

## **Raj Bahadur Singh vs Ram Sumiran Misra And Ors. on 4 April, 1950**

**Equivalent citations: AIR1950ALL692, AIR 1950 ALLAHABAD 692**

### **JUDGMENT**

Sapru, J.

1. This a plaintiff's appeal arising out of a suit for specific performance of a contract of sale of certain plots of land entered into between the plaintiff and defendant 1, on 23rd May 1943. The land in dispute is 'protected land' within the meaning of the U. P. Regulation of Agricultural Credit Act. On the date the contract was entered into, the permission of the Sub-Divisional Officer to sell the land had not been obtained. Later, on 24th May 1943, the Sub-Divisional Officer granted permission to defendant 1, to sell the property within two months. Instead of selling the property to the plaintiff defendant 1 sold it to some other persons with whom also he appears to have entered into a contract of sale of this very property. The suit, out of which this appeal arises, has been brought by the landlord plaintiff for specific performance and his contention is that the respondents had knowledge of the contract of sale in his favour when they executed the sale-deed. The suit was decreed by the learned Munsif. On appeal, the decree of the trial Court was reversed by the learned Civil Judge. The plaintiff has now come up in appeal to this Court.

2. The learned Civil Judge has come to the conclusion that within the period allowed by the Sub-Divisional Officer who, gave permission to execute a sale deed on 24th May within two months, no sale deed was executed in favour of the plaintiff-appellant. No sale-deed having been executed in favour of the plaintiff -appellant within the period allowed by the Sub-Divisional Officer, the permission given to the defendant to execute one had got exhausted. By 1 reason of the fact that the period provided by the order of the Sub-Divisional Officer has expired, the question which I have to consider is whether this Court will be justified now in granting specific performance of the contract of sale to the plaintiff, knowing fully well that the plaintiff is under a statutory disability to execute the sale-deed. The provisions of Section 12 read with Section 24, make it abundantly plain that it is not open to a proprietor to permanently alienate a 'protected' land without the permission of the Sub-Divisional Officer. Admittedly within the period allowed by the Sub-Divisional Officer no sale-deed was executed by the proprietor in favour of the appellant. She utilised the opportunity which the permission had given to her to transfer the property to some other persons. It is obvious that she was not acting in a straight forward manner so far as the appellant is concerned. I would, therefore, give her no costs, But while declining to give her any costs in this appeal, the main question which has yet to be answered is whether I should give to the plaintiff-appellant the relief of specific performance of the contract for the sale of land.

3. My attention has been invited to the case of Enayat Ullah v. Khalil Ullah Khan, 1938 A. L. J. 569 : (A. I. R. (25) 1938 ALL. 432) where it was laid down by Iqbal Ahmad: J. that:

"The sale-deed executed by a Court in pursuance of a decree for specific performance is a transfer, by the Court on behalf of the judgment-debtor and it is the title of the judgment-debtor to the property that is transferred by the sale-deed executed by the Court. If the judgment-debtor is precluded from transferring his property by some statutory provision, the Court cannot, in violation of that provision, execute a sale-deed of the property. Clause (3) of Section 7, Encumbered Estates Act provides that until the happening of certain contingencies the landlord shall not be competent, without the sanction of the Collector, to make any exchange or gift of or to sell, mortgage or lease his proprietary rights in land.... As the Court was asked to execute the sale-deed on behalf of the judgment-debtor, the Court could not ignore the statutory provision just referred to and could not execute the sale-deed without the sanction of the Collector. We consider that it is not for the Court to apply for the sanction of the Collector."

This was a case under the U. P. Encumbered Estates Act, but, no doubt the principle which it has laid down is applicable to cases under the U. P. Regulation of Agricultural Credit Act also. I may refer to another case of this Court on this point, viz., Sri Narain Dube v. Jang Bahadur, 1947 A. L. J. 196 : (A. I. R. (34) 1947 ALL. 431). In this case it was remarked by Verma C. J. in delivering the judgment of the Bench that the execution of a deed of sale by the Court in the enforcement of a decree for specific performance is a transfer on behalf of the party and not by the Court and that such a transfer is a voluntary transfer Within the meaning of Section 12 of the Act. It was further laid down by the learned Judges composing that Bench that the intention of the legislature being I to prevent a transfer of certain classes of land, it was the duty of the Courts to give effect to that intention. These cases are binding upon me and are, in my opinion, indistinguishable in principle from the one before me.

4. For the reasons given above, I dismiss the appeal and affirm the judgment and decree of the lower appellate Court. The respondent shall not be entitled to any costs in this case.