

(1980) 06 AP CK 0006

In the Andhra Pradesh High Court

Case No : Letters Patent Appeal No. 130 of 1977

C. Ramaiah

APPELLANT

Vs

Mohammadunnisa Begum

RESPONDENT

Date of Decision : 13-06-1980

Acts Referred:

Andhra Pradesh Vacant Lands in Urban Areas (Prohibition of Alienation) Act, 1972 —
Section 10, 4, 4(2), 5
Contract Act, 1872 — Section 56
Transfer of Property Act, 1882 — Section 53A

Citation : AIR 1981 AP 38

Hon'ble Judges : Ramachandra Raju, J;Chennakesav Reddy, J

Bench : Division Bench

Advocate : A. Venkataramana, for the Appellant; Upendralal Waghray, for A. Anantha Reddy, for the Respondent

Final Decision : Dismissed

Judgement

Chennakesav Reddy, J.—This appeal by the defendant under Clause 15 of the Letters Patent is directed against the affirming judgment of our learned brother M. Ramachandra Raju, J., in C.C.C.A. No. 183 of 1975 preferred against the decree of Second Additional Judge, City Civil Court, Hyderabad, in O.S. No. 211 of 1970. The respondent-plaintiff filed the suit to recover the possession of the land of an extent of about 11,000 sq. Yards, comprised in Survey No. 142, in Amberpet, Hyderabad Urban Taluq, or in the alternative to recover damages of a sum of Rs. 11,000 with interest at 9% per annum. The trial Court decreed the suit for possession of the suit land and the appeal preferred by the defendant was also unsuccessful Hence this appeal.

2. The material facts giving rise to the litigation between the parties are not much in dispute. The plaintiff executed an agreement of sale, Ex. A-1, dated 6-8-1963 agreeing to sell the suit land to the defendant for a sum of Rs. 11,000. Under the said agreement he received a sum of Rs. 6,000 from the defendant and put the defendant in possession of the suit land. According to the defendant,

he subsequently paid a sum of Rs. 4,000 to the plaintiff and obtained Ex. B-5, receipt dated 13-7-1970 but the plaintiff denied that he received the said amount, There were also some other points of controversy between the parties as to the extent of land agreed to be sold and the time for payment of the entire amount and the performance of the contract by the defendant. But the main ground on which the case of the plaintiff rested was that the contract of sale Ex. B-1 was frustrated and it became impossible of the performance due to the supervening Act, namely, the prohibition against any alienation enacted in the Andhra Pradesh Vacant Lands in Urban Areas (Prohibition of Alienation) Act, 1972. The trial Court held, on a careful assessment, of the evidence on record that the actual area agreed to be sold to and put in possession of the defendant was 8,470 Sq. Yards, and time was not the essence of the contract. Therefore, the trial Court found that the defendant did not commit any breach of the agreement of the sale by not paying the balance of consideration amount within the stipulated time. As regards the amount claimed to have been paid by the defendant to the plaintiff under Ex. B-5 it held that the claim was false and that the defendant paid only a sum of Rs. 6,000 and no further amount. The Court however held that the suit agreement had become frustrated on account of the subsequent legislative prohibition against alienation enacted by the Andhra Pradesh Vacant Lands in Urban Areas (Prohibition of Alienation) Act, 1972 and decreed the suit for possession. In the appeal preferred by the defendant, only two points were urged before our learned brother, M. Ramachandra Raju, J. viz., (1) whether the defendant paid the further sum of Rs. 4,000 under the agreement of sale over and above the amount of Rs. 6,000 which was admittedly paid, and (2) whether the suit agreement of sale had become frustrated on account of the provisions of the Andhra Pradesh Vacant Lands in Urban Areas (Prohibition of Alienation) Act, 1972. On the first point, our learned brother held agreeing with the trial Court that there was no payment made under Ex. B-5 as alleged by the defendant. On the second point, it was held that the suit agreement had become impossible of performance and there was frustration of the contract entered into between the plaintiff and the defendant. However, the learned Judge having, regarding the admission of the plaintiff that he received a sum of Rs. 6,000 under the contract, granted a decree for possession subject to the condition that the plaintiff should refund the sum of Rs. 6,000 to the defendant which she admittedly received under the agreement of sale from the defendant. Subject to the said variation in the decree the appeal was dismissed.

3. In this appeal, the learned counsel for the appellant, Sri A. Venkata Ramana submits that the suit transaction which had taken place as early as in 1962 stands unaffected by the provisions of Andhra Pradesh vacant lands in Urban Areas (Prohibition of Alienation) Act, 1972 (hereinafter referred to as "the Act") since the provisions of the Act have no retrospective operation and therefore the transaction of sale under Ex. B-1 is not frustrated and can be completed. It is, therefore, necessary to look at the relevant provisions of the Act and examine the soundness in the submission.

4. The Act was enacted to prohibit alienation of certain lands in urban areas of the State of Andhra Pradesh and it came into force with effect from 5-6-1972. Sections 4 and 5 which are relevant read as follows:--

4. (1) No person who owns any vacant land shall on or after the commencement of this Act, alienate such land by way of sale, lease for a period exceeding six years, gift, exchange, usufructuary mortgage or otherwise, or effect a partition or create a trust of such land; and any alienation made, or partition effected, or trust created in contravention of this section shall be null and void.

Provided that nothing in this sub-section shall apply to the alienation by any person or any one plot of vacant land owned by him not exceeding one thousand square metres in extent and not forming part of a compact block.

(2) The provisions of Sub-section (1) shall apply to any transaction of the nature referred to therein, in execution of a decree or order of a civil court of any award or order of any other authority.

5. Notwithstanding anything contained in the Registration Act, 1908-

(a) no document relating to partition or creation of a trust of vacant land shall be registered on or after the commencement of this Act, by any registering officer appointed under the said Act:

(b) no document relating to alienation of a vacant land shall be registered by any registering officer appointed under the said Act, unless the person presenting the document furnishes a declaration by the transferor in the prescribed form which shall be subject to verification in the prescribed manner-

(i) that the plot of vacant land owned by him and intended to be alienated does not exceed one thousand square metres in extent:

(ii) that such vacant land does not form part of a compact block: and

(iii) that no other plot of vacant land owned by him has been alienated on or after the commencement of this Act.

(c) a document relating to alienation or partition of any vacant land or the creation of any trust of any vacant land registered on or after the commencement of this Act shall, for the purposes of Section 4, take effect and operate only from the time of such registration, notwithstanding that such document has not been registered within this State."

5. Section 4 prohibits alienation of any vacant land by any person or after the commencement of the Act by way of sale, gift, exchange etc., and declares that any such alienation shall be null and void. Under the proviso however, alienation of a plot of land not exceeding one thousand square metres in extent owned by any person and not forming a part of a compact block is exempted. Under Sub-section (2) of Section 4, the prohibition contained in Sub-section (1) is made applicable even to transactions of the nature referred to therein in execution of a

decree or order of a Civil Court or of any award or order of any other authority. Clause (a) of Section 5 places restriction on the registration of a document under Act 16 of 1908. Clause (c) specifically declares that a document relating to alienation of vacant land registered on or after the commencement of the Act, shall for the purpose of Section 4, take effect and operate only from the date of such registration. If that be so, any alienation of vacant land by means of registration made subsequent to the Act is hit by Section 4 (1) of the Act and shall be null and void. In other words, any registration made after coming into operation of the Act although in pursuance of an agreement of sale entered into prior to the Act shall be null and void. Under Sub-section (2) of Section 4 even a registration made in pursuance of a decree or order of a Civil Court after the coming into operation of the Act shall be null and void. Therefore, there cannot be any specific performance of an agreement of sale or even execution of a decree for specific performance of an agreement of sale after the coming into force of the Act in respect of vacant land covered by the Act. Further, Section 10 of the Act gives an overriding effect to the provisions of the Act over any other law inconsistent therewith or any custom, usage or agreement, or decree or order of a Court, Tribunal or other authority. Therefore, the provisions of the Act are applicable to the land in dispute and so the transaction of sale under the agreement cannot be completed by registering the sale deed. Therefore, the performance of the contract has become impossible and there is a frustration of the agreement of sale. u/s 56 of the Contract Act, the contract to do an act which after the contract is made become impossible or by reason of some event which the promisor could not prevent, unlawful, becomes void when the act becomes impossible or unlawful. In this case, the contract Ex. B-1 after the contract was made became impossible for performance because of the provisions of Sections 4 and 5 of the Act and is, therefore, void. This view finds support from the decision of the Supreme Court in *Satyabrata Ghose Vs. Mugneeram Bangur and Co. and Another*, . The Supreme Court observed:

".....the doctrine of frustration is really an aspect or part of the law of discharge of contract by reason of supervening impossibility or illegality of the Act agreed to be done and hence comes within the purview of Section 56 of the Indian Contract Act. It would be incorrect to say that Section 56 of the Contract Act applies only to cases of physical impossibility and that where this section is not applicable, recourse can be had to the principles of English law on the subject of frustration. It must be held also, that, to the extent that the Indian Contract Act deals with a particular subject, it is exhaustive upon the same and it is not permissible to import the principles of English law "dehors" these statutory provisions."

The Supreme Court further observed in paragraph 20:

"It is well settled and not disputed before us that if and when there is frustration the dissolution of the contract occurs automatically. It does not depend, as does rescission of a contract on the ground of repudiation or breach, or on the choice

of election of either party. It depends on the effect of what has actually happened on the possibility of performing the contract. Per Lord Wright in 1944 AC 265 at p. 274 (I). What happens generally in such cases and has happened here is that one party claims that the contract has been frustrated while the other party denies it. The issue has got to be decided by the Court "ex post facto", on the actual circumstances of the case."

6. On the facts and circumstances of this case, we have no doubt or hesitation in holding that by reason of the supervening event viz., enactment of Act 12 of 1972, the contract has become impossible of performance and is, therefore, frustrated.

7. Then, there remains for consideration the submission of the learned counsel that the plaintiff was precluded from seeking possession of the land by virtue of the protection bestowed by the provisions of Section 53-A of the Transfer of Property Act. But when the contract itself is illegal, the doctrine enunciated u/s 53-A of the Transfer of Property Act cannot be invoked. The doctrine can only be invoked and applied to agreements which are invalid for want of registration. The section cannot be invoked to validate other agreements. An agreement which is invalid under any other law falls outside the scope of the doctrine and neither the Section nor the doctrine of equity on which the Section is founded can validate an agreement which the law says is invalid. The Privy Council in *Arsecularatne v. Perera* AIR 1928 PC 273 declined to apply the doctrine to an agreement which was not executed or decided as required by law-Subba Rao, J.. (as he then was) in *Akram Mea v. Municipal Corporation of Secunderabad*, AIR 1957 Andh Pra 859 observed:

"If the contract is otherwise valid. Section 53-A protects the possession of the transferee, notwithstanding the fact that the contract is not registered. But if the contract is invalid under any other law, this section obviously cannot validate that which the law says is invalid."

8. Therefore, the defence available u/s 53-A of the Transfer of Property Act to protect the possession of the defendant is not available to him, since the contract itself is void under the provisions of Act 12 of 1972.

9. In the result, the appeal fails and it is accordingly dismissed with costs.