

04.01.
2024

Ct. No. 04

ab

SAT 218 of 2022
IA No. CAN 1 of 2022

Abdul Kashem
Vs.
Kantari High Madrasah, represented through
Moslem Dofadar and others.

Mr. Prosenjit Mukherjee.

... for the appellant.

Both the Courts below have concurrently held that the plaintiff/appellant has miserably failed to prove the case that he has a right as a reversioner in the event of a breach of conditions enshrined in the settlement deed.

Admittedly, the settlement deed was executed by the plaintiff/appellant in favour of the Madrasah, which includes the stipulation that the said property would be used as playground for the students of the said Madrasah and the Managing Committee or its Members shall not use it as their private property and shall not be able to transfer the same by any mode and in the event of breach of the aforesaid conditions, it would be open to the plaintiff/appellant to seek for cancellation of the said settlement deed.

Though the suit was posted as undefended suit yet the trial court did not find that the plaintiff/appellant has been able to prove his case warranting the relief to be granted as prayed for in the plaint. The appellate court has taken note of the provisions contained in Section 10 of the Transfer of Property Act (hereinafter referred to as 'said Act'), which prohibits any conditions against the alienation in a document relating to transfer of the property and to such extent it would be regarded as void. Section 10 of the said Act is quoted as under:

“10. Condition restraining alienation.-

Where property is transferred subject to a condition or limitation absolutely restraining the transferee or any person claiming under him from

parting with or disposing of his interest in the property, the condition or limitation is void, except in the case of a lease where the condition is for the benefit of the lessor or those claiming under him:

Provided that property may be transferred to or for the benefit of a women (not being a Hindu, Muhammadan or Buddhist), so that she shall not have power during her marriage to transfer or charge the same or her beneficial interest therein.”

It is manifest from the bare reading of the language used in the aforementioned Section that if any property is transferred stipulating a condition by which the right of the transferee is impeded in relation to a disposition and/or alienation thereof, such condition or limitation shall be void. However, an exception is carved out in case of a lease, which is kept outside the purview thereof. It admits no ambiguity in our mind that Section 10 has its applicability to a situation where the condition or limitation relating to the disposition and/or alienation of the property is concerned, it would be void to such extent.

Both the Courts below have held that the condition relating to restriction on alienation offends the spirit of Section 10 of the said Act and, therefore, is regarded as void, which cannot be said to be illegal, perverse and/or contrary to law. It also appears from the record that though the nomenclature of the said deed was given as settlement deed yet the plaintiff/appellant received a consideration money of Rs. 40,000/- from the defendant no. 1 and, therefore, once the right is alienated absolutely, the condition relating to the transfer and/or alienation is hit by the provisions of Section 10 of the said Act.

So far as the applicability of Section 11 of the said Act is concerned, we noticed that the manner in which it is sought to be interpreted by the Counsel for the plaintiff/appellant does not run in tune with the legislative intent. The said Section has two parts and the

second part throws a light on the intention of the legislature in excluding operation of the first part in the eventualities as mentioned therein.

We, thus, do not find that both the Courts below have committed any wrong in arriving at a conclusion that the suit must fail. The instant appeal does not involve any substantial question of law and the same is hereby dismissed under Order XLI Rule 11 of the Code of Civil Procedure.

In view of the dismissal of the appeal itself, the connected application being CAN 1 of 2022 has become infructuous and the same is also dismissed.

There shall, however, be no order as to costs.

(Harish Tandon, J.)

(Madhuresh Prasad, J.)