Bhagat Ram vs Kishan And Ors. on 22 April, 1985

Equivalent citations: AIR1985SC962, 1985(1)SCALE1164, (1985)3SCC128, 1985(17)UJ1005(SC), AIR 1985 SUPREME COURT 962, 1985 (3) SCC 128, (1985) 1 CURCC 1093, (1985) 3 APLJ 3, (1985) 2 LANDLR 158

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Bench: Ranganath Misra, V.D. Tulzapurkar

JUDGMENT

Ranganath Misra, J.

1. This appeal by special leave is by the defendant No. 1 questioning the correctness of the appellate judgment of the Delhi High Court.

2. The plaintiff-respondent No. 1 sued for a declaration that the agreement dated April 14, 1961, Exhibit D-1 entered into between the plaintiff and the defendant No. 1 for sale of 52 bighas of land was not binding and was null and void as being opposed to the provisions of the Delhi Land Reforms Act, 1954, ('Act' for short). Plaintiff had pleaded that defendant No. 1 had served a notice on November 23, 1962, on him as also defendants 2-4 his co-sharers, demanding execution of the sale-deed and that provided the cause of action for institution of the suit. Present appellant as defendant No. 1 entered contest in the suit and maintained that the agreement was a valid one and was enforceable. According to him the suit was not maintainable being hit by Section 42 of the Specific Relief Act. The learned trial Judge dismissed the suit. On appeal the Additional Senior Subordinate Judge affirmed the dismissal. In second appeal the High Court reversed the judgments and decrees of the two courts below by holding that the agreement was hit by the Act inasmuch as the purpose for which the property was being purchased was non-agricultural and would be opposed to the provisions of the Act. Defendant No. 1 has assailed the reversing decree of the High Court in this appeal.

3. On a true construction of Section 23 of the Act the fate of this appeal depends. That section provides :

> 23. Use of holding for industrial purposes-
>
> (1) A Bhumidhar or Asami shall not be entitled to use his holding or part thereof for industrial purposes, other than those immediately connected with any of the purposes referred to in Section 22, unless the land lies within the belt declared for the purpose by the Chief Commissioner by a notification in the official Gazette:

> Provided that the Chief Commissioner may, on application presented to the Deputy Commissioner in the prescribed manner, sanction the use of any holding or part thereof by a Bhumidhar for industrial purposes even though it does not He within such a belt.

4. There is no dispute that the plaintiff and defendants 2-4 are Bhurnidhars. Undoubtedly, Section 23 imposes a restriction on user of the land for the purposes other than those provided in Section 22, such purposes being agricultural, horticultural or animal husbandry, including pisciculture and poultry farming. Construction of buildings is not a purpose covered by Section 22 of the Act and a Bhumidhar would, therefore, not be entitled to use agricultural land for the purpose of construction of buildings-the purpose for which admittedly the land was agreed to be purchased.

5. Bhumidhari right is transferable and the defendant No. 1 is entitled to use the land even for the purpose other than those enumerated in Section 22 if he obtains permission of the Chief Commissioner. Therefore, the agreement for transfer of land does not become invalid by itself. The defendant No. 1 after obtaining the property could use it for the intended purpose on obtaining permission of the Chief Commissioner or if no such permission was obtained, he could use the land for the purposes authorised under Section 22 of the Act. In our opinion, the High Court went wrong in holding that the agreement was opposed to public policy or transfer under the agreement was hit by Section 23 of the Act, Support for our view is available from the decision of this Court in Jambu Rao Satappa Kocheri v. Neminaih Appayya Hanammannaver . The suit by the plaintiff for declaration that the agreement is bad had rightly been dismissed by the trial Court as also the first appellate Court and the High Court on an erroneous view reversed the same. In our opinion the suit is liable to be dismissed,

6. It has been stated to us at the Bar that some of the lands agreed to be sold have in the mean time been acquired under the Land Acquisition Act. Counsel for parties have agreed that the land so acquired shall be taken to have been deleted from the agreement and our direction shall be operative for the lands which are still in the hands of the plaintiff and defendants 2-4.

7. With a view to avoiding multiplicity of litigation we suggested to counsel for the parties that the agreement for sale should be given effect to but in the changed circumstances mainly arising out of steep escalation of the price of land the consideration should be enhanced. Counsel for both sides have accepted our suggestion that the consideration for each bigha of land should be fixed now at Rs. 3,000/-instead of what had been agreed under the agreement in 1961. We accordingly direct that the vendor under the agreement who are plaintiff and defendants 2-4 in the suit shall intimate the trial Court by 10th May 1985 the extent of and out of the 52 bighas subject to agreement that have been acquired in the mean time and the learned trial Judge will make an order within one week thereafter fixing the extent of land available to be sold. Within two months from that date the plaintiff and defendants 2-4 are directed to execute the sale deed in favour of defendant No. 1 by receiving the consideration at the rate of Rs. 3.000/-per bigha. Plaintiff and defendants 2-4 are directed to deliver possession simultaneously with the registration of the sale deed and at any rate not beyond a fortnight from that date. Since the parties have ultimately agreed to give effect to the agreement subject to the alteration in the consideration amount, we direct them to bear their

respective costs throughout.