
(2006) 12 AHC CK 0047
In the Allahabad High Court

Smt. Jahani

APPELLANT

Vs

Smt. Shashi Bala

RESPONDENT

Date of Decision : 08-12-2006

Acts Referred:

Uttar Pradesh Zamindari Abolition and Land Reforms Act, 1950 — Section 168A, 189(aa)

Citation : (2007) 3 ADJ 177 : (2007) 2 AWC 1134 : (2007) 102 RD 176

Hon'ble Judges : Sunil Ambwani, J

Bench : Single Bench

Final Decision : Allowed

Judgement

Sunil Ambwani, J.—Heard Shri P.K. Pandey, learned Counsel for appellant and Shri A.N. Bhargava, learned Counsel for respondent.

2. The defendant's second appeal arises out of O.S. No. 518 of 1971 for cancellation of sale deed dated 28.7.1970, The suit was dismissed on 26.3.1977. The Civil Appeal No. 156 of 1977 was allowed by 1st Additional District Judge, Muzaffarnagar on 8.8.1977, decreeing the suit for cancellation of sale deed dated 28.7.1970.

3. The second appeal was admitted on grounds No. 1 and 6 as substantial questions of law as under:

I. Whether the plaintiff-respondent had any right to file the suit for cancellation of a sale deed which was void u/s 168-A of the U.P. Zamindari Abolition and Land Reforms Act as in view of the provision of Section 189(aa) of the U.P. Zamindari Abolition and Land Reforms Act the plaintiff-respondent would also have no right whatsoever left in the disputed land. The suit should have therefore been dismissed on this ground alone.

6. Whether Section 168-A of the U.P. Zamindari Abolition and Land Reforms Act has absolutely no application in the present case because the plaintiff-respondent has nowhere pleaded that the area in dispute is a consolidated area.

4. The trial court held that the plaintiff had sold one half share of Khasra No. 1667, 1668, 1672, 1693. The plaintiff Smt. Shashi Bala was an illiterate lady and her husband was present at the time of sale deed and was also a witness to the document. The allegation made by her that Khasra No. 1667 was included in the document fraudulently, is not a correct fact. Smt. Jahani-the defendant is 50 year's old Harijan woman, who was not in a position to play fraud on the plaintiff. The trial court further found that PW-2 Surendra Kumar, husband of the plaintiff stated that the land in dispute was earlier owned by Sher Singh and Kishna. Kishna is the husband of the defendant. The plaintiff had purchased Kishna's share, and that the entire land purchased from Kishna was sold back by the plaintiff to Kishna's wife- the defendant. This transaction was in lieu of loan taken by Kishna, the defendant's husband and was proved by the receipt dated 28.7.1970. In her statement, PW-1 accepted in her statement that she had purchased the share of Kishna for Rs. 4000/- and that she had sold entire share back to his wife. The issue, that the sale was for inadequate consideration, was not proved on record.

5. The trial court considered the plea that the sale was void as it amounted to fragmentation of the agricultural holdings u/s 168-A of U.P. Zamindari Abolition and Land Reforms Act, 1950 (the Act). It was found that khata No. 174-A and 174-B are parts of the same khata. The village was subjected to consolidation operation. The area of land sold by the sale deed was less than 3-1/8 acre. On the date of the sale, the plaintiff and Sher Singh were owner of the half share each of the land. He found that entire plot was for more than 3-1/8 acres. It was not partitioned between the plaintiff and Sher Singh. The plaintiff had sold her share in the undivided plot, and as such even if the undivided plot was less than 3-1/8 acres, the transaction will not be void u/s 168-A of the Act. The trial court further found that the even otherwise the consequence of such transaction is that the land included in the void transaction will u/s 189-A of the Act, vest in the Gaon Sabha with no benefit to the plaintiff.

6. The appellate court considered the appeal only on the question of effect of Section 168-A of the Act on the sale. It found from the extract of Khatauni (Ext. 3) of the year 1383 fasli that Khata No. 274 consists of 6 plots in which plaintiff had half share with other half share of Sher Singh. The plaintiff executed sale deed of half share of the Khata in respect of four plots, 1668, 1677, 1678 and 1693 and one plot 1667 as a whole leaving out plot No. 1711. The total area of these plots was less than 3-1/8 acres. The vendee did not have any other plot contiguous to these plots and as such the sale deed was void u/s 168-A of the Act as it fragmented the land for an area less than 3-1/8 acres. The fact, that the plaintiff was co-bhumidhar of plot No. 1667 and 1711, to the extent of half share, will not be of much help. The appeal was as such allowed and sale was declared to be of void transaction.

7. Learned Counsel for appellant contends that Section 168-A of the Act has no application to the facts of the case and further the plaintiff-respondent did not

have a right to file the suit for cancellation of the sale deed as void, as in such case u/s 189 (aa) of the Act the plaintiff respondent's interest shall be extinguished and he shall have no right whatsoever left in the land. He has relied upon *Udai Shanker v. Additional Commissioner and Ors.* 1986 RD 195 decided by the High Court holding that when the agricultural holding is transferred in contravention with the provisions of the Act, the rights of the vendor are extinguished and that the vendor has no right to maintain a suit for partition. The effect of Section 189(aa) and Section 190(1)(cc) of the Act is that the transferee can be evicted by the Gaon Sabha or the State. The respondents, on the other hand, contends that once a transfer is declared to be void, it cannot be acted upon, and that the vendor will not lose his rights. He can recover the possession after paying the sale consideration.

8. If the transfer is void as it is hit by Section 168-A of the Act, the transferor does not get back any right to hold it. Section 189 of the Act provides that the interest of a bhumidher with transferable rights in his holding or any part thereof shall be extinguished, (aa) when the holding or part thereof has been transferred or let out in contravention of the provisions of the Act. In such case the Land Management Committee u/s 194 of the Act is entitled to take possession of the land comprised in a holding or part thereof and the transferee can be evicted by the Gaon Sabha or the State. The plaintiff-respondent as such did not have any right to get the sale deed cancelled in his favour.

9. The object of declaring the sale of fragmented agricultural holding as void is that the agricultural holdings may not be reduced to uneconomic holding. The area below 3-1/8 acres in the hands of a person in the fertile regions of the state is treated to be uneconomic holding. The restriction does not defeat the right to transfer of the land, which is a common law right. It preserves the right to sale where the vendor sells his entire holdings. The sale of the entire share in a holding is also not treated as fragmentation, unless the entire land in which the share is claimed itself is a fragment. Where the land lies in a consolidated area within the total area of the two holdings has to be taken together to consider whether there is any fragmentation. Where the total area of the land holder is less than the prescribed area u/s 168-A, of the Act the sale will not be hit by the provision. Section 168-A of the Act reads:

168-A Transfer of Fragments.- Notwithstanding the provisions of any law for the time being in force, no person shall transfer whether by sale, gift or exchange any fragment situate in a consolidated area except where the transfer is in favour of tenure-holder who has a plot continuous to the fragment or where the transfer is not in favour of any such tenure-holder (the whole or so much of the plot in which the person has bhumidhari rights, which pertains to the fragment is thereby transferred.)

2. The transfer of any land contrary to the provisions of Sub-section (1) shall be void.

3. When a bhumidhar has made any transfer in contravention of the provisions of Sub-section (1) the provisions of Section 167 shall mutates mutandis, apply.

10. The restriction on transfer of fragments is based on the area qua the transferee and not the transferor. A fragment is defined in Section 2 (8-A) of the Act to mean land of less extent than (1) 1.89 hectare (4.6845 acres) in areas of the State described in Clauses (i) to (vi), and (b) 3.125 acres in rest of U.P. excluding Kumaon Division. It by sale of such fragment the transferee gets the fragmented area contiguous to his plot or the transfer is by a tenure holder who sells the whole of his Bhumidhari rights in the plot, the transfer is not hit by Section 168-A of the Act. A fortiori, if a person sells the same area which he had purchased, back to the wife of the vendor, and the wife has no other land, and she regains the same area which was held by her husband, the transfer will not attract the vice of fragmentation.

11. In the present case Smt. Jahani-the defendant was a harijan woman. Her husband Kishna held his entire holding jointly with Sher Singh. The plaintiff purchased the entire share of Kishna, in lieu of some loan. Kishna did not possess any other land. This entire land was transferred to his wife Smt. Jahani. The plaintiff admitted that she had purchased the share of Kishna for Rs. 4000/- and had sold the entire land back to his wife Jahani. The same land was retransferred. The sale, as such, was not of the fragment, as the entire holding of Kishna went back to his wife Jahani. If Kishna could have sold his entire holding to his wife, she could acquire the same by transfer from the transferee of her husband.

12. The second appeal is consequently allowed. The judgment and decree of the appellate court dated 8.8.1977 in Civil Appeal No. 159 of 1977 is set aside. The judgment of the trial court is restored and the plaintiffs suit is dismissed with costs throughout.