(1973) 02 AHC CK 0015

In the Allahabad High Court

Case No : Second Civil Appeal No. 154 of 1970

Ahmad Khan and Others — APPELLANT

Vs

Smt. Shahanshah Jehan Begum — RESPONDENT

Date of Decision : 05-02-1973

Acts Referred:
Evacuee Interest (Separation) Act, 1951 — Section 11

Citation : AIR 1973 All 529

Hon'ble Judges : T.S. Misra, J

Bench : Single Bench

Advocate : K.B. Sinha, for the Appellant; Uma Kant Srivastava, for the Respondent

Final Decision : Allowed

Judgement

T.S. Misra, J.—This is defendant''s appeal arising out of a suit for specific performance of a contract of sale in respect of 7 annas share in the house in dispute. The material facts are as follows. The plaintiff was the owner of 7 annas share in the house No. 139/14 Hathikhana, Lucknow. She sold her said share in the house to the defendant. On the same day a deed of agreement was also executed whereby the defendant had agreed that if the plaintiff would pay a sum of Rs. 4,000/- within four years to her she would reconvey the said share of the plaintiff. One Wajid Ali Khan had also a 6 annas share in the said house and the defendant had originally 3 annas share in the same. Wajid Ali Khan migrated to Pakistan and his 6 annas share in the said property was declared to be evacuee property. The Custodian sold the entire premises as composite property by public auction on 23-8-1963 to the defendant. The sale was confirmed and a sale certificate dated 18th October, 1963 was issued. On 9-2-1966 the plaintiff served a notice on the defendant requiring her to reconvey 7 annas share in the said house to her in pursuance of the agreement dated 14-5-1962. The defendant, however, failed to comply with the said notice, hence the suit was filed by the plaintiff for the specific performance. The defendant contested the suit on a number of grounds. She alleged that the property in suit vested in the Custodian free from all encumbrances and liabilities and was sold by the Competent Officer, Lucknow by a public auction as composite property. The defendant purchased the said property in public auction for a consideration of Rs. 5700/- and thereafter spent a large amount on its constructions. She, therefore, contended that the plaintiff had no right in the property and as the said house had been declared composite property and had been sold as such, the defendant was under no obligation to reconvey 7 annas share in the said house to the plaintiff in pursuance of the agreement dated 14-5-1962. The trial Court accepted the contention raised by the defendant and dismissed the suit. On appeal by the plaintiff the findings of the trial Court were reversed and the suit was decreed. Aggrieved, the defendant has now come to this Court in second appeal.

2. It was argued on behalf of the defendant-appellant that under Sub-clause (a)(iii) of Section 10 of the Evacuee Interest (Separation) Act 1951 the Competent Officer had the power to take all such measures as he might have considered necessary for the purpose of separating the interests of the evacuees from those of the claimants ha any composite property and sell the property and distribute the sale proceeds thereof between the Custodian and the claimant in proportion to the share of the evacuee and of the claimant of the property. It was argued that the Competent Officer in exercise of his powers u/s 10 sold the property in question and distributed the sale proceeds thereof. It was further argued that in view of the provisions of Section 11 of the said Act the whole property vested in the Custodian free from all encumbrances and liabilities and as such the defendant was relieved of all her obligations under the aforesaid agreement of 14-5-1962. The learned counsel for the respondent, however, submitted that in view of the provisions of Section 12 read with Sub-section (3) of Section 20 of the said Act the plaintiff was entitled to have the said agreement of 14-5-1962 specifically enforced.

3. In order to appreciate the arguments advanced by the learned counsel for the parties it would be necessary to examine the scheme of the Evacuee Interest (Separation) Act, 1951 (hereinafter called the Act). This Act was passed for making special provisions for the separation of the interest of evacuee from those persons in property in which such other persons are also interested. Section 2(c) defines ''competent officer'' as an officer appointed as such by the State Government u/s 4. Composite property has been defined u/s 2(d) as any property which or any property in which an interest has been declared to be evacuee property or has vested in the custodian under the Administration of Evacuee Property Act and in which the interest of evacuee consists of an undivided share in the property held by him as a co-sharer or partner of any other persons, not being an evacuee. Section 5 of the Act deals with the jurisdiction of "competent officer". It confers jurisdiction on the competent officer to decide any claim relating to any composite property situate within the limits of the local area of his jurisdiction. Section 2(b) defines a claim as follows:--

"Claim" means the assertion by any person, not being an evacuee, of any right, title or interest in any property, as a co-sharer or partner of an evacuee in the property; or as a mortgagee of the interest of an evacuee in the property; or as a mortgagor having mortgaged the property or any interests therein in favour of an evacuee.

Section 6 empowers a competent offices to issue notices for the purposes of determining or separating the evacuee interest in composite property requiring persons claiming interest in any composite property to submit claim to him. Section 7 deals with the procedure. Section 8 provides that on receipt of a claim the competent officer shall make an enquiry and pass an order determining the interests of the evacuee and the claimant in the property. Section 10 empowers a competent offer to separate the interests of the evacuee from those of the claimant. It provides that the competent officer in particular may:--

(a) in the case of any claim of a co-sharer............

(iii) sell the property and distribute the sale proceeds thereof between the custodian and the claimant in proportion to the share of the evacuee and of the claimant in the property.

Section 11 deals with the vesting of interest of the evacuee in the custodian free from encumbrances and payments. Section 12 provides that nothing in Chapter II shall prejudice any rights in respect of the property transferred or delivered, or payment made, to a claimant under the provisions of this Act which any other claimant or other persons may be entitled by due process of law to enforce against the claimant to whom the property is delivered or transferred or the payment is made. Sub-section (3) of Section 20 provides that nothing in Sub-section (1) of Section 20 shall prevent any civil or revenue Court from entertaining any suit or proceeding relating to any right in respect of any payment made or property transferred or delivered, to a claimant under the provisions of this Act which any other claimant or other person may be entitled by due process of law to enforce against the claimant to whom the payment is made or the property is delivered or transferred. The contention of the learned counsel for the appellant that the whole premises in question vested in custodian free from all encumbrances and liabilities is therefore not sound. The object of the Act is not to vest in the custodian property which was not an evacuee property but to vest in him only the evacuee interest in the property after determining or separating as the case may be that interest from the interest of the other persons in the manner prescribed. Section 11 of the Act, therefore, cannot vest in the custodian any property which is not an evacuee property. It cannot have the effect of making the entire property vest in the custodian as evacuee property where the order u/s 7 of the Act of 1950 held that a certain share in it only was evacuee property; See Abdul Hakim Khan and Others Vs. The Regional Settlement Commissioner, .

In the present case notices were issued by the competent officer inviting claims with respect to the composite property. Two claims were filed before him one by Smt. Shahanshah Jehan Begum and the other by Smt. Mehboob Jehan Begum. Shahanshah Jehan Begum had alleged that she sold 6 annas share to Mehboob Jehan Begum within a period of four years. Mehboob Jehan Begum denied the agreement to reconvey the property. The competent officer found that the share of the evacuee in the property was six annas and the value of that share was Rs. 3360/-. In regard to the question as to whether Mehboob Jehan Begum was absolute owner or she had agreed to reconvey the property to Shahanshah Jehan Begum the Competent Officer held that Mehboob Jehan Begum was the owner of the 7 annas share which originally belonged to Shahanshah Jehan Begum and which the latter transferred to the former. He, therefore, held that Shahanshah Jeban Begum could not be held to be co-sharer in the property at that stage and the evacuee share, thus, could not be transferred in her favour. He further held that the evacuee share would, therefore, be transferred to Mehboob Jehan Begum on payment of its money value. It was observed by the competent officer that Shahanshah Jehan Begum did not show interest in purchasing the evacuee share. A certified copy of the order of the Competent Officer is Exhibit 2 on the record. Obviously, the entire property was, therefore, not held to be the evacuee property. The share of the evacuee was found to be only 6 annas in the property; hence the entire property did not and could not vest in the custodian.

4. It is, however, not disputed that the entire house was a ''composite property'' as defined in Section 2(d) of the Act. It is also not disputed that in pursuance of the provisions of Section 10(a)(iii) of the Act the competent officer sold the entire property by public auction on 23rd August, 1963 to Srimati Mehboob Jehan Begum and granted a sale certificate exhibit A-1. It was argued that in view of these supervening events it became impossible for the defendant to perform the original contract of re-conveyance of 7 annas share which the defendant had purchased from the plaintiff.

5. I shall now proceed to consider whether the agreement to re-sell the 7 annas share in the said house had been rendered unenforceable because of the supervening events. To attract the doctrine of frustration of contract the performance of the contract must become absolutely impossible due to the supervening events, legislative or otherwise. It is a settled law that a contract for sale of land does not create any interest in the property which is a subject-matter of the contract. The obligations of the parties to contract for sale of land are, therefore, the same as any other ordinary contract and the doctrine of frustration, therefore applies to a contract for sale of land as well. This doctrine is well enshrined in Section 36 of the Indian Contract Act. It is applied on the ground of impossibility of performance of contract due to the supervening events over which the parties had no control. If the changed circumstances make the performance of the contract impossible the parties would be absolved of further performance of it as they did not promise to perform an impossibility. The word ''impossible'' has not been used in Section 56 of the Contract Act in the sense of physical or literal impossibility. The performance of an act may not be literally

impossible but it may be impracticable and useless and if an unforeseen event or change of circumstances totally destroyer the very foundation of the adventure it can be said that he finds it impossible to do the act which he promised to do. It is equally settled that when there is frustration of contract the dissolution of the contract occurs automatically and it does not depend on the ground of repudiation or breach or on the choice or election of either party but it depends on the effect of what had actually happened on the possibility of performing the contract. Hence, where it is alleged that the contract had frustrated the Court has to find out whether the supervening event vitally affected the contract and struck at the roots of the adventure and made its performance impossible.

6. In the present case, the plaintiff had sold her 7 annas share to the defendant and the latter had agreed if the plaintiff would pay Rs. 4,000/- within four years she would reconvey the same to the plaintiff. Thereafter Wazid Ali Khan who had 6 annas share migrated to Pakistan and his 6 annas share in the property was declared to be an evacuee property. As the interest of the evacuee in the said property was undivided, the entire property became ''composite property'' within the meaning of Section 2(d) of the Act, This 6 annas share of the evacuee in the said property vested in the custodian. The Competent Officer appointed u/s 4 of the Act thereupon proceeded to take action u/s 10(a)(iii) of the Act and sold the entire house. The defendant could not object to the sale being made by the Competent Officer. He had no control in the matter. The plaintiff also was not entitled to stop the sale being made by the Competent Officer. In fact the Competent Officer exercised his jurisdiction u/s 10(a)(iii) of the Act to sell the entire house in which the evacuee had an interest of only 6 annas. This sale of the house was not at the instance of the defendant and the Competent Officer did not act as a representative or agent of the defendant. The events referred to above upset the very foundation upon which the parties to the suit rested their bargain. The defendant was not entitled, in law, to resist the sale of the non-evacuee interest in the said property. The Competent Officer as pointed out above, had the jurisdiction to sell not only the interest of the evacuee in the said property but also the non-evacuee interest therein. Obviously, therefore, on the happening of these events it became impossible for the defendant to perform his part of the contract. The contract for re-sale, therefore was frustrated. Consequently, he could not be compelled to specifically perform the agreement dated 14th May, 1962. The appellate Court below was, therefore, not justified in decreeing the suit.

7. In the result, the appeal is allowed with costs. The decree passed by the appellate Court below is set aside and the decree passed by the trial Court is restored.