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SALIG RAM-
BHAGAT RAM
v.
KISHAN SINGH-
SANT RAM.

We accordingly accept the appeal, set aside the order of the learned Judge of this Court as well as that of the trial Judge and dismiss the application. In view of the peculiar circumstances of the case, however, we leave the parties to bear their own costs throughout.

A. N. K.

Appeal accepted.

APPELLATE CIVIL.

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June 21.

Before Addison Acting C. J. and Din Mohammad J.

JALAL DIN AND ANOTHER (DEFENDANTS) Appellants,
versus
HUKAM CHAND (PLAINTIFF) Respondent.

Regular First Appeal No. 31 of 1938.

Punjab Alienation of Land Act (XIII of 1900), SS. 3, 6, 9, 14, 21-A — Alienation of land by an agriculturist to a non-agriculturist — without sanction of Deputy Commissioner — Legal effect thereof — Provisions of S. 14 explained — Contract — whether void under S. 65 of the Indian Contract Act (IX of 1872) — Alienee whether entitled to sue for refund of money.

The plaintiff purchased some land from J. by a sale-deed which was registered against the provisions of s. 17 of the Punjab Alienation of Land Act as both the vendor and the vendee knew that the vendee was a non-agriculturist and could not, therefore, purchase land from the vendor who was an agriculturist. The vendor having moved the proper authorities in the matter, the Deputy Commissioner purporting to act under s. 14 of the Act converted the sale into a usufructuary mortgage for 20 years as provided by s. 6 (a) of the Act. The plaintiff instituted the present suit claiming refund of the sale price on the ground that, the contract being void, the vendor was bound to restore the advantage that he had received under the transaction. The trial Court granted him a decree for Rs.5,000 odd giving him at the same time a lien on the land for that amount.

Held, that such a permanent alienation, as is involved in the present case, is not void. If sanction of the Deputy Commissioner has not given in advance, it takes effect under the law as a usufructuary mortgage under s. 6 (a) of the Act. If later, the Deputy Commissioner sanctions the sale, it becomes an out and out sale. If he does not, it continues as a usufructuary mortgage in the terms permitted by s. 6 (a) of the Act, the longest period of possession for the automatic redemption of the mortgage being 20 years. An alienee, entering into such a transaction comes under the terms of the Act and is bound by it, his sale compulsorily becoming a usufructuary mortgage as provided by s. 6 (a) of the Act. He cannot avoid the law by stating that he resiles from the transaction when sanction of the Deputy Commissioner is refused.

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Held also, that s. 65 of the Indian Contract Act did not apply as the present transaction had not become void and the plaintiff, therefore, was not entitled to sue for refund of money.

Bahadur v. Mohammad Din (1), dissented from.

Held further, that such a lien as the trial Court allowed in the present case offended against the provisions of the Punjab Alienation of Land Act, inasmuch as it created an indefinite mortgage of the land for the amount of the purchase money together with the value of the improvements.

Ghulam Muhammad v. Ali Bakhsh (2), dissented from.

Deputy Commissioner, Gujrat, v. Allah Dad (3), approved.

First appeal from the decree of Lala Sansar Chand Bhandari, Subordinate Judge, 1st Class, Gujrat, dated 10th November, 1937, granting the plaintiff a decree.

M. M. ASLAM KHAN and BASHIR AHMAD, for Appellants.

BISHAN NARAIN, A. N. KHANNA and M. L. PURI, for Respondent.

(1) 1934 A. I. R. (Lah.) 979.

(2) 1930 A. I. R. (Lah.) 331.

(3) 1937 A. I. R. (Lah.) 408.

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The judgment of the Court was delivered by—

ADDISON, ACTING C. J.—The plaintiff, Hukam Chand, purchased from Jallu, defendant 1, some land by a deed, dated the 3rd July, 1922, and more land by a deed, dated the 10th July, 1924, for Rs.2,000 and Rs.1,500, respectively, these deeds being registered on the dates of their execution, although this was against the provisions of section 17 of the Punjab Alienation of Land Act. It has been correctly found by the trial Court that both the vendor and the vendee knew that the vendee was a non-agriculturist and could not, therefore, purchase land from the vendor who was an agriculturist. Later, defendant 2 acquired an interest in the land and he was added as a defendant.

Some time later, namely, on the 17th May, 1933, the vendor moved the Deputy Commissioner of Gujrat to revoke the mutations sanctioning the transfers. This he refused to do and defendant 1 carried the matter to the Financial Commissioners. The revision before them was accepted on the 3rd August, 1934, and the Deputy Commissioner was ordered under the provisions of section 3 (3) of the Punjab Alienation of Land Act to inquire into the circumstances of the alienation and either to sanction the sales or refuse sanction. In the latter case it was the duty of the Deputy Commissioner, under the provisions of section 14, to convert the sales into usufructuary mortgages in form (a) permitted by section 6 for such term not exceeding 20 years and on such conditions as the Deputy Commissioner considered to be reasonable. Accordingly the Deputy Commissioner refused to sanction the sales and converted them into usufructuary mortgages for the full term of 20 years permitted.

Thereafter, the plaintiff instituted the present suit for a declaration that he was the absolute owner of the land in question owing to his adverse possession for more than 12 years and in the alternative he sued for the refund of Rs.8,000 as the sale consideration, together with the cost of improvements effected by him. Various pleas were raised in defence. The trial Judge held that there was no question of adverse possession, but he considered that the plaintiff was entitled to a decree for refund of the purchase money, Rs.3,500, together with the cost of improvements effected to the value of Rs.2,170, total Rs.5,670, and he granted the plaintiff a decree for that amount with costs against the defendants, at the same time giving the plaintiff a lien on the land for that amount. Against this decision the defendants have appealed and the Deputy Commissioner has put in a revision petition under section 21-A of the Punjab Alienation of Land Act, on the ground that the effect of the decree was to contravene the provisions of the Punjab Alienation of Land Act, inasmuch as a lien on the land to the extent of the decretal amount had been ordered for an unspecified period, which was against the provisions of the Act.

Under section 3 of the Act a person is at liberty to make a permanent alienation of his land if he is a member of an agricultural tribe, as the vendor here is, only to a person who is a member of the same tribe or of a tribe in the same group. In the present case, the plaintiff vendee is not a member of an agricultural tribe at all. Where such a sale as the present is effected, it is enacted by section 3 (2) that such a permanent alienation of land shall not take effect as such unless and until sanction is given thereto by a Deputy Commissioner, and it is further provided that such

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sanction may be given after the act of alienation. By section 3 (3) the Deputy Commissioner has full discretion to grant or refuse sanction.

Then comes section 14 which provides that, in the case of such a permanent alienation as the present, which under section 3 is not to take effect as such until the sanction of a Deputy Commissioner is given thereto, it *shall*, until such sanction is given or if such sanction has been refused, take effect as a usufructuary mortgage in form (a) permitted by section 6 for such term not exceeding twenty years and on such conditions as the Deputy Commissioner considers to be reasonable. The words are mandatory and the alienation shall take effect immediately as a usufructuary mortgage in form (a) permitted by section 6 and also takes effect in the same form if such sanction has been refused. In the present case, therefore, *ab initio* the alienation took effect as a usufructuary mortgage under the law and when later sanction was refused, it continued as a usufructuary mortgage under the law in form (a) permitted by section 6, the Deputy Commissioner in the present case allowing the full term of 20 years.

The form of usufructuary mortgage provided for by section 6 (a) is that by which the whole mortgage is automatically redeemed without payment of any sum of money at the expiry of the term fixed by the Deputy Commissioner or which is agreed upon in the first instance. There are other forms of mortgage provided for in section 6, but these we are not concerned with.

Section 9 further enacts that if a member of an agricultural tribe makes a mortgage of his land in any manner or form not permitted under the Act, the

Deputy Commissioner has authority to revise and alter the terms of the mortgage so as to bring it into accordance with such form of mortgage permitted by the Act as the mortgagee appears to him to be equitably entitled to claim. This section is only mentioned to show that the Deputy Commissioner has again full power to alter a mortgage and must do so.

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Lastly, section 21 of the Act runs as follows:—

21 (1): “ A Civil Court shall not have jurisdiction in any matter which the Provincial Government or a Revenue Officer is empowered by this Act to dispose of.”

21 (2): “ No Civil Court shall take cognisance of the manner in which the Provincial Government or any Revenue Officer exercises any power vested in it or in him by or under this Act.”

It is clear from this section that no Civil Court shall take cognisance of the manner in which the Provincial Government or any Revenue Officer exercises any power vested in it or in him by or under this Act.

It follows from the provisions of the Act that when such a permanent alienation, as is involved in the present case, is effected, it is not void. If sanction of the Deputy Commissioner has not been given in advance, it takes effect under the law as a usufructuary mortgage permitted under section 6 (a) of the Act. If later the Deputy Commissioner sanctions the sale, it becomes an out-and-out sale. If he does not, it continues as a usufructuary mortgage in the terms permitted by section 6 (a) of the Act, the longest period of possession for the automatic redemption of the mortgage being 20 years. If an alienee enters into such a transaction, he comes under the terms of the

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Act and is bound by it. His sale compulsorily becomes a usufructuary mortgage as permitted by section 6 (a) of the Act. That is the law and he cannot avoid the law by stating that he resiles from the transaction when permission of the Deputy Commissioner is refused.

There is no question of the application of section 65 of the Contract Act. That section is to the effect that when an agreement is discovered to be void or when a contract becomes void, any person who has received any advantage under such agreement or contract is bound to restore it or to make compensation for it to the person from whom he received it. The present transaction has not become void. Under the law it automatically becomes a usufructuary mortgage for such term, not exceeding 20 years, as the Deputy Commissioner fixes. It is obvious, therefore, that section 65 of the Contract Act does not apply and that the plaintiff is not entitled to sue for refund of the money. In this respect we do not agree with the Single Judge decision, *Bahadur v. Mohammad Din* (1). Nor are we in agreement with another Single Judge decision, *Ghulam Muhammad v. Ali Baksh* (2), which held that such a lien as the trial Judge allowed in the present case was not in contravention of the Punjab Alienation of Land Act. *Ghulam Dastgir v. Nur Ali* (3) is not in point, the provisions of the Punjab Colonization of Government Lands Act being entirely different from those of the Punjab Alienation of Land Act. That case, therefore, does not help towards the decision of the present case. The correct position appears to have been laid down in *Deputy Commissioner, Gujrat v. Allah Dad* (4).

(1) 1934 A. I. R. (Lah.) 979.

(3) 1935 A. I. R. (Lah.) 401.

(2) 1930 A. I. R. (Lah.) 331.

(4) 1937 A. I. R. (Lah.) 408.

It was not contended before us that the possession of the vendee was adverse and obviously from the provisions of the Act already quoted, there could be no question of adverse possession, the transaction taking effect as a usufructuary mortgage. All that was contended before us was that the transaction could be avoided by the alienee when the Deputy Commissioner refused sanction to the permanent alienation taking effect. It has already been made clear that he has no such option, but that the transaction automatically becomes a usufructuary mortgage in the terms permitted by section 6 (a) of the Act, the maximum period for automatic redemption being one of 20 years.

For the reasons given we accept the appeal and dismiss the plaintiff's suit with costs throughout.

On this decision the revision petition put in by the Deputy Commissioner becomes infructuous and may, therefore, for the present be struck off the register of pending cases. Had it been necessary to decide it, our decision would have been that the decree did offend against the provisions of the Punjab Alienation of Land Act in giving an indefinite mortgage of the land for the amount of the purchase money together with the value of the improvements.

A. K. C.

Appeal accepted.

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