

Supreme Court of India

Banwari Lal And Ors. vs Sukhdarshan Dayal on 12 December, 1972

Equivalent citations: AIR 1973 SC 814, (1973) 1 SCC 294

Author: Y Chandrachud

Bench: J Shelat, Y Chandrachud

JUDGMENT Y.V. Chandrachud, J.

1. This appeal by special leave is directed against a judgment dated December 7, 1967 of a learned single Judge of the High Court of Allahabad, setting aside a decree of affirmance passed by the III Additional Civil Judge, Meerut.

2. An extensive area comprised in Plot No. 765 of Mauza Bhaunjar, Tehsil Ghaziabad, was sub-divided by the co-owners into small plots, as a part of a housing scheme called "Chandrapuri Colony". The case of the plaintiffs who on behalf of the various purchasers of the sub plots, brought the present suit under Order 1, Rule 8 of the CPC is that a representation was made to them that plot No. 19 will be reserved for being used in common as a Dharmshala and yet it was sold to one Manohari Devi who in turn sold it to the defendant. The defendant constructed a boundary wall around the plot, rendering impossible the use of the plot for common benefit. Plaintiffs therefore asked for a declaration that plot No. 19 was earmarked for a Dharmshala, for a permanent injunction restraining the defendant from interfering with the construction of a Dharmshala and for possession of the plot after demolition of the boundary wall.

3. Defendant denied that plot No. 19 was reserved for the use of a Dharmshala and contended that Manohari Devi who, under the sale in her favour had become an absolute owner of the plot was entitled to sell it to him.

4. While decreeing the suit, the trial court and the 1st appellate court held that plot No. 19 was set apart for the construction of a Dharmshala, that the co-owners had lost their ownership over that plot and therefore they had not right to sell it. The High Court having reversed those findings and dismissed the suit, plaintiffs have filed this appeal.

5. The principal contention of the plaintiffs, is that a representation was made to the purchasers by or on behalf of the co-owners that plot No. 19 would be reserved for a Bharaashala, that the purchasers paid high prices for the plots by reason of that representation and therefore the co-owners had no right to sell the plot to Manohari Devi who, in turn, had no right to sell it to the defendant. There are numerous difficulties in accepting this contention. There is no evidence as to who, on behalf of the co-owners, made the particular representation. It is said that it was announced over a loudspeaker, while the housing scheme was being advertised, that a plot will be reserved for a Dharmshala. Who made the announcement and under whose authority are matters on which plaintiffs have been unable to, shed any light. Thus, the argument lacks basis. Besides, though modern contrivances like microphones are useful aids in propagation of views or dissemination of information, they have not yet acquired notoriety carriers of binding representations. Promises held out over loudspeakers are often claptraps of politics. In the Instant case, the announcement, was if at all, a puffing up of property put up for sale.

6. It would appear that in the maps which were annexed to some of the sale-deeds, plot No. 19 was described as "Dharmshala". But, in the context, that circumstance cannot be construed as containing a representation that the particular plot will in perpetuity remain unbuilt upon. It was on September 21, 1946 that the plot was sold to Manohari Devi. And yet, maps annexed to subsequent sale-deeds described the plot as "Dharmshala". The transfer in favour of Manohari Devi was effected by a registered deed of sale and therefore, subsequent purchasers of the other plots in Chandrapuri Colony had notice, constructive at any rate, that plot No. 19 was not subject to any restraining covenant. It seems clear that, in fact the co-owners had at no time created fetters on their disposing power. The decision in *K.S. Nanji and Company v. Jatashankar Dossa* which plaintiffs rely proceeded on different facts for, there the map was annexed to the deed of lease in order to delineate the boundary line between the holdings of the parties. The maps in the instant case are not annexed to the sale-deeds and cannot therefore be deemed to be a part of the sale-deeds by incorporation or otherwise. In fact no sale-deed refers to any map in the context of the use of plot No. 19.

7. It is significant that none of the sale-deeds on record contains a stipulation that plot No. 19 would be reserved for common use as a Dharmshala. For the matter of that, no reservation is made in any of the sale-deeds as regards the use to which the plot may be put. Most of the sale-deeds contain an express recital that the co-owners will lay out roads and drains. If plot No. 19 was truly earmarked for a specific purpose it is impossible that a suitable term in that behalf would not be included in the various sale-deeds.

8. In the first two courts, arguments revolved round a plea of estoppel. Learned Counsel for the plaintiff put the same plea in the forefront before us contending that the co-owners were estopped from disputing the right of the plaintiffs to ask that plot No. 19 shall remain reserved for the use of a Dharmshala. There is no merit in this contention. Evidence regarding the representation is vague and true facts were known to those who purchased the sub-plots after plot No. 19 was sold to Manohari Devi in 1946. Besides, estoppel is but a rule of evidence and except in cases like those under Section 43 of the Transfer of Property Act, when a grant is void by estoppel, the rule does not operate to create interest in property regarding which the representation is made. Accordingly, plaintiff cannot claim that possession of plot No. 19 be given to them so as to enable them to construct a Dharmshala. The learned Additional Civil Judge in First Appeal observes that the description of plot No. 19 in the map as "Dharmshala" would show that the plot was "more or less in trust" for general benefit. That shows like saying, if the issue be whether there is a binding agreement between the parties, that the agreement is "more or less a contract". Such fluid phrases cannot give rise to legal rights.

9. The High Court was therefore right in concluding that the title of the co-owners to plot No. 19 was not divested and that the plaintiffs had no cause of action to bring the suit. Accordingly, we confirm that judgment and dismiss the appeal with costs.