

Court No. - 29

Case :- SECOND APPEAL No. - 73 of 1993

Appellant :- Hublal

Respondent :- Kalloo And Ors

Counsel for Appellant :- B.K Saxena

Hon'ble Arun Kumar Singh Deshwal,J.

1. Heard learned counsel for the appellant.
2. Despite the service of notice, no one appears on behalf of the respondents.
3. Present appeal has been filed against the judgement and decree dated 13.10.1992 passed by the Court of 11th Additional District Judge, Lucknow, in Civil Appeal No.22/92, Sri Ram Versus Hublal and another allowing the appeal of the defendant/respondent no.2 and dismissing the suit for specific performance of a contract of the plaintiff/appellant vide regular suit no.284/88 Hub Lal Versus Kalloo and another dated 24.12.92 by the Court of Munsif Hawali, Lucknow on the following amongst others.
4. This second appeal was admitted on the following substantial question of law:
(1) Whether the learned Appellate Court below has committed manifest error of law in applying the provisions of Section-168-A of Uttar Pradesh Zamindari Abolition & Land Reforms Act, 1950 (hereinafter referred to as 'the Act, 1950') to the facts of the case?
5. The crux of the matter is that a registered agreement to sell was executed by respondent no.1 in favour of the appellant on 22.07.1986 regarding two biswa land in Khasra No.671, Village-Dehwa, Post-Mohanlalganj, District-Lucknow, after taking advance money of Rs.5,000/-, remaining Rs.1,000/- was payable at the time

of execution of sale deed. Despite repeated requests, respondent no.1 did not execute the sale deed in pursuance of the sale agreement dated 22.07.1986. Then, the appellant came to know that respondent no.1 had executed the sale deed dated 29.02.1988 in favour of respondent no.2 regarding the entire land in Khasra No.671. Thereafter, the appellant had filed a suit no.284 of 1988 for specific performance of an agreement to sell dated 22.07.1986 with a further prayer that both the respondents may be directed to execute the sale deed in pursuance of the agreement to sell dated 22.07.1986. This suit was decreed by judgment and decree dated 24.12.1991 in favour of the appellant. Feeling aggrieved by the judgement dated 24.11.1991, respondent no.2, the subsequent vendee of respondent no.1, had filed an appeal registered as appeal no.22 of 1992. The appellate Court allowed the above appeal by judgement dated 13.10.1992 and judgement and decree dated 24.11.1991 of Munsif Hawali, Lucknow, was set aside on the ground that the agreement to sell dated 22.07.1986, will amount to fragmentation of the land, hence violating Section-168-A of the Act, 1950, is void. Feeling aggrieved by the above judgement dated 13.10.1992, the present second appeal was filed.

6. Learned counsel for the appellant contends that Section 168-A of the Act, 1950 applies to the transfer of land through a sale deed, gift deed or exchange and not on the agreement to sell. In support of his contention, learned counsel for the appellant has relied upon the judgement of the coordinate Bench of this Court in **Second Appeal No.352 of 1993 (Ram Pratap and Others Vs. Gulab)** vide order dated **25.07.2013**. In that

judgement, the learned Single Judge observed that Section 168-A of the Act, 1950 would not apply to the agreement to sell and further observed that the provision of Section 168-A of the Act, 1950 has been deleted by the UP Amendment of 2004, therefore, there is no bar for execution of sale deed as on date.

7. Learned counsel for the appellant further submits that it is an established legal position that after execution of the agreement to sell, if the vendor transfers the land to another person, then the vendor, as well as the subsequent purchaser, will have to join in executing the sale deed if a suit for specific performance of the agreement is allowed. In support of his submission, learned counsel for the appellant has relied upon the following Apex Court judgements in **Lala Durga Prasad And Others Vs. Lal Deep Chand And Others** reported in **(1953) 2 SCC 509**; **R.C. Chandiok And Another Vs. Chuni Lal Sabharwal and Others** reported in **1970 (3) SCC 140** and; **Rathnavathi And Another Vs. Kavita Ganashamdas** reported in **(2015) 5 SCC 223**.

8. After considering the aforesaid submission and on perusal of record, the followings facts are undisputed that respondent no.1 had executed registered agreement to sell in favour of appellant on 22.07.1986 regarding two *bigha* of land in Khasra No.671 and, subsequently, without executing the sale deed of that part of the land, respondent no.1 had executed a sale deed dated 29.02.1988 in favour of the respondent no.2 regarding entire land of Khasra No.671. The sole question for determination is whether rigour of Section 168-A of the Act, 1950 will come into play for the agreement to sell part of land in Khasra no.671, and further question arises that

once respondent no.1 had transferred the entire land of Khasra No.671 through sale deed dated 29.02.1988 in favour of respondent no.2, then still the respondents could have been directed to execute the sale deed in specific performance of agreement dated 22.07.1986 executed by respondent no.1 in favour of the appellant. The consequence of the violation of Section 168-A of the Act 1950 has been provided under Sections 166 and 167 of the Act, 1950. For ready reference, Sections-166, 167 as well as Section 168-A of the Act, 1950 are being quoted as under :

"166. Transfer made in contravention of this Chapter to be void. Any transfer made by or on behalf of [bhumidhar with non-transferable rights] or asami [in contravention of the provisions of this [Act] shall be void.

167.(1) The following consequences shall ensue in respect of every transfer which is void by virtue of Section 166, namely-

(a) the subject-matter of transfer shall with effect from the date of transfer, be deemed to have vested in the State Government free from all encumbrances;

(b) the trees, crops and wells existing on the land on the date of transfer shall, with effect from the said date, be deemed to have vested in the State Government free from all encumbrances; and

(c) the transferee may remove other moveable property or the materials of any immovable property existing on such land on the date of transfer within such time as may be prescribed.

(2) Where any land or other property has vested in the State Government under sub-section (1), it shall be lawful for the Collector to take over possession over such land or other property and to direct that any person occupying such land or property be evicted therefrom. For the purposes of taking over such possession or evicting such unauthorised occupants, the Collector may use or cause to be used such force as may be necessary.]

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 has a plot contiguous 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 mutatis mutandis, apply.]"

9. From the perusal of the above sections, it is clear that where the title in any fragment situated in a consolidated area is transferred either by way of a sale deed, by way of

a gift deed or by way of exchange, then Section 168-A of the Act, 1950 will apply but not on the agreement to sell of a fragment of land because agreement to sell to transfer a land does not transfer the title. In the judgement of **Ram Pratap and Others (supra)**, the coordinate Bench of this Court had observed that Section 168-A of the Act, 1950 would not apply to the agreement to sell to transfer the land because the agreement transfers no title. It was also observed in the above judgement that Section 168-A of the Act, 1950 has already been deleted. Therefore, there is no legal impediment to executing the sale deed for part of the land. Apex Court in the case of **Union of India & Others Vs. Indian Charge Chrome & Another** reported in **(1999) 7 SCC 314** has observed that law prevalent on the date of decision will be applicable.

10. Section 168-A of the Act, 1950 does not completely prohibit the transfer of fragment of a land situated in consolidated area. It prohibits only that transfer of fragment of land where the vendee does not have any land adjoining to the purchased land. Therefore, Section 168-A of the Act, 1950 does not create or extinguish any right regarding agreement to sell but it simply imposed prohibition for execution of sale deed where the purchaser does not have any land adjoining to the fragmented part of the land which is subject matter of sale deed.

11. The Apex Court in the case of **The New India Assurance Company Ltd. Vs. C. Padma & Another** reported in **2003 (7) SCC 713** observed that benefit of amended provision applicable on pending cases, even though, a cause of action arose prior to enforcement of amendment Act. The Apex Court in the case of **Yadlapati Vs. Venkateswarlu Vs. State of Andhra Pradesh &**

Another reported in **1992 Supp 1 SCC 74** observed that amendment in a statute must be read as if the word of the amendment had been written into principle act unless that leads to any inconsistency. Therefore, on deletion of Section 168-A of the Act, 2004 by the amendment Act 27 of 2004, embargo imposed under Section 168-A of the Act, 1950 on execution of a sale deed of fragment of a land has been removed. Therefore, sale deed in pursuance of agreement to sell executed prior to deletion of Section 168-A of the Act, 1950 can be validly executed after deletion of Section 168-A of the Act, 1950, without any legal impediment.

12. Based on the above analysis, this Court holds that even if the agreement to sell is executed regarding a fragment of land in any consolidated area even then the same will not be hit by Section 168-A of the Act, 1950 because the agreement to sell does not transfer the land but it is simply the agreement between the parties to transfer the same in future through execution of sale deed. Though, Section 168-A of the Act, 1950 was deleted from the Act, 1950, therefore, till the deletion of this Section in 2004, no sale deed was executed in pursuance of an agreement to sell dated 22.07.1986. Now, if the direction is made to execute the sale deed considering the present law, there will be no legal impediment based on deleted Section 168-A of the Act, 1950. Even the U.P. Act No.27 of 2004, by which Section 168-A of the Act 1950 was deleted from the statute itself, permits regularising the sale deed executed within a particular time even before the deletion of Section 168-A of the Act, 1950. Therefore, this Court decides the substantial question of law framed in this appeal in favour

of the appellant by holding that the appellate Court has committed a manifest error of law by applying Section 168-A of the Act, 1950 to the agreement to sell to transfer the fragment of land in Khasra No.671.

13. Therefore, the judgement of the first appellate Court is absolutely erroneous, being contrary to the aforesaid legal position. Hence, the order of the first appellate Court dated 13.10.1992 is hereby set aside, and the present appeal is **allowed**. The order of the Munsif Hawali, Lucknow, passed in Suit No.284 of 1988 is hereby confirmed. Both the respondents are directed to execute the sale deed in favour of the appellant in pursuance of the agreement to sell dated 22.07.1986 within a period of one month, failing which the appellant will be free to execute the sale deed through the concerned Civil Judge.

Order Date :- 21.2.2024

S.Chaurasia