Article 19(l)(f) is limited by the power of the State to enact laws for the general welfare of the people. As already indicated abovel the law of pre-emption Is for the welfare of the people because it avoids litigation, consolidates property & bends to inomae the production of wealth.

13. Learned counsel for the applt. has refd. to Mahomed Beg v. Narayan Meghaji, 40 Bom 358 : (A. I. R. (3) 1916 Bom. 255), in support of his contention that the law of pre-emption is unreasonable. No such principle has been clearly laid down an that case The following observations of their Lordships in that case lead to the inference that so far as this provinca at least is concerned, the rule of pre-emption cannot be regarded as unreasonable :

> "It is true that the Mahomedan rule of pre-emption at least as between Musaliman "litigants, is accepted by the H. Cts. of Allahabad & Calcutta. Bat this circumstance, so far from assisting the present applta , really supplies, as I think, another sufficient reason for dismissing the appeal. For in the United Provinces & Bangal, owing to local conditions which are not reproduced in this Presidency, there has been a course of judicial decisions in favour of the recognition of pre-emption; whereas in this district of Khandesh there is admittedly not a discoverable instance In which this right has been either allowed by the Ct. or even asserted by any litigant. And this fact, which, I think, is true of the Presidency generally except Gujerat, affords conclusive evidence that to enforce the rule of pre-emption now would be to introduce into the law of property an innovation which is as foreign to the practice of the people as it is to the statutory law." My finding, therefore, on this point is that the Agra Pre-emption Act, 1922, has not become void by virtue of Article 13(1) & 19(l)(f) Const. Ind. as it does not impose any unreasonable restriction on the right of property.

14. The second point taken is that as the necessary permission of the learned Asst. Colr. in charge of the Sub-division Under section 24, U. P. Regulation of Agricultural Credit Act had not been obtained, the exchange is of no effect. The proviso to Sub-section (2) of Section 26 of the Act empowers the Asst. Coir, to grant ex post facto permission for permanent alienation & when such permission has been granted it will be deemed to .have been given before alienation was made. The contention on behalf of the applt. has, therefore, no force, & the exchange must be deemed to have been made with the permission of the Asst. Colr.

15. The third & the last point contended on behalf of the applt. was that in the circumstances of the present case the deed of exchange executed by Ablul Jalil on behalf of the minor applt, Abdul Hakim, should be upheld. Abdul Hakim's father, Habibur Rahman, is dead but his grand father, Mohamad Bashir, is alive. The affairs of the family are, however, managed not by Mohammad Bashir but by his brother, Abdul Jalil. Mohamad Bashir deposed that Abdul Jalil entered into the transaction of sale & exchange with his consent & permission. It was Abdul Jalil who figured as the guardian of Abdul Hakim in the deed of sale sought to be pre-empted & in the deed of exchange which is now assailed. In the plaint Abdul Jalil was proposed by the pltfs-resps as the guardian-ad-litem of Abdul Hakim, minor, & he was so appointed. In the memo, of appeal filed in the Ct. 1951 A11./82 of the Dist. J. & in this Ct. also Abdul Jalil was the guardian-ad-litem of Abdul Hakim & no objection was ever taken to this. The leading case on this subject is the P. C. decision in Imambandi V. Haji Mutsaddi, A. I. R. (5) 1918 P. C. 11: (45 Cal. 878 P. C.) which was folld. in Mohammad Ejaz Husain v. Mohd. Ifthikhar Hussain, A. I. R. (19) 1932 P. C. 76 : (7 Luck. 1 P. C.) & by a F. B. case of this Ct. in Mt. Anto v. Mt. Reoti Kuar, A.I.R. (23) 1936 ALL. 837: (166 I. C. 61 F. B.). As laid down in Imambandi's case, (A.I.R. (5) 1918 p. C.11 : 45 cal. 878) the father alone, or, if he be dead, his executor under the (Sunni law) is the legal guardian. If the father dies without appointing any executor & his father is alive, the guardianship of his minor children devolves on their grand-father. Should he also be dead & have left an executor it vests in him. In default of these do jure guardians the duty of appointing a guardian for the protection & preservation of the infants property devolves on the judge as the representative of the sovereign. It was also held in that case that under the Mahomedan law a person who has charge of the person or property of a minor without being his legal guardian, & who may therefore be conveniently called a 'de facto' guardian has no power to convey to another any right or interest in immovable property which the transferee can enforce against the infant; nor can such transferee, if let into possession of the property under such unauthorised transfer, resist an action in ejectment on behalf of the infant as a trespasser. These observations, however, must be interpreted in the light of the facts of the case. It will be seen that in all the three cases refd. to above the property in dispute was one which the minor had inherited from his father. In the present case, however, the property is not of this character. It was acquired by the de faeto guardian, Abdul Jalil, for the minor. Their Lordshipg of the Judicial Committee quoted the following from the Hidaya in giving reasons for restrictions on the power of the guardians to alienate immovable property of the minors.

> "The ground of this" (the difference in the power of dealing with the two kinds of property) "is that the sale of movable property is a species of conservation, as articles of that description are liable to decay, & the price is much more easily preserved than the article itself. With respect, on the contrary, to immovable property, it is in a state of conservation in its own nature hence it is unlawful to sell it unless, however, It be evident that it will otherwise perish, or be lost, in which case the sale of it is allowed."

16. It is thus evident that the real reason for imposing restrictions on the guardians' power of alienation of immoveable property is to conserve it. In the present case by the deed of exchange the minors' property was really conserved & not frittered away. It was to prevent the property purchased by the minor from passing out of hit possession by pre-emption that the exchange was made. The immoveable property of the minor was not changed into money. The principle of eonservation

continued, in fact, even after the exchange part of the purchased property continued to be with the minor & the remaining part which was given in exchange was converted into Zamindari in another village.

17. Another point of distinction is that neither in Imambandi's case, (A..I. R. (5) 19'8 p. c. 11: 45 cal. 878), nor in any of the other two cases in which it was folld. the transaction in dispute was one of exchange. It was either a sale or creation of a charge.

18. To sum up, for the following three reasons, I am of opinion that the principle of Imambandi's case, (A.I.R. (5) 1918 P. C. 11 : 45 cal. 878), is not applicable to the present case. Firstly, the property in dispute in the present case is not one which was inherited but was one which was acquired by the de facto guardian, Abdul Jalil, for the minor. Secondly, the principle of conservation of the property which is the basis of decision in Imambandi's case, (A., I. R. (5) 1918 P. C. 11 : 45 Cal. 878), has not been violated in the present case. Thirdly, here we are concerned with the transaction of exchange in respect of which there is not even an allegation that the minor's interest has been prejudiced thereby. Whereas in Imambandi's Case, (A. I. R. (5) 1918 P. C. 11: 45 Cal. 878), and in other cases in which it was folld. the transaction was not of exchange. I hold that the deed of exchange executed by Abdul Jalil, in the above circumstances, was not void & that being so the claim of pre-emption must fail Under section 20, Agra Preemption Act.

19. It was also argued on behalf of the applt. that if the deed of exchange executed by Abdul Jalil on behalf of the minor is invalid the deed of sale in which Abdul Jalil appeared as a guardian of Abdul Hakim is also invalid & there being no sale there can be no pre-emption. Having regard to the decision in Munni Kuar v. Madan Gopal, 88 ALL. 62: (A. I. R. (2) 1915 ALL. 478) & Narayan Das v. Mt. Dhania, 38 ALL. 164: (A. I. R. (3) 1916 ALL. 366), I see no force in this. There is nothing in the law to prevent a minor from becoming a transferee of the immoveable property. The fact that he was represented in the sale-deed by his grand uncle, Abdul Jalil does not invalidate the transaction.

19. The only ground upon which the Cts. below decreed the claim for pre-emption as against the present applts. was that the deed of exchange was void. As it has been held to be valid, the appeal must be allowed.

20. The appeal is allowed with costs of all the Cts.; the decrees of the Cts. below are set aside in toto & the suit is dismissed. Leave for Letters Patent Appeal is granted.