

(1990) 08 AHC CK 0014
In the Allahabad High Court
Case No : Second Appeal No. 537 of 1984

Sheo Nayak

APPELLANT

Vs

Smt. Saraswati and Others

RESPONDENT

Date of Decision : 18-08-1990

Acts Referred:

Uttar Pradesh Consolidation of Holdings (Amendment) Act, 1974 — Section 21
Uttar Pradesh Consolidation of Holdings Act, 1953 — Section 13, 14, 16A, 16A(2),
19

Citation : (1991) 1 AWC 37 : (1991) RD 260

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

Bench : Single Bench

Advocate : Gyan Prakash and D.S.P. Singh, for the Appellant; C.L. Pandey, for the Respondent

Final Decision : Dismissed

Judgement

B.L. Yadav, J.—This is a second appeal filed by the Plaintiff-Appellant in a suit for cancellation of sale-deed dated 25-10-1969 and for possession in respect of plot No. 246. The Plaintiff-Appellant has filed the suit with the allegations that he obtained a permission of the Settlement Officer of Consolidation as required by Section 5(c)(ii) of the U.P. Consolidation of Holdings Act, 1953 (for short the Act) in respect of plot No. 246 area 4 biswa 17 dhurs, which was actually sold to the Defendants and the remaining two plots, namely, plot Nos. 158 and 245 in respect of which permission of the Settlement Officer of Consolidation was obtained u/s 5 (c)(ii) of the Act but the sale-deed was not executed by the Plaintiff-Appellant. In respect of the plot which was sold, the sale consideration of Rs. 4200/- was also taken back by the vendees from the Registrar. In this way it was alleged that the sale-deed was without any consideration and fraudulently, the same was obtained in respect of only one plot, where as the permission of Settlement Officer of Consolidation was obtained in respect of three plots, the sale-deed was illegal and deserves to be cancelled and the possession of the plot may be handed over to the Plaintiff.

2. The suit was contested by the Defendant-Respondents denying the plaint allegations and alleged that even in respect of plot No. 246 the sale-deed was executed by the Plaintiff-Appellant and the same was valid and legal and under law it was not necessary that in respect of all the plots in respect of which the permission was obtained, the vendors were bound to execute the sale-deed, nor vendee was found to purchase all the plots.

3. Learned Munsif by his judgment and decree dated 3-3-1979 dismissed the suit and the first appeal filed by the Plaintiff-Appellant was dismissed by the judgment and decree dated 8-11-1983. Against these decrees the present second appeal has been filed.

4. Sri Gyan Prakash, learned Counsel for the Appellant urged that as the permission of the Settlement Officer of Consolidation u/s 5(c)(ii) of the Act to make the sale during continuance of consolidation operations, was obtained in respect of all the three plots, hence the sale-deeds must have also been executed in respect of all the three plots as the sale-deed was obtained by the Defendants in respect of only one plot, namely, plot No. 246, consequently, such a sale-deed was illegal as the permission obtained was in respect of all the three plots and that was granted with the understanding that the consolidation scheme would not be adversely affected by granting the permission for sale and in case only one plot was sold whereas the remaining two plots were not sold, in that event consolidation scheme would certainly be adversely affected and sale-deed cannot be held to be valid. Reliance was placed, on Deputy Director of Consolidation, Azamgarh Vs. Deen Bandhu Rai, .

5. No body has appeared for the Respondents and no assistance has been obtained in reply to the arguments of the learned Counsel for the Appellant.

6. The point that falls for consideration is whether the permission of the Settlement Officer of Consolidation u/s 5(c)(ii) of the Act obtained in respect of three plots can ensure for the benefit of the vendees when, in fact, the sale-deed was executed only in respect of one plot, Ex. abundanti Cautela, the relevant statutory provisions of Section 3(c)(ii) of the Act, are set out-

(c) Notwithstanding anything contained in the U.P. Zamindari Abolition and Land Reforms Act, 1950 no tenure-holder, except with the permission in writing of the Settlement Officer, Consolidation, previously obtained shall-

(i) omitted,

(ii) transfer by way of sale, gift or exchange his holding or any part thereof in the consolidation area.

7. Before proceeding further to interpret this statutory provision. It is convenient to have some elementary rules of interpretation. In respect of modern legislation unless there is something positive to modify, alter or qualify the language employed by the legislature literal interpretation is the safe side. In case the language used leads to only inference by clear and unequivocal language capable

of only one meaning, that must be interpreted according to rules of grammar. There is very little scope for the court to infer as to what is just and proper.

8. The duty of the Court is to expound the law as it is not as it ought to be. Words are not to be construed contrary to their meaning as excluding or embracing a particular case See *Whitehead v. McGregor* (1949) K.B. 358; *Sutcliffe v. Duggan* (1922) 1 AC 1. It is a general rule of literal construction that nothing is to be added to or subtracted unless there are adequate grounds to justify the inference that the Legislature intended something which it omitted to express.

It is a strong thing to read into Act of Parliament words which are not there and in the absence of clear necessity it is wrong thing to do.

We are not entitled to read words into Act of Parliament unless clear reason is to be found within the four corner of the Act itself.

See *Thompson v. Gault and Co.* (1910) A.C. 409; *Vickers, Sons and Maxim Ltd. v. Evans* (1910) A.C. 444.

A VERBIS LEGIS NON EST RECEDENDUM, a Latin maxim connotes that from the words of law there must be no departure. There is another maxim "CASUS OMISSUS" which means that while interpreting a statute even when there appears some omission, it is for legislature and not for courts.

In *Maharao Sahib Shri Bhim Singhji Ors. Vs. Union of India (UOI) and Others*, Krishna Iyer, J. held as follows:

Reading down meanings of words with loose laxical aptitude is permissible as part of the judicial process. To sustain a law by interpretation is the rule. To be trigger happy in shooting at sight every suspect law is judicial legicide. Courts can and must interpret words and read the meaning so that public good is promoted and power misuse is interdicted.

9. The provisions of Section 5(c)(ii) of the Act have to be interpreted according to the words employed to convey the meaning. The provision has to be considered in the context in which it is used. This provision must bear textual and contextual interpretation. It must not be in its isolation. Further meaning ought to be assigned so as to promote the public good.

10. As the legislature was conscious in using the words "that no tenure-holder except with the permission of the Settlement Officer of Consolidation previously obtained, shall transfer by way of sale or gift or exchange his holding in the consolidation area" Section 5(c)(ii) of the Act was amended by Section 21 of Act No. 34 of 1974 and earlier the words were transfer by way of sale, gift or exchange any part of his holding," and now the amendment has been made and the words "his holding or any part thereof" has been substituted. There are string of the decisions of this Court that if a sale-deed was executed in respect of the entire holding, no permission was necessary but this time by Act No. 34 of

1974 the amendment was made and even in respect of the part of the holding the permission was necessary.

11. This amendment of Section 5(c)(ii) of the Act has been noticed with a view to judge it on the basis of the rules of construction known as Mischief rule (in Heydon's case, 360 Rep. 7a, 1584, to consider how the law stood when the particular provision to be construed was passed, what the mischief was for which the old law did not provide and the remedy provided by the statute to cure that mischief. In the present case earlier the provision of Section 5(c)(ii) was "to transfer by way of sale etc...any part of his holding." If any part of holding was transferred the permission was required and if entire holding was transferred no permission was required. This is how the law stood when Section 5(c)(ii) was amended by Section 21 of U.P. Act No. 34 of 1974. The mischief for which old law did not provide was whether permission of Settlement Officer Consolidation was necessary, and the amendment was made providing that even in respect of entire holding the permission was necessary. In case legislature wanted to provide, it could provide that if for entire holding permission was obtained only a part of it or one or two plots only out of so many plots for which permission was obtained, sale could not be effected. In case legislature wanted it could add a proviso. But it did not. Court cannot create or add a proviso. In case the arguments of Mr. Gyan Prakash were to be accepted that would amount to adding a proviso to Section 5(c)(ii) of the Act but in fact no proviso was enacted or added to indicate that in case the permission has been obtained for so many plots, in that event the vendor would be bound to make the sale of the plots or the vendee would be bound to obtain the sale-deed in respect of all the plots. In case the submissions of the learned Counsel for the Appellant are accepted that would amount to legislate, which was not permissible as the function of the Court is to interpret the law and not to legislate. The only construction which could be placed on Section 5(c)(ii) is that even in respect of the part of holding the previous permission of Settlement Officer Consolidation was necessary but once that was obtained in respect of several plots, it was not necessary that sale-deed must be executed in respect of all the plots.

12. In Deputy Director of Consolidation, Azamgarh v. Deen Bandhu Rai 1965 SC 484 (supra), the controversy was different, In that case an application for permission u/s 16-A of the Act as it then stood was filed, that permission was rejected on the ground that as the Appellants were big tenure-holders, hence if the permission was granted, in that event they would become even the bigger land holders. The Supreme Court ruled that this was not germane for rejecting the application u/s 16-A(2) of the Act inasmuch as the question of consolidation scheme as provided u/s 13(a), (b) and (c) as it then stood, must have been considered and the principles formulated u/s 14 or 19 of the Act as they were, must have been taken into account and the findings must have been recorded that whether the grant of permission would affect the scheme of consolidation. Consequently, it was held that the Settlement Officer of Consolidation erred in rejecting the application on irrelevant consideration. In the instant case similar is

not the controversy as it was in the Deputy Director of Consolidation, Azamgarh v. Deen Bandhu Rai (supra). Out of three plots one has earlier been sold. There is nothing u/s 5(c)(ii) of the Act nor there was any other provision pointed out on the basis of which it could be said that the vendor was compelled to execute the sale-deed in respect of all the plots for which permission was obtained nor the vendee could be compelled to obtain sale-deed in respect of all the plots. Consequently, I am of the view that both the courts below have taken a correct view of law and were justified in dismissing the Plaintiff's suit. It may be noticed that the grant of permission was also challenged in consolidation proceedings, and there also the Appellant failed. Thereafter Civil Misc. Writ Petition No. 3412 of 1972 was filed in this Court and a Division Bench (consisting of Hon'ble K.N. Singh, J. and Hon'ble N.D. Ojha, as their Lordships then were) has dismissed the writ petition with the following observations:

But, even if there was any illegality or irregularity in the grant of permission, we do not consider it a fit case to interfere at the instance of the Petitioner, who himself transferred the plots in question to Respondent Nos. 3 and 4.

In this way, it was abundantly clear that the vendor the Plaintiff himself, who has obtained permission to make the sale and had actually executed the sale-deed in respect of one plot only, cannot be permitted to challenge the same and there was no justification to consider his case or grievance.

13. I do not find any merit in this second appeal and is, accordingly, dismissed. As no body has appeared for the Respondents, consequently, there shall be no order as to costs.