
(1936) 09 AHC CK 0020
In the Allahabad High Court

Shyam Sundar Lal and Another	Vs	APPELLANT
Din Shah and Others		RESPONDENT

Date of Decision : 18-09-1936

Acts Referred:

Citation : (1936) 09 AHC CK 0020

Final Decision : Dismissed

Judgement

1. This is a plaintiffs' appeal arising out of a suit brought for ejectment of the defendants from certain plots. The defendants pleaded that there was a patta or lease of the plots in dispute with power to the defendants and their heirs to plant grove and construct building's. The Assistant Collector dismissed the suit. An appeal was preferred to the District Judge who would have heard the appeal even if the suit had been filed in the Munsif's Court, and who was therefore competent u/s 269, Tenancy Act, to dispose of the appeal if the whole matter was before him. He upheld the decree of the trial Court. On appeal a learned Judge of this Court has come to the conclusion that the plaintiffs must fail because of the provisions of Section 53-A, T.P. Act, which has a retrospective effect.

2. Now before the addition of this section it was held by a Full Bench of this Court in Ramgopal Vs. Tulshi Ram and Another that the doctrine of part performance applied in England had no force in India. Later their Lordships of the Privy Council in AIR 1934 235 (Privy Council) laid down that the "doctrine of part performance would not apply to a case where an action had commenced before the enactment of Section 53-A. At p. 659 their Lordships noted that the view expressed in that case must be understood to be referable to the state of the law before the partial importation into it of the English equitable doctrine of part performance. Obviously Section 53-A could not affect a pending action. The learned Counsel for the appellants has relied on a Full Bench case of the Patna High Court in Ram Krishna Jha v. Jainandan Jha AIR 1935 Pat. 291. But there too the action had commenced before the enactment of this new section which was

therefore not applicable, and it was on this very ground that the learned Judges distinguished the Privy Council case already quoted above. A number of other cases have been relied upon by the learned Counsel for the appellants, but with the exception of one case they are all cases where the suits were pending when the amendment came into force. Accordingly they are not really in point. The solitary case which may be said to support the contention of the appellants is the case in *Cooverjee H. Plumber Vs. Vasant Theosophical Co-Operative Housing Society, Ltd.*, But that was also a case where there was no writing signed by the contracting parties from which the terms of the transfer could be ascertained. Section 53-A was therefore not applicable. In the course of the judgment the learned Judge however observed that as the amounts were paid prior to 1st April 1930, when Section 53-A came into operation, the section was not applicable. These were observations which were not necessary for the purposes of the case, and Section 63 of Act 20 of 1929 was apparently not brought to their notice.

3. The case in *Gauri Shankar Vs. Gopal Das and Others* decided by Mukerji, J., was also a case where the suit had been filed in 1929 before the coming into force of Section 53-A. On the other hand the case in *Gajadhar Misir Vs. Bechan Chamar* decided by one of us, is a case directly in point where the suit had been filed after the coming into operation of Section 53-A, and it was held that the provisions of the section governed the case, although the transaction had arisen before the coming into force of the section. In *Tota Ram and Others Vs. Ram Lal and Others* decided by a Pull Bench of which one of us was a member, the point was made clear that Section 63 of Act 20 of 1929 had prevented only certain specified sections from having a retrospective effect, and therefore by implication it was intended that the other sections should have such an effect. As regards the other sections not specified, the provision in (d) is to the following effect:

And nothing in any other provision of this Act shall render invalid or in any way affect anything already done before the 1st April 1930, in any proceeding pending in a Court on that date.

4. The provision quoted clearly means that so far as the sections, other than those specified in this Section 63, are concerned, nothing in them shall render invalid or in any way affect anything already done before 1st April 1930, when any action is pending on that date; that is to say, where the transaction had taken place before 1st April 1930, and an action in respect of it is actually pending on that date, the new sections would not affect the rights of parties in such litigation. It follows that the legislature intended that where no such action was pending on 1st April 1930, then the provisions of these sections would be applicable even though the transactions came into existence prior to that date. Now Section 53-A merely creates a bar against the transferor from enforcing against the transferee any right in respect of the property, when possession has been delivered, on the sole ground that there was no registered document. There is no reason why this bar should not come into existence by operation of law on 1st April 1930; when no litigation in respect of it was pending and the defendant

was in possession. Thereafter the defendant had an absolute protection under this section and he can resist a suit subsequently filed on the ground of having acquired an absolute right under this section on 1st April 1930. From this point of view it may even be said that he is not seeking to give a retrospective effect to Section 53-A, but is really claiming protection under that section with effect from 1st April 1930, the date on which it came into effect. The only point that remains for consideration is whether Section 53-A is applicable to leases also. No doubt Section 105 defines a lease as a transfer of a right to enjoy such property and does not speak of a transfer of an interest in such property. But Section 108(B) (j) speaks of the lessee transferring the whole or any part of his interest in the property. Similarly Sections 111(d) and (e) refer to the interest of the lessee and the lessee yielding up his interest.

5. It is also to be noted that Section 53-A, has been added in Ch. 2, T.P. Act, which contains a general provision governing all transfers. Indeed Section 117 which makes the provisions of Ch. 5 not applicable to leases for agricultural purposes would not take out even such leases from the operation of the provisions in Ch. 2. Several sections in this chapter show that the legislature intended that a lease should be treated as a transfer of property. Section 6(1) prevents a lessee of an estate under the management of a Court of Wards from being authorized to assign his interest as such lessee. Section 10 specially mentions a lease as being one of the kinds of transfer contemplated in that section. Similarly Section 12 implies that lease is a transfer of property. Illus. (a) to Section 25 is of a lease of a farm, and so is also the illustration to Section 42. If a lease of property were not to be regarded as a transfer of property within the meaning of Ch. 2, a considerable difficulty would be caused by not applying provisions like those in Sections 43 and 52, etc. to such a transfer. We must therefore hold that the transfer of Immoveable property contemplated by Section 53-A includes a transfer by lease. We accordingly dismiss this appeal with costs.