

(1976) 02 AHC CK 0022
In the Allahabad High Court
Case No : Second Appeal No. 1845 of 1966

Bhagwat Prasad

APPELLANT

Vs

Damodar Das and Others

RESPONDENT

Date of Decision : 10-02-1976

Acts Referred:

Transfer of Property Act, 1882 — Section 11, 40

Citation : AIR 1976 All 411

Hon'ble Judges : G.D. Srivastava, J

Bench : Single Bench

Advocate : Shambhu Prasad and Krishna Murari Sinha, for the Appellant; B. Dayal and Vishnu Sahai, for the Respondent

Final Decision : Dismissed

Judgement

G.D. Srivastava, J.—This is a plaintiff's second appeal against the judgment of the 1st Additional Civil Judge Bulandshahr. The appellant brought a suit in the court of Munsif Bulandshahr for demolition of certain constructions raised by respondents Land 2 in a strip of land in front of their house. The admitted facts of the case are that Vidya Ram respondent No. 4 was the original owner of a plot of land shown by letters A-B-C-D in the plaint map situated in Dadri town. He divided his plot into five portions, and sold one plot to respondent No. 1, two portions were sold to the plaintiff-appellant and the fourth portion was sold to respondent No. 3, while the last portion was retained by respondent No. 4 for himself. To the north of these portions, a strip of land 10 feet in width was provided for the benefit of all the purchasers and according to the plaint case, it was agreed upon that no constructions would be made on this strip of land by any purchaser. Respondents 1 and 2 made certain constructions on the said strip of land including a latrine. The plaintiff, therefore, sued for demolition of these constructions. The suit was contested by respondents 1 and 2 on various grounds. The main ground with which I am concerned in the present appeal is that the contract for leaving the strip of land unbuilt was arrived at between each

purchaser on one side and the original owner on the other side .and, therefore, the plaintiff had no right to sue. The other pleas raised by the respondents were that the suit was barred by estoppel and acquiescence, and that the respondents had not committed any breach of the contract by making the constructions. Both the courts below have held that although respondents 1 and 2 had made constructions in contravention of the terms of the sale deed, yet the plaintiff had no cause of action and had no right to bring a suit. The other pleas raised by respondents 1 and 2 were, however, repelled. In view of the above mentioned findings, both the Courts below dismissed the suit of the plaintiff and hence this appeal.

2. As already noted above, the only point which is involved in this appeal is whether the plaintiff has any right of suit in these circumstances. For the purposes of this appeal, it may be taken to be admitted that the disputed constructions have been made by respondents 1 and 2 in contravention of the condition mentioned in the sale deed. It does not appear to be disputed that when defendant No. 4 sold the various portions to different purchasers, it was expressly mentioned in the various sale deeds that the purchasers would not make any constructions on the open strip of land, which was to the north of these portions. Defendants 1 and 2 alone were given a right to make certain constructions towards the extreme end of this strip in the eastern portion. However it is admitted that defendants 1 and 2 have constructed a latrine and this is against the condition mentioned in the sale deed. The relevant question which arises for consideration is whether in these circumstances the plaintiff had got any right of suit or not.

3. Ordinarily speaking, if a property is absolutely transferred to another person, the transferor cannot impose any condition which might be inconsistent with the absolute right which has been created in favour of the transferee. This principle is embodied in the first part of Section 11 of the Transfer of Property Act. The learned counsel for the appellant, however, placed reliance on the second part of this Section which runs as follows:--"

"Where any such direction has been made in respect of one piece of immovable property for the purpose of securing the beneficial enjoyment of another piece of such property, nothing in this section shall be deemed to affect any right which the transferor may have to enforce such direction or any remedy which he might have in respect of a breach thereof."

This part of section 11, therefore, provides for an exception to the general rule, namely, that it is permissible to the transferor to impose any condition regarding the enjoyment of the property which has been transferred. In other words, if one part of the property has been sold and the other part has been retained by the transferor, the latter can impose a condition restricting the enjoyment of the property sold, if such a restriction is for the beneficial enjoyment of the property, which has been retained by the transferor. With reference to this provision of law, it was argued by the learned counsel for the appellant that because the

restriction imposed on the transferee in respect of the aforesaid strip of land was for the beneficial enjoyment of the other transferees and also the transferor, this condition was valid and could be enforced. It is true that this restriction was for the benefit of the transferee and also the transferor and therefore the condition is valid. But the question which still remains is whether the breach of such a condition can give rise to a cause of action for another transferee. A plain reading of the second part of Section 11 shows that an exception has been provided in respect of any right which the transferor may have to enforce such a direction. Undoubtedly therefore the transferor, namely, respondent No. 4 had a right to enforce the direction contained in the sale deed. The transferor is no doubt a party to the suit and is also supporting the claim of the appellant, but it is evident that he has not come as a plaintiff and is not seeking to enforce the above mentioned direction. It, therefore, now remains to be seen whether the plaintiff, who is only another transferee, can enforce a direction which is contained in the sale deed of another transferee. The general rule of law is that a contract will bind only the parties thereof and a third person cannot enforce any condition or term embodied in the contract. This rule also has certain recognised exceptions but it is clear that the instant case does not fall within those recognised exceptions. Thus ordinarily speaking, because the plaintiff was not a party to the contract, which was arrived at between the transferor (respondent No. 4) and the transferees (respondents 1 and 2) the plaintiff cannot be held entitled to bring a suit for enforcement of any term contained in that contract. As I have already pointed out, a plain reading of the second part of Section 11 shows that an exception has been made by the law only to protect the right of the transferor. The transferee no doubt has a right to transfer this benefit to another person--In the case cited by the lower appellate court, namely, Kanraj Vs. Vijai Singh, , it has however, been held that unless such a benefit has been expressly transferred to the transferee he will not be able to claim the advantage of that benefit. In the instant case however there could be no question of such a benefit having been transferred to the plaintiff, simply because all the sale deeds were executed by respondent No. 4 on one and the same date.

4. It was next argued that the transferor could impose a condition in respect of another land belonging to any body else. But this does not appear to be the correct position as will appear from the latter part of this exception. I need not repeat that only the transferor has been given a right to enforce such a direction and he alone will have a remedy in respect of a breach thereof. The purpose of the law is that for the beneficial enjoyment of his other property, the transferor can impose such a condition. I do not think it will be permissible for the transferor to impose a condition for the benefit of another property which he is transferring or is intending to transfer to another person on the same day. If such a condition has been imposed by the transferor for his own benefit, he may no doubt transfer that benefit to another person if the land for the benefit of which such a condition has been imposed is subsequently transferred. But he cannot impose a condition for the benefit of another person. Because in the

instant case, the various portions of the property were transferred on the same date, it could not be said that the transferor had imposed a condition and had transferred the same for the benefit of the plaintiff-appellant giving him a right to have a remedy in respect of its breach. The appellant has of course not based his right on any easement or tort. The claim is based only on contract and because the plaintiff-appellant was not a party to that contract between defendant No. 4 and respondents 1 and 2, he cannot have a right to bring a suit for breach of that condition. I was also referred to Section 40 of the Transfer of Property Act. In my opinion this section has no application to the present case, because this section only deals with the rights of a transferee of some land which is burdened with any restrictive covenant. The view of law taken by the courts below thus appears to be correct, and the appeal must fail.

5. In the result, the appeal is dismissed. Costs on parties.