Sushila Devi And Anr vs Hari Singh And Ors on 5 May, 1971

Equivalent citations: 1971 AIR 1756, 1971 SCR 671, AIR 1971 SUPREME COURT 1756

Author: K.S. Hegde

Bench: K.S. Hegde, A.N. Grover

PETITIONER:
SUSHILA DEVI AND ANR.

Vs.

RESPONDENT:
HARI SINGH AND ORS.

DATE OF JUDGMENT05/05/1971

BENCH:
HEGDE, K.S.
BENCH:
HEGDE, K.S.
GROVER, A.N.

CITATION:
1971 AIR 1756 1971 SCR 671

ACT:
Contract Act (9 of 1872), s. 56-Frustration-Applicability to leases.

HEADNOTE:
The appellants were legal representatives of the owner of a village. In January, 1947, the previous owner called for tenders for taking the property on lease for a period of three years. The respondents' tender was accepted and they deposited along with the tender earnest money and security for the payment of rent. The terms of the tender required that the lease deed should be got registered by the lessee and that the lessee alone would be personally responsible for taking possession of the lands.
As a result of the partition of India the village became a part of Pakistan. Even before actual partition, because of serious communal troubles, it was not possible for the respondents to go to the village either to cultivate the lands or to collect the rent from those who were

cultivating. No lease deed- was executed or registered. Under those circumstances the respondents filed a suit claiming a decree for the refund of the amounts deposited and damages. The lower courts held that the contract had become impossible of performance and decreed the suit in part.

In appeal to this Court,

HELD:(1) The law of frustration as embodied in s. 56 of the Contract Act applies only to a contract that is, an agreement to lease, and does not apply to leases. [674A; 675A-B]

Raj Dhruv Dev Chand. v. Harmohinder Singh, [1968] 3 S.C.R. 339, referred to.

(2)But in this case there was no lease. Since lease was to be for a period of three years it could have been validly made only under a registered instrument, and therefore, there was only an agreement to lease and not a lease. Such an agreement comes within the scope of s. 56 of the Contract Act. [675D-E]

(3)The impossibility contemplated by s. 56 is not confined to something which is not humanly possible. If the performance of a contract becomes impracticable or useless having regard to the object and purpose of the parties then it must be held that the performance of the contract became impossible. But the supervening events should take away the very basis of the contract and it should be of such a character that it strikes at the root of the contract. [676C-D]

In the present case, the respondents sought to take on lease the properties with a view to enjoy the properties either by personally cultivating them or by sub-leasing them to others. That object became impossible because of supervening events. Under the terms of the agreement the

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lessor was not expected to deliver the actual possession of the properties but because of the prevailing circumstances it was impossible for the respondents to either take possession of the properties or even to collect rent from the cultivators. Therefore, the contract had become impossible of performance. [676D-F]

Satyabrata Ghose v. Mugneeram Bangur and Co., [1954] S.C.R. 310, referred to.

JUDGMENT:

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 1225 of 1966.

Appeal by special leave from the judgment and decree dated December 14, 1964 of the Jammu & Kashmir High Court in Civil First Appeal No. 1 of 1960.

S. T. Desai and P. C. Bhartari for the appellants. Hardev Singh and Hiral Lal Kapoor, for respondents Nos. 12A to 12C.

The Judgment of the Court was delivered by Hegde, J.-The appellants are the legal representatives of Dewnani Vidya Wati. The said Vidya Wati was the owner of the village known as Kotli Delbagh Rai in Tehsil Gujranwalla. It appears that she used to give the lands in that village on lease for a term of years by calling for tenders and accepting the highest tender. In about January 1947, she published a notice inviting tenders from interested persons for taking those lands on lease for a period of three years beginning from kharif 1947 to Rabi 1950. The tenders had to be submitted before January 1, 1947. Clause (3) of the tender notice stated that "the terms of lease can be perused in the Dewan estates office Jammu before filing of the tenders. No excuse of ignorance as to the time will be entertained after the acceptance of the lease."

A note containing the terms on which the lands would be, leased was exhibited for the information of the tenderers in the office of the lessor. For our present purpose the only terms that are relevant are those contained in Clauses 4 and 5 of the note. Clause 4 reads :

> "According to the terms of the tender, the lessee shall be the essence of contract. In case the lessee is 15 days from the date of the acceptance of. the lease. The expenses of the completion and Registration of the deed shall be borne by the lessee. The period of 15 days fixed for the completion and registration of the lease deed shall be the essence of contract. In case the lessee is negligent to get the lease deed registered, the lease shall stand cancelled. The earnest money and the security, shall also be forfeited. A fresh tender for the lands shall be called for and any loss caused in this connection shall be home by the lessee."

Clause 5 says "The lessee shall, be personally responsible to get the possession of the lands under Patta after the registration of lease deed. On getting the possession of the land the lessee shall get the counter part of the lease deed executed from his cultivators and deposit the same in the estates office. And shall furnish a certificate for any part of land which he keeps for his self-cultivation. He shall inform and deposit fresh counter lease deed in case of any change in his cultivators and shall get a written receipt from the Manager for the same."

The respondents tendered in response to the notice calling for tenders. Their tender was accepted. Alongwith the tender they deposited a sum of Rs. 1,000 as earnest money. Later on they deposited a sum of Rs. 34,000 as security for the payment of rent.

No lease was executed or registered. From the material on record, it is that possible to find Out as to who was responsible for the non-execution of the lease. But that aspect is not material for our present purpose. The landlord has not sought to cancel the contract. The agreement to lease continued to be in force even after the period within which the lease deed had to be registered. Tehsil Gujiranwalla became a part of Pakistan as a result of partition of India on August 15, 1947. Even before the partition Vidya Wati as well as the respondents had migrated to India because of the communal disturbances. Considerable evidence was led in the case to establish that even before the

actual partition of India took place, because of the serious communal troubles, it was not possible for the respondents to go to Gujranwalla either to cultivate the lands or even to collect the rent from those who were cultivating the lands. Under those circumstances the respondents called upon Vidya Wati to refund the, amount deposited as security for the payment of rent as well as to pay them a sum of Rs. 2,000 as damages. She declined to comply with that demand. Thereafter they filed the suit from which this appeal arises claiming a decree for Rs. 36,000, Rs. 34,000 as refund of the amount deposited and Rs. 2,000 as damages. Vidya Wati 43--1 S.C.India/71 resisted the suit on various grounds. She pleaded that she had done all that she was expected to do under the contract. Therefore the claim made against her was not sustainable. According to her the lands sought to be leased were in the possession of the actual cultivators ; she was not required to evict those cultivators and deliver physical possession to the respondents. She was only required to deliver the landlord's possession of the lands proposed to be leased. According to her she had given to the respondents such possession as she could have given under the circumstances. She further pleaded that the doctrine of frustration is not applicable to leases. In addition she pleaded that the suit was barred by limitation. She also contended that under the contract she was entitled to forfeit the amount deposited as security.

At the trial most of the contentions advanced by Vidya Wati were given up. The only issue on which the parties went to trial was whether the contract was frustrated because of the supervening circumstances mentioned earlier. The trial court rejecting the contention of the plaintiffs came to the conclusion that Vidya Wati was not expected to deliver physical possession of the properties intended to be leased. She had only to give such possession as she had. But at the same time it upheld the contention of the plaintiffs that the agreement to lease was frustrated. In appeal a Division Bench of the High Court of Jammu and Kashmir agreed with the trial court that the contract referred to in the plaint was frustrated because of the supervening circumstances. It opined that the doctrine of frustration applied to leases as well. It further held that under the contract Vidya Wati was expected to deliver actual possession of the property to the plaintiffs and that she had neither delivered physical nor even symbolic possession of the same to the plaintiffs. In the result it affirmed the decision of the trial court. Thereafter this appeal has been brought by special leave. During the pendency of the appeal to the High Court Vidyawati died and the present appellants were brought on record as her legal representatives.

The only question that falls for decision in this appeal is whether the contract referred to in the plaint has become void in view of the circumstances established. In other words had the performance of the contract become impossible in view of the prolonged and widespread communal troubles and the long drawn out tension that prevailed between India and Pakistan. The law of frustration is embodied in Section 56 of the Contract Act. That section to the extent material for our present purpose reads "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."

The conclusion of the Division Bench of the Jammu and Kashmir High Court that Section 56 of the Contract Act applies to leases as well cannot be accepted as correct. Section 56 applies only to a contract. Once a valid lease comes into existence the agreement to lease disappears and its place is

taken by the lease. It becomes a completed conveyance under which the lessee gets an interest in the property. There is a clear distinction between a completed conveyance and an executory contract. Events which discharge a contract do not invalidate a concluded transfer see Raja Dhruv Dev Chand v. Harmohinder Singh and anr(1). In view of that decision the view taken by some of the High Courts that Section 56 of the Contract Act applies to leases cannot be accepted as correct. Further the English decisions bearing on the point can have no further relevance.

But in this case there was no lease. There was only an agreement to lease. As seen earlier, the agreement between the parties was that the properties in question should be leased to the plaintiffs for a period of three years. Such a lease could not have been validly made except under a registered instrument. As seen earlier the contract between the parties provided that the lease deed should be registered within 15 days from the date of the acceptance of the tender. For one reason or the other, the contemplated lease deed was neither executed nor registered. Therefore we have before us only an agreement to lease and not a lease. Such an agreement comes within the scope of Section 56 of the Contract Act.

We agree with the trial court that under the terms of agree- ment Vidya Wati was not expected to deliver actual possession of the properties sought to be leased. The contract between the parties provided that "The lessee shall be personally responsible to get the possession of the lands under Patta after the registration of lease deed".

In our opinion on this point the conclusion of the appellate court is not sustainable. But in fact as found by the trial court as well as by the appellate court, it was impossible for the plaintiffs to even get into Pakistan. Both the trial court as well as the appellate court have found that because of the prevailing circumstances, it was impossible for the plaintiffs to either to take possession of the properties intended to be leased or even to collect rent (1) [1968] 3 S. C. R. 339.

from the cultivators. For that situation the plaintiffs were not responsible in any manner. As observed by this Court in Satyabrata Ghose v. Mugneeram Bangur and Co. and anr (1), the doctrine of frustration is really an aspect or part of the law of discharge of contract by reason of supervening unpossibility or illegality of the act agreed to be done and hence comes within the purview of Section 56 of the Indian Contract Act. The view that Section 56 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 is not correct. Section 56 of the Indian Contract Act lays down a rule of positive law and 'does not leave the, matter to be determined according to the intention of the parties. The impossibility contemplated by Section 56 of the Contract Act is not confined to something which is not humanly possible., If the performance, of a contract becomes im- practicable or useless having regard to the object and purpose the parties had in view then it must be held that the performance of the contract has become, impossible. But the supervening events Should take &way the basis of the contract and it should be of such a character that it strikes at the root of the contract.

From the facts found in this case it is clear that the plaintiffs sought to take On lease the properties in question with a enjoy those properties either by personally cultivating sub-leasing them to others.

That object became because of the supervening events. Further the terms of the agreement between the parties relating to taking possession of the properties also become impossible of performance. Therefore we agree with the trial court as well as the appellate court that the contract had become impossible of performance.

in the result this appeal fails and the same is dismissed. But taking into consideration the fact that both the plaintiffs as well as the defendant had become the victim of circumstances which were beyond their control, we direct the parties to bear their own costs in this appeal.

V. P. S. Appeal dismissed.
(1) [1954] S. C. R. 310.