

Before Alok Singh, J.

SUBHASH CHANDER,—Appellant

versus

MOHINDER SINGH AND OTHERS,—Respondents

RSA No. 2209 of 1981

11th March, 2010

Code of Civil Procedure, 1908—Specific Relief Act—S.34—Defendants 4 and 5 executing sale deeds in favour of plaintiffs and defendants 1 to 3—Shamlat deh land mutated in favour of Gram Panchayat—3/4 share revested in whole proprietary body under a decree—Defendants 4 and 5 again selling their share to defendants 1 to 3—Defendants already transferring their interest in shamlat deh land to vendees by executing sale deeds—Defendants No. 4 and 5 had no right, authority or title to execute another sale deed—Sale deed held to be void ab initio and does not create any right or title in favour of defendants No. 1 to 3—Plaintiffs failing to claim consequential relief of possession—Whether suit is not maintainable and is barred by S. 34—Held, no—Neither plaintiffs nor defendants in possession of land—No need for plaintiffs to seek consequential relief of possession—Suit not barred by S. 34 and held to be maintainable—Appeal allowed, judgments and decrees passed by Courts below set aside.

Held, that once it is undisputed that original land holders executed the two sale deeds of the year 1959 and 1960 in favour of the plaintiffs and defendants No. 1 to 3, then acquiring any right on the basis of revesting would amount to revesting of the land in favour of the vendees of original land holders. These are not the new rights created by the statute or decree. These are the rights created in favour of defendants No. 4 and 5 only on the basis that they were found land holders of the land in question which they had already transferred. Meaning thereby, if by virtue of any Act or decree, land was directed to be vested in favour of the vendors, then it would be deemed, that land is vested in favour of the vendees on the basis of the sale deeds executed by the land holders/vendors in 1959 and 1960.

(Para 16)

Further held, that after the first sale of 1959 and 1960, if under the Civil Court decree land was revested to the proprietor, that decree did not create any right in favour of the proprietor since before that decree, he had transferred his interest in the shamlat deh land to the vendees of the previous sale deeds. In view of the above, since revesting in favour of the land holder would amount to revesting in favour of the plaintiffs and defendants No. 1 to 3 pursuant to the sale deeds in 1959 and 1960, hence, in 1966, defendants No. 4 and 5 had absolutely no right, authority or title to execute the sale deed in question dated 22nd August, 1966. None can transfer title better than he himself has fully applicable in the present case. Hence, sale deed dated 22nd August, 1966 is nothing except a waste paper and is void *abnito* and does not create any right or title in favour of defendants No. 1 to 3.

(Para 18)

Further held, that when property in dispute stood mutated in favour of the Gram Panchayat, some lessees were inducted in the land by the Collector who are in possession as of now. Neither plaintiff nor defendants are in possession. Hence, there was absolutely no need for the plaintiff to seek consequential relief of possession. In my humble opinion, whosoever is declared owner of the property in dispute shall be entitled to take legal remedy against the persons in possession/alleged lessees in accordance with law. In view of the above, finding recorded by the learned first Appellate Court seems to be correct and justified. Hence, suit is not barred by Section 34 of the Specific Relief Act and is very well maintainable.

(Para 21)

Sanjay Majithia, Sr. Advocate with Shailendra Sharma, Advocate,
for the appellant.

Bhag Singh, Advocate, *for respondents.*

ALOK SINGH, J.

(1) This is the second appeal filed by the plaintiff/appellant against the judgment and decree dated 19th October, 1979 passed by the learned trial Court and further judgment and decree dated 21st September, 1981 passed by the learned first Appellate Court.

(2) The brief facts of the present case are that plaintiffs have filed the suit seeking declaration that the plaintiffs are the owners in possession of 2/3rd share of the suit land and the sale deed dated 22nd August, 1966 executed by defendants No. 4 and 5 in favour of defendants No. 1 to 3 is null and void; defendants No. 4 and 5 were proprietors and biswedars in Village Bakhli, Tehsil Guhla, who sold their entire holding of agricultural land along with all the rights appurtenant thereto and all the rights in patti, Shamlat Thula and Shamlat Deh (Harkishan) to the plaintiffs and the defendants No. 1 to 3 vide two sale deeds dated 8th June, 1959 (Ex. P.3) and 28th June, 1960 (Ex. P4); according to the sale deeds, plaintiffs acquired 2/3rd share while defendants No. 1 to 3 acquired 1/3rd share; having purchased the land through above said sale deeds, title and interest in the Shamlat Deh, Shamlat Thula and Patti divested from the defendants No. 4 and 5 and vested in the plaintiffs and defendants No. 1 to 3; Shamlat Deh was mutated in favour of Gram Panchayat Bakhli when Punjab Act No. 1 of 1954 came in operation but on the enforcement of Punjab Act No. 18 of 1961, the said Shamlat Deh which was mutated in favour of the Gram Panchayat divested from the Gram Panchayat to the extent of 3/4th and re-vested in the whole proprietary body to the extent of 3/4th share under a decree titled as *Bakhtawara versus Gram Panchayat Bakhli*, Suit No. 34 of 1964 decided by the then Sub Judge on 9th February, 1965; defendants No. 4 and 5 again sold their share in this Shamlat Deh and Mastarka Malkan. that is Khewat No. 482 and 427 respectively of Jamabandi 1960-61 to defendants No. 1 to 3 vide sale deed dated 22nd August, 1966 (Ex. P2) illegally. As per plaintiff, since defendants No. 4 and 5 had already sold the property in favour of the plaintiffs and defendants No. 1 to 3, hence subsequent sale deed dated 22nd August, 1966 is void and nullity and does not create any title in favour of defendants No. 1 to 3. The further case of the plaintiff is that plaintiff is in joint possession of the same and plaintiff and defendants are shareholders as per the sale deeds of 1959 and 1960 (*supra*) and defendants No. 1 to 3 did not acquire any right pursuant to the impugned sale deed dated 22nd August, 1966.

(3) Defendants contested the suit on the ground that sale deed in question was executed by defendants No. 4 and 5 on the basis of mutation and after the vesting of the land in the Gram Panchayat and thereafter on re-vesting, sale deed in question was correctly executed in favour of the

defendants No. 1 to 3; the suit is time barred; the suit as framed does not lie and there is no such partition of khewat No. 489, that Civil Court has no jurisdiction.

(4) In the present case, following issues were framed :—

- “1. Whether the sale deed dated 22nd July, 1966 executed by defendants No. 4 and 5 is null and void as alleged ?
2. Whether the suit is maintainable in the present form ?
3. Whether at the time sale deed dated 8th June, 1959 and 28th June, 1960 took place defendants No. 4 and 5 were owners of the shamlat land comprised in Shamlat patti, Shamlat Thulla and Shamlat Deh and if they were not the owners whether any right in the lands of that nature was legally transferred in favour of the appellants and defendants No. 1 to 3.
4. If it is held that defendants No. 4 and 5 were the owners of the shamlat at the time of the two sale deeds whether the shamlat thereafter vested in the Gram Panchayat.
5. If it is held that defendants No. 4 and 5 were the owners of the shamlat at the time of the two sale deeds whether the shamlat thereafter vested in the Gram Panchayat.
6. Whether defendants No. 4 and 5 could take advantage of the judgment in Civil Suit No. 34 of 1964 and whether on the basis of that judgment they became owners of the shamlat ?
7. If defendants No. 4 and 5 could not take advantage of the judgment and decree in civil suit No. 34 of 1964 whether otherwise on account of changes in law they had become owners of shamlat land.
8. If defendants No. 4 and 5 were not the owners in shamlat at the time those sale deeds of 1959 and 1960 were executed and if defendants No. 4 and 5 acquired rights of ownership in the shamlat land on account of the changes in law. Whether the appellants could claim right of ownership by virtue of those two sale deeds assuming that according to those two sale deeds rights of ownership in the shamlat were also transferred.

9. If defendants No. 4 and 5 became owners of the share in shamlat on account of the judgment and decree in civil suit No. 34 whether the plaintiff became owners of that share by virtue of those sale deeds of 1959 and 1960.
10. Whether as a matter of fact in the sale deeds of 1959 and 1960, the rights of ownership held by the defendants No. 4 and 5 in shamlat were actually transferred in favour of the appellants and defendants No. 1 to 3.
11. If the rights were actually transferred in favour of the appellants and defendants No. 1 to 3 whether on reversion of the ownership rights in the shamlat in favour of defendants No. 4 and 5, the said rights would automatically vest in the appellants and defendants No. 1 to 3 on account of the sale deeds of 1959 and 1960, and if the answer to the question is that these would so vest in the appellants and defendants No. 1 to 3 whether defendants No. 4 and 5 had any saleable interest on 22nd August, 1966 in the shamlat land so as to transfer that interest exclusively in favour of defendants No. 1 to 3.
12. Whether the present suit should have been for declaration that the appellants became owners of the shamlat to the extent of shares held or acquired by defendants No. 4 and 5 or the suit in the present form that sale deed dated 22nd August, 1966 is null and void and is maintainable.
13. Whether from the facts disclosed in the plaint, the suit in *prima facie* time barred as alleged ?”

(5) Learned trial Court has held *vide* the judgment dated 18th October, 1965, 3/4th share of the whole shamlat Deh came back to the land owners i.e. defendants No. 4 and 5 and only 1/4th share remained with the Panchayat regarding mutation No. 1595. Any transfer made prior to the vesting and re-vesting has no relevance and after re-vesting in favour of the defendants No. 4 and 5, plaintiffs are not entitled to seek any benefit of Section 43 of the Transfer of Property Act and sale deed in question is valid. Learned trial Court further held that suit is time barred and further observed that suit is not maintainable in the present form since plaintiff could not prove his possession over the suit land.

(6) On the appeal being filed by the plaintiffs, learned first Appellate Court while discussing the Section 34 of the Specific Relief Act set aside the finding of the learned trial Court on issue No. 2 and has held that suit is very well maintainable in the present form without seeking relief for possession, in view of the fact that neither plaintiff nor defendants are in possession and lease holders from Collector from the time land vested in the Gram Panchayat are in possession, hence, there is no need for the plaintiff to seek relief for possession as a consequential relief with the relief of declaration. However, learned first Appellate Court concurred with the finding recorded by the learned trial Court on the question as to whether sale deed in question is null and void.

(7) This Court *vide* order dated 26th April, 2006, formulated following substantial questions of law :—

- “1. Whether the provisions of Section 43 of the Transfer of Property Act are attracted to the present case ?
2. Whether the rights in shamlat deh are accessory to the land held by proprietor in the village ?
3. Whether the shamlat land would be deemed to vest in the proprietors, notwithstanding the fact that it was mutated in the name of the Panchayat for an intervening period on account of provisions of a statute ?”

(8) I have heard learned Counsel for the parties and perused the record.

(9) Undisputedly, sale deeds dated 8th June, 1959 (Ex. P3) and 28th June, 1960 (Ex. P4) were executed by defendants No. 4 and 5 in favour of the plaintiffs and defendants No. 1 to 3 and by virtue of both the sale deeds, plaintiffs acquired 2/3rd share and defendants No. 1 to 3 acquired 1/3rd share in the property in dispute. Undisputedly, this is not the case of fraud or erroneous representation by the defendants No. 4 and 5 while executing both the sale deeds of the year 1959 and 1960 (*supra*). Hence, in my opinion, the substantial question of law No. 1 framed by this Court on 26th April, 2006 does not arise at all. Both

the Counsel submitted that in fact substantial question Nos. 1, 2 and 3 as formulated by this Court *vide* order dated 26th April, 2006 do not arise in the present case.

(10) Both the Counsel stated that in fact following substantial question of law may be formulated and appeal be decided on following substantial questions of law.

1. Whether defendant Nos. 4 and 5 were competent to execute the sale deed dated 22nd August, 1966 in favour of defendant Nos. 1 to 3, in the peculiar facts and circumstances of the case, they had earlier transferred the land in favour of the plaintiffs and defendants No. 1 to 3 *vide* two sale deeds dated 8th June, 1959 (Ex.P.3) and 28th June, 1960 (Ex.P4), by applying the principles none can transfer title better than he himself has ?
2. Whether the present suit is not maintainable and is barred by Section 34 of Specific Relief Act for non claiming the consequential relief of possession ?

(11) Having heard learned Counsel for the parties and having perused the record, I am satisfied that both these substantial questions of law, as suggested by both the Counsel, require consideration/adjudication. This Court while hearing the second appeal can hear the appeal on the substantial questions of law formulated earlier and shall also decide as to in fact substantial questions of law formulated earlier, arise or not, and can hear appeal on any other substantial questions of law in view of Sub-section (5) of Section 100 C.P.C., which reads as under :—

“100(5). The appeal shall be heard on the question so formulated and the respondent shall, at the hearing of the appeal, be allowed to argue that the case does not involve such question:

Provided that nothing in this sub-section shall be deemed to take away or abridge the power of the Court to hear, for reasons to be recorded, the appeal on any other substantial question of law, not formulated by it, if it is satisfied that the case involves such question.”

(12) In view of the proviso and Sub-section (5) of Section 100 C.P.C., I find that the alleged substantial questions of law formulated by this Court *vide* order dated 26th April, 2006 do not arise at all and this Court can hear the appeal on other two substantial questions of law which are formulated hereinbefore.

(13) Substantial Question No. 1 :

- (1) Whether defendant Nos. 4 and 5 were competent to execute the sale deed dated 22nd August, 1966 in favour of defendant Nos. 1 to 3, in the peculiar facts and circumstances of the case, they had earlier transferred the land in favour of the plaintiffs and defendants No. 1 to 3 *vide* two sale deeds dated 8th June, 1959 (Ex.P.3) and 28th June, 1960 (Ex.P4), by applying the principles none can transfer title better than he himself has ?

(14) Both the Counsel fairly stated that two earlier sale deeds in favour of the plaintiffs and defendants No. 1 to 3 dated 8th June, 1959 (Ex.P.3) and 28th June, 1960 (EX.P4) were executed by defendants No. 4 and 5. It is also not disputed by both the Counsel that by virtue of both the above sale deeds, plaintiff acquired 2/3rd share and defendants No. 1 to 3 acquired 1/3rd share in the property transferred. undisputedly, by virtue of operation of Punjab Act No. 1 of 1954, shamlat Deh land was mutated in favour of the Gram Panchayat and thereafter the enforcement of Punjab Act No. 18 of 1961 pursuant to the decree dated 9th February, 1965, the land was revested upto the 3/4th share in favour of the defendants No. 4 and 5.

(15) According to the learned Counsel for the defendants, since at the time of prior sale deed in favour of the plaintiffs and defendants land stood mutated in favour of the Gram Panchayat, hence, both the earlier sale deeds were non est and after the revesting *vide* judgment dated 9th February, 1965, defendants No. 4 and 5 acquired new rights. Hence, sale deed made by defendants No. 4 and 5 thereafter on 22nd August, 1966 in favour of the defendants No. 1 to 3 is a valid document.

(16) I do not agree with the arguments advanced by learned Counsel for the respondents. Once it is undisputed that original land holders executed the two sale deeds of the year 1959 and 1960 (*supra*) in favour of the plaintiffs and defendants No. 1 to 3, then acquiring any right on the basis of re-vesting would amount to re-vesting of the land in favour of the vendees of original land holders. These are not the new rights created by the statute or decree. These are the rights created in favour of the defendants No. 4 and 5 only on the basis that they were found land holders of the land in question which they had already transferred. Meaning thereby, if by virtue of any Act or decree, land was directed to be vested in favour of the vendors, then it would be deemed, that land is vested in favour of the vendees on the basis of the sale deeds executed by the land holders/vendors in 1959 and 1960 (*supra*).

(17) Leaned Counsel for the plaintiff/appellant has cited judgment of learned Single Judge of this Court in the matter of **Kulwant Singh versus Hardial Singh (1)**. Observations made by the learned Single Judge in the matter of Kulwant Singh (*supra*) in paragraph No. 6 is being reproduced herein as under :—

“Defendant No. 2 (appellant) challenged the judgment and decree of the trial Judge in first appeal. The first appellate Court held that the sale in favour of the plaintiff was prior in time and on the date when second sale was made by the vendor he had no subsisting interest in the disputed property and the sale was invalid. The sale in favour of the plaintiff excluded Shamlat Deh right. If after the sale in favour of the first vendee the Shamlat Deh land had been mutated in favour of the Gram Panchayat and thereafter under Civil Court decree, it was retrieved to the proprietor, the decree did not create any right in favour of the proprietor since before that decree, he had transferred his interest in the Shamlat Deh land to the plaintiff. The finding recorded by the first appellate Court is essentially a finding of fact and calls for no interference and the appeal is devoid of merit.”

(18) In view of the above, I hold that after the first sale of 1959 and 1960 (*supra*), if under the Civil Court decree land was revested to the proprietor, that decree did not create any right in favour of the proprietor since before that decree, he had transferred his interest in the Shamlat Deh land to the vendees of the previous sale deeds. In view of the above, since revesting in favour of the land holder would amount to revesting in favour of the plaintiffs and defendants No. 1 to 3 pursuant to the sale deeds in 1959 and 1960 (*supra*), hence, in 1966, defendants No. 4 and 5 had absolutely no right, authority or title to execute the sale deed in question dated 22nd August, 1966. None can transfer title better than he himself has fully applicable in the present case. Hence, sale deed dated 22nd August, 1966 is nothing except a waste paper and is void ab initio and does not create any right or title in favour of the defendants No. 1 to 3. Accordingly, substantial question No. 1 is answered in favour of the plaintiff/appellant.

(19) Substantial Question No. 2 :

(2) Whether the present suit is not maintainable and is barred by Section 34 of Specific Relief Act for non claiming the consequential relief of possession ?

(20) Learned first Appellate Court while dealing with the issue No. 2 therein has observed as under :—

“The learned Counsel for the appellant assailed the finding of the learned Sub Judge on issue No. 2 that the suit was not maintainable. He contended that the land in dispute was not in possession of the defendants and was in possession of the lease-holders from the Collector and, therefore, the plaintiff could not seek the relief of possession as provided in proviso of Section 34 of the Specific Relief Act. He cited Mt. Imam Bibi versus Abdul Rahman and others, A.I.R. 1936 Lahore 929 wherein it was held that where the defendants are not in possession of the property, the plaintiff cannot ask court for dispossessing the defendants, and, therefore, the suit for mere declaration is not obnoxious to the provisions of Section 42 and can, therefore, be

maintained. The learned Counsel also cited Deo Kuer and others versus Sheo Parsad Singh and others A.I.R. 1966 Supreme Court 359 in which it was held that a suit for declaration of title without further relief of possession was not hit by proviso to Section 42. The learned Counsel for the respondent could not say that the defendants were in possession of the property in dispute, and the suit was not maintainable. He could not support the finding of the learned Sub Judge on the point. There appears force in the argument of the learned Counsel for the appellants. In view of that, the finding of the learned Sub Judge on issue No. 2 is set aside and it is held that the suit was maintainable."

(21) When property in dispute stood mutated in favour of the Gram Panchayat, some lessees were inducted in the land by the Collector who are in possession as of now. Neither plaintiff nor defendants are in possession. Hence, in view of the above, there was absolutely no need for the plaintiff to seek consequential relief of possession. In my humble opinion, whosoever is declared owner of the property in dispute shall be entitled to take legal remedy against the persons in possession/alleged lessees in accordance with law. In view of the above, finding recorded by the learned first Appellate Court seems to be correct and justified. Hence, I hold that suit is not barred by Section 34 of the Specific Relief Act and is very well maintainable. Accordingly, substantial question No. 2 is answered in favour of the plaintiff/appellant.

(22) In view of the findings recorded on both the substantial questions of law, appeal deserves to be allowed.

(23) Hence, the appeal is allowed and the judgment and decree dated 19th October, 1979 and further judgment and decree dated 21st September, 1981 are set aside. Suit of the plaintiff/appellant is decreed with costs throughout.