

A

RAM PYARE

v.

B

RAM NARAIN & OTHERS

February 15, 1985

[O. CHINNAPPA REDDY, AND E. S. VENKATARAMIAH
SABYASACHI MUKHARJI, JJ.]

C

U. P. Zamindari Abolition & Land Reforms Act 1950, ss. 134 and 137—Vendor deposited money to acquire Bhumidari rights—Land sold on representation that he had such rights but before obtaining certificate of Bhumidari rights—Sale—Whether valid—Vendee, whether entitled to invoke s. 43, T.P. Act.

D

Transfer of Property Act, s. 43—Vendor depositing money for acquiring Bhumidari rights over land—Sale Deed executed making erroneous representation that vendor had Bhumidari rights—Certificate of Bhumidari rights issued subsequently—Whether s. 43 applicable.

E

Section 134(1) of the U.P. Zamindari Abolition and Land Reforms Act 1950 provides that if a Sirdar (tenure holder) deposits with the State Government an amount equal to ten times the land revenue payable on the date of application for the land of which he is a Sirdar, he shall be entitled with effect from the date on which the amount has been deposited, to a declaration that he has acquired the rights mentioned in sec. 137 in respect of such land. Sec. 137 as it stood before amendment in 1962 provided that the Sirdar shall become a bhumidhar from the date of grant of a certificate by the Assistant Collector under sub-sec. (1).

F

The vendor Who had Sirdari rights over the disputed land deposited the required amount on 28th Oct. 1961 u/s. 134 of the Act in order to acquire Bhumidari rights over the land. He sold the land to the appellant on the same day while he was granted certificate of Bhumidari rights u/s. 137 of the Act on 30th Oct. 1961. Thereafter, the respondents, sons of the vendor, filed a suit before the Additional Munsiff for cancellation of Sale Deed executed by the vendor on 28th October, 1961. The suit was dismissed and the order was confirmed in first appeal. But, the High Court in second appeal filed by the respondents decreed the suit, holding that the vendor had no right to execute the sale deed on 28th October 1961, since he acquired Bhumidhari rights w.e.f. 30th October 1961 i.e. from the date of grant of Bhumidari Certificate and not from the date of deposit of the amount.

H

Allowing the appeal to this Court,

HELD : (1) Section 43 of the Transfer of Property Act embodies 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 matters not whether the transferor acted fraudulently or innocently in making the representation. 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 s 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 s. 43, however, fraudulent the act of the transfer or might have been. [923 G-H; 924 C-D]

(2) In the instant case, the amount of deposit under sec. 134 of the Act was made on October 28, 1961 and it was on the same day that the sale deed was executed. It is clear that the vendor erroneously represented to the vendee that he was authorised to transfer the property and professed to transfer such property for consideration. The very execution of the sale deed on the same day as the deposit of the requisite amount under sec. 134 is significant enough to establish that the sale deed was the result of an erroneous representation by the Vendor. It is also clear that the respondents who are the sons of the vendor, cannot possibly claim to be transferees in good faith which indeed they do not claim to be. Section 43 of the Transfer of Property Act clearly applies to the situation. However, the conflict of opinion which rose in the Allahabad High Court on the question whether a tenant obtained Bhumidari rights from the date of deposit, the date of declaration or the date of certificate was resolved by the legislature which amended sec. 137(2) in 1962 and substituted the words "from the date on which the amount referred to in s. 134 has been deposited" for the words, "from the date thereof." Unfortunately the amending Act, which in the case of certain amendments provided that the substituted words shall be deemed always to have been so substituted, did not so provide in the case of the amendment of sec. 137(2) of the U.P. Zamindari Abolition Act. The result was that in cases where the amount had been deposited and a certificate obtained on different dates before the coming into force of the 1962 amending Act, the position still was that the tenure holder acquired bhumidari rights with effect only from the date of issuance of the bhumidari certificate. [922 E-H; 921 F-H; 922A]

Ram Sawarup v. Deputy Collector, Consolidation & Ors. I.L.R. 1971 (1) All. 698, approved.

Jumma Masjid v. Kodimaniandra Devlah, AIR 1962 SC 847 = [1962] Supp. 2 S.C.R. 554, *Official Assignee, Madras v. Sampath Naidu* 65 MAD LJ 588 and *Dhani Ram v. Jokhu* Second Appeal NO. 4276 of 1964 [decided by Allahabad High Court referred to.

A CIVIL APPELLATE JURISDICTION : Civil Appeal No. 1994 (N) of 1971.

From the Judgment and Order dated 26. 11. 70 of the High Court of Allahabad in Second Appeal No. 4540 of 1964.

B *O. P. Verma* for the Appellant.

J. M. Khanna and *R. A. Gupta* for the Respondents.

S. N. Kackar appeared as *amicus curiae*.

C The Judgment of the Court was delivered by

D CHINNAPPA REDDY, J. Matbar Mal, who had Sirdari rights over the disputed land, deposited an amount equal to ten times the land revenue payable on the land in order to acquire Bhumidhari rights. This he could do under sec. 134 of the U. P. Zamindari Abolition and Land Reforms Act, 1950 as it then stood. The deposit was made on October 28, 1961. On the same day, Matbar Mal sold the land to the present appellant. On October 30, 1961, a certificate to the effect that he had acquired Bhumidhari rights was issued to Matbar Mal under sec. 137 of the U. P. Zamindari Abolition and Land Reforms Act, 1950. Thereafter the sons of Matbar Mal filed the suit out of which the present appeal arises for cancellation of the deed of sale executed by Matbar Mal on October 28, 1961 in favour of the defendants. The suit was dismissed by the court of the Additional Munsif and the appeal by the plaintiffs was also dismissed by court of the Temporaries Civil & Sessions Judge, Deoria. On second appeal by the plaintiffs, however, a single judge of the High Court of Allahabad allowed the appeal following a Division Bench judgment of the same court in *Dhani Ram v. Jokhu* (Second Appeal No. 4276 of 1964) and decreed the suit. The defendant has preferred this appeal by special leave under Art. 136 of the Constitution.

E

F

G The ground on which the second appeal was allowed by the High Court was that the Sirdar who deposited the requisite amount acquired Bhumidhari rights not from the date of deposit but from the date of the grant of the Bhumidhari certificate, and, therefore, Matbar Mal who executed the sale deed on October 28, 1961 had no right to execute the same on that day as he acquired Bhumidhari rights with effect from October 30, 1961 only, which was the date of the issuance of the Bhumidhari certificate.

H

Before the U. P. Zamindari Abolition and Land Reforms Act, 1950 was amended in 1962, sec. 134 in so far as it is relevant stood as follows:

“134 (1) if a sirdar belonging to the class mentioned in cl. (a) of s. 131 pays or offers to pay to the credit of the State Government an amount equal to ten times the land revenue payable or deemed to be payable on the date of application for the land of which he is the sirdar, he shall, upon an application duly made in that behalf to an Assistant Collector, be entitled, with effect from the date on which the amount has been deposited, to a declaration that he has acquired the rights mentioned in sec. 137 in respect of such land.....”

Section 137 in so far as it is relevant then stood as follows:

“137 (1) If the application has been duly made and the Assistant Collector is satisfied that the applicant is entitled to the declaration mentioned in sec. 134, he shall grant a certificate to that effect.

(2) Upon the grant of the certificate under sub-sec. (1) the sirdar shall from the date thereof—

(a) become and be deemed to be a bhumidhar of the holding or the share in respect of which the certificate has been granted, and (b).....”

There was some conflict of opinion in the Allahabad High Court on the question whether the tenant depositing the amount equivalent to ten times the land revenue and obtaining a Bhumidhari certificate, obtained Bhumidhari rights from the date of deposit, the date of declaration or the date of certificate. The conflict was resolved by the legislature which enacted Act 21 of 1962 which amended sec. 137 of the U. P. Zamindari Abolition Act among other provisions of various other enactments. In sec. 137 sub-sec. 2 of the U. P. Zamindari Abolition Act, for the words “from the date thereof” were substituted the words and figures “from the date on which the amount referred to in sec. 134 has been deposited”. Unfortunately the amending Act, which in the case of certain amendments provided that the substituted words shall be deemed always to have been so substituted, did not so provide in the case of the amendment of sec. 137 (2) of the U. P. Zamindari Abolition

A Act. The result was that in cases where the amount had been deposited and a certificate obtained on different dates before the coming into force of the 1962 amending Act, the position still was that the tenure holder acquired bhumidari rights with effect only from the date of issuance of the bhumidhari certificate. It was so held in *Dhani Ram v. Jokhu* (supra) by a Division Bench of the Allahabad High Court. It was following this decision in Dhani Ram's case that the learned single Judge of the High Court in the present case allowed the second appeal.

B

C The decision in *Dhani Ram v. Jokhu* was approved by another Division Bench of the same court consisting of S. D. Khare and R. B. Misra, JJ in *Ram Swarup vs. Deputy Director, Consolidation and Ors.*⁽¹⁾ In the latter case the learned judges expressed the further opinion that in a situation like the one before them, there was no reason why recourse should not be had to sec. 43 of the Transfer of Property Act to feed the title as it were, if the necessary conditions were fulfilled. We agree with the reasoning of the learned judges in *Ram Swarup v. Deputy Director, Consolidation* (supra). In that case, the matter was remanded to the Deputy Director of Consolidation to consider the question of the applicability of sec. 43 of the Transfer of Property Act and proceed to dispose of the matter in accordance with law. In the present case, the facts speak for themselves and we do not think that it is necessary to remand the case to the lower courts for a decision on the question of the applicability of sec. 43 of the Transfer of Property Act. The amount of deposit under sec. 134 of the U. P. Zamindari Abolition Act was made on October 28, 1961 and it was on the same day that the sale deed was executed by Matbar Mal. It is clear that Matbar Mal erroneously represented to the vendee that he was authorised to transfer the property and professed to transfer such property for consideration. The very execution of the sale deed on the same day as the deposit of the requisite amount under sec 134 is significant enough to establish that the sale deed was the result of an erroneous representation by Matbar Mal. It is also clear that the present plaintiffs who are the sons of the vender, Matbar Mal cannot possibly claim to be transferees in good faith which indeed they do not claim to be. Section 43 clearly applies to the situation. The learned counsel for the respondents however attempted to disclaim the applicability of sec. 43 of the Transfer of Property Act by referring to *Jumma Masjid v. Kodimaniandra Deviah* ⁽²⁾. He

1. ILR 1971 (I) ALL. 698.

2. AIR 1962 SC 847=[1962] SUPP 2 S.C.R. 554.

invited our attention to the following observations of the learned judges:

“Now the compelling reason urged by the appellant for reading a further exception in sec. 43 is that if it is construed as applicable to transfers by persons who have only spes successionis at the date of transfer, it would have the effect of nullifying sec. 6 (a). But sec. 6 (a) and S. 43 relate to two different subjects and there is no necessary conflict between them. Sec 6 (a) deals with certain kinds of interests in property mentioned therein, and prohibits a transfer simpliciter of those interests. Sec. 43 deals with representations as to title made by a transferer who had no title at the time of transfer, and provides that the transfer shall fasten itself on the title which the transferer subsequently acquires. Section 6 (a) enacts a rule of substantive law, while s. 43 enacts a rule of estoppel which is one of evidence. The two provisions operate on different fields, and under different conditions, and we see no ground for reading a conflict between them or for cutting down the ambit of the one by reference to the other. In our opinion, both of them can be given full effect on their own terms, in their respective spheres. To hold that transfers by persons who have only a spes successionis at the date of transfer are not within the protection afforded by s. 43 would destroy its utility to a large extent.”

We are unable to see in what manner these observations can possibly assist the respondents. In the same decision, it has been observed later, referring to the decision of the Madras High Court in *Official Assignee, Madras v. Sanpath Naidu*(¹).

“This reasoning is open to the criticism that it ignores the principle underlying s. 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 transferer 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 words of s. 43 were,

(1) 65 Mad, LJ, 588.

- A "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 no whether the transferer acted fraudulently or innocently in making the representation, and that what is material is that he did
- B make a representation and the transferer has acted on it. where the transferee knew as a fact that the transferer 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 s. 6 (a). But where the transferee does act
- C on the representation, there is no reason why he should not have the benefit of the equitable doctrine embodied in s. 43, however, fraudulent the act of the transferer might have been."

- D In the circumstances of the present case, we have no doubt that the provisions of sec. 43 of the Transfer of Property Act are clearly attracted and that is sufficient to non-suit the plaintiffs. The appeal is, therefore, allowed with costs. The judgment of the High Court is set aside and that of the lower appellate court restored. Shri S. N. Kacker, Senior Advocate, was kind enough to assist us as amicus curiae. We are grateful to him for his assistance.

M.L.A.

Appeal allowed.