

**(2001) 02 BOM CK 0035**

**In the Bombay High Court**

**Case No : Second Appeal No. 48 of 1984**

Ramkrishna Ganpatrao Jogdand

APPELLANT

Vs

Kondiram Jaysingrao Naikwade

RESPONDENT

**Date of Decision : 28-02-2001**

**Acts Referred:**

Contract Act, 1872 — Section 65

**Citation :** AIR 2002 Bom 148 : (2001) 3 ALLMR 441 : (2001) 3 BomCR 242 : (2001) 4 MhLj 85

**Hon'ble Judges :** S. Radhakrishnan, J

**Bench :** Single Bench

**Advocate :** S.A. Deshmukh and K.M. Babhulgaonkar, for the Appellant; P.R. Deshmukh and S.V. Chandole, for the Respondent

**Final Decision :** Dismissed

## Judgement

S. Radhakrishnan, J.—Original plaintiff No. 1 Ramkrishna and his two sons Janardhan and Nivrutti had filed a suit against Kondiram and Vyankatrao, seeking permanent injunction restraining them from Interfering into the peaceful possession and enjoyment of the plaintiffs land admeasuring 8 acres and 4 gunthas. The contention of the original plaintiffs was that said Ramkrishna was declared owner of the said 8 acres and 4 gunthas of land u/s 38-F of the Hyderabad Tenancy and Agricultural Lands Act, 1950 (for the sake of brevity, hereinafter, referred to as "the said Act") said Ramkrishna had paid the price also for the same as per the declaration and as such said Ramkrishna had claimed title to the sated land. Balance portion of land admeasuring 1 acre and 28 gunthas was also in possession of Ramkrishna in addition to the aforesaid 8 acres and 4 gunthas. as a tenant.

2. The plaintiffs had alleged that plaintiff No. 1 Ramkrishna was simpleton having short temper. In the heat of anger, when he had a quarrel with his son-plaintiffs Nos. 2 and 3, hence he had entered into two sale deeds on 12-4-1978 in favour of the defendants selling the aforesaid land admeasuring 8 acres and 4 gunthas.

The plaintiffs in paragraph 7 of the plaint have specifically pleaded that these two sale deeds are invalid as per the provisions of the said Act, inasmuch as no prior permission of the Collector for said sale was obtained. Therefore, the contention of the plaintiffs in the plaint was that the sale deeds which were executed on 12-4-1978 were void. The said suit was for a permanent injunction restraining the defendants from interfering into the possession of the plaintiffs on the ground that the aforesaid two sale deeds were void ab initio. The aforesaid suit being Regular Civil Suit No. 100 of 1978 was decreed by the trial Court i.e. Joint Civil Judge J. D. Beed on 29-6-1981, holding that the plaintiffs were entitled to a permanent injunction restraining the defendants and their servants from interfering with the peaceful possession and enjoyment of the plaintiffs with regard to possession of the suit land.

3. Aggrieved thereby, the aforesaid defendants Kondiram and Venkatrao had preferred Regular Civil Appeal No. 187 of 1981 before the Extra Assistant Judge, Beed. The lower appellate Court also noticed the fact that subsequent thereto, the Deputy Collector, Land Reforms had declared the said transactions to be valid. The lower appellate Court had only considered one issue, namely, whether the original plaintiffs had proved their actual possession with regard to 8 acres and 4 gunthas of land from Survey No. 73/E/3 and whether the plaintiffs were entitled to get a decree for perpetual injunction.

4. Ultimately, the learned lower appellate Court, after re-appreciating the evidence, came to the conclusion that original plaintiffs were not in possession of the suit property and as such no decree for perpetual Injunction can be granted in their favour. The lower appellate Court has also given a finding that the aforesaid sale deeds were totally void in view of Section 50-B of the Tenancy Act, inasmuch as no prior permission from the Collector was obtained before the said sale deeds were executed. In the aforesaid facts and circumstances, the lower appellate Court has finally allowed the appeal and had set aside the trial Court's decree in favour of the plaintiffs and the suit was dismissed with costs.

5. It may also be noted that the plaintiffs application for ad interim injunction restraining the defendants from dispossessing them was refused by the trial Court. Thereafter, the appellants had filed a Misc. Civil Appeal No. 52 of 1978, wherein, the lower appellate Court had granted a temporary injunction in favour of the appellants on 20-11-1978. to the effect that the defendants should not disturb their peaceful possession with regard to the suit land. Against the grant of the said temporary Injunction, the respondents herein, namely defendants, had filed a Civil Revision Application No. 635 of 1978 in this Court, which came to be rejected on 15-12-1978. Thereafter, when this Second Appeal was filed by the present appellants. Civil Application No. 133 of 1984 was taken out for grant of an injunction against the respondents preventing them from disturbing possession of the appellants and this Court was pleased to grant the said temporary Injunction, pending hearing and final disposal of this second appeal on 2-3-1984.

6. The substantial question of law sought to be raised in this second appeal is whether this Court can render any assistance to a party, viz., plaintiffs, when the plaintiffs themselves knew that the two sale deeds were void and invalid.

7. Shri S. A. Deshmukh, learned counsel appearing for the appellants contended that though the aforesaid two sale deeds, executed on 12-4-1978, were invalid and void ab initio, still this Court ought to protect the plaintiffs by grant of permanent injunction restraining the defendants from disturbing their peaceful possession. Further contention of Shri Deshmukh is that though the sale deeds might be void, but that does not prevent this Court from granting any relief to the appellants by way of permanent injunction as was granted by the trial Court. Shri P. R. Deshmukh, learned Senior Counsel for the respondents referred to the judgment of the Apex Court on this issue in *Kuju Collieries Ltd. Vs. Jharkhand Mines Ltd. and Others*, . In paragraph 6 of the said Judgment, the Supreme Court has analysed the scope of Section 65 of the Contract Act in the following manner, at pages 1893-1894.

"We are of the view that S. 65 of the Contract Act cannot help the plaintiff on the facts and circumstances of this case. Section 65, reads as follows :

"When an agreement is discovered to be void, or when a contract becomes void, any person who has received any advantage under such agreement or contract is bound to restore it, or to make compensation for it to the person from whom he received it".

"The section makes a distinction between an agreement and a contract. According to S. 2 of the Contract Act an agreement which is enforceable by law is a contract and an agreement which is not enforceable by law is said to be void. Therefore, when the earlier part of the section speaks of an agreement being discovered to be void it means that the agreement is not enforceable and is, therefore, not a contract. It means that it was void. It may be that the parties or one of the parties to the agreement may not have, when they entered into the agreement, known that the agreement was in law not enforceable. They might have come to know later that the agreement was not enforceable. The second part of the section refers to a contract becoming void. That refers to a case where an agreement which was originally enforceable and was, therefore, a contract, becomes void due to subsequent happenings. In both these cases any person who has received any advantage under such agreement or contract is bound to restore such advantage, or to make compensation for it to the person from whom he received it. But where even at the time when the agreement is entered into both the parties knew that it was no lawful and, therefore, void, there was no" contract but only an agreement and it is not a case where it is discovered to be void subsequently. Nor is it a case of the contract becoming void due to subsequent happenings. Therefore, S. 65 of the Contract Act did not apply."

8. Similarly, Shri Deshmukh, learned Counsel for respondents also relied upon

the judgment of this Court in Bhaskarrao Jageshwarrao Buty and Others Vs. Saru Jadhao Tumble and Others, . In this case, our High Court, relying upon the judgment of the Apex Court came to a conclusion that, no Court would render assistance, even assuming that one of the parties to the transaction did not know about the Invalidity.

9. Finally, Shri Deshmukh also referred to the another Judgment of our High Court in Narayan Kisan Gade v. Machchindranath Kundlik Tarade 1994 Mh LJ 558 in which also, the issue has been considered at length including the judgment of the Apex Court in case of Kuju Collieries Ltd. (supra) so also of this Court in case of Bhaskarrao (supra) were referred. In the said judgment, there is also reference to a case of Sundara Gownder Vs. Balachandran, wherein, the Kerala High Court has held that at page 326 :

The said agreement could only be viewed as one with the object of defeating the provisions of law. As the object of the agreement patently comes within the mischief of Section 23 of the Contract Act, the agreement cannot be but void. Any action to realise the amount pursuant to the agreement cannot be entertained by the Court of law.

The Maxim "in part delicto portio est conditio Poseidon is" has its basis on the principles of public policy that the plaintiff, who has paid money or handed over property pursuant to an illegal or Immoral contract, cannot recover it as the Courts will not assist an illegal transaction in any manner."

10. Similarly in another case of Kanuri Sivaramakrishnaiah Vs. Vemuri Venkata Narahari Rao (Died), , the Andhra Pradesh High Court has held at page 189 :

"The Courts will not render any assistance to a person who induces innocent parties to enter into contracts of that nature by playing fraud on them to retain the benefit which they obtained by their wrong."

11. Ultimately, in the aforesaid judgment of our High Court in case of Narayan v. Machchindranath (supra), has held in paragraph 50 of the judgment that : the Court cannot render any assistance, since both the parties are guilty and Section 65 of the Contract Act would not be applicable to the transaction. The Court also held that the parties do not deserve any assistance from the Court. The Court also held that the proper course would be that the parties should be left where they are.

12. In these circumstances, especially in the light of very clear exposition of law to the effect that the Court cannot render any assistance to a party with regard to the agreements which are void and in this case when plaintiffs themselves knew that the said two sale deeds were void and invalid, as pleaded in paragraph 7 of the plaint, the right course would be to leave the parties where they are and no assistance can be given by this Court. Hence I answer the substantial question of law to the effect that no assistance can be rendered to the plaintiffs who themselves were aware that the two sale deeds were void and invalid. In

view of the above, the very suit, which was filed by the plaintiffs should not have been entertained and no assistance ought to have been given by the trial Court. The Regular Civil Suit No. 100 of 1976 itself stands dismissed and also the Regular Civil Appeal No. 187 of 1981 and the Judgment delivered therein dated 31-1-1984. It is made clear that the parties are left where they are.

13. In the result, Second Appeal stands disposed of in above terms. However, there shall be no order as to costs.