
(1980) 02 AHC CK 0089
In the Allahabad High Court
Case No : S.A. No. 237 of 1970

Smt. Bhuri

APPELLANT

Vs

Balwant Singh and Others

RESPONDENT

Date of Decision : 05-02-1980

Acts Referred:

Uttar Pradesh Consolidation of Holdings Act, 1953 — Section 3(4C), 5, 52
Uttar Pradesh Zamindari Abolition and Land Reforms Act, 1950 — Section 168A, 3(8)

Citation : (1980) AWC 258 : (1980) RD 160

Hon'ble Judges : R.S. Singh, J

Bench : Single Bench

Advocate : S.S. Tyagi, for the Appellant; G.P. Mathur, for the Respondent

Final Decision : Dismissed

Judgement

R.S. Singh, J.—This is the Plaintiff's second appeal against the decree & judgment dated 29-11-1969 of the Additional Civil Judge, Moradabad, affirming the decree of the trial court.

2. This was the Plaintiff's suit for cancellation of sale deed dated 22nd August, 1964 executed by the Plaintiff in favour of Defendant Nos. 1 and 2. The suit was filed on the allegation that Plaintiff was the Bhumidhar of plot No. 437-A and 437-B--total area 3.16 acres. Crops of sugar-cane etc. were standing on the land of the valuation of about Rs. 2,500/-. She wanted to go to pilgrimage and hence, she desired to sale the standing crops of the aforesaid plots. She requested Hari Singh, Defendant No. 2, who was her nephew to arrange for the sale of the crops, but he himself showed his willingness to purchase the crops for Rs. 1600/-. According to the Plaintiff's allegation, she had full faith in Hari Singh. She went to Amroha to execute the sale deed of the crops, but Hari Singh fraudulently got a sale deed executed of the aforesaid plots for a sum of Rs. 1600/-. The sale deed was challenged on the ground of fraud and inadequacy of sale consideration and also on the ground that it was hit by Section 168-A of the UP ZA and LR Act (hereinafter referred to as Act). It was further alleged that

consolidation of holdings proceeding was going on in the village and the necessary permission was not obtained from the consolidation authorities for executing the sale deed.

3. The suit was contested by the Defendants on the ground that the Plaintiff never went to the pilgrimage. The consolidation proceeding had already come to an end and the village was denotified u/s 52 of the U.P. Consolidation of Holdings Act before the sale deed was executed. Therefore, no permission was necessary for execution of the sale deed and the same was not hit by Section 168-A of the Act. According to the Defendants, they purchased the plot for Rs. 2500/- and not for Rs. 1600/-. It was further alleged that Plaintiff was explained and read over the contents of the sale deed and after due consultation with her well-wishers, she put her thumb impression on the sale deed. Out of the total sale consideration, Rs. 2000/- was paid to her before Sub Registrar and Rs. 500/- was paid before the sale deed was executed. It was also alleged that the quality of the land was not good and that was situated in low lying area and was not yielding good crops to the Plaintiff, it was further alleged that they exercised no undue influence on her and she executed the sale deed after fully understanding the whole thing. No fraud was played in obtaining the aforesaid sale deed.

4. The suit was dismissed by the Munsif. The Plaintiff preferred an appeal against the decree and judgment of the Munsif, which was also dismissed by the lower appellate court.

5. The learned Counsel for the Appellants attacked the decree of the courts below mainly on three grounds. Firstly, the sale was hit by Section 168-A of the Act and, therefore, the sale deed dated 22-8-1964, executed by the Plaintiff in favour of the Defendants Nos. 1 and 2 was void. Secondly, Plaintiff happened to be a pardanasin and illiterate lady, and the courts below have placed wrong burden of proof in this case. Thirdly, sale deed was executed for inadequate consideration.

6. The learned Counsel for the Respondents contended that the Plaintiff was transferred the entire holding. Therefore, it is not a transfer of fragment, as defined in the Act. Therefore, it is not hit by Section 168-A of the Act. It was further contended by the learned Counsel that both the parties have led evidences. Therefore, the question of burden of proof loses its importance. Regarding inadequacy of sale consideration, he contended that firstly in view of the finding of the courts below, there was no inadequacy of sale consideration in this case. Secondly, inadequacy of consideration can be no ground for cancellation of sale deed. Lastly, he contended that both the courts have recorded a concurrent finding on the points involved in this case. Therefore, it is not open for the Appellant to challenge the finding of fact, recorded by the courts below, before this Court.

7. The first question for consideration in this case is whether the transfer in this case is hit by Section 168-A of the Act. Section 168-A of the Act is as follows:

* * * *

8. Fragment has also been defined in Section 3(8-a) of the Act. Fragment means land less than 3.125 acres for the purposes in this case. Section 168-A has placed restriction on the transfer by a person of an area less than 3.125 acres, out if the total area of the holding is less than 3 125 acres, in that case, there is no bar of making a transfer of the entire holding. In case, the total area of the holding is more than 3.125 acres, there is no bar in transferring the entire land. The only restriction placed on the power of the tenure-holder is not to transfer it in such a way as to reduce the area, which may be less than 3.125 acres. In the instant case, there is no dispute about the fact that the total area of the holding constituting two plots No. 437-A and 437-B is 3.125 acres, which is not. covered by the definition of "fragment", as defined in Section 3(8-a) of the Act, There is further no dispute about the fact that the entire holding has been transferred in this case through one sale deed dated 22-8-1964. The sale deed shows that the Plaintiff sold the disputed holding in favour of two persons--namely Balwant Singh & Hari Singh with specified shares therein, mentioning the share of Balwant Singh as 3/4 and that of Hari Singh as 1/4 towards south and north respectively. According to the contention of the learned Counsel for the Appellant, as the sale deed was executed by the Plaintiff in favour of two persons, although by one sale deed, it means a transfer of fragment. Therefore, it is hit by Section 168-A of the Act. According to the learned Counsel for the Respondents, the holding was transferred by the Appellant, through one sale deed, therefore, it is immaterial whether the transfer is made in favour of one person or more and whether the shares are specified therein or not specified.

9. Section 168-A of the Act has placed restriction on the power of the tenure-holder, not to transfer an, area less than 3.125 acres, but there is no restriction placed by any provision of law that a transferor cannot sell by one sale deed in favour of more than one person. If the sale deed can be executed in favour of more than one person, it will be the matter inter-se between the vendees to take specific shares and pay the amount according to their shares. As far as the tenure-holder is concerned, the tenure-holder has transferred her entire holding in favour of two persons. There is no dispute about the fact that if the sale deed is executed in favour of two persons without specification of any share, it cannot be said that it is hit by Section 168-A of the Act, although according to law, in absence of any specification in the sale deed, the share of each of them will be half and half. But if the transfer has been made of the entire holding with specification of shares through one sale deed, there is no reason why it should be held to be invalid. In *Santokhi v. Board of Revenue U.P. at Allahabad* 1971 AWR 590, it has been held that:

Where undivided interest of one of the co-tenure holders is transferred, it cannot be said that the transfer involves transfer of a "fragment" or, in other words, transfer of a land of less extent than 3.125 acres, for the simple reason that what is transferred is undivided interest in the land and not any specific land.

The prohibition contained in Section 168-A is in respect of land which is a fragment i.e. which is lesser in extent than the prescribed area and not of undivided interest in the land. That being so, Section 168-A as it stood had no application where a co-tenure-holder transferred his undivided interest in the land.

10. In *Kallu v. Gulzari Singh* 1971 AWR 591, it has been held that:

Under Section 3(4-C) of the Consolidation of Holdings Act, "Holding" means a parcel of land held under one tenure by a tenure-holder singly or jointly with parcel or other tenure-holders. There can, therefore, be no restriction in transferring a holding held jointly by a number of tenure-holders to a number of transferees jointly. The position would be that the transferees would become the joint tenure-holders of the land purchased by them. The contention of the learned Counsel for the Respondent, therefore, that the transfer being to more than one tenure-holder in specific shares is hit by Section 5(c)(ii) has no force.

11. In view of what has been discussed above, I hold that if the tenure-holder transfers his entire holding in favour of more than one person, even with specification of shares, it will be a transfer of entire holding and the sale cannot be said to be hit by Section 168-A of the Act.

12. Now coming to the next point regarding inadequacy of sale consideration, according to the learned Counsel for the Appellant, the land in dispute is situated adjacent to the village abadi. Therefore, the sale consideration, as shown in the sale deed, is inadequate. Whereas, according to the learned Counsel for the Respondents, the land in dispute is not near village abadi and, therefore, the sale consideration cannot be said to be inadequate. The learned Counsel for the Applicant has not been able to point out any evidence on the record to justify his contention that the land in dispute is situated near the village abadi. The lower appellate court has considered this question and found that the land in dispute is not near village abadi and held that the sale consideration in this case was adequate. This finding of the lower appellate court is based on consideration of material evidence on the record and has to be accepted.

13. As regards the last question regarding onus of proof, it has been contended by the learned Counsel for the Appellant that the Plaintiff was a pardanasin and illiterate lady and, therefore, the onus of proving the fact that the sale deed was genuine and not obtained by practising fraud and by undue influence, was on the Defendant-Respondents. It has been contended by the learned Counsel for the Respondents that in this case, both the parties have led their evidences in support of their contentions. Therefore, the question of onus of proof has no effect in this case.

14. In *Kalwa Devadattam and Others Vs. The Union of India (UOI) and Others*, , it has been held that:

The question of onus probandi is certainly important in the early stages of a

case. It may also assume importance where no evidence at all is led on the question in dispute by either side. In such a contingency the party on whom the onus lies to prove a certain fact must fail. Where however, evidence has been led by the contesting parties on the question in issue, abstract considerations of onus are out of place and truth or otherwise of the case must always be adjudged on the evidence led by the parties.

15. In *Narayan Bhagwantrao Gosavi Balajiwale Vs. Gopal Vinayak Gosavi and Others*, , it has been held that:

The expression "burden of proof-really means two different things. It means sometimes that a party is required to prove an allegation before judgment can be given in its favour, it also means that on a contested issue one of the two contending parties has to introduce evidence. The burden of proof is of importance only where by reason of not discharging the burden which was put upon it, a party must eventually fail. Where, however, parties have joined issue and have led evidence and the conflicting evidence can be weighed to determine which way the issue can be decided, the abstract question of burden of proof becomes academic.

16. In the present case, both the parties have led evidence on all the issue framed in the case and on the appraisal of evidence on the record, the trial court decided all the issues and dismissed the suit. From the perusal of the judgment of the lower appellate court, it appears that the judgment of the trial court was not challenged on the ground that onus of proof has been wrongly placed on the Plaintiff-Appellant. Moreover, in this case, both the parties have led their evidences and the onus of proof has lost its importance.

17. In view of what has been discussed above, I find no force in this appeal, which is accordingly dismissed. However, the parties will bear their own costs.