

(1981) 10 BOM CK 0031
In the Bombay High Court
Case No : Second Appeal No. 508 of 1976

Dnyanoba Sukhdeo Lande and Another	APPELLANT
Vs	
Shrirang Mahataraji Dhurwade	RESPONDENT

Date of Decision : 06-10-1981

Acts Referred:

Contract Act, 1872 — Section 23
Transfer of Property Act, 1882 — Section 50B, 53A

Citation : (1982) 2 BomCR 18

Hon'ble Judges : M.P. Kanade, J

Bench : Single Bench

Advocate : S.C. Bora, for R.M. Agrawal, for the Appellant; U.B. Binwade, for A.V. Savant, for the Respondent

Final Decision : Dismissed

Judgement

M.P. Kanade, J.—Question of law involved in this second appeal is as to whether the appellants are entitled to protect their possession under the provisions of section 53A of the Transfer of Property Act, 1882 in respect of a land of which the plaintiff has become owner by operation of law under the provisions of section 38-E of the Hyderabad Tenancy and Agricultural Lands Act, 1950 (hereinafter referred to as "the Hyderabad Tenancy Act"). The said question arises out of the following facts.

2. Respondent Shrirang Mahataraji Dhurwade filed a Regular Civil Suit No. 5 of 1971 in the Court of the Joint Civil Judge, (Junior Division), Beed, for restoration of possession of agricultural land Survey No. 24 admeasuring 6 acres 36 gunthas situated at village Sandarwan, Taluka and District Beed. Originally, one Baburao Ganpatrao Land was the owner of the said land. The plaintiff, that is, the respondent in this appeal, was a protected tenant of the said land and under the provisions of section 38-E of the Hyderabad Tenancy Act, he was declared owner and the price of the land was also fixed. The plaintiff deposited the entire sale price and obtained a certificate of ownership as provided by sub-section 2 of

section 38-E of the Hyderabad Tenancy Act. In pursuance of the said declaration of ownership, the plaintiff obtained the possession of the land on June 21, 1963. It appears that the plaintiffs earlier had filed a Regular Civil Suit No. 100 of 1970 before the Court of the Civil Judge (Senior Division), Beed, for permanent injunction. The plaintiff was dispossessed during the pendency of the suit, and hence he withdrew the said suit. It is, thereafter, the present suit has been filed by the plaintiff against the defendant for possession as the defendant's possession was unlawful.

3. The appellant-defendant resisted the said suit. He admitted the ownership of the plaintiff in respect of the suit land. However, it is contended by the defendant by way of written statement, which is at Exh. No. 25, that the plaintiff had executed an agreement of sale on July 15, 1964, in favour of the defendant for consideration of Rs. 1,000/- and earnest amount of Rs. 975/- was paid and the balance of the amount was to be paid at the time of registration of sale deed. The said agreement of sale is produced by the defendant in the suit at Exh. No. 53. It is further contended by the defendant that the defendant was put in possession in pursuance of the said agreement of sale and, therefore, he is entitled to protect his possession u/s 53A of the Transfer of Property Act and it is, therefore, the suit was liable to be dismissed.

4. The learned trial Judge dismissed the plaintiffs' suit holding that the plaintiff was not dispossessed as placed by him and secondly it is held that the defendant was entitled to protect his possession u/s 53A of the Transfer of Property Act. That judgment and decree was challenged in appeal before the learned District Judge, Beed. The said appeal bearing No. 13 of 1974 was heard and by his judgment and decree dated June 14, 1976, the learned District Judge allowed the appeal and the judgment and decree passed by the trial Court was set aside and the defendants was ordered to deliver possession of the suit land to the plaintiff. The said judgment and decree of the learned District Judge is challenged in this appeal.

5. Shri S.C. Bora, learned Counsel appearing in support of the appeal, contended that the provisions of section 50-B of the Hyderabad Tenancy Act shall not be applicable to a case where the defendant is put in possession of the land under an agreement of sale. It is further urged that the agreement of sale does not become illegal. What is held to be illegal by sub-clause (2) of section 50-B is any transfer or a partition of land in contravention of sub-section (1) of section 50-B. The word "transfer" used in sub-section (2) of section 50-B has a restricted meaning and it cannot be extended to a case covered under the valid agreement of sale of the agricultural land. Shri Bora relied upon three authorities; *Eramma w/o Bachangouda v. Parwatamma w/o Thimmangouda*, AIR 1972 Mysore 121 : *Mohiuddin Shaikh Chand Vs. Gulam Ghouse Gulam Jilani*, and *Nathulal Vs. Phoolchand*, .

6. Shri U.B. Binwade, learned Counsel appearing on behalf of the respondent, submitted that the word "transfer" used in sub-section (2) of section 50-B has

got to be given a larger meaning than a restricted one. It is further argued by Shri Binwade that section 47 and section 50-B of the Hyderabad Tenancy Act cover two different fields. Section 47 restricted a permanent alienation whereas section 50-B restricts any kind of a transfer of an agricultural land of which a tenant has become an owner under any of the provisions of the Hyderabad Tenancy Act. These two sections mean altogether two different situations and it is, therefore, a larger meaning should be extend to the word "transfer" used in sub-section (2) of section 50-B of the Hyderabad Tenancy Act.

7. Now, it is well-settled that the provisions of section 53A would not apply to an invalid or a void contract of an agreement of sale. The question in this case is as to whether any transfer in contravention of the provisions of section 50-B will be a valid or a void contract and where a person who is put in possession in pursuance of such a contract is entitled to protect his possession. The answer to such question is positively no. Section 23 of the Indian Contract Act, 1872, lays down that the consideration or object of an agreement is lawful, unless it is forbidden by law; or is of such a nature that, if permitted, it would defeat the provisions of any law; or the Court regards it as immoral or opposed to public policy. It further lays down that in each of these cases, the consideration or object of an agreement is said to be unlawful. Every agreement of which the object or consideration is unlawful is, void. Under the land reforms, a protected tenant has been bestowed with a right of ownership in respect of held by him. Section 38-E specifically provides that the ownership of land held by protected tenant which they are entitled to purchase from their landholders in such area under any provision of the Chapter shall stand "transferred" to and vest in the protected tenant holding them and from such date the protected tenant shall be deemed to be the full owner of such a land. Under sub-section (2) of the said section, a certificate in the prescribed form is to be issued. Such a certificate shall be conclusive evidence of protected tenant having become owner of the land with effect from the date of the certificate as against the landholder and all other persons having any interest therein. The legislature by enacting the said provisions intended that the protected tenant should become owner of the land and he should enjoy and take the benefit of such land or which he had been declared owner. A restriction has been imposed on him not to transfer or deliver possession of the land to any one else except with the previous sanction of the Collector. Section 50-B of the Hyderabad Tenancy Act clearly lays down that land purchased by a tenant u/s 38-E shall not be transferred by sale etc., without the previous sanction of the Collector. Sub-section (2) further makes it clear that any transfer of such land shall be invalid. If an agreement of sale in respect of a land of which a tenant has been declared an owner, even his possession is transferred under an agreement, it will be deemed to be invalid under sub-clause (2) of the said section. The contract for sale of such land of which the tenant has become the owner will be invalid in view of the provisions of section 23 of the Indian Contract Act, because it contravenes the provisions of section 50-B of the Hyderabad Tenancy Act. It is, therefore, an agreement of sale on which the

appellant-defendant relies is illegal by virtue of sub-section (2) of section 50-B of the Hyderabad Tenancy Act and it is, therefore, he is not entitled to the protection of section 53A of the Transfer of Property Act.

8. Shri Bora, learned Counsel for the appellants, strongly relied upon the decision of a Division Bench of this Court in Mohiuddin Shaikh Chand Vs. Gulam Ghouse Gulam Jilani, , and contended that the transfer of possession of agricultural land in pursuance of an agreement of sale does not amount to a permanent alienation or transfer within the meaning of that expression in section 98-A of the Hyderabad Tenancy Act. The reliance on the said authority by Shri Bora is not well-founded. The said case deals with a transfer of agricultural land without the sanction of the competent authority u/s 47 of the Hyderabad Tenancy Act and on payment of penalty, there is a provision for validating of such a permanent alienation. We are not concerned here with the provisions of section 47 of the Hyderabad Tenancy Act and there is no question of any validity of agreement of sale and payment of penalty thereof. It is true that in the said case, this Court held that a transfer of possession of an agricultural land in pursuance of an agreement of sale does not amount to a permanent alienation or transfer, but we are not concerned here with the permanent alienation of the agricultural land of which the tenant has become the owner by operation of law and not by contract. The word "transfer" used in section 47 of the Hyderabad Tenancy Act had a restricted meaning whereas the word "transfer" used in section 50-A had a different meaning altogether. The legislature in its enactment had purposely used word "transfer" with a wider meaning, namely, that a protected tenant who acquires ownerships right by operation of law should not transfer even possession of the land without the requisite sanction from the competent authority. A party cannot be allowed to override the provision of section 50-B by a device such as an agreement of sale and continue in possession thereof claiming right u/s 53A of the Transfer of Property Act. It would amount to defeating the provisions and, therefore, the said agreement should be declared to be invalid and not enforceable at law. It is in this context, it must be held that the agreement of sale entered into between the plaintiff and the defendant was invalid and, therefore, no protection can be had u/s 53A of the Transfer of Property Act.

9. Lastly Shri Bora relied upon the decision in Eramma w/o Bachangouda v. Parwatamma w/o Thimmangouda, AIR 1972 Mys 121. A Single Judge of that Court while dealing with provisions of section 47 of the Hyderabad Tenancy Act held that the fact that there was no express condition that the vendor would undertake to obtain previous sanction of the Collector for the transaction makes no difference to the application of the principles of section 53A of the Transfer of Property Act because such an undertaking on the part of the vendor must be taken as an implied condition of the contract of sale. This case deals with the provisions of section 47 of the Hyderabad Tenancy Act with which we are not concerned in this case.

10. Shri Bora also relied upon a Supreme Court judgment in Nathulal Vs. Phoolchand, The Supreme Court laid down the conditions necessary for making out a defence of part performance to an action in ejectment by the owner. In the said case the Supreme Court had no occasion to consider as to whether an agreement of sale in respect of an agricultural land would be invalid or void in the absence of any requisite sanction as provided by any enactment as a condition precedent. It is, therefore, the said authority will not help Shri Bora to contend that the agreement of sale in respect of the suit land was valid or invalid. It is in this view of the matter that the agreement of sale relied upon by the appellant-defendant being illegal and invalid, he cannot be said to have accrued a right u/s 53A of the Transfer of property Act and it is, therefore, the plaintiff's suit has been rightly decreed by the Appellate Court. The learned District Judge has considered various authorities and has rightly arrived at the conclusion that the appellant-defendant was not entitled to protection u/s 53A of the Transfer of Property Act and it is, therefore, this appeal deserves to be dismissed.

11. In the result, this second appeal fails and the same is dismissed with costs.