

(1990) 03 AHC CK 0032

In the Allahabad High Court

Case No : Civil Misc. Writ Petition No. 14845 of 1987

Kundan

APPELLANT

Vs

1st Addl. District Judge, Bulandshahr and others

RESPONDENT

Date of Decision : 21-03-1990

Acts Referred:

Constitution of India, 1950 — Article 226
Transfer of Property Act, 1882 — Section 8

Citation : AIR 1990 All 121

Hon'ble Judges : K.P. Singh, J

Bench : Single Bench

Advocate : Yasharath, for the Appellant; C.P. Srivastava, Adv and Standing Counsel, for the Respondent

Final Decision : Partly Allowed

Judgement

1. Aggrieved by the order of the 1st Additional District Judge, Bulandshahr dated 28-7-1987 in Revision No. 166 of 1985, Suresh Chand, decree-holder v. Kundar, judgment-debtors, the petitioner has approached this Court under Article 226 of the Constitution. The petitioner is defendant-judgment-debtor in a suit for specific performance of the contract.

2. The dispute between the parties related to the sale of sirdari plot No. 465 of mauja Amarpur measuring 4 bighas 8 biswas. On the basis of an agreement to sell dated 8-4-1969 the plaintiff had brought a suit for specific performance of the contract. The defence in the suit was that the defendant-judgment-debtor had not entered into the alleged agreement. The trial Court had dismissed the suit but in appeal the suit was decreed and the Second Appeal also failed on 28-11-1984. The plaintiff-opposite party No. 3 in the present writ petition filed an execution which was numbered as Execution Case No. 5 of 1985. The judgment-debtor-petitioner had raised a plea that the disputed plot had acquired the nature of a grove and the value of the plot together with the trees had amounted to Rs. 1 lakh, therefore, the sale of the trees could not be done in

favour of the plaintiff-opposite party. The other pleas raised by the judgment-debtor are continued in annex."2" attached with the writ petition. The agreement to sell has been contained in Annex."1" attached with the writ petition. The trial Court had accepted the plea raised by the petitioner as is evident from the order dated 17-8-1985 contained in Annexure "3" attached with the writ petition. Against the order of the trial Court, the plaintiff-decree-holder had preferred a revision petition which has been allowed by the revisional Court as is evident from the certified copy of the judgment dated 28-6-1987 contained in Annex: "4" with the writ petition.

3. Before me the learned Counsel for the petitioner has contended that the revisional Court has patently erred in observing that the trees standing over the disputed plot would go with the land sold. According to the learned Counsel for the--petitioner, there was no agreement for the sale of the trees in favour of the plaintiff-opposite party and, therefore. the observation of the revisional Court in this regard suffers from patent error of law and deserves to be quashed.

4. The learned Counsel for the contesting opposite party has submitted that the impugned judgment of the revision Court does not suffer from any error of law apparent on the face of the record. According to him, the revisional Court has relied upon a number of rulings mentioned in its judgment and it has rightly held that in view of Section 8 of the Transfer of Property Act, the trees standing on the disputed land would partake the nature of the land and would vest in the transferee after the execution of the sale deed by the petitioner in favour of the contesting respondent.

5. I have considered the contentions raised on behalf of the parties and have also gone through the rulings mentioned in the impugned judgment. Section 8 of the Transfer of Property Act reads as below:

"Unless a different intention is expressed or necessarily implied, a transfer of property passes forthwith to the transferee all the interest which the transferor is then capable of passing in the property and in the legal incidents thereof, and such incidents include where the property is land the easements annexed thereto, the rents and profits accruing after the transfer, and all things attached to the earth."

6. Relying upon the aforesaid provisions and the rulings reported in Sh. Fitrat Husain and Another Vs. Liaqat Ali and Another, ; Bhoop Singh Vs. Sri Ram and Another, and Divisional Forest Officer, Himachal Pradesh and Another Vs. Shri Daut and Others, , the revisional Court has held that the trees standing on the disputed plot would also be held as sold to the plaintiff-decree-holder.

7. I have difficulty in accepting the conclusion arrived at by the revisional Court in the facts and circumstances of the present case. There is a dispute whether the trees standing on the disputed land existed on the date of agreement to sell entered into by the petitioner. According to the Commissioner's report it is evident that the saplings existed on the disputed land on the date of the

agreement to sell. The bare perusal of the agreement to sell, contained in Annexure "1" attached with the writ petition, would indicate that only the plot (arazi) was intended to be sold. If the saplings were existing on the date of the agreement to sell, the plaintiff-decree-holder might have insisted to incorporation of the saplings in the agreement to sell. Non-mention of saplings in the agreement to sell indicates that they were not intended to be sold. If the saplings were planted after the agreement to sell, no question of their being sold would be involved in the facts and circumstances of the present case. It is not disputed that a large number of fruit bearing trees exist on the disputed land. Still there is enough space for cultivation. In such circumstance it is to be seen whether the trees would go with the land after the execution of the sale-deed by the petitioner. I had granted time to the counsel for the parties to consult their clients to adjust the equities between themselves but the counsel for the parties could not do the needful and on the date of argument they proceeded on the material available on the record and both of them tried to support their contentions.

8. In this State it is not unknown that the field belongs to a tenant and the tree standing thereon may belong to a different tenant, i.e. the planter, In the present case, the area of the disputed plot belonging to the petitioner is approximately 2 bighas 4 biswas and the trees standing thereon might be 105. The agreement to sell in favour of the plaintiff-respondent regarding the petitioner's land would be only for a sum of Rs. 7500/-. Annexure "1" to the counter-affidavit of Suresh Chandra indicates that the annual profit from the disputed property would be Rs. 2000/-. In such a circumstance, if the trees also go with the land, the petitioner shall be put to a great hardship and suffer irreparable loss. Before me, the relevant question is whether in law the petitioner can be helped.

9. In *Sh. Fitrat Husain and Another Vs. Liaqat Ali and Another*, , per majority it has been held that on the transfer of proprietary rights in sir land on which a grove stands, the right to the possession of the trees and their fruit remains with the transferor, unless he relinquishes this portion of his exproprietary rights or the whole of his exproprietary rights in accordance with Section 15 of the Agra Tenancy Act, 1926.

10. In *Bhoop Singh Vs. Sri Ram and Another*, , a Division Bench of this Court has observed as below:

".... In the case of a sole proprietor he cannot have inferior rights as a grove-holder as well as full proprietary rights as Zamindar in the land in which he has planted a grove. His rights in the groves or trees planted by him merge completely in his zamindari rights. The trees pass to the purchaser with the auction-sale of the zamindari."

11. In *Mahmood Hasan Khan Vs. Bhikhari Lal and Others*, , a Division Bench of this Court relying upon Section 8 of the Transfer of Property Act has observed as below (vide paragraph 4):

"...when an owner of a grove sells the grove by declaring that he was selling it with every right that he possessed therein, it follows that his right to land was also conveyed to the vendee unless it was expressly reserved by him. In the case of a grove in which the grove-holder is not the owner of the land, a sale by him would not be deemed to have passed the land to the vendee. But this is not so in the case of a sale by a proprietor of the grove which he has planted over his own land."

12. In *Divisional Forest Officer, Himachal Pradesh and Another Vs. Shri Daut and Others*, , their Lordships of the Supreme Court have expressed as below:

".... It seems to us that this expression "right, title and interest of the land owner in the land" is wide enough to include trees standing on the land. It is clear that under S. 8 of the Transfer of Property Act, unless a different intention is expressed or implied, transfer of land would include trees standing on it. It seems to us that we should construe S. 11 in the same manner."

13. It is noteworthy that the rulings" relied upon by the revisional Court deal with the cases of land owner and not a case of tenant. Since in this State it is well known that in the field of a tenant the trees of another tenant exist, therefore, the principle of law relied upon by the revisional court to determine the claims of the parties in the present case who are tenants and not the owner of the land, who would be State of U. P. at present is not attracted. I think that the revisional court has patently erred in observing that with the execution of the sale deed by the petitioner the trees standing on the land to be sold would also go to the plaintiff-opposite party.

14. In paragraph 6 of the above mentioned Supreme Court ruling it has also been mentioned as below :

"There can be no doubt that trees are capable of being transferred apart from land, and if a person transfer trees or gives a right to a person to cut trees and remove them it cannot be said that he has transferred land."

From the above, I infer that the trees have separate entities. Since the agreement to sell contained in Annexure "1" relate to the plot only, I think that even on the basis of section 8 of the Transfer of Property Act, different intention appears in the instant case and it cannot be said that the trees standing on the disputed land would also go with the land and the purchaser of the petitioner atone would be entitled to the trees standing thereon. To my mind, so long as the trees stand over the disputed land belonging to the petitioner and purchased by opposite party No. 3, the petitioner shall be entitled to timber of the trees standing thereon. The purchaser of the petitioner's land in pursuance of the decree of specific performance would be entitled to cultivate the disputed land and grow crops and use the disputed land in the manner he likes but he cannot have any claim to the trees standing over the disputed land.

15. It would not be out of place to mention here that their Lordships of the

Supreme Court in Damacherla Anjaneyulu and Another Vs. Damcherla Venkata Sessaiah and Another, have observed as below:

".....This is accordingly a fit case where the problems can be resolved by directing that instead of executing a sale deed of the land in favour of the plaintiffs the defendant shall pay to the plaintiff Rs. 1,25,000/- being the approximate present value of 10 kunthas of land. We, therefore, substitute an order in the following terms in place of the decree passed by the High Court."

16. In the facts and circumstances of this case, it would be better for the parties to arrive at some conclusion by way of compromise between themselves so that the trees and the land may belong to one of them. This cannot be done unless the parties arrive at a compromise between themselves. In law, according to me after the execution of the sale deed by the petitioner in favour of the opposite party No. 3 the land will belong to the purchaser (opposite party No. 3) but the petitioner shall be entitled to the fruits and the timber of the trees standing on the disputed land.

17. For the foregoing discussion, this writ petition succeeds in part and the observations of the revisional court that the trees would go with the land are hereby quashed and the case is sent back to the revisional court to enable the parties to arrive at some compromise between themselves. If they fail to arrive at some compromise, opposite party No. 3 will be entitled to the area of the plot purchased by him and the petitioner shall be entitled to enjoy the fruits and the timber of the trees standing thereon hereafter.

18. Parties are directed to bear their own costs.

19. Order accordingly.