

SMT. ISHWARI DEVI

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v.

SMT. SARLA DEVI AND ORS.

DECEMBER 14, 1994

[R.M. SAHAI AND N.P. SINGH, JJ.]

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Transfer of Property Act, 1882: Sale Deed—Interpretation of—Words used by Vendor cannot be ignored on presumption—Where in a deed property has been specifically identified by the vendor ambiguity or inconsistency arising out of it has to be disregarded.

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C executed a sale deed in favour of the appellant. The recitals stated that (i) the vendor was transferring 4 biswas of land, in Khasra No. 613, over which a two storey building called 'Anand Bhavan' was built in four set of flats, in favour of vendee completely and permanently; and (ii) the possession of the property— one set of which was with the husband of the appellant— vendee, AC, and the rest of three sets with other tenants viz., SR, SL and BR— has been handed over to the appellant-vendee. In 1979 the appellant filed a suit for eviction of SR who contested the appellant's ownership. Therefore, in order to prove her title the appellant relied on the sale deed as well as on a revenue extract viz. Jamabandi entry of 1970-71. On this revenue entry SR claimed that the area of Anand Bhavan was 7 biswas out of which 4 biswas was transferred in favour of the appellant-vendee. The Rent Control Officer held that the claim was based on misapprehension as the details of 4 biswas mentioned in the Khasra was added up to submit that total area was 7 biswas and allowed the eviction application only to the extent that SR was in arrears from December 1976 to August 1979.

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Since SR was probably aware that total area over which the building was standing was 7 biswas he got 3 biswas entered in the Jamabandi record in 1980-81 in the name of the vendor, C, over Khasra No. 491. He also got an *ex parte* report from the Kanungo that Anand Bhavan was situated in two plots. On the basis of 1980-81 Jamabandi entry SR obtained a power of attorney from the sons of the vendor and as power of attorney he sold 3 biswas of land to his daughter-in-law, respondent No. 1. In 1987 the appellant filed another eviction petition against SR which was contested and the ownership of the flat was claimed with respondent. The Rent Control Officer allowed

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- A the application and commented adversely against SR. Thereafter, the respondent filed a suit for declaration that the orders passed by Rent Control Officer were null and void and sought an injunction restraining the appellant from interfering with her possession. The Trial Court dismissed the suit holding that (i) the sale deed in favour of respondent was invalid and (ii) the recitals in sale deed executed by C
- B were conclusive.

- On appeal the District Judge relying on the evidence of Kanungo, who had gone to demarcate the area on spot, tax receipts and report of Commissioner allowed the appeal holding that since C sold only 4 biswas of Khasra No. 613 and no corrigendum was issued the sale of
- C remaining 3 biswas, which had separate Khasra No. 491, by his sons in favour of respondent was valid. This order was upheld by the High Court.

- In appeal to this Court on the question whether what was transferred by C under the sale was the entire building owned by the
- D vendor or only 4 biswas:

Allowing the appeal and setting aside the orders passed by the First Appellate Court and the High Court, this Court

- HELD: 1. In construing a sale deed the words used by the vendor cannot be ignored on any supposition or presumption. Where the property has been specifically identified in a deed any ambiguity or inconsistency arising out of it has to be disregarded. [589 B]
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2. The circumstances and above all the sale deed executed by C are so transparent that it leaves no doubt that the order of the two Courts below are manifestly erroneous. No amount of evidence, oral or documentary, could demolish the sanctity of the sale deed executed by C. The recital in the sale deed is clear and unequivocal. The vendor intended without any reservations to transfer the two storeyed building in favour of the appellant. This could not be diluted merely because the area was mentioned as 4 biswas. The appellant became owner of the
- F entire building and the entire area stood vested in her. The erroneous recital in the sale deed that the building was situated in 4 biswas would
- G not in any manner affect the title of the appellant. [588 E, 589 C]

3. The entry in the Jamabandi record in 1980-81 was purposive. It is surprising that conscience of none of the Courts below was stirred by
- H such entry and the District Judge or the High Court did not care to

ascertain as to how such entries came to be made in the revenue record. A
It was the duty of the Court to have attempted to find out the truth by
sending for the original revenue records. [587 F, 589 F]

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 9227 of
1994.

From the Judgment and order dated 27.6.94 of the Himachal Pradesh B
High Court in R.S.A. No. 70 of 1994.

Dhruv Mehta, Aman Vachher and S.K. Mehta for the Appellant.

Ashok Kumar, Ms. Gargi Khanna and Ms. Madhu Moolchandani for C
the Respondents.

The Judgment of the Court was delivered by

R.M. SAHAI, J. The dispute in this appeal relates to interpretation of a
sale deed. It is not disputed that one Churu Ram was the owner of the D
property in dispute. He executed a sale deed on 28th December 1976 in
favour of the appellant the relevant portions of which are extracted below :

“And whereas the vendor is the owner and in possession of a
two story building called ‘Anand Bhavan’ built in four sets
which are old and in dilapidated conditions over a land E
Khewat No.32, Khatauni No. 48, Khasra No. 613 ad
measuring 4 Biswas, Gair Mumkin, situated in Kethu No. 7,
Teh. and Distt. Shimla and entered into revenue records as
per Jamabandi for the year 1970-71;

NOW THIS SALE DEED WITNESSETH AS UNDER : F

That the Vendor, as per the above sale agreement, has
transferred his land admeasuring 4 Biswas, Khewat No. 32,
Khatauni No. 48, Khasra No. 613 over which a two storey
building called ‘Anand Bhavan’ is built situated in Village G
Kethu, Tehsil and Distt. Shimla for Rs.13,000 (Rupees
Thirteen Thousand Only) with all its title, ownership, road
water, airlight, including other amenities, fittings, fixtures,
drains and other rights whatsoever the vendor has in respect
of the said land and the house, in favour of the vandee
completely and permanently. H

A The possession of the property and the land sold has been handed over to the vendee today. The possession of one set is with the husband of the vendee and the possession of rest of the property is given through the tenants. The tenants living in the above property are— (1) Sant Ram, (2) Salig Ram, (3) Bali Ram and (4) Amogh Chand.”

B Prior to construing the sale deed and finding out whether what was transferred was entire Anand Bhavan owned by Churu Ram or only 4 Biswas of Khasra no. 613 it is necessary to mention few facts not with a view to decide title of appellant but to emphasis that things were not as they have been made out by the District Judge which has resulted in not only in grave error of law but even gross miscarriage of Justice. The appellant is the wife of Amogh Chand who was tenant of one of the sets and was mentioned in the sale deed at no. 4. The respondent is the daughter-in-law of Sant Ram who was also tenant of one set and was mentioned as no.1. In 1979 the appellant filed a petition for eviction of Sant Ram. It was contested by him. He denied ownership of the appellant. Therefore, the appellant to prove her title filed the sale deed and jamabandi, that is the revenue extract of 1970-71. The entry in it is as under :

E	“Khewat No.	Khautani No.	Name of owner with address	Name of cultivator with address	Khasra No.	Possession	Revenue
F	32	48	Churu Ram s/o Ramdinu Mall s/o In Possession owner Ganga Ram Manderja Khewat No. 29 Sucessor Shyamlal Deh.”	Self in possession with the permission of owner	613	0-4 Lehri Bhavan 0-1 Bungalow 0-3	0-5

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On this entry Sant Ram claimed that the area of Anand Bhavan was 7 biswas out of which 4 biswas was transferred in favour of the appellant. The Rent Control Officer held that the claim was based on misapprehension as the details of 4 biswas mentioned in the Khasra was added up to submit that total area was 7 biswas. What is necessary to be mentioned that Sant Ram never claimed that only a part of Anand Bhavan was sold and the portion in his occupation continued to be with Churu Ram or his successor. In 1981 the application for eviction was allowed, only, to the extent that Sant Ram was found in arrears from 28.12.1976 to 31.8.1979 at the rate of Rs.86 P.M. But Sant Ram was probably aware that the total area over which the building was standing was 7 biswas. Therefore, in the same year, that is 1980-81 something unexplainable happened. Apart from one extract repeating the entry of jamabandi as it was in 1970-71 another entry was made in name of Churu Ram over Khasra no. 491. The exact entry is reproduced below :

"Khautani No.	Name of owner with address	Name of cultivator with address	Khasra No.	Posse-ssion	Revenue Remarks
239	Churu Ram s/o Ram, Ritu Mal Wasi Deh"	Owner in posse-ssion	491	0-3 Unauthorised Bungalow	468

If Churu Ram was owner how could he be in unauthorised occupation. The two do not go together. That is why to put at the mildest the entry was purposive. It is surprising that conscience of none of the Courts below was stirred by such entry and the District Judge or the High Court did not care to ascertain as to how such entries came to be made in the revenue record and did not consider it appropriate to take action against the officials concerned. All this is being said not because anything turns on it so far title of the appellant is concerned but only to emphasise that the Courts below should have been more vigilant.

Reverting to the narration of facts Sant Ram being armed with entry of 1980-81, procured probably at his instance, obtained power of attorney from the two sons of Churu Ram who of course had nothing to loose and within one month as holder of power of attorney he sold 3 biswas in favour

- A of his daughter-in-law, the respondent. In 1987 the appellant filed another eviction petition against Sant Ram which was contested and now ownership of the flat was claimed with respondent. The Rent Control Officer allowed the application and commended adversely against Sant Ram. Then the respondent filed the present suit for declaration that the two orders passed by Rent Control Officer were null and void and sought an injunction
- B restraining appellant from interfering in her possession. The suit was dismissed by the Trial Court. It was held that the sale deed in favour of respondent was invalid. The oral and documentary evidence was rejected and recitals in sale deed of 1976 were held to be conclusive. The Trial Court further noticed that when eviction proceedings were started by the appellant against another tenant he went to the length of denying title of
- C appellant and claimed that entire right and title of Anand Bhavan vested in respondent. In appeal the District Judge relying on evidence of Kanungo who had gone to demarcate the area on spot, tax receipts and report of Commissioner allowed the appeal. It was held that since Churu Ram sold only four biswas of Khasra No. 613 and no corrigendum was issued the sale of remaining area of three biswas of Anand Bhavan which had separate
- D Khasra No. 491 by his sons in favour of respondent was valid. The order was maintained by the High Court.

- If the revenue extracts, particularly, of 1980-81 recording Churu Ram as owner in unauthorised occupation of the bungalow over 0.3 in Khasra no. 491 would have inspired any confidence or there would have been some
- E doubt if it was a correct and true depiction of the state of affairs as it existed on spot we would have sent the case back to the District Judge. But the circumstances and above all the sale deed executed in 1976 are so transparent that it leaves no doubt that the order of the two Courts below are manifestly erroneous. No amount of evidence, oral or documentary, could demolish the sanctity of the sale deed executed by Churu Ram. The
- F vendor after disclosing his title mentioned not only the details of property but gave out in detail the extent which he was transferring. It was mentioned that Anand Bhavan with four flats which were in occupation of (1) Sant Ram, (2) Salig Ram, (3) Bali Ram and (4) Amogh Chand were being sold and possession was delivered. The recital is clear and unambiguous. The identity was established by giving Khasra numbers, name of
- G village and area as mentioned in Jamabandi. Since entire Anand Bhavan with two storeyed building and four flats were sold and handed over to the appellant the description of four biswas was an error which crept in due to its wrong recording in Jamabandi. When the Anand Bhavan was situated in seven biswas as it now transpires to be the mention of four biswas in Jamabandi and its repetition in sale deed was obviously mistake which
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could not recoil against. It is not the claim of respondent that Churu Ram was possessed of any other property. A

In construing a sale deed the words used by the vendor cannot be ignored on any supposition or presumption. Where the property has been specifically identified in a deed any ambiguity or inconsistency arising out of it has to be disregarded. As explained earlier the recital in the sale deed is clear and unequivocal. The vendor who was the owner of Anand Bhawan intended without any reservations to transfer the two storeyed building called Anand Bhawan in favour of the appellant. This could not be diluted merely because the area was mentioned as four biswas. The appellant became owner of the entire Anand Bhawan and the entire area stood vested in her. The erroneous recital in the sale deed that Anand Bhawan was situated in 4 biswas would not in any manner affect the title of the appellant. The learned counsel for respondent attempted to support the order by placing reliance on the report of the Commissioner and the undertaking given by the appellant before District Judge that if the building was found situated in any other Khasra than Khasra No. 613 then she would not claim any right over it. But what was lost sight of was that the appellant was so sure due to description of the area in the Jamabandi that it must not have crossed her mind that there was a mistake or error in it. Nor she could have been aware of the planning of Sant Ram who after advancing a preposterous argument on the description of the property in jamabandi of 1970-71 in column No. 5 proceeded to give it shape by getting 3 biswas entered in name of Churu Ram in the same year and then got an *ex-parte* report from the Kanungo that Anand Bhawan was situated in two plots. The appellant was not aware of all this and, therefore, she appears to have agreed for the appointment of a commissioner who when went to the spot and having found that the area being 7 biswas and 4 being entered in Khasra No. 613 and 3 in Khasra No. 491 had no option except to submit the report in favour of the respondent. But it was the duty of the court to have attempted to find out the truth by sending for the original revenue records and find out if actually there was any Khasra No.491 before 1980-81. Same was with the *ex-parte* report of Kanungo. The tax receipts too mentioned appellant as owner of entire Anand Bhawan. In any case even assuming that 3 biswas of Anand Bhawan fall in Khasra No. 491 Churu Ram who undisputedly was the owner of entire Anand Bhawan having transferred the entire property in favour of the appellant the title passed to her over the entire area whether it fell under Khasra No. 613 or 491. The submission of the respondent, therefore, is liable to be rejected. H

A In the result this appeal succeeds and is allowed. The orders passed by the High Court and the First Appellate Court are set aside. The plaintiff suit filed for declaration and injunction is dismissed. The appellant shall be entitled to her costs throughout.

T.N.A.

Appeal allowed.