

It was claimed that the land had been used as a graveyard from time immemorial.

The result, therefore, is that I can see no ground for interference and dismiss the appeal with costs.

Appeal dismissed.

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KHAN
v.
BABU
RAGHONDRAN
PRATAP
SAHI

APPELLATE CIVIL

*Srivastava,
J.*

Before Mr. Justice E. M. Nanavutty

HAR GOVIND PRASAD AND OTHERS (DEFENDANTS-APPELLANTS) v. BABU AMBIKA DUTT RAM (PLAINTIFF-RESPONDENT)*

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February, 8

Transfer of Property Act (IV of 1882), section 41—Essential elements of section 41, Transfer of Property Act—Prior vendee in possession—Subsequent vendee merely inspects revenue records—Inquiry not made in the village—Subsequent vendee not protected by section 41—Burden of proof under section 41 is on transferee.

Section 41 of the Transfer of Property Act makes it necessary for the transferee to prove that his transferor was the ostensible owner with the express or implied consent of the real owner, that the transfer was made for consideration and that the transferee took reasonable care to ascertain the right of his transferor before he entered into the transaction and that he acted in good faith when he entered into that transaction.

Where, therefore, a person purchases property which the vendor had sold to another person long before who was in possession and the new purchaser merely inspects the revenue records but does not make any inquiry in the village in which the property lies he cannot be said to have taken reasonable care to ascertain the right of the transferor and when he fails to prove that his vendor was the ostensible owner with express or implied consent of the real owner the subsequent purchaser is not protected by section 41 of the Transfer of Property Act. *Mubarak-un-nissa Bibi v. Mohammad Raza Khan* (1), referred to.

The burden of proof is always on the transferee to show that he acted in good faith and that his transferor was the ostensible

*Second Civil Appeal No. 41 of 1933, against the decree of Babu Mahabir Prasad, Subordinate Judge of Lucknow, dated the 19th of November, 1932, reversing the decree of Babu Gulab Chand Simal, Munsif of Haveli, Lucknow, dated the 23rd of December, 1931.

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owner with the express or implied consent of the real owner. No entry in the village record-of-rights can supply the place of a title-deed and a transferee who acts on such an entry as evidence of the title of his transferor cannot be held to have discharged that burden. *Muhammad Shujat v. Musammatt Chandanbibi* (1), referred to.

Mr. *Makund Behari Lal*, for the appellants.

Mr. *Hakimuddin Siddiqui*, for the respondent.

NANAVUTTY, J.:—This is a defendants' appeal from a judgment of the learned Subordinate Judge of Lucknow reversing the judgment and decree of the Munsif of Havali, Lucknow, and decreeing the plaintiff's suit with costs of both courts.

The facts out of which this appeal arises are briefly as follows: Ratan Lal and Sangam Lal were original owners of the under-proprietary land in suit in Mahal Indarnagar in village Para in the district of Lucknow. They were also owners of a four annas zamindari share in the same village. On the 10th of November, 1900, Ratan Lal and Sangam Lal transferred their four annas zamindari share to the late Rai Sri Ram Bahadur. By another sale-deed of the same date they transferred their four annas share of the under-proprietary land in suit to Babu Sitapat Ram. By a will dated the 21st of May, 1911, Rai Sri Ram Bahadur gifted the under-proprietary land in suit to his son Babu Ramapat Ram. Babu Ramapat Ram, Babu Sitapat Ram, and Rai Sri Ram Bahadur are all dead and the plaintiff in the present suit, Babu Ambika Datt Ram, is the son of Babu Ramapat Ram and claims to be the owner of the under-proprietary land. On the 28th of April, 1927, Ram Dayal, the original defendant in the present suit, purchased the under-proprietary land from Ratan Lal for a sum of Rs.600. Sangam Lal died some years ago leaving a grandson, Brij Lal. After the death of Sangam Lal the under-proprietary land in suit was recorded in the name of Brij Lal alone. Ratan Lal's name was entered in the revenue papers along with

that of Sangam Lal before the latter's death, but after that his name was somehow omitted from the revenue papers. Ratan Lal therefore applied for correction of papers and his application was to the effect that there had been a partition between him and his brother before the death of Sangam Lal and that this under-proprietary land had fallen to his share, and he therefore prayed that Brij Lal's name be removed and his name alone be entered in the revenue papers. His application was granted on the 2nd of October, 1926, and on the 28th of April, 1927, he sold this under-proprietary land to Ram Dayal. Ram Dayal sued in 1927 for arrears of rent and his suit was decreed and then plaintiff Babu Ambika Datt Ram filed the present suit on the 11th of June, 1930, for recovery of possession. Ram Dayal died in the course of the present litigation and his sons Hargobind Prasad, Gaya Prasad and Salig Ram are now the appellants before me.

Amongst the other pleas raised by Ram Dayal in his written statement there was one plea that he was a *bona fide* purchaser for valuable consideration given. This plea was accepted by the trial court and the plaintiff's suit was dismissed. It was, however, rejected by the lower appellate court and the plaintiff's suit was decreed. The defendants have now come in second appeal.

The sole point for determination in the present appeal is whether Ram Dayal was a *bona fide* purchaser for valuable consideration. The learned counsel for the defendants-appellants has argued on the strength of the ruling reported in *Mubarak-un-nissa Bibi and another v. Mohammad Raza Khan and others* (1) that Ram Dayal was, in fact, a *bona fide* purchaser for valuable consideration and that he was protected by section 41 of the Transfer of Property Act. In my opinion there is no force in this contention, and it was rightly overruled by the learned Subordinate Judge of

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acknow. Section 41 of the Transfer of Property Act runs as follows:

“Where *with the consent, express or implied, of the person interested in immovable property* a person is the ostensible owner of such property and transfers the same for consideration, the transfer shall not be voidable on the ground that the transferor was not authorized to make it: provided that the transferee after taking reasonable care to ascertain that the transferor had power to make the transfer has acted in good faith.”

This section, therefore, makes it necessary for the transferee to prove:—

First, that his transferor was the ostensible owner *with the express or implied consent of the real owner*

Second, that the transfer was made for consideration, and

Third, that the transferee took reasonable care to ascertain the right of his transferor before he entered into the transaction and that he acted in good faith, when he entered into that transaction.

Now, the facts of this case clearly do not support the contention of the appellants. The plaintiff bases his title on the sale-deed of the 10th of November, 1900, executed by Ratan Lal and Sangam Lal in favour of Rai Sri Ram Bahadur. Rai Sri Ram Bahadur gifted this property under a will to Babu Ramapat Ram and plaintiff is the son of Babu Ramapat Ram. Rai Sri Ram Bahadur applied for mutation of names on the basis of this sale-deed of 1900, but he only put in one application for mutation of names and as it so happened that the under-proprietary tenure covered by the sale-deed of 1900 was situated in three mahals, namely Mahal Dibba, Mahal Indarnarain, and Mahal Baldeva in village Para, so the Registrar Kanungo actually effected mutation only of the under-proprietary land in Mahal Dibba, and the under-proprietary tenure

in Mahal Indarnarain which constituted the land in suit in the present case, accidentally remained as held by Ratan Lal and Sangam Lal in the revenue papers. But although no mutation was effected in favour of Rai Sri Ram Bahadur owing to this mistake on the part of the revenue authorities, Rai Sri Ram Bahadur and after him his son Babu Ramapat Ram and after the latter Babu Ambika Datt Ram remained in actual possession of the under-proprietary land in suit. The under-proprietary land includes grove land and khudkasht land and these were in actual cultivation of the plaintiff's uncle Sitapat Ram. Ram Dayal, who purchased this very same under-proprietary land in 1927, could very easily have known these facts had he cared to make inquiries in the village. In fact the sale-deed of 1927 in favour of Ram Dayal itself makes it clear that the vendor Ratan Lal was not in actual possession of the land which he sold, for the sale-deed gives the purchaser the right to sue for profits of the three previous years in respect of the land sold by that sale-deed. In these circumstances it cannot be said that the transferee Ram Dayal has succeeded in proving that his transferor Ratan Lal was the ostensible owner with the express or implied consent of the real owner Rai Sri Ram Bahadur and his son and grandson who is the present plaintiff. The burden of proof is always on the transferee to show that he acted in good faith and that his transferor was the ostensible owner with the express or implied consent of the real owner. No entry in the village record-of-rights can supply the place of a title-deed and a transferee who acts on such an entry as evidence of the title of his transferor cannot be held to have discharged that burden. See *Muhammad Shujat v. Musammatt Chandanbibi* (1). Section 41 of the Transfer of Property Act also lays down that the transferee must take *reasonable care* to ascertain that the transferor had power to make the transfer. In the present case I am

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(1) (1926) 97 I.C., 988.

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of opinion that the transferee did not take such reasonable care. Had he made inquiries in village Para before purchasing the property he would at once have come to know that Ratan Lal had long ago sold this very same under-proprietary land to Rai Sri Ram Bahadur and that he had no interest left in the property at all which he could transfer to Ram Dayal. Mere inspection of the revenue papers by the transferee is not enough.

In the present case Ram Dayal was the son of Mohan Lal, the Patwari of village Para, and he himself was in the service of the father of Sangam Lal and all the circumstances of the case seem to me to point clearly to the fact that he could not have been so easily duped by Ratan Lal as he tries to make out in the present case. Had Ram Dayal cared to see the application for mutation of names presented by Rai Sri Ram Bahadur and the order passed on that application he would not have fallen into the error of purchasing property belonging to another man from his vendor Ratan Lal. The ruling of the Allahabad High Court cited by the learned counsel for the appellants in *Mubarak-un-nissa Bibi v. Muhammad Raza Khan* (1), does not seem to me to apply to the facts of the present case, and the learned counsel for the appellant frankly admits that he could not find in the decided rulings of the various High Courts any case the facts of which were analogous to those of the present case.

In my opinion the learned Subordinate Judge has arrived at a very just and fair conclusion and has rightly held that section 41 of the Transfer of Property Act cannot help the contention of the defendants.

The appeal therefore fails and is dismissed with costs.

Appeal dismissed.

(1) (1924) I.L.R., 46 All., 377.