
(1986) 04 P&H CK 0012

In the Punjab And Haryana At Chandigarh

Case No : Regular Second Appeal No. 1690 of 1977

Puran Chand

APPELLANT

Vs

Jagat Ram and others

RESPONDENT

Date of Decision : 02-04-1986

Acts Referred:

Transfer of Property Act, 1882 — Section 11

Citation : (1986) 04 P&H CK 0012

Hon'ble Judges : S.S. Sodhi, J

Bench : Single Bench

Advocate : Arun Jain, for the Appellant; P.L. Sanghi, for the Respondent

Final Decision : Dismissed

Judgement

S.S. Sodhi, J.—Plaintiffs-Jagat Ram and Mangat Ram trace their right and title to the land in suit to the two sale-deeds executed by the Defendant Puran Chand and Daya Ram (now deceased) in January, 1947. Puran Chand and Daya Ram being the predecessors-in-interest of the present Plaintiffs. These sale-deeds contained a stipulation to the effect that if construction thereon was not raised by Dussehra, 1947. the land would be resumed by the vendor. The controversy in appeal now is with regard to this clause. The case of the Defendants being that the constructions not having been made by Dussehra, 1947, or even during the extended period ending on November 30, 1950, the land must revert to the vendor. According to the Plaintiffs, on the other hand, the clause was invalid being repugnant to the absolute interest conveyed by the sale-deeds.

2. The principle underlying Section 11 of the Transfer of Property Act, 1892, clearly stand attracted here and it is also well-settled otherwise too that a subsequent clause repugnant to the absolute interest conveyed, cannot but be taken to be invalid and has thus to be disregarded. Indeed. the settled rule is that a condition or provision requiring a person to whom property is given to use it or not to use it, in a particular way, is invalid if it is inconsistent with those rights of enjoyment which are inseparably incident to the absolute ownership. A

statement to this effect is to be found in Volume-II of Jarman on Wills, VIIIth Edition at page 1455.

3. As a precedent, reference may be made to the judgment of this Court in Lilawati and Others Vs. Firm Ram Dhari Suraj Bhan and Another, , where after making an absolute sale of land, a condition was incorporated regarding payment of what was termed as "haq malkana" to the vendor. It was held that a vendor cannot be permitted to convert a sale into a perpetual lease in this manner and the principle of Section 11 of the Transfer of Property Act, 1882 was clearly applicable, namely; that there can be no restriction on the enjoyment or property which has been transferred absolutely. Quoted with an approval here were the observations of AIR 1933 201 (Lahore) "where in a deed of gift or will an absolute estate of inheritance is created 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 interest as if there were no such directions."

4. Such being the clear and well-established position in law, there can be no escape from the conclusion that the courts below rightly held the stipulation in the sale-deed regarding reversion of the land to the vendors to be void and unenforceable. This being so, the Plaintiffs were rightly granted a decree for permanent injunction as sought by them.

5. This appeal is accordingly hereby dismissed with costs.