

IN THE HIGH COURT AT CALCUTTA
(CIRCUIT BENCH AT PORT BLAIR)

SAT/10/2024

Anita Singh

Vs

Bimla Lall and others

Mr.KMB Jayapal
Mr. Pradeep Singh

... for the appellant

September 06, 2024

[SR]

Item No. 5

This second appeal arises out of a judgment and decree dated 13.08.2024 passed by the First Appellate Court in Other Appeal No. 4 of 2024 preferred by the appellant herein by and which the judgment and decree of the Trial Court dated 28.12.2023 in Other Suit No. 27 of 2018 has been upheld.

On considering the judgment of the Trial Court, we find that the following issues were framed in the suit which is for specific performance of agreement for sale dated 19th June, 2001.

- “1. *Whether the suit maintainable in its present form and law?*
2. *Whether the plaintiff is entitled to a decree in the form of direction to the defendant nos.1 to 3 to execute and register the sale deed in respect of the suit land in favour of the plaintiff?*
3. *To what other relief or reliefs the plaintiff is entitled?”*

The original vendor had died prior to the institution of the such and as such his legal heirs were impleaded as defendants in the suit. It appears from the judgment and decree of the Trial Court, all the issues except (1) have been decided in favour of the plaintiff being appellant herein. However, the suit was dismissed only on one issue that the land in question sought to be transferred was a land

recorded as Non Occupancy Right (in short 'NOR') in the Record of Rights and as such was not transferable.

The learned Trial Court, after analyzing the evidence led before it, came to the conclusion that land in question is NOR and in view of the provisions of Regulation 159 (8) of the Andaman and Nicobar Islands Land Revenue and Land Reforms Regulations, 1966 (hereinafter referred to as the 1966 Regulation), the same could not be transferred. As a consequence thereof, the learned Trial Court came to the conclusion that no decree for specific performance directing the defendants, can be passed in view of the embargo in transferring such land under the provision of Regulation 159 (8) of the 1966 Regulation.

Before the First Appellate Court, it was argued that the land in question is not recorded as NOR but is with Occupancy Right (in short 'OR') and as such there was no embargo in transferring the land in question. In the alternative, it was argued that the provision of Regulation 159 (8) of the 1966 Regulation is not a mandatory provisions but is directory in nature as no consequence in case of such transfer which would become a void transfer once such provision is considered to be mandatory has been provided in the 1966 Regulation.

Although, the First Appellate Court has not given any detailed independent finding on this argument but have agree with the views of the learned Trial Court as reflected in the judgment and decree dated 28.12.2023. We find that this aspect has been, to some extent, dealt with by the learned Trial Court by considering the provisions of Regulation 151(1)(c) of the 1966 Regulation that a tenant acting in contravention to the rights given to such recorded tenant with regard to NOR land is liable to be evicted.

Under the provisions of Order 14 Rule 1 of the Code of Civil Procedure 1908, (in short 'CPC') there are two classes of issues, namely; (i) issue on facts; and (ii) issues on law.

The issue which fell for consideration before the learned Trial Court in respect of the nature of land had two aspects imbedded therein. The first one is an issue of fact whether the land in question is NOR or OR. The learned Trial Court, after considering the materials before it including the evidence of the Patwari who produced the original record, came to the finding that the land in

question is NOR. Thus, there was a finding on the issue of fact in respect of the nature of the land which led to the legal issue as to whether such land can or could have been transferred.

After considering provisions of Regulation 159 (8) and 151(1)(c) of the 1966 Regulation, the learned Trial Court came to the conclusion that such land cannot be transferred and as such no specific performance of agreement dated 19th June, 2001 wherein an NOR land has been agreed to be transferred can or could be granted. The learned Trial Court thereby dismissed the suit.

Before the learned First Appellate Court, no further materials were produced to disprove the factual issue that the land is not with NOR. Although, it was argued that the land was OR by showing the records of right (ROR) but this aspect has also been considered by the learned Trial Court and on the basis of the evidence, it came to the finding that the land in question therein is NOR. Unless there is any contrary materials being produced before the First Appellate Court to demonstrate the land is OR and not NOR, the First Appellate Court was right in concurring with the finding of the Trial Court on this factual issue. Thus, the two courts have given a concurrent findings that the land in question is NOR. This factual issue cannot be gone into and reopened in the second appeal.

However, the legal issue whether the provisions of Regulation 159(8) of the 1966 Regulation is mandatory or directory in view of the provision of Regulation 151(1)(c) leaves a grey area. Regulation 151(1)(c) gives a right to evict the recorded tenant but it does not indicate that no transfer of a land under category of NOR cannot be transferred. The transfer is as such case can also be construed be an unauthorized transfer giving rise to a right against the recorded tenant for being evicted but does not convincingly hold that the transfer is void. The language of Regulation 159(8) of the 1966 Regulation by using the word “shall” also does not give any indication as to whether such transfer is void or voidable. It only makes a transferor in such a case to be liable to be evicted under regulation 151(1)(c) of the 1966 Regulation.

It is also not clear from the 1966 Regulation whether on a subsequent prayer of a recorded tenant, the land recorded as NOR, can be converted into an OR.

In the aforesaid facts and circumstances, the second appeal is admitted on the following grounds :

- i) Whether the provisions of Regulation 159(8) of the Andaman & Nicobar Islands Land Revenue and Land Reforms Regulations, 1966 is a mandatory provision or directory in nature.
- ii) Is the competent authority empowered to change the nature of a land recorded as NOR to be converted into a land under OR on the prayer of the recorded tenant ?.
- iii) Is an agreement to sale a NOR land voidable or void?

Let the records of the Trial Court be called for. If such records are before the First Appellate Court, then the First Appellate Court shall transmit the records forthwith.

The appellant is directed to prepare sufficient number of informal paper books with legible copy of the documents used before the learned Trial Court, the pleadings and the deposition of witnesses after getting the index of the papers books settled with the respondents.

As the second appeal is at the admission stage and there is no application for stay, the respondent at this stage has no right of audience but will be entitled to seek modification of the issues framed herein or for additional issues being included.

Let a copy of this order be served by the appellant to the respondent.

The Registry of this Circuit Bench is also directed to serve a copy of this order on the respondent.

(Arindam Mukherjee, J.)

(Biswaroop Chowdhury, J.)