
(1976) 01 P&H CK 0011

In the Punjab And Haryana At Chandigarh

Case No : Civil Regular Second Appeal No. 674 of 1965

Kali Ram and others

APPELLANT

Vs

Union of India and others

RESPONDENT

Date of Decision : 21-01-1976

Acts Referred:

Transfer of Property Act, 1882 — Section 41

Citation : (1977) 1 ILR (P&H) 361 : (1976) 78 PLR 475

Hon'ble Judges : D.S. Tewatia, J

Bench : Single Bench

Advocate : M.R. Agnihotri, for the Appellant; D.S. Nehra and Mr. Gur Prem Singh Dhillon, for the Respondent

Final Decision : Allowed

Judgement

D.S. Tewatia, J.—The only question, which is common to both the appeals (R S. As 674 and 675 of 1965), that arises for determination is as to whether the principles enshrined in Section 41 of the Transfer of Property Act, 1882 (Act 4 of 1882), hereinafter called the Property Act, can be invoked by a transferee to protect his rights qua the Sand which he purchased bona fide for consideration if that land happened so be owned by the Union of India the same bring the evacuee property.

2. Before proceeding with the consideration of the proposition of law above said, a few relevant facts, that are not in dispute, may be stated. These are: One Daulat Ram was mortgagee of certain land left behind by him in Pakistan. He Sled his claim before Government of India of which copy is Exhibit D.1, wherein he described himself as mortgagee of the land in lieu of which he was making claim for allotment. In Tasdiqi Parcha, copy of which is Exhibit D. 2, he had been recorded only as a mortgagee. In the copy of Jambandi received from West Pakistan, he was shown as a mortgagee, but due to inadvertance or mistake of some functionary of the Government, he was allotted land measuring 65 Kanals 6 Marias in village Latani as owner in lieu of mortgagee land left behind by him in

West Pakistan. He was succeeded by his grandsons Hari Chand, Jassa Ram and Ram Chand who were recorded as owners of the aforesaid land, as evidenced by copy of Jamabandi Exhibit P. 5 for the year 1958-59. After this, as a result of consolidation proceedings in the village, land in dispute measuring 70 Kanals 16 Marlas was allotted to them in lieu of land measuring 05 Kanals 8(sic) Marlas. Thereafter, Jassa Ram, sold his one-third share in the aforesaid land in favour of his other two brothers, namely, Hari Chand and Ram Chand, and these two brothers then sold the entire land aforesaid by means of a registered sale-deed dated 17th December, 1958 in favour of Plaintiffs 1 to 3, deceased father of Plaintiff No 4 and Defendants Nos. 3 to 5, for a consideration of Rs. 8,000/- The mutation regarding the aforesaid sale was sanctioned in their favour on 20th December, 1959. In the meantime, the Chief Settlement Commissioner by his order dated 12th June, 1961, Exhibit D. 4, cancelled the allotment of land in the name of Daulat Ram on the ground that he having left land in Pakistan in which he had only mortgagee rights, was not entitled to allotment of land in lieu thereof as owner and as a sequel to this order the mutation of sale aforesaid was cancelled on 29th June, 1962(sic) and that after the cancellation of the allotment in favour of Daulat Ram, part of the land was auctioned by Rehabilitation authorities to Defendants 6 to 8. The Plaintiffs filed a suit for a declaration that they were owners of the land in suit and that Defendants 1 and 2 had no title or interest in it.

3. The trial Court, inter-alia, held that the principles enshrined in the provisions of Section 41 of the Property Act protected the Plaintiffs' rights in the land and it decreed the suit. The lower appellate Court regarding this point took a contrary view and dismissed the suit.

4. Mr. D.S. Nehra defending the order of the lower appellate Court has argued that the provisions of Section 36 of the Displaced Persons (Compensation and Rehabilitation) Act, 1954, (No. 44 of 1954), hereinafter referred to as the Rehabilitation Act, is a complete bar to the jurisdiction of the trial Court in the matter, for so lone as the order of the Chief Settlement Commissioner u/s 24 of the Rehabilitation Act, Exhibit D. 4, stands, the Plaintiffs would have no right and that validity of the order cannot be called in question in the civil court.

5. At this stage, a look at the provisions of Section 36 of the Rehabilitation Act is necessary. It reads:

36. Save as otherwise expressly provided in this Act, no civil Court shall have jurisdiction to entertain any suit or proceeding in respect of any matter which the Central Government or any officer or authority appointed under this Act is empowered by or under this Act to determine and no injunction shall be granted by any Court or other authority in respect of any action taken or to be taken in pursuance of any power conferred by or under this Act.

6. I am afraid the provisions of Section 36 of the Rehabilitation Act would be no bar to the maintainability of the present declaratory suit and for the granting of

the relief of perpetual injunction restraining the Defendants other than the pro-forma Defendants from interfering with the possession of the Plaintiffs over the suit land.

7. The order of the Chief Settlement Commissioner has no other effect than this that the rights of the predecessor-in-title of the Plaintiffs stood cancelled and the suit land became the property of the Union Government by virtue of the same being the evacuee property. However, the right, which the Plaintiffs acquired in the property by virtue of the application of the principles contained in Section 41 of the Property Act, does not as such militate against the ownership right of the Union Government and, therefore, it, was not necessary for the Plaintiffs to challenge the validity of the order passed by the Chief Settlement Commissioner u/s 24 of the Rehabilitation Act. The provisions of Section 41 of the Property Act protect the bona fide purchaser for consideration from an owner. In the present case neither there is any doubt, nor has it been questioned before me that the Plaintiffs were bona fide purchasers for consideration and had, at the time of purchase, made enquiries from the village Patwari about the title of the vendor and had also consulted the record-of-rights wherein it was Hari Chand and Ram Chand, who had been recorded the absolute owners of the entire suit land and prior to that, their grand father Daulat Ram had been recorded as the owner thereof, which means that their vendors were the ostensible owners of the suit land with the express consent of the Government of India when the same was purchased by them, for it is the functionaries and officials of the Union Government who had effected the entries in the record-of-rights regarding his ownership rights and so the provisions of Section 41 of the Property Act are clearly attracted to the facts of the present case. That being the position, then the transfer in favour of the Plaintiffs and the pro forma Defendants could not be assailed by the Union of India, or the Defendants claiming through the Union of India. In view of the above, the lower appellate Court clearly erred in dismissing the Plaintiffs' suit.

8. I draw sustenance for the above view from a Division Bench decision rendered in Damodar Dass etc. v. Joginder Singh etc. L.P.A. No. 181 of 1972 (Letters Patent Appeal No. 181 of 1972) on 18th September, 1975, which came to my notice while dictating this judgment after the decision had been finalised. In the case before the Letters Patent Bench, the material facts were that property of a muslim was declared evacuee and allotted to some displaced persons. The Muslim Evacuee land-lord had established that he had not migrated to Pakistan and that his land could not be declared as evacuee property. The authorities instead of disturbing the allottee gave to him equivalent land at some other place. This person after allotment to him of the land, effected its sale for consideration. Afterwards part of the land was ordered to be withdrawn from him on account of the same having been allotted to him in excess of the value of his land. After protracted litigation, the transferees from this Muslim, approached the High Court in a writ petition and raised a plea that in view of the provisions of Section 41 of the Transfer of Property Act the transfer of the land to them could

not be invalidated. Dealing with this plea, Sidbu J., who delivered the opinion for the Bench, made the following observations which can be noticed with advantage.

We feel that it is also necessary to deal with another important aspect of this case. Even if the Rehabilitation Authorities had sought the remedy in the civil court, that would not have been granted to them in view of the provisions of Section 41 of the Transfer of Property Act, 1882 which are fully attracted in this case. That section reads as under:

41. Where, with the consent, express or implied, of the persons interested in immovable property, a person is the ostensible owner of such property and transfers the same for consideration, the transfer shall not be voidable on the ground that the transferor was not authorised to make it: provided that the transferee, after taking reasonable care to ascertain that the transferor had power to make the transfer, has acted in good faith.

The land in dispute being evacuee property had vested in the Central Government. Hence, the Central Government which were interested in that property, gave its express consent when that property was given to the Muslim owners in lieu of their land which had been erroneously treated as evacuee property and then allotted as such to some displaced persons. Thus, the Muslim owners, the predecessors-in interest of Respondents Nos. 1 to 6, who were the ostensible owners of that land with an express consent of the Central Government which were interested in that land, sold the same in that capacity to the Petitioner-Respondents Nos. 1 to 3, and one Chanan Singh, the predecessor in-interest of Smt. Devi, Petitioner-Respondent No. 6(sic) for consideration of Rs. 30,000/- by means of the registered sale deed, dated 21st June, 1965. That being so, the transfer of the land in question made in favour of Respondents Nos. 1 to 6 could not be got declared voidable by the Rehabilitation Authorities on the ground that the transferors were not empowered to make it because it appears that the transferees, after taking reasonable care to ascertain from the revenue record that the transferors being the ostensible owners had the power to make the transfer, had acted in good faith while purchasing the land for consideration as stated above. In view of this matter, Respondents Nos 1 to 6, could not be ousted from the land in dispute even if the Rehabilitation Authorities had sought the remedy in the Court of law, because the provisions of Section 41 of the Transfer of Property Act, would have been attracted and created a hurdle in the way of the Rehabilitation Department if it had sought relief of getting the land in dispute retrieved from the transferees in the court of law.

9. At this stage, Mr. D.S. Nehra, Learned Counsel for the Union of India, referred(sic) me to the stipulation in the sale-deed in favour of the Plaintiffs and the proforma Defendants, wherein it was slated that in the event of any defect in the title of the vendor in regard to the whole or any part of the property, the vendor shall be liable to pay compensation to the transferee. On the strength of this stipulation in the sale-deed, Mr. Nehra urged discretionary remedy or injunction ought not to be granted to the Plaintiffs.

10. I do not think this can be validly suggested on behalf of the Defendant Respondents, for the equity is in favour of the Plaintiffs who had acquired the land after payment of money, and merely because they could have their rights enforced against the vender, the Court will not deny them the relief that they are seeking in the suit.

11. Mr. Nehra next urged that since action of the Union Government in auctioning a part of the property to Defendants 6 to 8 is an action under the Rehabilitation Act, so the civil court by virtue of the provisions of Section 36 of that Act is debarred from restraining the Defendants from taking that action.

12. This is arguing in circles, because once it is held that the property in question by virtue of the provisions of Section 41 of the Property Act had become the absolute property of the Plaintiffs and nobody could touch it, not even the original owner, then the action on the part of the original owner of auctioning or taking possession thereof cannot stand on a better footing.

13. In the result, these appeals are allowed with no order as to costs.

14. On the oral request of Mr. Nehra, the leave to file a Letters Patent Appeal is granted.