(1969) 09 P&H CK 0027

In the Punjab And Haryana At Chandigarh

Case No : Second Appeal No. 466 of 1963

Lilawati and Others — APPELLANT

Vs

Firm Ram Dhari Suraj Bhan and Another — RESPONDENT

Date of Decision : 12-09-1969

Acts Referred:
Transfer of Property Act, 1882 — Section 11

Citation : AIR 1971 P&H 87

Hon'ble Judges : Shamsher Bahadur, J

Bench : Single Bench

Advocate : D.N. Aggarwal, for the Appellant; H.S. Awasthy, H.L. Sarin and A.L. Bahl, for the Respondent

Judgement

1. The single question for determination in this appeal of the plaintiff is whether after a vendor has made an absolute sale of property he can enforce the payment of the sum of rent from the vendee?

2. The plaintiff Lilawati sold about 100 plots in village Pillu Khera in Jind Tehsil, the object being to start a Mandi there. The defendant-respondents M/s. Ram Dhari Suraj Bhan purchased plot No. 70 for Rs. 99/- in pursuance of the sale-deed Exhibit P. 1 of 20th of April, 1958. Although the sale was absolute, some conditions were introduced, on of these being that a sum of two annas in every hundred rupees would be paid as haqe malkana to the vendor. Out of this sum of two annas, one anna was to be given to the village Panchayat and the remainder one anna was to be retained by the vendor Lilawati. It is not necessary to go into the other conditions which required the vendee to construct a shop on the plot sold to him and to keep a frontage for purposes of the shop. The defendants having refused to comply with the direction for payment of haqe malkana, the plaintiff brought a suit for rendition of accounts to enforce the condition.

3. The pleadings of the parties gave raise to many issues but out of them issue No. 3 is only relevant for purposes of this appeal:-

"3. If issue No. 2 is proved, are the defendants bound by these conditions?" The trial Judge, and likewise the lower appellate Court in appeal, decided against the plaintiff, having found as a fact that the transfer of the land in favour of the vendee-defendants was absolute. It is not contested by Mr. Aggarwal, the learned counsel for the appellant, that the sale of plot for Rs. 99/- in favour of the vendee by the appellant was absolute. In that situation, the principle embodied in Section 11 of the Transfer of Property Act that there can be no restriction on the enjoyment of property which has been transferred absolutely, is clearly applicable. Under this section:-

"Where, on a transfer of property, an interest therein is created absolutely in favour of any person, but the terms of the transfer direct that such interest shall be applied or enjoyed by him in a particular manner, he shall be entitled to receive and dispose of such interst as if there were no such direction."

Likewise, the vendee is entitled to ignore a condition which cuts down his enjoyment of the absolute right of property. As stated in Mulla''s Transfer of Property Act (1966 Edition) at page 104, " a restraint on transfer is repugnant to any interst in property whether absolute or limited, for the right of transfer is an incident of ownership." It was observed by Right Hon''ble Sir Shadi Lal in the Privy Council decision of AIR 1935 187 (Privy Council) :-

"There can, however, be no doubt that if these clauses are repugnant to the absolute estate created in favour of the lady, they cannot cut down that estate and must consequently be held to be invalid."

4. The property having passed absolutely to the vendee-respondents, any direction in the sale-deed which is contrary to the enjoyment of such absolute estate is void and unenforceable. In a Single Bench decision of the Oudh Chief Court in Mt. Shiv Nath Kunwar v. Lachhmi Narain AIR 1938 Oudh 17, the sale-deed was for a cash consideration of Rs. 1000/- and there was an agreement for payment of Rs. 47/- as annual rent to the vendor. It was held by the learned Judge that "where a vendor makes an absolute conveyance of his property to the vendee by sale for a cash consideration, the stipulation in the sale deed for payment of a certain amount to the vendor out of the profits of the property by way of rent is clear restriction on the enjoyment of the rights created absolutely, in favour of the vendee. Such a restriction being repugnant to the interest created, is not only illegal but without consideration and cannot be enforced."

5. What the appellant apparently wants is to convert a sale into a perpetual lease and he cannot be permitted to do so under the beneficial provisions in favour of the transferee contained in Section 11 of the Transfer of Property Act.

6. Two other decisions of the Lahore High Court may be mentioned in this connection. One is a decision of Bhide, J. in Daulat Ram v. Haveli Shah AIR 1938 Lah 479, in which it was held that "when ownership of a site of a shop is transferred to the vendee, its enjoyment cannot be restricted by conditions, e.g. That the vendee should not convert the shop into two or more." In the instant

case, there is something more required of the vendee who is to pay for all time to come a sum of two annas on the sale or purchase of goods of the value of one hundred rupees to the vendor, half of which is to be appropriated as haqe malkana. The other case is a Bench decision of Tek Chand and Monroe, JJ., in Umrao Singh v. Baldev Singh AIR 1933 Lah 201. Though the transfer in that case was by will the principle is all the same applicable. Tek Chand, J., speaking for the Court, held that, ''where in deed of gift or will an absolute estate of inheritance is created in favour of person, any subsequent clause which purports to restrict that interest is invalid, and the donee or legatee takes an absolute estate as if the deed contained no such restrictive condition."

7. Mr. Aggarwal has cited the Privy Council decision of AIR 1932 158 (Privy Council) . There was a compromise in a family settlement and it was held by the Board in that case that "the terms of the compromise were binding, that the restriction as to alienation was only partial and that such a partial restriction was neither repugnant to law nor to justice, equity and good conscience." It would be readily observed that to enforce the compromise their Lordships had to invoke the principles of equity and good conscience as opposed to the clear provisions of the Transfer of Property Act. This was done in the peculiar circumstances of the case where the propriety of observing the terms of a compromise by placing restrictions on the right of alienation in respect of property given to female heirs was under consideration. The second case cited by Mr. Aggarwal is a Bench decision of the Calcutta High Court in Bejoy Krishna Vs. Sree Sree Iswar Damodar Jew, . In that case the transferor reserved for himself a subordinate or tenancy right under the transferee, and it was found that he did not infringe the provisions of Section 11 of the Transfer of Property Act. that case is also distinguishable because the vendor in the instant case has not reserved for himself a future right of tenancy, but there is a perpetual obligation for payment out of profits of the site which has been absolutely sold to the transferee.

8. In my opinion, the decision reached by the Courts below is correct and in accordance with law. There is no scope for interference in appeal which fails and is dismissed with costs.

9. Appeal dismissed.

