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IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION
ABHAY S. OKA; J., RAJESH BINDAL; J.
CIVIL APPEAL NO. 9833 of 2014; July 4, 2023
Indira Devi versus Veena Gupta & Ors.

Sale - Right to repurchase - Right of repurchase assignable or transferable and cannot be treated as personal to the contracting parties - The condition of right to repurchase in sale deed will not be personal to the vendor unless the terms in the documents specifically state so. Such a right can always be assigned and the contract containing such condition shall be enforceable. The only exception being that such a right should not be personal in nature. The assignment of obligations in a document is not possible without the consent of the other party. No implied prohibition of transfer or assignment can be inferred in a document. The benefit of contract is assignable in cases where it does not make any difference to the person on whom the obligations lies, to which of two persons he is to discharge. (Para 18-21)

For Appellant(s) Mr. Sanjay Hegde, Sr. Adv. Mr. Farrukh Rasheed, AOR Mr. Abu Bakr Sabbaq, Adv. Mr. Ashish Sharma, Adv.

For Respondent(s) Mr. Yadav Narender Singh, AOR Mr. Rahul Pratap, AOR

J U D G M E N T

Rajesh Bindal, J.

- 1.** The appellant herein has challenged the order dated September 26, 2013 passed by the High Court of Judicature at Patna in Second Appeal No. 123 of 2000.
- 2.** The facts of the case available on record are being noticed here. Kaleshwar Prasad Singh was inducted as a tenant in the property in question by late Kishori Lal Sahu who was the exclusive owner thereof. He along with his son executed a conditional sale deed dated 5.8.1977 in favour of Indira Devi d/o Kaleshwar Prasad Singh. It was mentioned in the sale deed that vendors were in dire need of money, hence, with the consent of family members, conditional sale deed was being executed in favour of the vendee for a total sale consideration of ₹ 5000/-. The condition in sale deed was that in case the vendors return the full consideration amount to the vendee by July, 1984, the vendee would return the property by means of a registered sale deed at the cost of the vendors. In case, the vendors fail to pay the consideration money within the stipulated time, the vendee will become exclusive owner of the property. Till then the vendee would not deal with the property in any manner whatsoever.
- 3.** Late Kishori Lal Sahu executed a registered gift deed dated 14.02.1983 in favour of his daughter-in-law, Veena Gupta w/o Gopal Prasad. The description of the property was detailed out in the Gift Deed, wherein it was stated that the executant was old and the beneficiary was taking care of him, hence the properties are being gifted to her. Number of properties were gifted. It was mentioned therein that the property as mentioned at column no. 5 therein was transferred to Indira Devi by way of registered sale deed dated 5.8.1977, which can be purchased back by Veena Gupta from Indira Devi.
- 4.** The vendors were ready and willing to return ₹ 5000/- to the vendee to get the sale deed registered back in their name but the vendee was not agreeing to the same. The civil suit was filed by the respondent no.1 along with Kishori Lal Sahu (now deceased) in 1983. The prayer in the suit was for a direction to the appellant to accept ₹ 5000/- as

consideration money and execute sale deed in favour of respondent no.1 in respect of the house as mentioned in the suit. On failure, decree be passed directing appellant to register the sale deed in favour of the respondent no.1, the first plaintiff and as a consequence, the plaintiffs be put in possession of the property in question. In the alternative, the prayer was that there is a relationship of landlord and tenant between Kishori Lal Sahu (non deceased), the second plaintiff and Kaleshwar Prasad Singh, the first defendant. A decree of eviction be passed in favour of the plaintiffs on the ground of personal necessity and non payment of rent and the possession be got delivered. The Trial Court vide judgment dated 27.9.1986 dismissed the suit. The judgment and decree of the Trial Court was upheld by the lower appellate court vide judgment and order dated 27.1.2000. In second appeal filed by the respondents, the judgments of the courts below were reversed by the High Court vide judgment dated 26.09.2013. The High Court framed the following substantial questions of law:

“(i) Whether the courts below committed error in dismissing the suit of the plaintiff on wrong approach and on consideration of an issue which was not material for the purpose of adjudication of the suit?

(ii) Whether the courts below committed error in not considering the main issues involved in the suit regarding character and construction in respect of the deed impugned?

(iii) Whether the courts below committed error in not considering the issue of merger of tenancy to the ownership as is relevant in the deed of sale?”

ARGUMENTS OF THE APPELLANTS

5. The argument raised by the learned counsel for the appellant was that late Kishori Lal Sahu executed the conditional sale deed along with his son in favour of Indira Devi on 5.8.1977. He had no right to assign his right to repurchase the property, to any third party, the right being personal to him. Even otherwise there was no clause in the sale deed in terms of which such right could be assigned to anyone else. It was further submitted that the Gift Deed by which the property was given to Veena Gupta cannot be termed as Gift Deed as there was consideration for transfer of the property in question as she could get the property in question only on payment of the consideration money mentioned in the sale deed. It was further submitted that from a perusal of the plaint, it is not evident that the plaintiffs were always ready and willing to fulfil the condition as mentioned in the conditional sale deed as they had no money available with them. Further, the stand taken by the appellant in the written statement was that late Kishori Lal Sahu was not keeping good health, hence the Gift Deed executed in favour of Veena Gupta was not a valid document.

6. In support of the plea that the right as conferred in the sale deed being personal, could not be assigned, reliance was placed upon the judgments of this Court in ***Bhoju Mandal and Ors. vs. Debnath Bhagat and Ors.***¹ and ***Kapilaben and Ors. vs. Ashok Kumar Jayantilal Sheth, through POA Gopal Bhai Madhusudan Patel and Ors.***². It was further argued that multiple reliefs having been claimed in the suit, the same was not maintainable as on the one hand, the claim was for specific performance whereas on the other hand, the plea of tenancy was also raised.

¹ 1963 Supp (2) SCR 82

² (2020) 20 SCC 648

ARGUMENTS OF THE RESPONDENTS

7. On the other hand, learned counsel for the respondents submitted that the only relief pressed by him is at serial no. 1 in the suit i.e. with reference to the specific performance with possession. It is a case in which late Kishori Lal Sahu, father-in-law of Veena Gupta, had executed the Gift Deed in her favour pertaining to his properties including the property in question. It is specifically mentioned in the Gift Deed that Veena Gupta can take possession of the property sold to Indira Devi by purchasing the same from her. She will have all rights available to her which late Kishori Lal Sahu had. As per the condition in the sale deed, the property could be repurchased in case ₹5000/- were paid to Indira Devi up to July, 1984. The amount was offered to Indira Devi, however, when she refused to accept the same, civil suit was filed. As the appellants were not accepting the consideration, during the pendency of the civil suit an application was filed in March, 1984 seeking permission to deposit ₹ 5000/- in the Court. On permission being granted by the Court, the amount was deposited in Court on April 29, 1984. Hence, there was compliance of the condition laid down in the sale deed for getting the property back. The right to get the aforesaid property back was assigned by late Kishori Lal Sahu to the respondent no.1 vide registered gift deed. The error committed by both the courts below in dismissing the suit was corrected by the High Court.

8. To counter the argument raised by the learned counsel for the appellant that the right being personal to the deceased late Kishori Lal Sahu, could not be assigned, reliance was placed upon judgment of this Court in ***T.M. Balakrishna Mudaliar vs. M. Satyanarayana Rao and Ors.***³ and ***Shyam Singh vs. Daryao Singh (dead) by LRs and Ors***⁴. It was submitted that such a right is not personal and the same can always be assigned. In any case, it was not assigned in favour of any third party rather it was by the father-in-law of Veena Gupta in her favour, as he was getting old. It was in the family only. He further submitted that Special Leave Petition bearing SLP(C) No. 5910 of 2014 filed by Rajmani Devi & Ors. against Veena Gupta, respondent no.1 herein challenging the same judgment on the issue of default in payment of rent on the part of original defendants was dismissed by this Court on 21.02.2014.

9. Heard learned counsel for the parties and perused the record.

DISCUSSION

10. The primary issue which requires consideration in the present appeal is as to whether the vendor can assign the right contained in a sale deed to get the property registered back or the right being personal cannot be assigned.

11. The contents of the documents placed on record would be relevant to appreciate the issue. The relevant clauses in the conditional sale deed are extracted hereinbelow: -

“That the vendors after taking confident of the vendee about the right title of the vendors and possession executed the conditional sale deed on valid consideration of Rs.5,000/ {Rupees five thousands} only and handed over the full right title and possession to the vendee St. Indira Devi having left no concern with the property. The vendors were out of the purview of Land Calling Act.

That the conditional sale deed is being executed on condition that if the vendors would return the full consideration money to the vendee by July 1984 then the vendee would return the same by means of registered sale deed at the cost of the vendors and the vendors fail to return the consideration money within the stipulated time the vendee would be full owner of the property till

³ (1993) 2 SCC 740

⁴ (2003) 12 SCC 160

then the vendee would neither execute any deed of conveyance to others with respect to the land would mortgage the land nor would become the guarantor over the land nor would take loan over the land, if it would have been done it would be illegal. The vendee would also neither change the physical feature of the house nor the vendee would be entitled to pay the rent to the state of Bihar.

If the vendors intend to return the consideration money to the vendee within the stipulated period the vendee would execute a sale deed in favour of the vendors (failing which/the vendors would deposit the full consideration money in the court and the right title of the vendee would be seized and in that case the vendee would bear the cost of the damages. If the vendee would be dispossessed from the afore said land or part thereof on account of some legal complication the vendors and their legal heirs would be liable to pay the full consideration money -A with damages to the vendee. The vendee would acquire full right title over the afore said land after the expiry of stipulated period and the vendors would have no option or right thereafter to interfere with respect to the right title and possession of the vendee and the vendee would have been on liberty to mutate his name in place of vendors and utilize the land as per her choice if any interference is made by the vendors or their heirs would be illegal by the court and the vendors would be entitled to bear the cost and damages”.

(emphasis supplied)

12. The relevant clauses in the Gift Deed are extracted hereinbelow:-

“I, the executant, am in possession of the above-mentioned property. I am in old age now and God knows when this life will come to an end. That beneficiary of this document is the Potehu (daughter-in-law) of the executant. She takes care of me, the executant and I am happy with her care. Therefore, I have decided to gift my entire property to her and make her owner of my all the properties like me.

.....

Only some property, as mentioned at column No. 5, has been given to Smt. Indira Devi through sale deed dated 5.8.1977. No other document regarding these properties has been executed.

.....

She can also take the possession of property sold to Indra Devi and Malti Devi by purchasing the same from her. Now she will get all the rights which I was enjoying till date in respect of above-mentioned property.”

13. The civil suit was filed by late Kishori Lal Sahu and Veena Gupta against Kaleshwar Prasad and Indira Devi. The primary relief which has been pressed by the plaintiff is extracted below:-

“(a) A decree for specific performance of contract be passed in favour of the plaintiff first party and the defendant first be directed to take ₹ 5000/- from the plaintiff first party and the defendant second party be directed to execute and register a sale deed with respect to the suit house detailed in Schedule-I below in favour of the plaintiff first party and put the plaintiff first party in possession and on failure of the defendants to do so, the court may be pleased to execute and register a sale deed in favour of the plaintiff first party on behalf of defendant second party and a decree for recovery of possession be passed and the plaintiff first party be put in possession by delivery of possession through court by dispossessing the defendants or anybody else whosoever be found in possession on behalf of the defendant second party.”

14. As has already been noticed, the Trial Court as well as the first Appellate Court had dismissed the suit whereas the High Court had reversed the findings and decreed the same.

LEGAL POSITION

15. The issue was considered by this Court in *T.M. Balakrishna Mudaliar* (supra) wherein reference was made to earlier judgment of Privy Council in *Sakalaguna Nayudu v. Chinna Munuswami Naykar*⁵. This Court opined that the benefit of a contract of repurchase which did not show that it was intended only for the benefit of the parties contracting, could be assigned. The option given to repurchase the property sold would prima facie be assignable. Para 9 of the judgment is extracted below:-

“9. The Privy Council in *Sakalaguna Nayudu v. Chinna Munuswami Naykar* has held that the benefit of a contract of repurchase which did not show that it was intended only for the benefit of the parties contracting, could be assigned and such contract is enforceable. Beaumont, C.J. in *Vishweshwar Narsabhata Gaddada v. Durgappa Irappa Bhatkar*⁶ held that both under the common law as well as under Section 23(b) of the Specific Relief Act, 1877, an option given to repurchase the property sold would prima facie be assignable, though it might also be so worded as to show that it was to be personal to the grantee and not assignable. On the particular facts of that case, it was held that the contract was assignable. In *Sinnakaruppa Gounder v. Karuppuswami Gounder*⁷, it was held:

“In our view, generally speaking, the benefits of a contract of repurchase must be assignable, unless the terms of the contract are such as to show that the right of repurchase is personal to the vendor. In the latter case it will be for the person who pleads that the contract is not enforceable, to show that the intention of the parties thereto was that it was to be enforced only by the persons named therein and not by the assignee.”

16. Again, the issue came up for consideration before this Court in Shyam Singh case (supra), wherein judgments of the Privy Council in *Sakalaguna Nayudu* and this Court in *T.M. Balakrishna Mudaliar* (supra) were referred to. It was a case in which a conditional sale deed was registered with a right of repurchase. The conditions as mentioned in the sale deed in the aforesaid case, which were similar to the case in hand, are extracted below:-

“Whereas we, Daryao Singh, son of Hardeva, the first party and Surajmal, Peetam and Babu, sons of Rati Ram, the second party, Jat, residents of Village Nala, Pargana Kandhala, Tehsil Budhana, District Muzaffarnagar. Party 2 has executed a sale deed today in favour of Party 1 for a sum of Rs 4900 in respect of 2 bighas 7 biswas of the land of Khasra No. 95, bearing a rent of Rs 6.25 annually situate in Khata No. 331 of Village Nala, Pargana Kandhala, Tehsil Budhana, District Muzaffarnagar, about which it was agreed between the parties that if the second party paid the entire consideration of the sale deed of Rs 4900 to the first party or to the heirs of the first party within ten years from today then in that situation the first party will reconvey the aforesaid land by sale deed in favour of the second party without any objection. If for any reason the first party does not execute a sale deed in favour of the second party, after five years but within ten years from the date of sale deed dated 4-2-1971, then the second party will have a right to deposit the entire consideration of Rs 4900 in the civil court and get the sale deed executed by the court, the first party will have no objection. The present agreement will be binding upon the parties and the heirs of the parties. Therefore, these few comments by way of agreement of reconveyance of sale within ten years are being written so that this document may be used when necessary. After the limitation of ten years the second party will have no right at all to get released the aforesaid from Party 1.”

(emphasis supplied)

⁵ AIR 1928 PC 174

⁶ AIR 1940 Bom 339 : 42 BLR 653 : ILR 1940 Bom 674

⁷ AIR 1965 Mad 506 : ILR (1965) 2 Mad 20

17. In *Shyam Singh's* case (supra) the party having right to repurchase the land sold the rights to a third party for a consideration of ₹ 19,000/- by way of a registered document. The right to repurchase was available to him on payment of ₹ 4900/-. All the courts below had opined that if there is no clause in the sale deed permitting assignment of right to repurchase, the same could not be transferred. When the matter came up before this Court, the question under consideration was whether such a prohibition against assignment or transfer can be read into the document by implication. The opinion expressed was that a long period of ten years was fixed for obtaining re-conveyance, no implied prohibition of transfer or assignment can be inferred in the document keeping in view the provisions of Section 15(b) of the Specific Relief Act. The relevant paras of the judgment are extracted below:-

“13. In our considered opinion, in the absence of any words or expressions in the documents indicating prohibition on assignment or transfer of right of repurchase and in the face of clear provisions of Section 15(b) of the Specific Relief Act, 1963, an implied prohibition cannot be read into the terms of the documents. Merely because in the documents, there is mention of “heirs” of the contracting parties but not their “assignees” or “transferees”, the legal right of assignment available to the benefit of original contracting party under Section 15(b) of the Act cannot be denied to it.

14. We are fortified in our view by two direct decisions of this Court rendered in somewhat similar circumstances with documents contemporaneously executed for sale and repurchase with comparable stipulations. See T.M. Balakrishna Mudaliar v. M. Satyanarayana Rao (supra) and Habiba Khatoon v. Ubaidul Huq⁸”.

15. In the case of Habiba Khatoon [(1997) 7 SCC 452] taking stock of earlier decisions of this Court, the Privy Council and the High Court of Bombay, the law on the present-contested issue was explained to uphold the right of repurchase of the original contracting party thus:

“We may in this connection also usefully refer to a decision of this Court in the case of T.M. Balakrishna Mudaliar v. M. Satyanarayana Rao [(1993) 2 SCC 740]. Considering the provisions of Section 15(b) of the Specific Relief Act, 1963 a Bench of two learned Judges of this Court speaking through Kasliwal, J., endorsed (in para 10 of the SCC) the statement of law flowing from the decision of Sakalaguna Nayudu [Sakalaguna Nayudu v. Chinna Munuswami Nayakar, AIR 1928 PC 174 : 55 IA 243 : 32 CWN 850] as well as the decision of Beaumont, C.J., speaking for the Bombay High Court in the case of Vishweshwar Narsabhatta Gaddada v. Durgappa Irappa Bhatkar [AIR 1940 Bom 339 : 42 Bom LR 653 : ILR 1940 Bom 674] . The statement of law which got imprimatur of this Court in para 9 of the Report runs as follows:

‘The Privy Council in Sakalaguna Nayudu v. Chinna Munuswami Nayakar [Sakalaguna Nayudu v. Chinna Munuswami Nayakar, AIR 1928 PC 174 : 55 IA 243 : 32 CWN 850] has held that the benefit of a contract of repurchase which did not show that it was intended only for the benefit of the parties contracting, could be assigned and such contract is enforceable. Beaumont, C.J. in Vishweshwar Narsabhatta Gaddada v. Durgappa Irappa Bhatkar [AIR 1940 Bom 339 : 42 Bom LR 653 : ILR 1940 Bom 674] held that both under the common law as well as under Section 23(b) of the Specific Relief Act, 1877, an option given to repurchase the property sold would prima facie be assignable, though it might also be so worded as to show that it was to be personal to the grantee and not assignable. On the particular facts of that case, it was held that the contract was assignable. In Sinnakaruppa Gounder v. M. Karuppuswami Gounder [AIR 1965 Mad 506 : ILR (1965) 2 Mad 20 :

In our view, generally speaking, the benefits of a contract of repurchase must be assignable, unless the terms of the contract are such as to show that the right of repurchase is personal to the vendor. In the latter case it will be for the person who pleads that the contract is not

⁸ (1997) 7 SCC 452

enforceable, to show that the intention of the parties thereto was that it was to be enforced only by the persons named therein and not by the assignee.

16. From the statement of law as has been approved and followed by this Court in two decisions in *Habiba Khatoon* [(1997) 7 SCC 452] and *T.M. Balakrishna Mudaliar* [(1993) 2 SCC 740] , unless the contents of the document in question and evidence in relation thereto are so clear to infer a prohibition against assignment or transfer, the right of repurchase has to be held to be assignable or transferable and cannot be treated as personal to the contracting parties.

17. On a very unsubstantial ground that the document in question makes a mention only of “parties” and their “heirs” and not “assignees” or “transferees”, it cannot be held that the right of repurchase was not assignable. In our considered opinion, therefore, the courts below were in error in construing the document in question in a manner to infer an implied prohibition against assignment and transfer.”

(emphasis supplied)

18. It may be noticed that the earlier two judgments of this Court in *T.M. Balakrishna* (supra) and *Habiba Khatoon* (supra) were cited with approval. Right of repurchase was held to be assignable or transferable and cannot be treated as personal to the contracting parties.

19. To be fair to the appellant, we refer to the judgments cited by learned counsel for the appellant, which do not support his case. In *Bhoju Mandal and Ors’s case* (supra), the issue under consideration was as to whether the document in question there was a mortgage or a sale with condition of repurchase. The same was decided on construction of the clauses in the document. It was in that reference this Court observed that there is a distinction between the said two concepts. The issue can be resolved only by ascertaining the intention of the parties on a consideration of the contents of the documents. The specific issue under consideration therein was not as to whether the right to repurchase was personal to the vendor or the same could be assigned or not. The judgment of the High Court opining that the document therein was not a mortgage but a sale with a condition of repurchase was upheld.

20. In *Kapilaben and Ors.’s case* (supra) this Court had considered that assignment of a contract might result in transfer of either rights or obligations thereunder. The transfer of obligations is not possible without the consent of the other party. The transfer of right is permissible except in cases where the contract is of personal nature. Relevant paras thereof are extracted below:-

“24. It is well-settled that the term “representative in interest” includes the assignee of a contractual interest. Though the provisions of the Contract Act do not particularly deal with the assignability of contracts, this Court has opined time and again that a party to a contract cannot assign their obligations/liabilities without the consent of the other party. A Constitution Bench of this Court in *Khardah Co. Ltd. v. Raymon & Co. (India) (P) Ltd.*⁹, has laid out this principle as follows :

“19. ... An assignment of a contract might result by transfer either of the rights or of the obligations thereunder. But there is a well-recognised distinction between these two classes of assignments. As a rule *obligations under a contract cannot be assigned except with the consent of the promisee, and when such consent is given, it is really a novation resulting in substitution of liabilities*. On the other hand, rights under a contract are assignable *unless the contract is personal in its nature or the rights are incapable of assignment either under the law or under an agreement between the parties.*”

⁹ AIR 1962 SC 1810

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27. Even in a case of assignment of rights *simpliciter*, such assignment would necessarily require the consent of the other party to the contract if it is of a “personal nature”. This is elucidated by the learned authors *Pollock and Mulla* in their commentary on *The Indian Contract and Specific Relief Acts* (R. Yashod Vardhan, and Chitra Narayan, Eds., 15th Edn., Vol. I) at p. 730:

“A contract which is such that the promisor must perform it in person viz. involving personal considerations or personal skill or qualifications (such as his credit), are by their nature not assignable. The benefit of contract is assignable in ‘cases where it can make no difference to the person on whom the obligation lies to which of two persons he is to discharge it’. The contractual rights for the payment of money or to building work, for e.g. do not involve personal considerations.”

(emphasis supplied)

21. It can be summed up from the aforesaid judgments that the condition of right to repurchase in sale deed will not be personal to the vendor unless the terms in the documents specifically state so. Such a right can always be assigned and the contract containing such condition shall be enforceable. The only exception being that such a right should not be personal in nature. The assignment of obligations in a document is not possible without the consent of the other party. No implied prohibition of transfer or assignment can be inferred in a document. The benefit of contract is assignable in cases where it does not make any difference to the person on whom the obligations lies, to which of two persons he is to discharge.

22. If the facts of the case in hand are considered, we do not find that there is any term in the conditional Sale Deed which debars its assignment to any other person. The clause only mentions regarding right of repurchase. The option is given to the vendors with the obligations on the vendee. The right to repurchase in the present case has been assigned by Kishori Lal Sahu (now deceased) in favour of respondent no.1 who is none else than his daughter-in-law to whom other properties have also been gifted.

23. Even the argument raised by learned counsel for the appellant that such an assignment of a right cannot be treated as a gift as consideration money is involved, is also noticed and rejected for the reason that the executor of the Gift Deed i.e Kishori Lal Sahu (now deceased) had transferred his right to repurchase the property in favour of respondent no.1. That right could always be assigned by him with whatever conditions attached to it. Further in the suit filed, he was also a plaintiff, who died later.

24. For the reasons mentioned above, we do not find any error in the judgment of the High Court. The present appeal is accordingly dismissed. There is no order as to costs.

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