(1957) 04 BOM CK 0011

In the Bombay High Court

Case No : Second Appeal No. 677 of 1951

Bajirao Ganpati and Others — APPELLANT

Vs

Daulatrao Malhari — RESPONDENT

Date of Decision : 03-04-1957

Acts Referred:

Berar Land Revenue Code, 1928 — Section 176
Central Provinces and Berar Relief of Indebtedness Act, 1939 — Section 11, 11(1), 15, 15(2)
Transfer of Property Act, 1882 — Section 40, 53
Trusts Act, 1882 — Section 91

Citation : AIR 1957 Bom 236 : (1957) 59 BOMLR 1007 : (1957) ILR (Bom) 769

Hon'ble Judges : Mudholkar, J

Bench : Single Bench

Advocate : N.B. Chandurkar and S.N. Kherdekar, for the Appellant; L.D. Khapre, for the Respondent

Judgement

1. The only point in this appeal is whether the transaction in question is a sale or merely an agreement for sale.

2. The plaintiffs had applied to the Debt Relief Court for settlement of their debts and eventually that Court framed a scheme whereunder the debt was payable to one Waman Gopal who was their only creditor by instalments. The date on which the scheme was prepared was 13-6-1941 and the last instalment was made payable thereunder on 15-3-1949. On 28-4-1949, the plaintiffs executed a document exhibit D-9 styled as ''Sauda Chitti'' whereunder they agreed to sell field S.No. 49/1 of mauza Chincholi, taluq Mehekar, district Buldana to the defendant for a sum of Rs. 4500/- in consideration of the defendant satisfying the debt due to Waman Gopal. In pursuance of this agreement, the plaintiffs put the defendant in possession of the property, it is stated that the defendant has been paying instalments to Waman Gopal regularly.

3. On 1-4-1950, the plaintiffs instituted the suit out of which this appeal arises for possession of the field on the ground that the transaction represented by

exhibit D-9 was not merely a con- tract of sale but was a sale itself and as such was void u/s 15 of the Central Provinces and Berar Relief of indebtedness Act. The plaintiffs claim was denied by the defendant who contended that the transaction was not a sale but was merely an agreement to sell and that the parties had contemplated the execution of a proper deed of conveyance at a later date. The suit was decreed by the trial Court but was dismissed by the lower appellate Court.

4. It is contended before me on the authority of the decisions in Radhakisan v. Shridhar ILR 1952 Nag 636 : AIR 1953 Nag 1821, Karalia Nanubhai v. Mansukhram ILR 24 Bom 400, and Ram Bakhsh v. Mughlani Khanam ILR 26 All 266 that where full price has been paid by the vendee to the vendor and where the vendor has placed the vendee in possession of the property it must be held that the title has passed to the vendee and that the document though purporting to be a mere contract of sale, would operate as a conveyance.

5. In the first mentioned case, what was held was that for the purpose of claiming pre-emption It is not necessary that there should be a sale as required by Section 54 of the Transfer of Property Act and that the word ''sale'' used in Section 176, Berar Land Revenue Code, must not be construed in the narrow sense in which it is used in the Transfer of Property Act. In the instant case, what we are concerned with is the meaning of the word ''transfer'' used in Section 15 (2) of the Relief of Indebtedness Act. Under that provision every transfer of immovable property made by a debtor in respect of whose debts a scheme has been prepared under Sub-section (1) of Section 11, shall be void unless made with the sanction of the Deputy Commissioner concerned. Now, a transfer as contemplated by this provision must necessarily be a transfer which is a vaild one under the Transfer of Property Act. In other words, therefore, a transfer which is prohibited by this provision is one which could be effectively made under the Transfer of Property Act. Therefore, the word ''transfer'' has to be interpreted in the narrow sense in which it is used in the Transfer of Property Act. The particular transfer here, is a sale which is denned thus in Section 54 of the Transfer of Property Act :

"Sale is a transfer of ownership in exchange for a price paid or promised or part-paid and part-promised."

Thus the requirement of a transfer by way of a sale is a transfer of ownership. In the document in question there is nothing in Sauda Chitti from which it could be inferred that the parties intended to transfer ownership. On the other hand, the document makes it perfectly clear that the parties intended that the executants should execute a said deed in respect of the aforesaid field at a future date and that such a document could not be executed on that date in view of the fact that the scheme prepared by the Debt Relief Court u/s 11 of the Relief of Indebtedness Act was still in subsistence and that it was not possible to obtain the permission of the Deputy Commissioner for the transfer. In these circumstances, it is clear that the observations made in the Nagpur case can afford no assistance to the Plaintiffs.

6. The facts of the Bombay case relied on are as follows : Under a contract of sale with respect to certain fields, possession was delivered to the vendee and the whole of the purchase-money was paid to the vendor, but the transfer was not effected, as the necessary registered conveyance had not been executed. Subsequently, a judgment-creditor of the vendor sought for a declaration that the fields were liable to be attached and sold as the property of the judgment-debtor. Before the case was decided by the Court of first instance, a registered conveyance had been executed. A declaration was issued by the High Court and the reasons for this are stated thus by Jenkins. C. J. :

"Reliance has been placed on the concluding words of Section 54 of the Transfer of Property Act, which provide that a Contract ''does not, of itself, create any interest in or charge on'' the property sold. But the answer is that here reliance is not placed on the contract of sale alone; there, is something more: there is posserion and payment of the whole of the purchase-money; and that this makes a material difference is manifest from Section 55(6)(b), which entitles the purchasers to a charge on the property for the amount of any purchase-money properly paid by him. Reference may also be made to Section 40 of Transfer of Property Act and to Section 91 of the Trusts Act. Furthermore, before this case was decided by the Court of first instance, a registered conveyance had been executed, so that the purchaser''s title was perfected, and it would be impossible for us to cancel that deed."

It will thus be clear that though reference is made to Section 91 of the Trusts Act, the decision of the suit is based on the provisions of Section 55(6)(b) of the Transfer of Property Act and also on the circumstance that a registered conveyance had been executed pendente lite. How far the execution of a conveyance pendente lite affects the decision of the question in suit is not a matter which needs consideration. Suffice it to say that the Court regarded it as a sufficient ground for dismissing the plaintiff''s claim. The two grounds which were given by the learned Chief Justice for dismissing the claim did not amount to holding that actual transfer of ownership by executing a deed of conveyance as required by the second paragraph of Section 54 is not necessary. No doubt this decision was interpreted in ILR 26 All 266, as laying down the law that no conveyance was necessary for the transfer of a title where full consideration has been paid by the vendee to the vendor and where the vendee is placed in possession of the property. Referring to both these decisions it was observed by Chandavarkar J. who delivered the judgment of the Division Bench in Lalchand v. Lakshman ILR 28 Born 466:

"All that, therefore, the vendee can claim is the benefit or Section 55(6)(b) of the Transfer of property Act. The decision in ILR 24 Bom 400 is so far but no further in his favour, and that benefit he has got under the decree of the lower Court. The Allahabad decision in 1904 All. W.N.S (C) no doubt applies to a state of facts not dissimilar to the present, but the judgment shows that the Court there simply followed the decision of this Court in Karalia Nanubhai v. Mansukhram as an authority which had gone the length of deciding that where there is a contract of sale followed by delivery of property and receipt of purchase money by the vendor, a registered deed conveyance is not necessary to pass ownership to the vendee though Clause 2 of Section 54 of the Transfer of Property Act says that ownership can pass only by such a deed and not otherwise in the care or tangible immovable property of one hundred rupees and upwards. The decision in Karalia Nanubhai v. Mansukhram (B) does not go and was not intended to go that length nor was it necessary for the purposes of that decision to do so since there was a registered conveyance in the casa Wore we to follow the Allahabad decision, we should be overriding the plain provisions of the Transfer of Property Act."

With respect, I entirely agree with this view.

7. I may also refer to the decision in Jibhaoo Harisingh Rajput Vs. Ajab Singh Fakira Rajput, in which the two precious Bombay decisions have been referred to as an authority for the proposition that in a case such as the present what the contract of sale brings into existence is a charge in favour of the vendee u/s 55(6)(b) of the Transfer of Property Act in respect of the purchase price paid by him. The law this being clear, I have no doubt that the ownership in the property had not passed from the vendor to the vendee by the execution of the document of Sauda Chitthi dated 28-1-1949.

8. In Amroo v. Baburao ILR 1950 Nag 25 : AIR 1951 Nag 403 (F), I have observed:

"I will first, deal with the question whether the document on which reliance is placed on behalf of the appellant is an agreement or a conveyance. That document is described as an agreement & is stamped as such. There are no words of conveyance therein. On the other hand, the document clearly states that a sale deed will be executed to future. Therefore, it is clear that the document must be regarded as an agreement and can under no circumstances be regarded as a conveyance."

I adhere to that view. In the instant case, as already pointed out, the document in question does contemplate the execution of a proper conveyance. In the circumstances the only inference which can be drawn is that the transaction has not passed into the realm of transfer and is only a contract. No doubt, the defendant is in possession of the property in pursuance of the contract & as such he is entitled to the rights conferred by Section 53A of the Transfer of Property Act. But that is entirely a different matter. It only creates an equity in his favour by the help of which he can retain his possession. But that does not make him a transferee of the property.

9. In this view, I uphold the decree of the lower appellate Court and dismiss the appeal with costs.

10. Appeal dismissed.

