
to the agreement to sell, and claiming to be joint owner of the subject-matter of the suit, is not entitled to be impleaded as a defendant. He is neither a necessary nor a proper party and we fully agree in this view and answer the question posed at the threshold in the negative. We further hold that the decisions in *Gurdev Singh and another v. Paras Ram and another*, (21) and *Atul Sharma v. Gurvinder Singh and others*, (22), do not lay down the correct law and are overruled. No costs.

H.S.B.

Before R. N. Mittal, J.

PIARA SINGH,—Appellant.

versus

JAGTAR SINGH AND ANOTHER,—Respondents.

Regular First Appeal No. 1817 of 1978

August 6, 1986.

Foreign Exchange Regulation Act (XLVI of 1973)—Sections 31(1) and 63—Foreign national acquiring commercial property in India with foreign exchange—Prior permission of the Reserve Bank of India not obtained by such vendee prior to purchase as required by Section 31(1)—Contravention of Section 31(1)—Whether makes transaction void—Property so bought—Whether liable to confiscation.

Held, that Section 31(1) of the Foreign Exchange Regulation Act, 1973, provides that without the previous permission of the Reserve Bank of India a person who is not a citizen of India, cannot acquire property, but it does not provide that if someone purchases any property the title therein does not pass to him. What the Act provides is that if a person contravenes Section 31 and some other sections, he can be penalized under Section 50 and can also be prosecuted under Section 56. However, there is no provision in the Act which makes a transaction void or says that no title in the property passes to the purchaser in case there is contravention of the provisions of sub section (1) of Section 31. Section 63 contains a provision regarding confiscation of certain properties but it does not contain any provision for confiscation if there is breach of the provision of sub-section (1) of Section 31. Therefore, it has to be held

(21) 1985 P.L.J. 315.

(22) 1985 R.L.R. 226.

Piara Singh v. Jagtar Singh and anothe.

that property purchased in contravention of Section 31 is not liable to confiscation.

Regular First Appeal from the decree of the Court of the Judge 1st Class, Chandigarh, dated the 26th day of October, 1978, passing a decree for the recovery of possession of the first and second floor of the premises in dispute in favour of the plaintiffs and against the defendant and also passing a decree for the recovery of Rs. 14,000 in favour of the plaintiffs and against the defendant with costs of the suit.

Application under Order 41 rule 27 read with Section 151 C.P.C. praying that the application may kindly be allowed and the photostat copy of the sanction obtained under Section 31(1) Foreign Exchange Regulation Act 1973 be ordered to be brought on the record of the case.

Application under Section 151 C.P.C. praying that the application may kindly be allowed and filing of original document be dispensed with.

Anand Swaroop Sr. Advocate (Manoj Sarup with him), for the Appellant.

N. C. Jain, Sr. Advocate (V. K. Jain, with him),

JUDGMENT

Rajendra Nath Mittal, J.:

(1) This judgment will dispose of R.F.A. No. 1817 of 1978, R.S.A. No. 1210 of 1982 and Civil Miscellaneous Applications Nos. 885-CI and 886-CI of 1986.

(2) The facts as given in R.F.A. No. 1817 of 1978 are that Piara Singh was the owner of shop-cum-flat No. 21, Sector 26, Grain Market, Chandigarh. The plaintiffs purchased the said Flat from him for a consideration of Rs. 75,000 on 22nd November, 1971. It is alleged that the defendant delivered possession of the ground floor to them on the same day which was let out by them to one Gulshan Rai Sapra. However, the defendant could not give vacant possession of the first and second floors of the building to them and consequently he agreed to pay the rent at the rate of Rs. 400 per mensem to them. They filed an eviction petition against the defendant regarding first and second floors of the building in which

the defendant took a plea that there existed no relationship of landlord and tenant between the parties and that he was a trespasser in the building. Consequently, they filed a suit for possession of the first and second floors of the building and for recovery of Rs. 14,000 as damages for use and occupation with effect from 1st July, 1973 till 30th June, 1976 at the rate of Rs. 400 per mensem.

(3) The suit was contested by the defendant, who, *inter alia*, pleaded that the property was in fact sold by him for a consideration of Rs. 1,50,000 to the plaintiffs but the sale deed was got executed in favour of the plaintiffs for a consideration of Rs. 75,000, as they had no money to pay the balance amount. The plaintiffs' father Prem Singh had agreed to pay balance amount of Rs. 75,000 within a year and for that purpose he executed a document, dated 25th November, 1971. It is further averred that their father agreed that if the remaining amount was not paid within the stipulated period, the sale deed would stand cancelled. The defendant further took a plea that the sale consideration had been brought to India by the father of the plaintiffs in contravention of Foreign Exchange Regulation Act and, therefore, the sale was void. Some other pleas were also taken but they do not survive in the appeal.

(4) The learned trial Court held that whole of the building was sold by the defendant to the plaintiffs for a consideration of Rs. 75,000 and the document alleged to have been executed by the father of the plaintiffs in favour of the defendant agreeing to pay Rs. 75,000 more to him within one year and that if that amount was not paid within the stipulated period, the sale deed would stand cancelled, was not satisfactorily proved. It further held that no breach of Foreign Exchange Regulation Act (referred to as the Act) had been established. The other pleas taken by the defendant were also rejected. Consequently, it decreed the suit for possession of the first and second floors of the building and for recovery of Rs. 14,000. The defendant has come up in appeal to this Court.

(5) Mr. Anand Swaroop, learned counsel for the appellant, has argued that the sale consideration of the building was Rs. 1,50,000 and not Rs. 75,000. Prem Singh, father of the plaintiffs had agreed by a separate agreement to pay the amount of Rs. 75,000 within a period of one year and in case he failed to do so, the sale deed would stand cancelled, and he would be entitled to retain

Piara Singh v. Jagtar Singh and another (R. N. Mittal, J.)

possession of the building. He further submits that the agreement mark 'A' has been duly proved and from the document the above facts stand established.

(6) I have duly considered the argument but do not find any substance therein. The sale deed was executed by the defendant in favour of the respondents on 22nd November, 1971, wherein the sale consideration is mentioned as Rs. 75,000. The whole of the consideration was paid by Prem Singh on behalf of the plaintiffs to the defendant in the presence of the Sub-Registrar. There is no mention in the sale deed that the sale consideration was Rs. 1,50,000 out of which Rs. 75,000 had been paid and the balance would be paid subsequently. In case there had been such an agreement, between the parties, as stated by Mr. Anand Swaroop, there was no reason as to why that was not mentioned in the sale deed. It is well settled that after the execution and registration of a sale deed, the title of the property passes on to the purchaser. Therefore, as soon as the sale deed was executed and registered, the title in the building passed on to the plaintiffs.

(7) There is doubt about the genuineness of the document mark 'A'. It is alleged to have been executed by Prem Singh on the same day on which the sale deed was executed. The said document, however, bears the date as 25th November, 1971 and not 22nd November, 1971, the date of execution of the sale deed. Thus the version of the defendant regarding the date of the execution of the document is falsified. Moreover the execution of the document is not properly established. Prem Singh does not admit its execution. V. K. Sharma was its solitary attesting witness but for the reasons best known to the defendant he has not been examined. His non-production supports the version of the plaintiffs that it was never executed by Prem Singh. The defendant produced Shri Shanti Sarup, Handwriting Expert, D.W. 5 to prove the document. The learned trial Court did not rely on his testimony and in my view rightly. It is well settled that the science of handwriting is not a perfect science. Therefore, evidence of a handwriting expert is received with great caution. Moreover Shri Shanti Saroop Jain admitted that there were variations in the admitted signature and the disputed ones, and that the hand of the writer was not a set hand. In this situation the statement of a Handwriting Expert cannot be of much assistance. It is also relevant to point out that the stamp paper was not purchased by

Prem Singh. It has not been brought on the record as to who purchased the stamp paper. In the circumstances it cannot be held that mark 'A' was executed by Prem Singh.

(8) Even if, it may be assumed that the document was executed by him, he had no right to do so as he had no power of attorney from the plaintiffs on the date when the document is alleged to have been executed. The power of attorney was given to him by Kuldip Singh on 31st March, 1975 and by Jagtar Singh on 21st December, 1975. Thus the defendant-appellant also does not get any rights under the document. For the aforesaid reasons, I reject the submission of Mr. Anand Swaroop and affirm the finding of the trial Court.

(9) The next argument of Mr. Anand Swaroop is that the transfer of the property in favour of the plaintiffs is invalid under sub-section (1) of section 31 of the Act, and therefore, they are not entitled to obtain its possession.

(10) I have given my thoughtful consideration to the argument but do not find any merit in it. In order to decide the matter, it is necessary to read relevant portion of the said sub-section (1) of section 31 of the Act which is as follows :—

31(1).

“No person who is not a citizen of India and no company (other than a banking company) which is not incorporated under any law in force in India or in which the non-resident interest is more than forty per cent, shall, except with the previous general or special permission of the Reserve Bank, acquire or hold or transfer or dispose of by sale, mortgage, lease, gift, settlement or otherwise any immovable property situate in India:

Provided that nothing in this sub-section shall apply to the acquisition or transfer of any such immovable property by way of lease for a period not exceeding five years.”

(11) It is true that the section provides that without the previous permission of the Reserve Bank, a person who is not a citizen of India, cannot acquire property, but it does not provide that if

Piara Singh v. Jagtar Singh and another (R. N. Mittal, J.)

some one purchases any property the title therein does not pass to him. What the Act provides is that if a person contravenes sections 31 and some other sections, he can be penalized under section 50 and can also be prosecuted under section 56. However, there is no provision in the Act which makes transaction void or says that no title in the property passes to the purchaser in case there is contravention of the provisions of sub-section (1) of section 31. Section 63 contains a provision regarding confiscation of certain properties but it does not contain any provision for confiscation if there is breach of the provisions of sub-section (1) of Section 31. Therefore, the property purchased in contravention of sub-section (1) of Section 31 is also not liable to confiscation. In the circumstances, it cannot be held that the plaintiffs are not entitled to obtain possession of the property or recover damages for its use and occupation.

(12) The matter may be examined from another angle. Even if the transaction is invalid the plaintiffs have been given a certificate, dated 10th September, 1981 by the Reserve Bank of India exercising its powers under sub-section (1) of Section 31 of the Act. It is stated in the certificate that Jagtar Singh and Kuldip Singh, sons of Prem Singh, 113, Sector 11-A, Chandigarh, are authorised to hold shop-cum-flat 71, Grain Market, Sector 26, Chandigarh, and do business after coming to India for permanent settlement. It is evident from the certificate that the plaintiffs are entitled to hold the said property. Therefore, if there was any illegality in the purchase, the same has been legalized by the Reserve Bank by giving the certificate to them.

(13) The appeal was filed in 1978 whereas the certificate has been issued in 1981. The plaintiffs, therefore, moved Civil Miscellaneous No. 885-CI-1986 under Order 41, Rule 27 and Section 151 of the Code of Civil Procedure praying that the document be taken on the record. It is well settled that a Court in the interest of justice can take into consideration subsequent events. In the above view I am fortified by the observation of the Federal Court in *Lachmeshwar Prasad Shukul and others v. Keshwar Lal Chaudhuri and others*, (1), wherein it was observed that hearing of an appeal under the procedural law of India is in the nature of re-hearing and, therefore, in moulding the relief to be granted in a case on appeal, the appellate Court is entitled to take into account even

(1) A.I.R. 1941 Federal Court 5.

facts and events which have come into existence after the decree appealed against. Consequently, I accept the application, take the certificate on the record and mark it as Exhibit P.A. In Civil Misc. No. 886-C-I of 1986, it is stated that the applicant would produce the original certificate after the application for additional evidence is allowed. Consequently, it is prayed that the filing of the original certificate be dispensed with for the time being. The plaintiffs have since filed the original certificate. Therefore, the civil miscellaneous has become infructuous.

(14) The rate of damages has not been challenged in the appeal before me. Consequently, I do not find any merit in the appeal.

(15) Now I advert to R.S.A. No. 1210 of 1982. The plaintiffs have filed this suit for damages at the rate of 500 per mensem for the period from 1st July, 1976 to 31st July, 1977 regarding the property in dispute. The trial Court decreed the suit for recovery of Rs. 5,200. The appeal by Piara Singh was dismissed by the Additional District Judge. He has come up in second appeal to this Court.

(16) No additional argument has been raised in the appeal by Mr. Anand Swaroop.

(17) For the reasons already mentioned, I do not find merit in this appeal too. Consequently, I dismiss both the appeals with costs.

R. N. R.

Before S. S. Sodhi, J.

MADAN LAL,—*Petitioner.*

versus

MEENA,—*Respondent.*

Civil Revision No. 587 of 1986
July 30, 1986.

Code of Civil Procedure (V of 1908)—Order IX, Rule 13—Hindu Marriage Act (XXV of 1955)—Sections 21 and 24—Ex-parte decree