
(2008) 11 JH CK 0019
In the Jharkhand High Court

Smt. Neela Sangeeta Lakra and Others	APPELLANT
Vs	
Jhalko Devi and Others	RESPONDENT

Date of Decision : 20-11-2008

Acts Referred:

Chotanagpur Tenancy Act, 1908 — Section 46, 46(1)(b)

Citation : (2009) 1 JCR 537

Hon'ble Judges : Ramesh Kumar Merathia, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

Ramesh Kumar Merathia, J.—This appeal has been filed against the judgment dated 15.9.2003 passed by Subordinate Judge VI, Ranchi in Title Suit No. 19 of 1993/354 of 2003.

2. The Plaintiffs-appellants filed said suit claiming the following reliefs:

(i) The defendant No. 1 to 5 may be directed to execute and register the deed of sale in favour of the plaintiff or their nominee or nominees in respect of the suit property as per their agreement after obtaining necessary permission from the Deputy Commissioner, Ranchi and fulfilling other legal formalities, failing whereof, this learned Court may be pleased to execute and register the deed of sale on behalf of defendant Nos. 1 to 5, pursuant to the agreement dated 26.9.88 and 10.10 88 after taking necessary permission after completing other legal formalities.

(ii) That further relief or reliefs be granted which the Court seems good and proper.

(iii) Cost of the suit be decreed.

The Schedule "A" of the plaint was as follows:

Land situated in village Konka, P.S. Lower Bazar, District-Ranchi.

Khata No. Plot No. Area 89 329 1.89 Acres of land out 330 of 3.78 acres and 30 1/2 decimal, total area of 2.19 1/2 acres of land.

4. The case of the plaintiff in short was as follows.

The lands in the Khata No. 89 plot No. 329 and 330, area 1.89 acres and plot No. 212 and 214, area 8 Kathas situated in village Konka, P.S. Lower Bazar, District-Ranchi was recorded in the original survey in the name of Budhua Oraon, Baghu Oraon and Champa Oraon. Defendant No. 1 to 5, who are the descendants of the said recorded tenants entered into 2 agreements with regard to sale of the Schedule "A" land. One agreement was between the plaintiffs and defendant Nos. 1 to 4 dated 26.9.1988 (Ext. 10) and other was between plaintiffs and defendant No. 5 dated 10.10.1988 (marked X) with regard to an area of 80 decimals out of plot No. 329 and 330.

After taking permission in Permission Case No. 609(R) 8 II of 1988-89 under the Section 46 of the Chhota Nagpur Tenancy Act, 1908 (for short "C.N.T. Act") defendant Nos. 1 to 4 sold land in plot No. 212 and 213, area 8 Kathas under a registered sale deed in favour of plaintiff No. 1 on 12.7.1990. Defendant Nos. 1 to 4 also sold 7 Kathas out of 1.89 acres of land in plot No. 329 and 330 on payment of consideration money by registered sale deed after taking permission u/s 46 of C.N.T. Act to one Sujash Tirkey. The defendants from time to time have also taken advance money under the said agreement.

Defendant No. 5 took Rs. 20,501/- from plaintiffs at the time of agreement as advance and he also received a sum of Rs. 500/-

Defendant Nos. 1 to 5 filed 4 cases for taking permission u/s 46 of the C.N.T. Act to sell of lands of plot No. 329 and 330 being Miscellaneous Case No. 677/89-90, 682/89-90, 662/89-90 and 508/90-91.

The plaintiffs were ready and willing to perform their part of the contract.

Defendant Nos. 1 to 5 fraudulently filed one application u/s 46 of the C.N.T. Act for permission to sell 50 Kathas of land out of 1.89 acres of plot No. 329 and 330 vide Misc. Case No. 5 of 1991, in which the plaintiffs filed objection before the Deputy Commission, Ranchi on the ground that an agreement dated 26.9.1988 was entered into between the plaintiffs and the defendants for sale of the lands including the land under the said proceeding. The said agreement between defendant Nos. 1 to 5 and defendant No. 6 is void and illegal. The cause of action of the suit arose when the said agreement was entered into by defendant Nos. 1 to 5 with defendant No. 6 and on subsequent dates when the defendants filed application for permission to sell 50 Kathas of land to defendant No. 6.

5. The case of the defendants-respondent Nos. 1 to 5, in short was as follows.

The plaintiffs are brokers of land. The husband of plaintiff No. 1 namely Abraham Lakra is an employee of State Bank of India and therefore, he works in the name of his wife plaintiff No. 1. The plaintiffs got an agreement executed without any

consideration by misguiding them, that for searching customer for the land agreement is necessary. Then on the pretext of arranging money for purchase of some land for the approach road, the plaintiffs got a sale deed for eight Kathas executed without paying any consideration money. On the pretext that without power of attorney, the land cannot be sold, they got a general power of attorney (Ext. 12) executed which was ultimately cancelled when the defendants learnt that the plaintiffs misused the same. The defendants denied to have received any amount as advance or against the agreement from time to time. It was further said that the defendants are illiterate Adiwasis and they became victim of the plaintiffs who are also Adiwasis, but who are learned. The plaintiffs also cheated Sujash Tirkey who has also filed a money suit against them. Defendants are not aware about any permission case filed by them. The permission for sale of 50 Kathas of land out of plot No. 329 and 330 was filed before the Deputy Commissioner but on the objections raised also by the plaintiffs, permission was refused.

6. The issues were decided by the trial court in the following manner:

Issue No. 1- Whether the suit as framed was maintainable under the law or not was decided against the plaintiffs holding that without permission of the Deputy Commissioner, the defendants could not execute sale deed and as the plaintiffs have not claimed alternative relief, the suit as framed is not maintainable in law.

Regarding Issue No. 2, it was held that there was no cause of action for the suit.

Regarding Issue No. 3, it was held that agreement dated 26.9.1988 was entered into between the plaintiffs and defendant Nos. 1 to 4.

Regarding Issue No. 4, it was held that agreement dated 10.10.1988 was entered into between the plaintiff and defendant No. 5.

Regarding Issue No. 5, it was held that against agreement dated 26.9.1988, advance money was paid to defendant No. 1 to 4, but regarding Issue No. 6 it was held that no advance money was paid for the agreement dated 10.10.1988.

Regarding Issue No. 7, it was held that the mother of defendant No. 3 could not execute agreement on behalf of the minor defendant No. 3.

Regarding Issue No. 8, it was held that amounts were paid by the plaintiffs from time to time against agreement dated 26.9.1988 but no amount was paid against agreement dated 10.10.1988.

Regarding Issue No. 9, it was held that the plaintiffs were ready and willing to perform their part of the contract with regard to the agreement dated 26.9.1988, but not with regard to agreement dated 10.10.1988.

Regarding Issue No. 10, it was held that the plaintiffs could not prove that permission was sought by the defendants for sale of the lands, in terms of the agreement.

Regarding Issue No. 11, it was held that the order dated 12.5.1993 passed in Miscellaneous Case No. 5/1991-92 refusing permission to the defendants to sell lands, is applicable to the plaintiffs also.

Regarding Issue No. 12, it was held that the plaintiffs were not entitled to get relief for specific performance of contract.

Regarding Issue No. 13, it was held that as the plaintiffs have not claimed alternative relief, they are not entitled to the same.

Regarding Issue No. 14, it was held that the suit can not be dismissed on the ground that the schedule of the land was uncertain and unclear.

Regarding Issue No. 15, it was held that there was no part performance of the contract, as the power of attorney was cancelled.

7. Mr. Manjul Prasad, learned senior counsel appearing for the appellants submitted that only because permission to sell lands was refused to defendant Nos. 1 to 5 for sale of land to defendant No. 6, the plaintiffs cannot be denied the decree for specific performance of the agreement entered into between them and the defendant Nos. 1 to 5. He further submitted that the plaintiffs were not bound by the said order refusing permission. He relied on the judgment reported in Nagar Khan and Others Vs. Gopi Ram Agarwala, and submitted that the consideration need not pass in praesenti and therefore, the agreement dated 10.10.1988 was not invalid on the ground that no consideration was paid for the same.

8. Relying on the judgment reported in Ramjoy Rewani Vs. Kusum Mahatani and Others, , he submitted that there is no bar u/s 46(1) (b) of the C.N.T. Act for an occupancy raiyat against entering into an agreement for sale and such a contract would be enforceable, though with the sanction of the Deputy Commissioner, which may be obtained at any time after the execution of the agreement for sale, but before the execution of actual deed of sale; and that what is prohibited is the actual transfer in praesenti. He submitted that therefore the agreements in question were enforceable.

9. Mr. P.K. Prasad, learned senior counsel appearing for the respondent Nos. 1 to 5 on the other hand submitted as follows.

The order dated 12.5.1993 passed by the competent authority-Deputy Commissioner refusing permission to defendant Nos. 1 to 5 for selling land to defendant No. 6, is fully applicable to the plaintiffs. Such order refusing permission is attached with the right of the defendant Nos. 1 to 5, to sell their lands further, to anyone. The permission was refused on the ground inter-alia that if defendant Nos. 1 to 5 sell 50 Kathas of land to defendant No. 6, they will be left with insufficient lands for their survival. If permission was not granted for selling 50 Kathas of land out of the lands in question, no sale deed could be executed for sale of 1.89 acres of land in favour of the plaintiffs.

Referring to Section 47 of the C.N.T. Act, he submitted that the Court should not pass decree for the sale of the right of raiyat. He further submitted that on equitable grounds also the Court should not pass decree for specific performance of contract in favour of the plaintiffs, as it has come in evidence that plaintiffs were literate persons and were actually brokers of land whereas, the defendant Nos. 1 to 5 were illiterate/uneducated/down-trodden and in fact, one of them was Rickshaw puller. Relying on the paragraphs 14 and 18 of the judgment reported in 1997 (2) PUR 655 Saitun Nisa v. Triloki Vishwakarma alias Triloki Mistri, he further submitted that as plaintiffs have not claimed alternative relief for refund of money/compensation, no such relief can be granted to them.

10. Thus, the question in this appeal is whether in view of Ext. F(the order dated 12.5.1993) passed by the Deputy Commissioner in Miscellaneous Case No. 5/1991-92 refusing permission to the defendant Nos. 1 to 5 for selling 50 Kathas of land to defendant No. 6; inter-alia on the ground that defendant No. 1 to 5 who were the members of the Schedule Tribe will be left with insufficient lands for their survival; the decree for specific performance of contract can be granted in favour of the plaintiffs, even if it is accepted that the agreements entered into between the plaintiffs and defendant Nos. 1 to 5 were valid agreements, for sale.

11. There is no dispute with the proposition laid down in the case of Nagar Khan (supra) that under the contract to transfer u/s 53-A, it is not necessary that the consideration money for transfer of the property must pass in praesenti. Similarly, there is no dispute with the proposition laid down in the case of Ramjoy Rewani (supra) that there is no bar u/s 46 (1) (b) of C.N.T. Act for an occupancy raiyat against entering into a contract for sale and such contract would be enforceable subject to sanction of the Deputy Commissioner which may be obtained at any time after the execution of agreement and before the actual deed of sale. But, in the present case the position is different. The permission to sell lands has been refused by the Deputy Commissioner to defendant No. 1 to 5, when they proposed to sell lands to defendant No. 6.

12. One of the grounds was that the defendant Nos. 1 to 5 who are members of the Schedule Tribes will be left with insufficient lands for their survival, if they sell 50 Kathas of land to defendant No. 6. Under the agreements in question, the lands involved are 1.89 acres. It has been specifically pleaded in paragraph 15 of the plaint that the plaintiffs filed objection before Deputy Commission, Ranchi in the said Miscellaneous Case No. 5 of 1991. The said order dated 12.5.1993 (Ext. F) has become final. The order refusing permission to the defendant Nos. 1 to 5 for selling lands is binding on them and it is attached with them prohibiting them from selling any further land. The defendant Nos. 1 to 5 were bound by the said order and being party to the said order, the same is applicable to the plaintiffs also and therefore they cannot claim specific performance of the agreements in question, whereunder the defendant Nos. 1 to 5 are said to have agreed to sell 1.89 acres of land to the plaintiffs.

13. On equitable grounds also, in my opinion the plaintiffs are not entitled to

decree for specific performance of contract. It has come in the evidence that husband of plaintiff No. 1 was a bank employee and plaintiff No. 2 was a doctor. It has also come in evidence that the plaintiffs were also working as brokers of land. It has also come in the evidence that the defendant Nos. 1 to 5 were illiterate/uneducated and down-trodden members of Scheduled Tribes. The pleadings and the evidences on record clearly indicates that the plaintiffs tried to mislead the defendant Nos. 1 to 5.

14. It may also be noted that though, the plaintiffs claimed that the defendant Nos. 1 to 5 applied for permission to sell lands in their favour by filing Miscellaneous Case No. 667/89-90, 682/89-90, 662/89-90 and 508/90-91, but they could not prove that defendant Nos. 1 to 5 actually applied for permission under the said Miscellaneous cases. There is no allegation by the plaintiffs that defendant Nos. 1 to 5 are guilty of not applying for permission. In the circumstances, defendant Nos. 1 to 5 can not be directed to seek permission to sell lands to plaintiffs.

15. So far as, the alternative relief is concerned, in view of the judgment of Saitun Nisa (*supra*), no relief can be granted to the plaintiffs as they did not prayed for the same and the same has been rightly rejected by the trial court.

16. After hearing the parties and carefully going through the entire materials on record, in my opinion no decree can be passed in favour of the plaintiffs as prayed. Accordingly, the suit and his appeal is dismissed. However no costs.