

REPORTABLE

IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO. 9040 OF 2013

Aftaruddin (Dead) Rep. Thr. Lrs.Appellant(s)

Vs.

Ramkrishna Datta alias Babul Datta & Ors. ..Respondent(s)

J U D G M E N T

Deepak Gupta, J.

1. Ramkrishna Datta, Dharendra Chandra Ghosh and Lalit Mohan Ghosh, filed a suit in the trial court for declaration of their title on the suit land with consequential relief of permanent injunction for restraining Aftarduddin (contesting defendant & appellant before this Court), who has since expired and is represented by legal heirs, from interfering in the suit land.

2. From the facts as pleaded and proved before the trial court it is apparent that one Sayed Jama Kazi was the raiyat (owner) of the suit land. Aftaruddin was under-raiyat (Kurfa rights similar to tenancy rights). This fact is apparent from the Revenue Record as reported in the Civil Survey of Settlement for the year 1965-66 and in the Revenue Khatiyani No.302 published on 15.03.96. On 11.01.71, Aftaruddin is alleged to have executed a sale deed transferring the entire suit land in favour of Mamataj Begam, daughter of the raiyat Sayed Jama Kazi. Thereafter, Mamataj Begam and Sayed Jama Kazi transferred the suit land to plaintiffs 1 and 2 by registered sale deed on 27.11.71. On 06.04.81 plaintiff no.2 sold and transferred a portion of his land to plaintiff no.3. In the Revenue Record the defendant Aftaruddin was shown to be in possession of the suit land. Therefore, the plaintiffs filed a suit for declaration of their title and prayed for injunction that defendant no.1 be restrained from interfering in the suit land.

3. The suit was contested by Aftaruddin and two contentions were raised: (i) that the sale deed was never executed by him and (ii) that being an under-raiyat he could not transfer his rights to any person in view of the bar created by Section 108 of the Tripura Land Revenue and Land Reforms Act, 1960 (for short the 'TLR&LR Act'). The original sale deed was not produced on the ground that the same was destroyed in fire but a certified copy of the same was produced. The trial court held that though the sale deed had been executed, Aftaruddin could not have transferred his rights in the suit land and, therefore, dismissed the suit. The First Appeal filed was also dismissed. In the Second Appeal this concurrent finding of fact was set aside on the ground that it was a perverse finding. It was held by the High Court that in the sale deed Aftaruddin has represented himself to be a raiyat and not an under-raiyat and, therefore, Section 108 of TLR&LR Act had no application. The High Court also found that in terms of Section 43 of the Transfer of Property Act the subsequent vendee could not be denied their rights.

4. We have heard learned counsel for the appellant. A “raiyat” has been defined in Section 2(s) of the TLR&LR Act to mean a person who owns land for purposes of agriculture, paying land revenue to the Government; and “under-raiyat” under Section 2(v) means a person who cultivates or holds the land of raiyat under an agreement, express or implied, on condition of paying therefor rent in cash or in kind or delivering a share of the produce and includes a bargadar, i.e. a person who cultivates the land of any person on a condition of delivering a share of the produce to the land owner or raiyat.

5. Section 108 of TLR&LR Act reads as follows :-

“108. (1) The interest of under-raiyat in any land held by him as such shall be heritable but, save as otherwise provided in this Act, shall not be transferable.

(2) No under-raiyat shall be evicted from his land except as provided in this Act.”

A bare reading of the aforesaid provision makes it absolutely clear that an under-raiyat is prohibited from transferring his

interest as under-raiyat in any land though this interest is a heritable interest. Sub-section (2) provides that no under-raiyat can be evicted except in accordance with the provisions of the TLR&LR Act. The TLR&LR Act was enacted as an agrarian reform legislation and the purpose of Section 108 is to prevent the under-raiyats or tenants from being evicted or being forcefully or dishonestly compelled to transfer their rights as under-raiyats.

6. The learned Single Judge laid great emphasis on the fact that in the sale deed Aftaruddin is described to be a raiyat. This cannot in any manner validate the sale deed which is otherwise totally against law. Obviously, a Sub-Registrar could not have registered a sale deed where the seller has described himself as an under-raiyat. We may also add that the vendee Mamataj Begam was none other than the daughter of Sayed Jama Kazi, the raiyat. A few months after Aftaruddin executing the sale deed on 11.01.71, Mamataj Begam and her father Sayed Jama Kazi sold the entire land in favour of the plaintiffs/respondents

on 27.11.71. It is obvious that the sale deed dated 11.01.71 was got executed showing Aftaruddin as a raiyat to get over the bar of Section 108. This is what Section 108 prohibits. The plaintiffs who were subsequent purchasers cannot take benefit of the subterfuge and fraud committed by Sayed Jama Kazi and Mohd. Aftaruddin. Their remedy, if any, lay in taking action against Sayed Jama Kazi and Mamataj Begam, who were not even impleaded as parties in the suit. The High Court totally mis-interpreted the provisions of Section 108.

7. In 1987 Aftaruddin was conferred the rights of the raiyat. It was contended on behalf of the plaintiffs that in view of Section 43 of the Transfer of Property Act since Aftaruddin is now entitled to transfer his rights a sale deed in their favour becomes valid. This is not at all correct. No sale deed was executed by Aftaruddin in favour of the plaintiffs. The fraud was not committed by Aftaruddin but by Sayed Jama Kazi and Mamataj Begam. The protection under Section 108 of the TLR&LR Act which is a statutory

protection could not have been taken away by the subterfuge committed by the then raiyat.

8. We are clearly of the view that the High Court exceeded its jurisdiction in setting aside the concurrent finding of fact without any question of law much less a substantial question of law arising in the second appeal. Accordingly the judgment of the High Court is set aside and the judgment of the trial court is restored. The appeal is, accordingly, allowed.

.....J.
(Madan B. Lokur)

.....J.
(Deepak Gupta)

New Delhi
December 08, 2017