(1934) 03 AHC CK 0060

In the Allahabad High Court

Gajadhar Misir — APPELLANT

Vs

Bechan Chamar — RESPONDENT

Date of Decision : 21-03-1934

Acts Referred:

Citation : (1934) 03 AHC CK 0060

Hon'ble Judges : Bennet, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

Bennet, J.—This is a second appeal by a plaintiff whose suit has been dismissed by the two lower Courts. The facts which have been found by the lower appellate Court are as follows:

A person Janki was stated to have been the owner of an agricultural plot No. 444 in the village area 65 acres. The question of the proprietary title of Janki in this plot was not in dispute, but it does not appear that any proof was put on the record that he had proprietary title in that plot. He may have been an owner of the plot as "haqiat mutfarka," but there is no copy of the khewat to show that, and the lower Courts proceeded on the assumption that he was the owner and had powers of transfer. On 30th June 1900 he executed a usufructuary mortgage of this plot to one Dukhi. On 1st June 1901, Janki executed an unregistered sale deed of his equity of redemption in favour of the defendants. As the sale consideration is stated to be Rs. 199, in this deed, registration was required by Section 54, T.P. Act, and Section 17(b), Registration Act, both of which require a registered instrument for a consideration of Rs. 100 or upwards. The defendants redeemed the mortgage of Dukhi in due course and entered into possession of the plot. Subsequently on 2nd February 1919, Janki again sold the same equity of redemption by Gajadhar when he made a registered sale-deed. Gajadhar, plaintiff, has now brought this suit for redemption of the original mortgage of 30th June 1900, treating the defendants as mortgagees. The defendants pleaded that they were in possession not as mortgagees, but as real owners under the sale-deed of 1st June 1901 in their favour. The two lower Courts have held that the plaintiff purchased the property with knowledge of the prior sale in favour of defendants and therefore under the doctrine of part performance in Section 53-A, T.P. Act, the plaintiff is not entitled to any relief.

2. In second appeal the sole contention of Learned Counsel has been that Section 53-A, T.P. Act, is not retrospective and cannot affect the transaction in question. For this proposition Learned Counsel has relied on a ruling reported in Kanji and Moolji Brothers Vs. T. Shanmugam Pillai, In this ruling on p. 736, Col. 1, the Madras High Court held that the section would not be retrospective on the following grounds:

Their Lordships of the Judicial Committee in Young v. Adams (1898) A.C.J 469 have stated that retrospective effect ought not to be given to a statute unless an intention to that effect is expressed in plain and unambiguous language. Judged by that test Act 20, in our opinion, fails to disclose an intention that Section 53-A was to have a retrospective effect.

3. The ruling therefore held that Act 20 of 1929, which introduced Section 53-A, into the Transfer of Property Act by Section 16, Amending Act, did not have a retrospective effect as regards transfers made prior to 1st April 1930, the date on which the Amending Act, came into force. Reference was also made to a Full Bench ruling of this Court reported in Girjanandan Vs. Hanumandas, , in which three learned Judges against two learned Judges held that the Transfer of Property Amendment Act, 27 of 1926, was not retrospective in its nature so as to apply to documents executed prior to its coming into force. That was a prior Transfer of Property Amending Act, and the Amending Act, with which we are concerned. On p. 934 (of 24 A.L.J.), Daniels, J., held as follows:

Where the legislature inserts a new definition in an existing Act the effect of which is to define a term previously undefined, it would ordinarily be held that the definition was intended to be retrospective, more particularly when the preamble of the Act inserting it declared that it was expedient to explain the law, but where the new definition has the effect of repealing a previously existing and inconsistent definition then in the absence of clear words showing the contrary intention the new definition will apply only from the date on which the new Act came into force and all documents executed prior to that date will be governed by the definition then in force.

4. Similarly on p. 944 (of 24 A.L.J.), Boys, J., held as follows:

An act is retrospective (1) when it is expressly enacted that an enactment shall be retrospective, i.e., where such words occur as ''shall operate retrospectively,'' (2) where it is a necessary implication from the ''language employed that the legislature Intended a retrospective operation.'' Emphasis was laid on the strength of the implication required by the Judicial Committee in the case of Colonial Sugar Refining Co. v. Irving (1905) A.C. 369 where, in interpreting the Judiciary Act, the Committee said that it ''is not retrospective by express enactment or by necessary intendment.''

5. These two learned Judges were in the majority of three in that decision. The first quotation from Daniels, J., shows that he held that ordinarily a definition would be retrospective, but that if there was the repeal of a previously existing and inconsistent definition then in the absence of clear words show in he contrary intention the document would not be retrospective. This I may note is practically what is laid down in the General Clauses Act, Section 6, as regards the effect of the repeal of a provision of existing law. In the judgment of their Lordships of the Privy Council, Young v. Adams (1898) A.C.J 469 the plaintiff had been dismissed from public service before a certain Act came into operation, and he claimed that he should have the benefit of certain provisions in that Act. The Act laid down that nothing in the Act should affect the right of the Crown to dispense with the service of any person employed in the public service as it existed before the passing of the Act. It is clear from thin provision that the Act was not intended to apply to dismissals before the Act. The question of the interpretation of the present Act, 20 of 1929, stands on an altogether different footing. In Section 63 of that Act there is a provision as follows:

Nothing in any of the following provisions of thin Act, namely, Sections 3, 4, 9, 10, 15, 18, 19, 27 and 30, Clause (c), Section 31, Sections 32, 33, 31, 35, 46, 52, 55, 57, 58, 59, 61 and 62 shall be deemed in any way to affect (a) the terms or incidents of any transfer of property made or effected before the first, day of April 1930; (b) the validity, invalidity, effect or consequence of anything already done or suffered before the aforesaid date; (c) any right, title, obligation or liability already acquired, accrued or incurred before such date; or (d) any remedy or proceeding in respect of such right, title, obligation or liability; and nothing in any other provision of this Act shall render invalid or in any way affect anything already done before the first day of April 1930, in any proceeding pending in a Court on that date; and any such remedy and any such proceeding as is herein referred to may be enforced instituted or continued, as the case may be, as if this Act had not not been passed.

6. This section in my opinion is intended to how which of the provisions of the Act shall not have retrospective effect on transfers made before the Act comes into operation on 1st April 1930. The natural inference to be drawn from this particular provision is that sections not referred to in this provision shall have effect on transfers made prior to 1st April 1930. If this distinction is not to be drawn, it would be impossible to see what meaning the section could have. The only meaning that the section can have is to divide the sections of the Act into those which shall not have retrospective effect and those which shall have retrospective effect. Now Section 16 is not one of the sections enumerated in Section 63. Accordingly it is a section which shall have retrospective effect, that is, which shall affect the transfers of property made before 1st April 1930. It is by virtue of Section 16, Amending Act, that the new Section 53-A is introduced into the Transfer of Property Act. Therefore I consider that Section 53-A does

have application to a case like the present where the suit has been brought after the Amending Act came into force, but where the transfer in question took place before the Amending Act came into force. The present suit was brought on 18th June 1930 and the Amending Act came into force on 1st April 1930, which was prior to the date of the suit.

7. For these reasons I consider that the decree of the lower appellate Court is correct, and I dismiss the second appeal with costs. Permission is granted for a Letters Patent appeal.

