

REPORTABLE

IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO. 1575 OF 2019

(Arising from SLP(C) No.1135/2016)

Tanu Ram Bora

...Appellant

Versus

Promod Ch. Das (D) through Lrs. & Others

...Respondents

J U D G M E N TM.R.SHAH, J.

Leave granted.

2. Feeling aggrieved and dissatisfied by the impugned judgment and order dated 17.07.2015 passed by the High Court at Guwahati in R.S.A. No. 173/2003, by which the High Court has dismissed the said appeal preferred by the appellant herein/plaintiff and has confirmed the judgment and decree passed by the learned trial Court dismissing the suit, confirmed

by the first appellate Court, the original plaintiff has preferred the present appeal.

3. The facts leading to the present appeal in nut and shell are as under:

3.1 That the appellant herein/original plaintiff (hereinafter referred to as the 'original plaintiff') purchased the suit land by a registered sale deed dated 06.01.1990 from Late Pranab Kumar Bora, husband of original defendant no.2 and father of original defendant nos. 3 to 8. It appears that the suit land was declared as ceiling surplus land in the year 1988 and consequently the same was acquired by the Government. However, subsequently on 14.09.1990, the suit land was again declared ceiling free land. That thereafter, the original plaintiff mutated the land in his name vide order dated 18.12.1991 in Mutation Case No.94/91-92, and accordingly the name of the original plaintiff was recorded in the Sadar Jamabandi. It appears that the original defendant no.1, an Ex-Police Officer, illegally entered into the suit land on 09.04.1995. Therefore, the original plaintiff immediately filed a suit in the Court of learned Civil Judge, Junior division, which was numbered as Title Suit No. 230/1995, praying for giving possession of the suit land by evicting defendant no.1. The

original plaintiff also prayed for a decree of declaration, declaring that he has a right, title and interest over the suit land. The original plaintiff also prayed for permanent injunction. That the said suit was filed in the month of July, 1995.

3.2 That the learned trial Court decreed the suit by its judgment and decree dated 28.08.1998 specifically holding that the original plaintiff purchased the suit land by valid document and has got right, title and interest over the suit land.

4. Feeling aggrieved and dissatisfied with the judgment and decree passed by the learned trial Court, the original defendant no.1 filed Title Appeal No. 36/1998 before the first appellate Court. At this stage, it is required to be noted that so far as original defendant nos. 2 to 4 are concerned, as such, they did not challenge the judgment and decree passed by the learned trial Court holding that the original plaintiff purchased the suit land by valid document. That the first appellate Court, by its judgment and order dated 15.09.1999, allowed the said appeal preferred by original defendant no.1 and remanded back the matter to the learned trial Court, framing an additional issue to the effect that "Whether the suit land was declared ceiling surplus land and as such it was acquired by the Government in

the year 1988 and as such whether the vendor had any saleable right to sell the suit land to the plaintiff on 6.1.1990”.

4.1 That thereafter on remand, the learned trial Court considering the additional issue dismissed the suit by holding that disputed land was declared as ceiling surplus land by the Government and therefore as such the vendor had no right to sell the suit land by sale deed dated 06.01.1990, and there being so, the original plaintiff has no right, title and interest over the suit land.

4.2 The judgment and decree passed by the learned trial Court came to be confirmed by the first appellate Court, by judgment and order dated 04.06.2003. At this stage, it is required to be noted that while dismissing the appeal and concurring with the finding recorded by the learned trial Court that the vendor of the original plaintiff had no right to sell the suit land after the suit land was declared as ceiling surplus land, the first appellate Court also came to the conclusion that the defendants' rights over the suit land also could not be established under Section 53A of the Transfer of Property Act (hereinafter referred to as the 'T.P.Act'). At this stage, again it is required to be noted that original defendant no.1 did not file any appeal against the said

observation, and as such, the same has attained finality, which means original defendant no.1's right over the suit land was also declined. The judgment and order passed by the first appellate Court, confirming the judgment and decree passed by the learned trial Court dismissing the suit, has been further confirmed by the High Court, by the impugned judgment and order. Hence, the original plaintiff has preferred the present appeal.

5. Ms. V. Mohana, learned senior advocate, appearing on behalf of the appellant/original plaintiff, has vehemently submitted that all the Courts below have not at all considered Section 43 of the Transfer of Property Act. It is vehemently submitted by Ms. Mohana, learned senior counsel appearing on behalf of the original plaintiff that it is an admitted position that after the execution of the sale deed dated 06.01.1990, subsequently the suit land was made ceiling free on 14.09.1990, and therefore the sale deed became a valid sale deed. It is submitted, that in view of Section 43 of the T.P. Act, the rights of the original plaintiff in the suit land, pursuant to sale deed dated 16.01.1990 are protected. In support of her above submission, Ms. Mohana, learned counsel appearing on behalf of the original plaintiff has heavily relied upon the decision of this Court in the

case of *Ram Pyare vs. Ram Narain and others*, (1985) 2 SCC 162. She has also relied upon another decision of this Court in the case of *Jumma Masjid vs. Kodimaniandra Deviah*, AIR 1962 SC 847.

5.1 Ms. Mohana, learned senior counsel appearing on behalf of the original plaintiff has further submitted that all the Courts below have materially erred in not appreciating the fact that as such it was the original plaintiff who approached the Court for declaration and permanent injunction, claiming rights on the basis of a registered sale deed dated 06.01.1990, and the cause of action arose when original defendant no.1 illegally entered into the suit land. It is submitted that as such the first appellate Court has specifically held against original defendant no.1 that the original defendant no.1 also has no right, title and interest on the suit land on the basis of the agreement to sell as none of the ingredients of Section 53A of the Act are satisfied. It is submitted that as such the aforesaid finding recorded by the first appellate Court had attained finality, and therefore it is concluded that original defendant no.1 had no right, title and interest in the land in question. It is further submitted by Ms. Mohana, learned senior counsel appearing on behalf of the original plaintiff that so

far as original defendant nos. 2 to 8 – legal heirs of the original vendor are concerned, they never challenged the registered sale deed dated 06.01.1990, and they also never claimed any right, title or interest in the suit land.

5.2 Making the above submissions, and relying upon the above decisions, it is prayed to allow the present appeal, set aside the judgment and decree passed by the learned trial Court, confirmed by the first appellate Court and the High Court, and consequently to decree the suit filed by the original plaintiff.

6. The present appeal is opposed by Shri Hariharan, learned advocate appearing on behalf of legal heirs nos. 1/1 and 1/6 of the deceased original defendant no.1. Office report dated 22.12.2018 indicates that service on legal heirs nos. 1/2, 1/4 and 1/5 is complete but no one has entered appearance on their behalf. The said office report also indicates that notice sent to legal heir no. 1/3 has been received back with postal remarks “refused” and as such service is deemed to be complete upon her. The said office report further indicates that service is also complete on respondent nos. 2 to 8 but no one has entered appearance on their behalf.

6.1 Shri Hariharan, learned advocate appearing on behalf of original defendant no.1 (now on behalf of legal heirs nos. 1/1 and 1/6) has vehemently submitted that there are concurrent findings of facts by all the Courts below that at the time when the sale deed was executed in favour of the original plaintiff, i.e., on 06.01.1990, the land in question was ceiling surplus land, and therefore was a government land, and therefore the original vendor was not the owner of the suit land, and therefore had no right, title or interest in the suit land, and therefore the plaintiff had no right, title or interest in the suit land on the basis of the registered sale deed dated 06.01.1990. It is submitted therefore all the Courts below have rightly dismissed the suit.

6.2 So far as the reliance placed by the learned senior counsel appearing on behalf of the plaintiff on Section 43 of the T.P. Act is concerned, it is vehemently submitted by Shri Hariharan that by getting the protection under Section 43 of the T.P. Act, the vendee has to prove that the transferor acted fraudulently or erroneously represented. It is submitted by Shri Hariharan, learned counsel appearing on behalf of the legal heirs of original defendant no.1 that in the present case the ingredients of Section

43 of the T.P. Act are not satisfied, and therefore the rights of the original plaintiff are not protected under Section 43 of the Act.

6.3 Making the above submissions, it is prayed to dismiss the appeal.

7. Heard learned counsel on behalf of the respective parties at length.

7.1 At the outset, it is required to be noted that the following facts are not in dispute:

- i) that the original plaintiff purchased the suit land by a registered sale deed dated 06.01.1990, executed by late Pranab Kumar Bora on payment of full sale consideration;
- ii) that as on 06.01.1990, the suit land was ceiling surplus land and the government was the owner;
- iii) that the land in question became ceiling free land on 14.09.1990;
- iv) that the name of the original plaintiff was mutated in the revenue record – Sadar Jamabandi vide order dated 18.12.1991 in Mutation Case No. 94/91-92;
- v) that neither the vendor nor the heirs of the vendor challenged order dated 18.12.1991 by which the name of the plaintiff was mutated in the revenue record;

vi) that when the earlier suit was decreed by the learned trial Court, it was only the original defendant no.1 who challenged the judgment and decree passed by the learned trial Court and no appeal was preferred by original defendant nos. 2 to 7, heirs of the original vendor; and

vii) that in the second round of litigation, the first appellate Court specifically observed against original defendant no.1 that he has also no right, title or interest in the suit land on the basis of prior agreement to sell and the said finding had attained finality.

7.2 It is required to be noted that as such the heirs of the original vendor are not contesting the proceedings and it is only original defendant no.1 (now the legal heirs of original defendant no.1) are contesting the proceedings. Thus, it appears and/or nothing is on record to show that it was the case on behalf of the original defendants, more particularly on behalf of the vendor that the original plaintiff was informed specifically at the time of execution of the sale deed dated 06.01.1990 that the land in question is ceiling surplus land. In the light of the aforesaid facts, Section 43 of the T.P. Act, which is heavily relied upon on behalf of the original plaintiff is required to be considered.

7.3 Section 43 of the Act reads as under:

“43. Transfer by unauthorised person who subsequently acquires interest in property transferred – where a person [fraudulently or] erroneously represents that he is authorised to transfer certain immovable property and professes to transfer such property for consideration, such transfer shall, at the option of the transferee, operate on any interest which the transferor may acquire in such property at any time during which the contract of transfer subsists.

Nothing in this Section shall impair the right of transferees in good faith for consideration without notice of the existence of the said option”.

7.4 Section 43 of the T.P. Act provides that where a person fraudulently or erroneously represents that he is authorised to transfer certain immovable property and professes to transfer such property for consideration, such transfer shall, at the option of the transferee, operate on any interest which the transferor may acquire in such property at any time during which the contract of transfer subsists. Thus, if at the time of transfer, the vendor/transferor might have a defective title or have no title and/or no right or interest, however subsequently the transferor acquires the right, title or interest and the contract of transfer subsists, in that case at the option of the transferee, such a transfer is valid. In such a situation, the transferor cannot be

permitted to challenge the transfer and/or the transferor has no option to raise the dispute in making the transfer.

7.5 The intention and objects behind Section 43 of the T.P. Act seems to be based on the principle of estoppel as well as the equity. The intention and objects seems to be that after procuring the money (sale consideration) and transferring the land, thereafter the transferor is estopped from saying that though he has sold/transferred the property/land on payment of sale consideration, still the transfer is not binding to him. That is why Section 43 of the T.P. Act gives an option to the transferee and not the transferor. The intention of Section 43 of the Act seems to be that no body can be permitted to take the benefits of his own wrong. In the facts and circumstances of the case, Section 43 of the Act would come into play and protect the rights of the original plaintiff.

8. An identical question came to be considered by this Court in the case of *Ram Pyare (supra)*. In the aforesaid decision, on considering Section 43 of the Act, it is observed and held by this Court that as the sale deed in favour of the vendee was result of an erroneous representation of the vendor, thereafter the sons of the vendor, cannot claim to be transferees in good faith and

therefore their suit for cancellation of the sale deed would not be maintainable. In the aforesaid decision, this Court considered the following observations of this Court in another decision in the case of *Jumma Masjid (supra)*:

“This reasoning is open to the criticism that it ignores the principle underlying Section 43. That section embodies, as already stated, a rule of estoppel and enacts that a person who makes a representation shall not be heard to allege the contrary as against a person who acts on that representation. It is immaterial whether the transferor acts bona fide or fraudulently in making the representation. It is only material to find out whether in fact the transferee has been misled. It is to be noted that when the decision under consideration was given, the relevant word of Section 43 were, "where a person erroneously represents", and now, as amended by Act 20 of 1929, they are "where a person fraudulently or erroneously represents", and that emphasises that for the purpose of the section it matters not whether the transferor act fraudulently or innocently in making the representation, and that what is material is that he did make a representation and the transferee has acted on it. Where the transferee knew as a fact that the transferor did not possess the title which he represents he has, then he cannot be said to have acted on it when taking a transfer. Section 43 would then have no application, and the transfer will fail under Section 6(a). But where the transferee does act on the representation, there is no reason why he should not have the benefit of the equitable doctrine embodied in Section 43, however fraudulent the act of the transferor might have been.”

9. At this stage, it is required to be noted that as observed hereinabove in the present case as such the heirs of the original vendor are not contesting the proceedings and they have never disputed the right, title or interest of the original plaintiff, and it is the original defendant no.1 and now his heirs who are contesting the proceedings. Heirs of the original vendor have never initiated any proceedings for cancellation of the registered sale deed dated 06.01.1990, and/or they have never claimed any right, title or interest in the suit land after the registered sale deed dated 06.01.1990. As such, in the case of *Ram Pyare (supra)*, applying Section 43 of the Act, this Court has specifically observed and held that once there was an erroneous representation by the vendor, thereafter the suit by the heirs of the vendor for cancellation of the sale deed would not be maintainable. Under the circumstances and in the facts and circumstances of the case, the rights of the original plaintiff in the suit land by a sale deed dated 06.01.1990 would be protected by operation of Section 43 of the Act. Therefore, the finding recorded by all the Courts below that the original plaintiff has no right, title or interest in the suit land on the basis of a registered sale deed

dated 06.01.1990 cannot be sustained and the same deserves to be quashed and set aside.

10. Now so far as the other reliefs prayed in the suit, namely, (i) to get back a decree for return of possession from original defendant no.1; and (ii) that a decree for permanent injunction are concerned, deserve to be granted, as the first appellate Court has specifically observed and held against original defendant no.1 that he has no right, title or interest in the suit land and the said finding has attained finality. Once, it is held that he has no right, title or interest in the suit land, and that the plaintiff has a right, title or interest on the basis of a registered sale deed dated 06.01.1990, and he claimed to be in possession on the basis of a registered sale deed dated 06.01.1990, which came to be disputed by original defendant no.1 subsequently, the defendant no.1 cannot be permitted to be continue in possession, and therefore the original plaintiff is entitled to other reliefs also.

11. For the reasons stated above, the present appeal succeeds and is allowed. The impugned judgment and order passed by the High Court, as also, the judgment and decree passed by the learned trial Court, confirmed by the first appellate Court, are hereby quashed and set aside. Consequently, Title Suit No.

230/1995 preferred by the original plaintiff is hereby decreed in toto. However, in the facts and circumstances of the case, there shall be no order as to costs.

.....J.
[L. NAGESWARA RAO]

NEW DELHI;
FEBRUARY 08, 2019.

.....J.
[M.R. SHAH]