

(1959) 12 MP CK 0030
In the Madhya Pradesh High Court
Case No : C. Rev. No. 70 of 1959

Janki

APPELLANT

Vs

Atmaram

RESPONDENT

Date of Decision : 24-12-1959

Acts Referred:

Central Provinces Land Alienation Act, 1916 — Section 4(2)
Presidency Small Cause Courts Act, 1882 — Section 25

Citation : (1961) J LJ 700

Hon'ble Judges : T.C. Shrivastava, J

Bench : Single Bench

Advocate : J.V. Jakatdar, for the Appellant; R.K. Verma for opposite party, for the Respondent

Final Decision : Dismissed

Judgement

T.C. Shrivastava, J.—This revision u/s 25 of the Small Cause Courts Act has been filed by the defendants in Civil Suit No. 99 of 1958. decided by the Civil Judge, Class I, Raigarh, on 31-12-58.

2. The applicants had agreed to sell their lands to the non-applicant on 13-7-1948 for Rs. 150. They received the consideration and put the non-applicant in possession of the lands. However, a sale-deed could not be executed, as the applicants are aboriginals and a transfer to a non-aboriginal could not be made by them without the permission of the Deputy Commissioner u/s 4 (2) of the C. P. Land Alienation Act, 1916. The applicants did not apply for the necessary permission till 22-6-1956. An application filed on that date was dismissed by the Collector, Raigarh on 22-6-1956. The transfer could not hence be completed. The applicants took back possession of their lands on the very next day, i. e., on 23-6-1956.

3. The non-applicant then brought the present suit for refund of the consideration. The claim was resisted on the ground that the contract was void ab initio and so no claim for refund could be made. It was also contended that

the non-applicant had been in possession of the lands for 8 years and the profits derived were sufficient to cover the amount of consideration.

4. The trial Court held that the refund could be claimed. The plea that the claim was satisfied by possession for eight years was not expressly considered.

5. The first question which arises in this revision is whether the claim for refund could be made u/s 65 of the Contract Act. Shri J. V. Jakatdar for the applicants contends that as the contract was ab initio void, that section has no application. He relies upon the decision in *Nathibhai & another vs. Wailaji and others* ILR 1937 Nag. 111. It was held in that case that where a judgment-debtor transfers property during the management of the Collector, the transfer is void and no refund can be claimed by the purchaser. A contrary view has been taken later in *Sunderlal vs. Laxman Prasad* ILR 1949 Nag. 52, and *Saraswatibai vs. Madhukar* ILR 1950 Nag. 467. However, I need not discuss the question as para 11, Schedule III of the CPC differs from Section 4 of the Land Alienation Act.

6. Section 4 of the Land Alienation Act provides that "a permanent alienation of land shall not take effect as such unless and until sanction is given thereto by the Deputy Commissioner...". It is clear from this language that the transfer only remains ineffective as such, but the contract to sell remains a valid contract. If necessary permission is obtained, the transfer takes effect; otherwise it becomes void. Thus the case is covered by Section 65 of the Contract Act.

7. I may refer to the decision in AIR 1930 287 (Privy Council) where the question arose in the context of an agreement to transfer sir land which could not be transferred without the permission of the Deputy Commissioner. The suit was for specific performance of the contract and their Lordships held that it was the duty of the vendor to apply for the necessary permission and directed him to do so. The fact that specific performance was decreed makes it obvious that the contract was treated as valid. The same view was taken in *Kishanlal Onkardas Goyanka Vs. Suryadatta Govindlal and Others*, It was held in that case that Section 65 of the Contract Act applied and a refund could be claimed by a vendee where the vendor failed to obtain the necessary permission for the transfer.

8. It is thus clear that refund of the consideration could be decreed.

9. The next question is whether the applicants could claim to set off the profits which the defendant-non-applicant got from the land while he was in possession. It will be noticed that Section 4 of the C P. Land Alienation Act does not make the possession of the non-applicant wrongful. What it says is that the transfer cannot take effect as a permanent alienation. The delay in applying for permission was on the part of the applicants and there is thus no question of the non-applicant accounting for profits. Further, so far as equities are concerned, the applicants were having the advantage of the amount paid by the non-applicant all these years. On their own reasoning they must pay interest for it. It is significant that the applicants forcibly took back possession on the very next day the permission was refused without caring to refund the amount received. There are thus no

equities. That apart, u/s 65 of the Contract Act the non applicant is liable to restore any advantage received by him under the contract. This has reference only to what he got under the contract. He got the lands only under the contract and has to return them when the contract becomes void. There is no liability to render accounts.

10. In the result, the petition for revision is dismissed with costs. Hearing fee is fixed at Rs. 25 only.