

THE HIGH COURT OF DELHI AT NEW DELHI

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Judgment delivered on: 19.12.2013

+ **FAO(OS) 583/2013 & CM No.20170/2013**

SH RAM NIWAS DAGAR

..... Appellant

versus

SHRI KRISHAN KUMAR & ANR

..... Respondents

Advocates who appeared in this case:

For the Petitioner : Mr Anand Yadav.

For the Respondent : Mr P. D. Gupta, Mr Kamal Gupta and
Mr Abhishek Gupta for R-2.

CORAM:-

HON'BLE MR JUSTICE BADAR DURREZ AHMED

HON'BLE MR JUSTICE VIBHU BAKHRU

JUDGMENT

BADAR DURREZ AHMED, J (ORAL)

1. This appeal is directed against the judgment and order dated 05.12.2013 passed by a learned Single Judge of this Court in CS(OS) No.38/2011. The suit was filed by the appellant *inter-alia*, seeking specific performance of an agreement to purchase dated 10.01.2001 as also cancellation of a release deed dated 23.08.2006 executed by defendant no.1 (Krishan Kumar) in favour of respondent no.2 (defendant no. 2) in respect of the entire holding of defendant no.1, which was to the extent of 8 bighas and 8 biswas in Khasra No.208, in the Revenue Estate of Village Hiran Kudna, Delhi. The cancellation of the release deed was sought only to the extent of 1 bigha and 10 biswas which was sought to be sold by virtue of the agreement to purchase dated 10.01.2001 (executed on 23.02.2001). In the suit, a prayer for injunction restraining the defendants from

dispossessing the plaintiff in respect of the said 1 bigha and 10 biswas of land was also included. An alternative prayer was also made for damages, which was estimated at ₹70 lacs.

2. In the suit, a preliminary issue had been framed, which was as follows:-

“1. Whether the relief of specific performance of agreement dated 23rd February, 2001 can be claimed by the plaintiff in view of the provisions of Section 45 of the Delhi Land Reforms Act?”

3. The said preliminary issue has been decided by virtue of the impugned judgment and the learned Single Judge has held that the relief of specific performance cannot be claimed in view of the clear provisions of Section 33 and Section 45 of the Delhi Land Reforms Act, 1954 (hereinafter referred to as the said ‘Act’).

4. The facts of the case are that the said Agreement to Sell/Purchase is dated 10.01.2001 but is stated to have been signed and executed on 23.02.2001. At the point of time when the said agreement was entered into, defendant no.1 who was the proposed seller owned land to the extent of 8 bighas and 8 biswas. However, out of that holding, only 1 bigha and 10 biswas was proposed to be sold to the appellant and along with the Agreement to Sell/Purchase certain other documents such as the General Power of Attorney, Will, Affidavit, Receipts were executed on the very date i.e. 23.02.2001. In fact, the General Power of Attorney and the Will in favour of the plaintiff were also registered on that date. The total consideration of ₹10 lacs was paid by the appellant/plaintiff to defendant no.1 and the possession of the land to the extent of 1 bigha and 10 biswas

was also handed over to the appellant/plaintiff by defendant no.1 (Krishan Kumar).

5. Five and a half years later i.e. on 23.08.2006, defendant no.1 (Krishan Kumar) executed a release deed of the entire holding of 8 bighas and 8 biswas in favour of defendant no.2. It is only in the year 2011 that the appellant/plaintiff filed the said suit (CS(OS) No.38/2011) *inter-alia*, seeking specific performance of the agreement dated 10.01.2001 and cancellation of the release deed to the extent of 1 bigha and 10 biswas.

6. On the objection being raised by the defendants, the aforementioned preliminary issue was framed. We have already indicated above that the learned Single Judge came to the conclusion that specific performance of the agreement dated 10.01.2001 (executed on 23.02.2001) could not be granted in view of the provisions of Section 45 read with Section 33 of the said Act.

7. Before proceeding any further, it would be pertinent to set out the provisions of Section 33 of the said Act, which are as under:-

“33. Restrictions on transfers by a *Bhumidhar*.- (1) No *Bhumidhar* shall have the right to transfer by sale or gift or otherwise any land to any person, other than a religious or charitable institution or any person in charge of any such *Bhoodan* movement, as the Chief Commissioner may, by notification in the Official Gazette, specify, where as a result of the transfer, the transferor shall be left with less than eight standard acres in the Union Territory of Delhi:

Provided that the Chief Commissioner may exempt from the operation of this section, the transfer of any land made before the 1st day of December, 1958, if the land

covered by such transfer does not exceed one acre in area and is used or intended to be used for purposes other than those mentioned in clause (13) of section 3.

(2) Nothing contained in sub-section (1) shall preclude the transfer of land by a *Bhumidhar* who holds less than eight standard acres of land, if such transfer is of the entire land held by him;

Provided that such *Bhumidhar* may transfer a part of such land to any religious or charitable institution or other person referred to in sub-section (1).

Explanation. – For the purposes of this section, a religious or charitable institution shall mean an institution established for a religious purpose or a charitable purpose, as the case may be.

8. It is evident from Section 33, that no Bhumidhar has a right to transfer any land to any person (other than a religious or charitable institution or any person in charge of any such Bhoodan movement) where, as a result of the transfer, the transferor would be left with less than eight standard acres of land in the Union Territory of Delhi. On a plain reading of this provision and upon considering the factual basis of the present matter, it is evident that if defendant no.1, who was the Bhumidhar in respect of 8 bighas and 8 biswas of land, was permitted to transfer 1 bigha and 10 biswas of land in terms of the agreement dated 10.01.2001, he would be left with less than eight standard acres in the Union Territory of Delhi. It is, therefore, evident that defendant no.1 being the Bhumidhar of 8 bighas and 8 biswas did not have the right to transfer the 1 bigha and 10 biswas of land. We must also notice Sub-section 2 of Section 33 which stipulates that nothing contained in Sub-section (1) would preclude the transfer of land by

a Bhumidhar who holds less than eight standard acres of land, if such transfer is of the entire land held by him. In the present case, the entire holding of defendant no.1 (Krishan Kumar) was less than eight standard acres and, therefore, he could only transfer the said land in entirety and not in part. In the present case it is evident that if the agreement dated 10.01.2001 were allowed to be specifically performed, it would amount to permitting defendant no.1 (Bhumidhar in question) to transfer land in contravention of Section 33 of the said Act.

9. If we read Section 45 of the said Act, it is absolutely clear that any transfer made by or on behalf of the Bhumidhar in contravention of the provisions of Chapter 3 of the Act would be void. Section 33 as well as Section 45 both fall within Chapter 3 of the Act. Therefore, any provisions which would result in contravention of the provisions of Section 33 of the Act would be void.

10. The learned counsel for the appellant, however, contended that the point of time to be reckoned for the purposes of Section 33 and Section 45 is the point at which the transfer takes place or in other words the sale deed is executed. He submitted that if the Agreement to Sell were to be specifically enforced, the Bhumidhar in this case i.e. Krishan Kumar would be left with no land because of the release deed that was executed by the appellant in favour of respondent no. 2 and, therefore, the transfer would not be void and/or contravene Section 33 of the said Act. We do not agree with this submission at all. The learned Single Judge has in our view correctly assessed the position whereby in paragraph 14 of the impugned judgment he has concluded that the applicability of Section 33 has to be

decided at the time when the agreement was entered into between the parties and the effect of Section 33 cannot be assessed on account of the subsequent development, namely, the transfer of his entire holding by defendant no.1 in favour of defendant no.2 by virtue of the release deed dated 23.08.2006. The learned Single Judge also correctly held that Section 45 provides that any transfer made by or on behalf of the Bhumidhar or Asami in contravention of Chapter 3 would be void. As such, the Court would not, therefore, direct specific performance of an agreement, the consequence whereof would be the violation of a statutory provision, namely, Section 33 of the said Act which would result in a void transaction by virtue of Section 45 thereof.

11. In our view, the learned Single Judge has also correctly applied the decision of a Division Bench of this Court in the case of **M. S. Yadav v. Shri Jagmal**: RFA(OS) No.49/1999 as decided on 22.02.2000, wherein the Court considered the provisions of Section 33 and Section 45 of the said Act. In that case, a suit for specific performance of an Agreement to Sell dated 22.01.1989 had been filed. The Bhumidhar in that case owned 14 bighas and 7 biswas of land and had agreed to sell agricultural land measuring 7 bighas and 15 biswas out of his holding, to the plaintiff therein. Thus, if 7 bighas and 15 biswas were taken out of the respondent's holding he would be left with less than eight standard acres of land. It was, therefore, contended that such an agreement could not be enforced as it would be violative of Section 33 and Section 45 of the said Act. The Division Bench after examining the said provisions came to the conclusion that:-

“It therefore becomes very clear that the land left with the respondent after deducting what is agreed to be sold, is less than eight standard acres. Section 33 clearly applies. The Agreement to sale cannot be enforced in view of Section 33. In our view the learned Single Judge was thus right in dismissing the suit.”

12. The learned counsel for the appellant sought to draw our attention to Section 42 of the said Act and contended that the consequence of transfer in contravention of Section 33 of the said Act was specifically provided for in Section 42 of the Act. He submitted that such action under Section 42 would be taken subsequent to the transfer having taken place. Therefore, the point of time at which the contravention of Section 33 of the Act needs to be considered is when the transfer actually takes place. According to him, the transfer had not taken place because the sale deed was not executed by defendant no.1 in favour of the plaintiff/appellant and if this agreement was to be specifically enforced, the relevant date would be the date on which the decree is passed and on which the sale deed is executed by defendant no.1 in favour of the plaintiff/appellant. He submitted that if that were to be happen, defendant no.1 would not be left with any land and, therefore, there would be no contravention of Section 33 particularly in view of Section 33(2) of the said Act. We do not agree with this contention because the learned counsel for the appellant has left out a very important aspect of the matter and that is that before such a decree of specific performance could even be contemplated, the release deed of the entire land would have to be called in question. The plaintiff/appellant is only seeking cancellation of the release deed in respect of a part of the land. Even for the sake of arguments, if we assume that that was possible it would amount to

the Bhumidhar agreeing to transfer or transferring two parts of the same land, in which case neither of the transactions would be valid. It is for this reason that we have to examine Section 33 as it is laid down in the statute book. It clearly states that no Bhumidhar shall have the right to transfer by sale or gift or otherwise any land where the result of the transfer would leave the transferor with less than eight standard acres in the Union Territory of Delhi. This is subject to the provisions of Section 33(2) of the said Act which stipulates, as pointed out above, that it would not preclude a Bhumidhar from transferring his entire holding in a case he holds less than 8 standard acres. Therefore, on a plain reading, we are in agreement with the submission of the learned counsel for defendant no.2, that the focus of Section 33 is on the right of a Bhumidar to transfer any land. In the facts of the present case, the Bhumidar had no such right when he entered into the agreement dated 10.01.2001. When the Bhumidhar did not have the right to transfer or to enter into an agreement, then how can that agreement be specifically enforced. That would amount to the Court passing decree in contravention of the express provisions of Section 33 and 45 of the said Act.

13. We concur with the decision of the learned Single Judge. Accordingly, the present appeal and the application are dismissed with no order as to costs.

BADAR DURREZ AHMED, J

VIBHU BAKHRU, J

DECEMBER 19, 2013/MK