

Munshi Lal And Anr. vs Vishnu Das And Ors. on 1 December, 1953

Equivalent citations: AIR1954ALL450, AIR 1954 ALLAHABAD 450

JUDGMENT

Malik, C.J.

1. This is a defendant's appeal against a decree passed by the lower courts for specific performance of a contract dated 10-4-1942. The property agreed to be sold consisted of shares in Khewat No. 1 in Mauza Kishorepur, Mahal Durga Prasad, Pargana Jewar, and in Mauza Alawalpur, Mahal Durga Prasad, in the same Pargana. The facts are that defendant No. 5, Lala Raghubar Dayal, had applied under the Encumbered Estates Act and on 7-4-1942, he filed an application under Section 20 for the quashing of the proceedings. On 10-4-1942, he entered into an agreement with the plaintiffs to sell the property to them for Rs. 2,600/-. The plaintiffs paid a sum of Rs. 1,600/- as earnest money and the balance was to be paid at the time of the execution of the sale deed. On 18-7-1942, the application under Section 20 was granted and the proceedings under the Encumbered Estates Act were quashed. The plaintiffs served a notice on 13-8-1943, for specific performance of the contract and on 18-12-1943, filed the suit. They claimed specific performance of the contract, and in the alternative, refund of Rs. 1,600/-, the amount of earnest money, and a sum of Rs. 300/-, excess price which defendant No. 5 had received from defendants Nos. 1 and 2 to whom the property had been sold.

2. On 5-5-1942, defendant No. 5, Lala Raghubar Dayal had sold the property in village Alawalpur to Munshi Lal, defendant No. 1, for Rs. 2,000/-; and on 6-5-1942, the same defendant has sold the property in Kishorepur to Musammat Gendo, defendant No. 2, wife of Munshi Lal.

3. It has been held by the lower courts, and the finding does not appear to have been challenged that Musammat Gendo was a 'Benamidar' for Munshi Lal. So in fact the vendee of both the sale deeds, was Munshi Lal.

4. On 31-7-1943, Munshi Lal sold a portion of the property in village Kishorepur to defendants Nos. 3 and 4, Ghansham Singh and Rup Singh, for Rs. 3,500/-.

5. Defendants 1 and 2 contended that the agreement to sell in their favour was earlier, being of the dates 28-3-1942 and 7-4-1942, and the plaintiffs, therefore, had no preferential right as against them. It was also pleaded by those defendants and defendant No. 4 that they were 'bona fide' purchasers of the property for value and that the plaintiffs could not get a decree for specific performance against them.

6. The first question, therefore, that arises is whether the contesting defendants 1, 2 and 4 are 'bona fide' purchasers of the property in suit and that they purchased the same for consideration and in good faith after proper enquiry without notice of the contract in plaintiff's favour.

7. Learned counsel strenuously urged that there was no finding that these defendants were not 'bona fide' transferees or that they had notice of the agreement in plaintiffs' favour. The plea, however, could be raised by these defendants only if they were transferees. If they were not transferees of the property, the question whether they were 'bona fide' transferees would not arise. The lower courts have found that transfers in favour of these defendants were void by reason of the provisions of Section 7(4), U. P. Encumbered Estates Act Section 7(3) provides that after an order under Section 6 is passed and until the Collector has declared in accordance with Section 44 that the landlord has ceased to be subject to the disabilities of that sub-section or until the passing of the order by the Special Judge under Sub-section (2) of Section 44, the landlord will have no right to make any exchange or to gift away or sell or mortgage or lease his proprietary rights in the property or any portion thereof. Sub-section (4) of Section 7 provides that :

"Any transfer made in contravention of the provisions of this section shall be void."

8. Learned counsel has urged that by reason of the quashing of the proceedings under Section 20 of the Act the entire proceedings must be deemed to have been wiped out and the disabilities must be deemed to have come to an end, with the result that a transfer which was void for the reason that it was executed at a time when the Encumbered Estates Act proceedings were pending must be deemed to become valid after the quashing of the proceedings. We do not think it is possible to accept this contention in view of the provisions of Sections 43 and 44 of the Act.

Section 43 gives the consequences of quashing proceedings under Section 20 of the Act and Sub-section (b) of this section is to the effect that :

"Notwithstanding anything contained in Section 18 all rights and remedies and proceedings stayed and all attachments of properties mentioned in statements filed under Section 8. which had become null and void under Sub-section (1) of Section 7 shall revive to the creditors as if no action had been taken under this Act."

The provision that no transfer shall be made after an order under Section 6 has been passed is contained, as we have pointed out, in Sub-section (3) of Section 7, and the provision relating to that is also contained in Section 44, Sub-section (2), which is to the following effect :

"When an application is dismissed or when proceedings under the Act have been quashed, the landlord shall cease to be subject to the disabilities mentioned in Sub-section (3) of Section 7 'from the date of the order of the Special judge dismissing the application, or quashing the proceedings.'"

It is clear, therefore, from the provisions of Sections 43 and 44, quoted above, that the quashing of the proceedings does not have the effect of validating a sale which was void under Sub-sections (3)

and (4) of Section 7.

9. The finding of the lower courts, therefore that the sale deeds in favour of defendants 1 and 2 were void was correct. Defendants 1 and 2 having no interest in the property could not convey any title to defendants 3 and 4 and none of these defendants can be said to be owner of the property by reason of the sale deeds executed in their favour.

10. The lower appellate court has held that there was an agreement with the plaintiffs on 10-4-1942, to sell the property to them for Rs. 2,600/- and that the plaintiffs had paid a sum of Rs. 1,600/- as earnest money. This finding is a finding of fact. The lower courts decreed the plaintiffs' suit for specific performance, but since the decision of the lower appellate court the position has entirely changed by reason of the passing of the Zamindari Abolition and Land Reforms Act (1 of 1951). The zamindari property is now vested in the State and it is not possible to direct the sale of that property to the plaintiffs.

10a. Section, 65, Contract Act provides that :

"When an agreement is discovered to be void or when a contract becomes void, any person who has received any advantage under such agreement or contract is bound to restore it, or to make compensation for it to the person from whom he received it."

By reason of the Zamindari Abolition and Land Reforms Act it is now impossible to direct the sale of the property by the defendants to the plaintiffs. The rights in the property itself having come to an end and having vested in the State, the contract of which specific performance is now being sought must be deemed to have become void. The defendants, therefore, or such of them, who have received any advantage under such agreement or contract are bound to restore it and to make compensation to the plaintiffs from whom they received the amount. We consider, therefore, that instead of granting the first relief, which was granted by the lower court, it would be more appropriate to grant to the plaintiffs the alternate relief, that is, refund of the earnest money and compensation by way of damages.

11. The finding of the lower appellate court is that the plaintiffs paid a sum of Rs. 1,600/- to defendant No. 5 on 10-4-1942. The plaintiffs are, therefore, entitled to get this money from defendant No. 5 with compensation as the plaintiffs have been kept out of possession of the property. The usual rate at which Interest is now allowed being 3 per cent, we direct that the plaintiffs, be given a decree for Rs. 1,600/- with interest at the rate of 3 per cent, from 10-4-1942, to the date of payment. This amount would be deemed to be a charge on the compensation money that may be payable by the State to the defendants under the Zamindari Abolition and Land Reforms Act. Since the plaintiffs are not represented in this Court we make no order as to costs of this appeal.