

(2004) 12 AHC CK 0063
In the Allahabad High Court
Case No : Second Appeal No. 2086 of 1987

Noor Mohammad (since deceased) represented by LRs 1/1
Noor Alam siddique and Others

APPELLANT

Vs

Satya Narain and Others

RESPONDENT

Date of Decision : 13-12-2004

Acts Referred:

Uttar Pradesh Consolidation of Holdings Act, 1953 — Section 30
Uttar Pradesh Zamindari Abolition and Land Reforms Act, 1950 — Section 117, 117A, 19A(2)

Citation : (2005) 3 AWC 2639 : (2005) 2 RCR(Civil) 778 : (2005) 98 RD 502 : (2005) 1 RD 502

Hon'ble Judges : S.N. Srivastava, J

Bench : Single Bench

Advocate : Swaraj Prakash, for the Appellant; H.R. Misra, Ajay Kumar Misra and Ashwani Kumar Misra, for the Respondent

Final Decision : Dismissed

Judgement

S.N. Srivastava, J.—This appeal has its genesis in the O.S. No. 99 of 1978 instituted for the relief of specific performance. The suit culminated in being decreed for recovery of Rs. 11,190/- with interest at the rate of 15% per annum from the date of agreement to sale dated 5.5.1974 with cost throughout against which an appeal was preferred and the lower appellate court in its turn, allowed the appeal and reversed the judgment and decree of the trial court vide judgment and decree dated 6.7.1987.

2. To begin with, the plaintiff instituted suit for specific performance of contract dated 5.5.1974 along-with cost attended with further prayer to grant such relief as may be deemed fit in case the agreement to sale is found not executable. The precise allegation of the plaintiff were that both defendants and plaintiffs were domiciled in the same village i.e. village Cheruaha May Pakar Post Office Maharajganj District Maharajganj and that on 5.5.1974, Gulab Das, father of defendants 1 to 4 and husband of defendant No. 5 had accepted a sum of Rs.

10,000/- and in consequence, had executed agreement to sale agreeing to execute sale deed on a consideration of Rs. 10,000/- in relation to plot Nos. 471 admeasuring 1.40, 669 asmeasuring .99 and 670 admeasuring 1.00 acre totaling up to 3.39 acres. It is further alleged that Gulab Das met his civil death on 31.12.1975 and thereafter, his heirs developed aversion to execute the sale deed despite persistent demand from the plaintiffs. It is in this backdrop that the suit came to be instituted. Defendants on the other hand emphatically repudiated the plaint allegations and also denied agreement to sale 5.5.1975 and its execution besides various other kindred pleas.

3. At the time of admission of appeal in hand, the Court gleaned following substantial question of law in the perspective of the facts and circumstances of the case.

"Whether the suit can be dismissed simply on the ground that during consolidation operation identity of the plots changed."

4. From a persual of the finding recorded by the lower appellate court, it would transpire that the lower appellate court dissented from the view taken by the trial court and reversed the judgment and decree taking into reckoning that new chaks having been carved out on different plots, the agreement to sale was not enforceable.

5. Before coming to grips with the respective contentions of the parties, it may be noticed that during pendency of Second appeal, an application to amend the plaint was filed. Yet another application was filed to admit certain documents on record including Khatauni for the year 1383-F to 1385 F and 1394 from a bare persual of which, it will be evident that the land in dispute along with other plots were recorded in the name of Gulab Das prior to commencement of consideration in the village. On this aspect, the learned counsel for the petition tried to clarify that during tendency of case, the consolidation operation had commenced in village and plots in suit were subsumed in chak No. 138 which was carved out in an area admeasuring 5.98 acre and therefore, it is canvassed that plaint required amendment as agreement to sale is enforceable against the new chak. In connection with the above proposition, the learned counsel placed credence on Baikunthi Devi and Others Vs. Mahendra Nath and Another, in which the quintessence of what has been on the same land, the agreement of sale would be enforceable.

6. To obtain an insight into the merit of amendment sought, I proceed to examine the record. It would appear that Chak No. 138 admesuring 5.98 was carved cut in which were mutated the names of Satya Narain, Surendra, Shailesh (Major), Arvind (minor) sons of Gulab Das, Ramzan Ali son of Nohd. Ali, Ram Awadh Raman and sons of Sri Ram and Shanti Devi, widow of Ram Dawan. It is further evident from Annexure 3 to Amendment Application that Chak No. 138 admeasuring 5.98 acres included plot Nos. 469, 470, 471, 472 Sa, 473 Sa, 474 Sa, 475 Sa, 476 Sa, 612 Sa, 668 Sa, 669 Sa, 670 Sa, 695 Sa, 696 Sa, 697/1,

697/2, 698, 699 Sa, 703 Sa, 704 Sa, the total area of which was 5.98 acre and no separate chak was assigned in relation to land appertaining to agreement to sake. It would thus appear that a new chak was carved out of an area of 5.98 acres, which included number of other plots including also a small area of plots in suit and Chak No. 138 was also not assigned to defendants exclusively. It would further appear that this chak was allotted in the name of a number of other persons also alongwith heirs of Gulab Das, Ramzan Ali, Shanti Devi widow of Ram Dawan who are not arrayed as a party to the suit.

7. I now proceed to delve into the aspects whether right, title or interest of Gulab Das which existed prior to consolidation operation on the basis of agreement to sale as relied upon by plaintiffs, have ceased to exist u/s 30 of the U.P.C.H. Act and whether the sale deed can be executed by enforcing the agreement to sale for the plot in suit in favour of plaintiff even if a decree is passed in his favour.

8. Section 30 of the U.P.C.H. Act deals with the point at issue in this second appeal and it is, therefore, quoted below.

"30. Consequence which shall ensue on exchange of possession - With effect from the date on which a tenure holder enters, or is deemed to have entered into possession of the chak allotted to him, in accordance with the provisions of this Act, the following consequences shall ensue-

(a) the rights, title, interest and liabilities-

(i) of the tenure-holder entering, or deemed to have entered into possession, and

(ii) of the former tenure-holder of the plots comprising the chak, in their respective original holdings shall cease; and

(b) the tenure-holder entering into possession, or deemed to have entered into possession, shall have in his chak the same rights title, interest and liabilities as he had in the original holding together with such other benefits of irrigation from a private course, till such source exists, as the former tenure-holder of the plots comprising the chak had in regard to them;

(c) lands vested in the Gaon Sabha shall be deemed to have been resumed by the State Government under the provisions of Section 117 or Section 117-A, as the case may be, of the Uttar Pradesh Zamindari abolition and Land Reforms Act, 1950 and settled with the tenure-holder;

(d) the rights of the public as well as all individuals in or over land included in a chak following a declaration made under the proviso to Sub-section (2) of Section 19A shall cease and be created in the land specified for the purpose in the final Consolidation Scheme; and

(e) the encumbrances, if any, upon the original holding of the tenure-holder entering, or deemed to have entered, into possession, whether by way of lease, mortgage or otherwise shall, in respect of that holdings, cease, and be created on the holdings, or on such part thereof, as may be specified in the final

Consolidation Scheme."

9. This section deals with the consequences of exchange of possession and the consequences are enumerated in clauses (a) to (e). The section envisages extinction of rights of the parties in the original holdings and vesting of those rights in the land, which is allotted, to them after consolidation. The substance that emerges from perusal of the above section is that if the tenure holder gets the same land in chak as in agreement to sale the agreement shall be enforced and if it is completely changed the contract is unenforceable. It is further clear from a perusal of this section that it all depends upon the identity of land and if identity is not changed it can be enforced. From the facts on record, it is revealed that the chak No. 138 was not allotted to the defendant exclusively and there is change in identity of land. In the instant case, as discussed above, a new chak was allotted which also included the land in question, in the names of various person including the names of heirs of defendants and in the circumstances, it is clear that it was not a case in which it can be said that identity of the land has not changed except the change of numbers. The land in question against which agreement to sale was executed by deceased Gulab had undergone a complete change of identity and a new chak namely, Chak No. 138 was carved out and therefore, it follows that agreement to sale cannot be enforced. Therefore, I am of the view that having evaluated the merit of the application pro and con, it is not sustainable and is liable to be rejected. I have also considered the ratio of the decision in *Smt. Baikunthi Devi and Ors. v. Mahendra Nath and Anr.* cited by the learned counsel for the appellant to give cogency to his case. From a close scrutiny of this decision, it would transpire that the decision was rendered in different facts and perspective and the same do not bear any resemblance of sort to the facts and perspective of the present case which may warrant its applicability and contention of the learned counsel for the appellants. The application for amendment is therefore rejected.

10. The learned counsel for the appellant switched over to next argument canvassing that agreement to sale was still enforceable on grounds that Chak 138 carved out in the names of heirs of Gulab Das include plots namely, plot Nos. 469, 470, 471, 472 Sa, 474 Sa, 475 Sa, 476 Sa, 612 Sa, 668 Sa, 669 Sa, 670 Sa, 695 Sa, 696 Sa, 697/1, 697/2, 698, 699 Sa, 703 Sa, 704 Sa, and to prop up his contentions, he relied upon a decision in *Sukha and Others Vs. Hari Singh and Others*, . This aspect has been dealt with elaborately above and as a consequence of above discussion, I have converged to the conclusion that Chak No.138 was not carved out comprising plots in question i.e. plot nos. 471, 669 and 670 only but it was carved out for an area measuring 5.98 acres which included number of other plots, and therefore, the argument of the learned counsel that a part of three plots, and therefore, the argument of the learned counsel that a part of three plots in suit formed part of bigger chak No. 138 do not commend to me for acceptance. The cases cited across the bar by the learned counsel are unavailing and the ratio flowing from these decision cannot be applied to the facts of the present case and therefore, the same do not put

any intrinsic strength into the case sought to be built up by the learned counsel for the appellants.

11. The learned counsel, then switched over to the next argument canvassing that the appellants are entitled to get compensation and in connection with this, relied upon Janab Ali Shaikh Vs. State of West Bengal, . From a close scrutiny of the decision, it is discernible that the ration of the case is not applicable to the facts of the present case in that case during the pendency the land which was covered in the suit for specific performance was acquired by the State Government and compensation was paid to the original tenant. By this reckoning, the decision does not commend itself for application to the present case.

12. In the above conspectus, I am of the view that the suit was rightly decreed for recovery of the amount alongwith interest and there is no palpable infirmity and error of law in the decision rendered by the lower appellate court. The substantial question of law framed at the time of admission of this appeal is accordingly answered in terms of the above discussion.

13. As a result of foregoing discussion, the second appeal fails and is accordingly dismissed. There would be no order as to costs.