Supreme Court of India
Achutananda Baidya vs Prafullya Kumar Gayen And Ors on 8 April, 1997
Bench: G.N. Ray, S.C. Sen

CASE NO.:
Appeal (civil) 1009-1019 of 1987

PETITIONER:
ACHUTANANDA BAIDYA

RESPONDENT:
PRAFULLYA KUMAR GAYEN AND ORS.

DATE OF JUDGMENT: 08/04/1997

BENCH:
G.N. RAY & S.C. SEN

JUDGMENT:

JUDGMENT 1997(3) SCR 709 The Judgment to the Court was delivered by G.N. RAY, J. In these appeals, the judgment dated July 15, 1986 passed by the Calcutta High Court in Civil Rules Nos. 1691-92 of 1985 arising out of applications under Article 227 of the Constitution of India against judgment dated April 8, 1985 passed by the Sub-Divisional Officer Diamond Harbour in R.A.L. Appeals Nos. 19 and 20 of 1983, is under challenge.

There is no dispute that one Kamini Mohan Gayen was the owner of the lands in dispute. On June 1, 1968, the said Kamini Mohan Gayen had sold 0.60 cent of land to Achulananda Baidya the appellant in these appeals, The said Kamini Mohan Gayen also sold .60 cent of land on July 1, 1968 to one Sunil Kumar Mondal by a registered sale deed. The appellant Achutananda Baidya subsequently purchased the said 0.60 cent of land from Sunil Kumar Mondat. The successor in interest of Kamini Mohan Gayen, namely, the respondents in these appeals made applications under Section 4(1) of the West Bengal Restoration of Alienated Land Act, 1973 (hereinafter referred to as the Act) before the Special Officer con-stituted under the Act for restoration of the said 66 decimals of land and 60 decimals of land which had been transferred by Kamini Mohan Gayen on June 1, 1968 and July 1, 1968. It may be stated here that under Section 4(l)(b) of the Act, if the transfer in question had been made after the expiry of the year 1967 with an agreement, written or oral for reconveyance of the land to the transferor, the transferor may within ten years from the date of commencement of the Act may make an application in prescribed manner to the Special Officer having jurisdiction in the area in which the land transferred was situated for restoration of such land to him. Under Section 4(l)(a) of the Act, the transferor may also make an application before the Special Officer for restoration of the alienated land if the transfer of the said land was made after the expiry of the year 1967 if the transferor was in need of money for maintenance of himself and family or for meeting the cost of cultivation.

In the application for restoration of the said lands it was contended by the respondents that their predecessor-in-interest Kamini Mohan Gayen was in need of money for the maintenance of his family and in order to procure money to give his daughter in marriage, he had to sell the said lands

by the aforesaid registered deeds of sale under distress. It was also contended that the transferor and the transferee entered into oral agree- ment to reconvey the said land to the transferor. On such application, Cases Nos. 44 and 45 of 1974-75 were initiated before the Special Officer. After a contestant hearing, the Special Officer allowed the said applications for restoration of alienated land and inter alia on the finding that Kamini Mohan Gayen sold the land in distress and there was agreement for reconveyance of the said lands to the transferor.

The appellant preferred the appeals, namely, R.A.L. Nos. 19 and 20 of 1983-84 before the sub-Divisional Officer Diamond Harbour, being the appellate authority under the Act. The appellate authority allowed both the appeals inter alia on the finding that the transfer of the lands in question was tor raising money for the business and not for the marriage of the daughter. Hence, the sale was not a distress sale under Section 4(l)(a) of the Act. The appellate authority also held that there was no oral agreement for reconveyance. Accordingly, the orders passed by the Special Officer for restoration of the alienated Act were set aside by the appellate authority by allowing the appeals.

The respondents preferred revisional applications before the High Court under Article 227 of he Constitution of India against the decision of the appellate authority. By the impugned judgment, the High Court has upheld the finding of the appellate authority that the sale was not made for the marriage of the daughter of the vendor and the applicant was not entitled to claim restoration of the lands under Section 4(l)(a) of the Act. But the High Court has held that the finding of the appellate authority that there was no agreement for reconveyance is not correct because such finding was made without considering the evidences on record. The High Court has held that the existence of an oral agreement of reconveyance between the transferor and transferee has been established by the eviden-ces adduced in the case. Accordingly, the orders for restoration of alienated lands passed by the Special Officer were not required to be interfered with and should be upheld.

Mr. Biswajit Bhattacharya, the learned counsel appearing for the appellant, has strenuously contended that question of existence of oral agreement for reconveyance is a question of fact. That finding of fact on such question was concluded by the finding made by the appellate authority. It was, therefore, not open to the High Court to interfere with such finding of fact in the exercise of revisional jurisdiction under Article 227 of the Constitution. Mr. Bhattacharya has also submitted that in the impugned deeds there was no reference that the lands transferred were to he reconvcyed. Mr. Bhattacharya has submitted that the scope and jurisdiction of the High Court under Article 227 of the Constitution have been taken into consideration by this Court in a number of decisions and it has been indicated that the jurisdiction under Article 227 of the Constitution is not a jurisdiction of an appellate authority which can re-appreciate evidence adduced in a case and come to an independent finding of fact on such re-appreciation of the evidence. Therefore, there was no occasion for the High Court to reverse the finding of fact made by the appellate authority which was the final authority for making the finding of fact. Even then, the High Court has interfered with the finding of fact in exercise of revisional jurisdiction under Article 227 of the Constitution. Mr. Bhat-tacharya has submitted that on this ground alone, the impugned judgment is liable to be set aside.

Mr. Bhatlacharya has also submitted that, even on merits, the finding of the appellate authority is not to be reversed. The oral evidence adduced by the applicants in support of the case of oral agreement for reconveyance cannot be accepted because the existence of the facturn of an oral agree- ment had not been provided by leading direct evidence as required under Section 60 of the Indian Evidence Act. Mr. Bhattacharya has submitted that the oral evidence must be direct. If the witness refers to a fact which had been heard by the witness, the evidence must clearly mention that the witness himself had heard utterances constituting the fact. Mr. Bhat- tacharya had submitted that in the instant case, the witnesses have only deposed to the effect that in their presence there had been discussion between the transferor and the transferee but such witnesses have not deposed that they had heard the parties making oral agreement for recon- veyance. Hence, even on merit, no reliance can be placed on the deposi- tions of the witnesses examined by applicants to prove the existence of oral agreement. Hence, in any event, the High Court was wrong in reversing the finding of the appellate authority that there was no agreement for reconveyance. Mr. Bhatlacharya has, therefore, submitted that impugned judgment should be set aside by allowing these appeals and cancelling the orders for restoration of alienated lands.

We are, however, unable to accept such contention of Mr. Bhat-tacharya. In this case, the High Court has rightly held that the appellate authority came to the finding of non-existence of oral agreement of reconveyance without considering the evidence on record. If the appellate authority does not consider the materials on record having a bearing on a finding of fact and makes the finding of fact, such finding of fact arrived without consideration of relevant materials on record cannot be sustained in law. The High Court, in such circumstances, will be competent to consider the validity of the finding of fact assailed before it with reference to materials on record.

The power of superintendence of the High Court under Article 227 of the Constitution is not confined to administrative superintendence only but such power includes within its sweep the power of judicial review. The power and duty of the High Court under Article 227 is essentially to ensure that the Courts and Tribunals, inferior to High Court, have done what they were required to do. Law is well settled by various decisions of this Court that the High Court can interfere under Article 227 of the Constitution in cases of erroneous assumption or acting beyond its jurisdiction, refusal to exercise jurisdiction, error of law apparent on record as distinguished from a mere mistake of law, arbitrary ot capricious exercise of authority or discretion, a patent error in procedure, arriving at a finding which is perverse or based on no material, or resulting in manifest injustice. As regards finding of fact of the inferior court, the High Court should not quash the judgment of the subordinate court merely on the ground that its finding of fact was erroneous but it will be open to the High Court in exercise of the powers under Article 227 to interfere with the finding of fact if the subordinate court came to the conclusion without any evidence or upon manifest misreading of the evidence thereby indulging in improper exercise of jurisdiction or if its conclusions are perverse.

If the evidence on record in respect of a question of fact is not at all taken into consideration and without reference to such evidence, the finding of fact is arrived at by inferior court or Tribunal, such finding must be held to be perverse and lacking in factual basis. In such circumstances, in exercise of the jurisdiction under Article 227, the High Court will be competent to quash such

perverse finding of fact.

So far as the contention of Mr. Bhaltacharya that the oral evidence about the agreement of reconveyance entered between the parties as invalid and insufficient in view of the provision of Section 60 of the Evidence Act is concerned, we may indicate that such submission is misconceived and should not be accepted. In this case, the witnesses have deposed that in their presence, the parties had negotiated about the oral agreement tor reconveyance and such agreement was made. In our view, in such circumstance, it will be too hyper technical to contend that the witness should not only state that in their presence negotiation for oral agreement was held but they had heard the talks between the parlies. The deposition that on verbal discussions in the presence of the witness, the parties hud come to an agreement lor reconveyance necessarily implies that the witness had heard such discussion and has come to know about such oral agreement. In the aforesaid circumstance, we do not find any reason to interfere with the impugned judgment and the appeals are dismissed but in the facts of the case there will be no order as to costs.