(1971) 02 MP CK 0017

In the Madhya Pradesh High Court

Case No : L.P.A. No. 2 of 1969

Leeladhar Jaynarayan and others — APPELLANT

Vs

Ram Singh and others — RESPONDENT

Date of Decision : 24-02-1971

Acts Referred:
Specific Relief Act, 1963 — Section 9

Citation : (1973) ILR (MP) 298 : (1974) JLJ 566 : (1974) MPLJ 481

Hon'ble Judges : Shiv Dayal Shrivastava, J;S.R. Vyas, J

Bench : Division Bench

Advocate : G.M. Chaphekar, for the Appellant;

Final Decision : Allowed

Judgement

Shiv Dayal, J.

This is a Letters Patent Appeal from the Judgment and decree of a learned Single Judge, in Second Appeal No. 194 of 1964. That second appeal arose from a suit instituted by Jainarayan (whose legal representatives are the appellants) against Ramsingh and Umraosingh (respondents Nos. 1 and 2) and Babusingh (whose legal representatives are the other respondents) alleging that by an agreement of sale in the month of Baisakh Samvat 2006 (corresponding to 1948 A.D.), he had agreed to sell the suit land to the defendants for a sum of Rs. 9595/-. The defendants paid him Rs. 4595/- as part of the price and he gave them possession. However, under the law then in force, sale of land could be validly effected only with previous sanction of the Suba (Collector). The parties applied for the requisite sanction but by an order dated October 6, 1953, sanction was refused. The plaintiff claimed return of possession from the defendants. He expressed his readiness and willingness to return the part-price received by him.

The suit was resisted by the defendants inter alia on the ground that entire consideration had been paid to the plaintiff.

The trial Court passed a decree in favour of the plaintiff for possession of the suit lands on the condition that he returns Rs. 4595/- to the defendants within a specified period.

The defendants appealed. The learned District Judge held that by virtue of section 20 of the M.P. Land Revenue and Tenancy Ordinance read with section 22 (1) of that Ordinance (which provisions corresponded to sections 58 and 7 8 respectively of the M.B. Land Revenue and Tenancy Act, 1950, which repealed that ordinance) exclusive jurisdiction lay with the Revenue Authorities and a civil suit was barred by section 47 (1) of the Ordinance (corresponding to section 147 of the Act). In the result, he dismissed the suit as not competent in the civil Court. The plaintiff preferred second appeal which was dismissed by the learned Single Judge upholding the conclusion reached by the lower appeal Court.

The relevant provisions are these:

S. 70. (1)--Subject to the rules made under this Act, a Pakka tenant may with the previous sanction of the Suba transfer his rights in the whole or part of the holding by sale to a registered co-operative farming society of the same village in which the land is situated or to a bona fide agriculturist.

(2) to (7).............(not relevant)

(8) No sale under this section shall be deemed to be valid until the sale deed effect in such a sale has been registered in accordance with the law of registration in force for the time being.

Section 78 (1) any person who in contravention of the provisions of this Act, obtains possession of any land by virtue of a bequest, gift, sale, mortgage or sub-lease, shall be deemed to be a trespasser and shall be liable to ejectment in accordance with the provisions of section 58.

(2) On the dispossession of the trespasser under sub-section (1) the Pakka tenant, or if he is dead his legal heir shall under orders of the Tehsildar be placed in possession of the land on payment of arrears, if any.

(3) If a Pakka tenant or his legal heir as the case may be, refuses or fails to cultivate the land as required under subsection (2), the land shall be deemed to have been abandoned.

Section 58. Any person who occupies land without lawful authority, shall be regarded as a trespasser and may be dispossessed by the Tehsildar at any time but he shall be liable to pay, as penalty for each year during the whole or part of which he has been in such occupation, a sum equal to twice the revenue or rent which would have been assessed if the land would have been allowed to any other person. The Tahsildar may impose a fine, in addition, not exceeding Rs. 50 in any case.

It is contended by Shri Chaphekar, learned counsel for the appellants that the remedy provided in section 58 (corresponding to section 20 of the Ordinance) was not the only remedy. That remedy does not bar a civil suit which may be instituted on the basis of title. Reliance is placed on Nathu v. Dilbande Hussain and others 1964 MPLJ 822. In that case it was held by a Division Bench, on a reference having been made by a learned single Judge, that the remedy of a suit u/s 9 of the Specific Relief Act for obtaining possession of agricultural land of which he was dispossessed is not available to a Bhumiswami, that such a Bhumiswami, if he wishes to have the land restored to him in a speedy manner and after a summary enquiry must resort to the remedy given by section 260 of the Land Revenue Code, and that the view expressed in Kallu Paramlal v. Jamnaprasad 1962 MPLJ 738, Shantaprasad v. Jawaharsingh 1963 MPLJ 45 and Fattelal v. Nandlal 1963 MPLJ 292 that a dispossessed Bhumiswami can file a suit u/s 9 of the Specific Relief Act is not correct. In that decision, it was made clear that a civil suit is not barred if it is based on title. The observations are these:

Even after the revenue Court makes an order u/s 250, the aggrieved party has the remedy of filing a civil suit for establishing his title to the land and for obtaining possession of the same. The decision of the Revenue Court cannot operate as res judicata in the civil suit, nor can section 257 (x) of the Code stand in the way of the institution of a suit for possession of a land founded on title. What is excluded from the cognizance of a civil Court under clause (x) of section 257 is a suit of the type of one u/s 9 of the Specific Relief Act for restoring possession of land to a dispossessed Bhumiswami.

It is clear to us that that decision considered the scope of proceedings u/s 250 of the M.P. Land Revenue Code, 1959 read with section 257 (clause X) of that Code and it was held that a proceeding u/s 250 is analogous to a suit u/s 9 of the Specific Relief Act and only such a suit is barred by section 257 (x) of that Code. In the present case, it is not necessary to enter into the question whether the remedy u/s 58 of the M.P. Land Revenue and Tenancy Act 1950 is of a summary nature and whether the remedy of a civil suit on the basis of title is available quite apart from the remedy u/s 58.

We shall concentrate on the wording of section 78 of the M. B. Land Revenue and Tenancy Act. Two things must be satisfied for application of that section:

(1) A person must have obtained possession of any land--(a) by virtue of a bequest, or (b) by virtue of a gift, or (c) by virtue of a sale, or (d) by virtue of a mortgage, or (e) by virue of sub-lease, or (f) by virtue of an agreement purporting to be a bequest, gift, sale, mortgage or sub-lease; and (2) the possession must have been obtained in contravention of the provisions of the Act. There are different provisions which prohibit a bequest, a gift, a sale, a mortgage and a sub-lease in the circumstances specified in those provisions. Section 70 deals with the conditions when a pakka tenant could effect a valid sale. Now, in order to circumvent these provisions, the parties to any of such transactions may simply execute an agreement and in effect transfer the land without fulfilling the requisite conditions on the excuse that such transactions has not been effected as required by the law and is, therefore, not complete. To get over such a device, section 78 includes within its purview "any agreement

purporting to be a bequest, gift, sale, mortgage or sub-lease." Now such an agreement which is included in section 70 is one which ostensibly is an agreement but in effect purports to be such a transaction (e. g. sale). Such an agreement is patently distinct from an agreement for the sale of property. It is not possible to call an agreement for the sale of property as an "agreement purporting to be a sale". It will have to be seen in a given case, whether the agreement is one for the sale of lands or by itself it purports to be a sale. For instance, where the entire price agreed to between the parties has been paid by the so-called intending seller and possession is delivered by the intending seller to the intending purchaser, an agreement intended by the parties may be called one purporting to be a sale. Such an agreement would be executed merely as a device to circumvent the requirements of section 70 of the Act.

The above discussion leads to the following conclusions:

(1) An agreement purporting to be a sale is within the mischief of section 78 of the M.B. Land Revenue and Tenancy Act, 1950, but not so an agreement of sale. The two are distinct.

(2) An agreement which lacks in prescribed legal formation of a sale but in essense purports to transfer land as sold is "an agreement purporting to be a sale", such as where the vendor receives the price from the vendee and delivers him possession of the land. An agreement of sale, on the other hand, contemplates the happening of a future event or the fulfilment of a condition or conditions agreed upon.

(3) The former is within the purview of section 78 as the legislature obviously intended to prevent the provisions of section 70 being defeated by a circumventing device. The latter, being honest and innocent, is outside the purview of section 78 as the property is not yet transferred.

(4) If, in pursuance of an agreement of sale simpliciter, possession of land is given to the intending vendee, the fiction of section 78 does not come into play and the latter cannot be deemed to be trespasser so as to be liable to be ejected in the manner provided by section 58 of the Act. Section 58 being inapplicable to such a case, section 147 is completely out of the way.

(5) If an agreement of sale simpliciter is frustrated, the intending vendor, who has given possession to the intending vendee by virtue of such an agreement, can enforce his right to get back the possession by taking recourse to the ordinary remedy of a civil suit.

In the present case, nearly half the consideration was paid by the defendants to the plaintiff and both parties made an application to the Collector for a sanction. The case was, therefore, clearly one for agreement for the sale of land. It was an oral agreement. There was no agreement in writing. Nor was it the defendants'' case that the suit agreement was itself one purport-ting to be a sale. In these circumstances, it could not be said that there was an agreement purporting to be a sale within the meaning of section 78.

On the above analysis, it must be held that the suit transaction was not hit by section 22(1) of the Ordinance corresponding to section 78 of the Act. That being so, section 20 of the Ordinance corresponding to section 58 of the Act was out of the plaintiff''s way so that section 47 (1) of the Ordinance corresponding to section 147 of the Act could not be attracted. That section reads as follows:

Except as otherwise in this Ordinance, no civil Court shall entertain any suit instituted or application made, to obtain a decision or order on any matter which Government are or a Revenue Officer is, by this Ordinance empowered to determine, decide or dispose of.

The plaintiff''s suit is based on title. He simply claims return of possession as the intended sale could not be legally effected and the agreement for sale was frustrated. Consequently, the defendants were bound to return possession and the plaintiff was bound to return the part of the consideration which he had received.

This appeal is allowed, the judgment and decree of the learned single Judge and also of the learned District Judge are set aside, the judgment and decree of the trial Court are restored, the appellants will get their costs in the first appeal and in the second appeal. However, since respondents did not enter appearance before us, we leave the parties to bear their own costs in this Letters Patent Appeal.

