

(1985) 12 AHC CK 0034

In the Allahabad High Court

Case No : Civil Misc. Writ Petition No. 8565 of 1974

Niyaz Ahmad and Others

APPELLANT

Vs

The D.D.C. and Others

RESPONDENT

Date of Decision : 17-12-1985

Acts Referred:

Constitution of India, 1950 — Article 226
Limitation Act, 1963 — Article 54, 59
Specific Relief Act, 1963 — Section 10, 15
Transfer of Property Act, 1882 — Section 43
Uttar Pradesh Zamindari Abolition and Land Reforms Act, 1950 — Section 134, 137

Citation : (1986) RD 203

Hon'ble Judges : B.L. Yadav, J

Bench : Single Bench

Advocate : R.H. Zaidi, for the Appellant; S.C. and Surendra Nath Singh, for the Respondent

Final Decision : Dismissed

Judgement

B.L.Yadav, J.—The petition Under Article 226 of the Constitution of India is directed against the Order dated 30-08-1974 (Annexure L) passed by the Assistant Director of Consolidation Gyanpur.

2. The facts leading to this petition are that one Mohammad Fakhar. Respondent No. 6 was the tenure holder of Chak No. 213. On 24-08-1966 he is alleged to have executed an unregistered agreement of sale in favor of the Petitioners. In the meanwhile a power of attorney was executed by the Respondent No. 6 in favor of Mst. Batul and she was given power to execute the sale deed in respect of the land in dispute. Ten times rental was deposited in view of Section 134 of the U.P Zamindari Abolition and Land Relorms Act, (hereinafter referred to as the Act), for acquiring btiumidhari rights on 28-10-1968 and on the same date a registered sale deed "as also executed in favor of Nanku, Respondent No 3. Later on Mohammad Fakhar. Respondent No. 6 executed a registered sale deed in favor of the petitioner on 04-09-1961 artier the sale deed in favor of Respondent

No. 3.

3. Both the vendees, the Petitioners and also the Respondent No. 3 applied for mutation of the sale deed during the consolidation operation. It was alleged by the Petitioners that as they had an agreement for sale in their favor, hence no sale deed could have been executed in favor of respondent No. 3. The case of Respondent No. 3 was that the power of attorney was executed by Respondent No. 6 in favor of Respondent No. 7 on 06-09-1968 and the same was not cancelled by him, hence the sale deed in favor of the Petitioners could not have been executed by him (Mohd. Fakhar). It was further alleged that after depositing ten times rental the Sanad Bhumidhari was prepared and issued in the name of the tenure holder on 13.11.1968, hence that would date back to the date of deposit and this means that the sale deed executed on 28-10-1968 in favor of Respondent No. 3 was legal and thereafter no right was left in the vendor to execute another sale deed in favor of the Petitioner. It was further alleged that the claim of the Petitioners was time barred.

4. The Consolidation Officer decided the case in favor of Respondent No. 3 holding that the sale deed dated 28-10-1968 was legal and the name of vendor Mohammad Fakhar shall be expunged and that of Nanku, Respondent No. 3 shall be entered. The Petitioners preferred an appeal and the same was allowed by an Order dated 17-11-1972. Against that order the revision by Respondent No. 3 was allowed by the impugned Order dated 30-08-1974.

5. Sri R.H. Zaidi appearing for the Petitioners urged that the sale deed in favor of Respondent No. 3 dated 28-10-1968 was illegal and void as by that date the Sanad Bhumidhari was not obtained and the same was obtained on 12-11-1968, hence on the date of sale the vendor was not the bhumidhar and had no right to execute the sale deed. The agreement for sale dated 24-08-1968 was in favor of the Petitioners, hence Respondent No. 3 could not have obtained the sale deed from Mst. Batui, the lady holding the power of attorney from Mohammad Fakhar, Respondent No. 6, that no benefit of Section 43 of the Transfer of Property Act could be given to Respondent No. 3 under the facts and circumstances of the case. He relied upon *Banshidhar v. Smt. Dhnaadhari* 1971 AWR 440 (FB) and *The Saharanpur Co-Operative Cane Development Union Ltd. Vs. The Lord Krishna Sugar Mills Ltd. and Others*, .

6. Sri Surendra Nath Singh, appearing for Respondent No. 3 urged that as the sale deed was executed in favor of Respondent No. 3 on 28-10-1968 and ten times rental was also deposited in view of Section 134 of the Act and the Rules made there under and the Sanad Bhumidhari was issued on 12-11-1968, that would have retrospective effect and confer bhumidhari rights on the vendor on the date of sale and the sale deed in favor of Respondent No. 3 was valid and legal in any case with the help of Section 43 of the Transfer of Property Act even though the vendor might not have bhumidhari rights on the date of sale. But

that would endure for the benefit of the vendee after the bhumidhari Sanad was

granted. He further urged that the claim of the Petitioner was time barred, inasmuch as the agreement for sale was to be enforced by the Petitioners within a period of three years as provided Under Article 54 of the Limitation Act, 1963 and neither any suit for the specific performance of the contract was filed by the Petitioners nor a suit for cancellation of the sale deed in favor of Respondent No. 3 was filed within a period of three years in view of Article 59 of the Limitation Act, 1963. Hence neither the sale deed in favor of Respondent No. 3 can be held to be illegal nor can the agreement for sale in favor of the Petitioners now be enforced. He distinguished the cases cited on behalf of the Petitioners and placed reliance on Jagat Narain v. Lalji, 1964 AWR 646, Deshraj v. Lalsahai Singh 1973 AWR 123 (DB), Ishtiaq Ahmad v. The Commissioner, Varanasi Division 1974 RD 94 (DB), Ram Swarup v. Deputy Director of Consolidation 1971 RD 84 : 1970 AWR 891 (DB) and Niau v. Kunwar Sen 1966 RD 35. He further urged that as Mohammad Fakhar, who executed the agreement for sale in favor of the Petitioners did not deposit the ten times rental rather the same was deposited by Mst. Batul, who was holding the power of attorney, she executed the sale deed in favor of Respondent No. 3, whereas the sale deed of the Petitioners was got executed by Mohammad Fakhar without canceling the power of attorney, hence the sale deed in favor of the Petitioners was obviously illegal.

7. I have heard the learned Counsel for the parties. The first point that falls for determination is whether the sale deed dated 28-10-1968 in favor of Respondent No. 3 was illegal inasmuch as on that date the vendor was not the bhumidhar rather ten times rental was deposited and Sanad bhumidhari was issued on 12-11-1968 After 1961 there was an amendment in the Act (U.P. Act No. 21 of 1961) particularly in Section 134 and other sections. In Section

134 it was clearly provided that "If a sirdar pays or offers to pay to

the credit of the State Government ten times of the land revenue payable on the date of application, he shall, upon an application duly made in that behalf to an Assistant Collector, be entitled, with effect from the date on which the amount has been deposited, to a declaration that he has acquired rights (i. e. bhumidhari) mentioned in Section 137 in respect of such land ". In the instant case as the amount was deposited on 28-10-1968 (after the enforcement of U.P. Amendment Act No. 21 of 1961), hence the depositor would be entitled to declaration of bhumidhari rights on the date of the deposit itself.

8. I am of the opinion that even though the Sanad Bhumidhari was prepared and issued on 12th November, 1968 but that shall have effect from the date of deposit and it would be deemed as if the person who had deposited the ten times rental became bhumidhar on the date of deposit and if on that date he executed a sale deed in favor of Respondent No. 3, that was perfectly legal.

9. Apart from Section 134 of the Act assistance can be had from Section 43 of the Transfer of Property Act, which enacts a rule of "feeding the grant by estoppels ". In other words when a person transfers property to which he has no

transferable title, on the date of transfer, but he make representation that he has transferable interest therein, and acting on that representation the transferee takes a transfer for consideration, and in the meanwhile if the transferor acquires transferable rights, he (transferor and his privies) would be stopped by the English Common law doctrine of "estoppels by deed, from denying that he has no transferable rights. There is an equitable doctrine applicable to such situation, " equity treats that is done which ought to be done ".

10. It would not be out of place to mention that ratio decided (in *Holroyd v. Marshall* (1860) 10 HLC 191 was the basis for enacting Section 43 of the Transfer of Property Act.

11. In *Holroyd v. Marshall*, (supra) Lord Westbury has observed as follows:

If a vendor agrees to sell property, real or personal, of which he is not possessed at the time, and he receives the consideration for the contract, and afterwards becomes possessed of property answering the description in the contract, there is no doubt that a court of enquiry would compel him to perform the contract, and that the contract would, in equity, transfer the beneficial interest to the purchaser immediately on the property (or transferable interest) being acquired.

12. The aforesaid view was reaffirmed by the House of Lords in *Tailly v. Official Receiver* (188) 58 LJ QB 75 where Lord Macnaghten said:

Long before *Holryod v. Marshall* was determined, it was settled that an assignment of future property for value operates in equity by way of assignment, binding the conscience of the assignor, and so binding the property from the moment when the contract becomes capable of being performed on the principle that equity considers as done that which ought to be done, and in accordance with maxim which Lord Thurlow said he took to be universal "that whenever persons agree concerning any particular subject that, in a court of equity, as against the party himself, and any claiming under him, voluntarily or with notice, raises a trust" *Legard v. Hodges* (1789) 1 vas. Jun. 478.

13. Hon^{ble} Gangeshwar Prasad, J. in *Jagat Narain v. Laljee* 1964 AWR 646 has taken the view and similarly by this Court, in *Deshraj v. Lai Sahai Singh* (Supra), *Ramswarup v. Dy. Director of Consolidation* (Supra), *Ishtiaq Ahmad v. The Commr.* (Supra), it was held that Under these circumstances the equitable doctrine of feeding the grant by estoppels contained in Section 43 would be applicable.

14. The Supreme Court in *Ram Pyare v. Ram Narain* 1985 AWC 254 held in similar facts in respect of a transaction before the U.P. Amendment Act No. 21 of 1962 that Section 43 of the Transfer of Property Act enacts a rule of estoppels which is of evidence, and the representation as to title made by a transferor (sirdar) who had no title at the time of transfer, buy the title or interest acquired later on (the Bhumidhari rights acquired on the grant of Bhumidhari Sanad) would fasten itself on the title which the transferor subsequently acquires and

the transfer so made before in favor of the transferee, before the grant of Bhumidhari Sanad, would be legal and the vendor (or his privies) would be stopped from denying such right in favor of the transferees.

15. The next point is that as the Petitioners did not file a suit for specific performance of the contract within a period of three years as provided by Article 54 of the Limitation Act, 1963 nor he has filed any suit for cancellation of the sale deed within a period of three years as provided by Article 59 the claim of the Petitioners, accordingly became time barred. It is evidence that if the Petitioners wanted to enforce the agreement to sell, the remedy for him was to file a suit for specific performance of the contract in view of provisions of Sections 10 and 15 etc. (Chapter II) of the Specific Relief Act, 1963, but of course within a period of three years. Similarly the Petitioners could also have filed a suit for cancellation of the sale deed in favor of Respondent No. 3 (Nanku) within limitation but they did not do so hence their claim became time barred.

16. *Banshidhar v. Smt. Dhirajadhari*, (Supra) was a case where the controversy was whether the right of a bhumidhar accrues on the date of passing the order by the Assistant Collector for issuing a Sanad Bhumidhari or on the date when the actual Sanad Bhumidhari has been prepared. Whatever may be deemed to be the date for accrual of bhumidhari rights, but in view of Section 134 (after U.P. Amendment Act No. 21 of 1962) the side would become bhumidhar on the date of deposit. This case is besides the point. Similarly *Gorakhnath Dubey v. H.N. Singh* (Supra) was a case about the jurisdiction of the civil and consolidation courts (revenue court) in respect of the void able deeds and in substance it was held that where a deed was void able, the suit would lie in the Civil Court for cancellation of the same and in case it was void, the aggrieved party can ignore the same or in other words the controversy can be decided by the consolidation authorities or the revenue comets. In the instant case from the judgment it appears that the Petitioners themselves alleged that the sale deed in favor of Respondent No. 3 was void. Hence in that case the consolidation authorities have jurisdiction to adjudicate upon the same and the impugned orders passed by the Deputy Director of Consolidation are perfectly correct.

17. In view of the discussions made herein-above, I am of the view that this petition has no substance and the same is accordingly dismissed. There shall, however, be no order as to costs. It is, however, directed that in view of the Order dated 19.08.1975 the amount deposited shall be paid to Respondent No. 3.