
(1978) 12 AHC CK 0017
In the Allahabad High Court
Case No : Writ Petition No. 3861 of 1973

Mohammad Ishaq

APPELLANT

Vs

Abdul Latif and Others

RESPONDENT

Date of Decision : 20-12-1978

Acts Referred:

Uttar Pradesh Consolidation of Holdings Act, 1953 — Section 4, 45, 5

Citation : (1979) AWC 104

Hon'ble Judges : R.M. Sahai, J

Bench : Single Bench

Advocate : Jagdish Misra and O.P. Misra, for the Appellant; S.D. Pathak, for the Respondent

Final Decision : Dismissed

Judgement

R.M. Sahai, J.—The only controversy in this petition is whether the sale deed executed on 19th August, 1970 in pursuance of a decree passed in a suit for specific performance on 30th August, 1969 is invalid for not obtaining the permission of the Settlement Offices? Consolidation in accordance with the provisions of Section 5(c) of U.P. Consolidation of Holdings Act. The notification u/s 4 having been issued on 4-7-1970.

2. Section 5(c) of the U.P. Consolidation of Holdings Act prohibits any tenure-holder to transfer by sale, gift or exchange any part of the holding without the permission of Settlement Officer Consolidation. The consequences of such a transfer is given in Section 45 which provides that it shall be treated as invalid. There can be no doubt therefore that the sale deed executed in favour of the Petitioner suffered from a statutory infirmity.

3. What has however to be seen is whether the bar contemplated u/s 5(c) is applicable only to voluntary transfers or they are equally applicable to a statutory transfer. It may be that the execution of the sale deed in pursuance of the decree dated 30th August 1969 was in nature of execution proceeding or it may be a

statutory transfer but it is difficult to agree that in such a transfer no permission is needed. The Act does not create any such distinction. Its application is universal to a transfer made by any tenure-holder. It cannot be disputed that the transfer either in execution proceedings or in pursuance of the specific performance decree has to be made by a tenure holder and if it is to be made by a tenure holder it has to be in accordance with the provisions of Section 5(c) of U.P. Consolidation of Holdings Act.

4. It is true that the conduct of the opposite party has not been fair as he has not only entered into an agreement of sale but also got a decree passed on compromise yet the Petitioner cannot be granted any relief in view of the clear provisions of law.

5. In the result the petition fails and is dismissed. The parties shall bear their own costs.