

Dr. Govinddas and Another

Vs

Shrimati Shantibai and Others

Civil Appeal No. 281 of 1967

(CJI S. M. Sikri, A. N. Ray, M. H. Beg JJ)

21.01.1972

JUDGMENT

SIKRI, C.J. -

1. Shrimati Shantibai, respondent No. 1 - hereinafter referred to as the plaintiff - brought a suit for the specific performance of an agreement, dated March 1, 1960, to sell the property in suit situate at Bombay Bazar, Khandwa, executed by Dagdoo, respondent No. 2 - hereinafter referred to as the vendor - and Dr. Govinddas and Seth Goverdhandas, defendants - appellants before us, who had purchased the said property. The Trial Court dismissed the suit but the High Court allowed the appeal and decreed the suit. Having obtained certificate of fitness from the High Court, the appellants have filed this appeal before us.

2. The main point involved in this appeal is whether the appellants had notice of the agreement to sell, dated March 1, 1960, between the plaintiff and the vendor. The Trial Court held that the appellants were bona fide purchasers without notice of the prior agreement. The High Court, on the other hand, held that the appellants had notice of the previous agreement. Incidentally, the question of the nature of onus of proof which the appellants had to discharge to prove their bona fide has been debated before us. We have been taken through the evidence of the relevant witnesses and we are of the opinion that the High Court came to the correct conclusion.

3. According to the plaintiff, Seth Goverdhandas, appellant, had express notice of the agreement, dated March 1, 1960, (Ex. P-1) on the very day when the agreement was entered into. The version on behalf of the plaintiff is given by plaintiff's husband, Hemraj Singh Chauhan, witness No. 1 for the plaintiff, as follows :

"Souda-Chitthi was scribed by Shrikrishna Munshi who is Munshi to Mohammed Hussain Vakil. The house of Vakil Saheb is in front of my shop. After scribing Souda-Chitthi all of us went to Vakil Saheb for showing Souda-Chitthi; for going to the house of Vakil Saheb we people crossed the road which is to the front side of the shop and reached the shop of Hayatkhan. Hayatkhan and Goverdhandas were present there. Hayatkhan questioned as to why he was accompanied with so many persons ? Thereupon I replied that Souda of the house of Dagdooji was made. I had learnt that Goverdhandas also was to purchase this house and he was roaming about since the morning. I had also told him that Souda of the house of Dagdoo was made. The house of Vakil Saheb is adjacent to the house of Hayatkhan and he resides on the upper storey."

4. This is substantially corroborated by Hayatkhan, witness No. 3 for the plaintiff, who does not seem to be interested in either of the parties. Hayatkhan deposed :

"My shop is to the front-side of Chouhan Stores. I knew Goverdhandas. His shop is also situated in Bombay Bazar. In the month of March or April, in the last summer season Goverdhandas was sitting at my shop at about 10 or 10.13 a.m. In the meantime Hemraj Chouhan, Krishan Mishrlal and Dagdoobhai all these came to my shop from Chouhan Stores. Hemraj Seth said to Goverdhandas bhai that Souda-Chitthi in connection with the house was executed and he asked him not to visit Dagdoo. After this talk Hemraj and his companion went to the house of Mohammad Hussain Wakil Saheb.

Goverdhandas had come to my shop before he came Hemraj Seth (sic). On being questioned he replied that he had come for Dagdoo who had gone to Chouhan Stores. I asked him to sit and he sat."

In cross-examination he denied any friendship or domestic relations with Chouhan, plaintiff's husband. Hayat further deposed that Goverdhandas always used to visit his shop and sit there, from five minutes to half an hour. Nothing has been brought out in cross-examination to suggest that his story is not reliable. The only thing that has been brought to our notice is that he does not say that he questioned Hemraj Chouhan why he was accompanied with so many persons. This criticism, in our opinion, does not destroy his evidence.

5. In appraising the evidence of the witnesses it must be kept in mind that they are all residents of Bombay Bazar or they have shops in Bombay Bazar. This is expressly stated by Chhajjulal, witness No. 5 for the plaintiff, who says :

"My shop is also situated at Bombay Bazar at Khandwa. In the same line in Bombay Bazar house of Dagdoo, Chouhan Stores and the house of the defendants are also there."

Dagdoo also deposed that the shop of Goverdhandas was at a distance of 8 or 10 houses from his house and the shop of Purushottamdas was at a distance of one shop from the shop of Goverdhandas.

6. Chhajjulal deposed regarding another occasion when he and Hemraj went to the house of Purushottamdas to persuade Purushottamdas not to purchase the property in dispute. He stated :

"Then we both went to the shop of Purushottamdas. Purushottamdas and his son Ballabh Seth were present at the shop. Hemraj Seth said to Purushottamdas and Ballabh Seth that he made a Souda of the house of Dagdoo Teli. In the mean time Dr. Govinddas arrived there."

7. Another point sought to be made during the evidence was that the sale-deeds contained detailed measurements of two portions of the house in respect of which two separate sale-deeds were written. According to the evidence led on behalf of the plaintiff, the appellants got the house measured a few days before March 17, 1960, on which date they bought the house. This is deposed to by Kanhaiyalal, witness No. 2 for the plaintiff. He deposed :

"I know the Defendants 2 and 3. About 16-17 months back on the day of Holi

festival, i.e. on March 13, 1960, I was sitting at the shop of Ramcharan at about 8 a.m. He was tenant of Dagdoo.

In the meantime Goverdhan and the defendant arrived there and those persons measured the length and breadth of the shop with the tape. On seeing it I and Ramcharan both went to these persons and said that the Souda of this shop was settled with Chouhan. Thereupon they said, 'In what way you concerned' ? Then I went away."

In cross-examination it was brought out that he had not told this to Chouhan. We may mention that the defence of the appellants is that the detailed measurements which are mentioned in the two sale-deeds were taken from the gift-deed in favour of Dagdoo.

8. The version of Dagdoo is that there was some dispute raised by his sister in respect of the title to the property and the plaintiff wanted to keep Rs. 5,000/- in order to safeguard herself, which was not acceptable to him, and the plaintiff agreed to receive back Rs. 2,000/- earnest money; as he had already spent it he told Goverdhandas to sell the house; and Goverdhandas called Ballabh Seth. He further deposed :

"They both said about purchasing the house. Then Doctor Saheb was called. Dr. Saheb was prepared to purchase. The value of the house was fixed at Rs. 25,000/- He asked me and my mother to make signature on the sale-deed. On the very day I went with my mother and settled by putting everything on paper. (Two sale-deeds, dated March 17, 1960, shown.) They both bear my signature and the thumb-impression of my mother. I have already received the amount in presence of the Registrar."

Dagdoo denied that he had any occasion to visit the house of Goverdhandas or Purushottamdas prior to that. He further deposed :

"I had no talk with Goverdhandas and Govinddas in connection with the Souda made with Chouhan. Goverdhandas and Govinddas never said to me for cancelling the Souda of the plaintiff."

In cross-examination, he denied having seen Goverdhandas at the shop of Hayat the day on which Souda-Chitthi was executed. He further deposed that Goverdhandas was his tenant of the disputed property prior to seven or eight years. He admitted that before he entered into agreement talks went on for about eight or ten days prior to executing the Souda-Chitthi in favour of the plaintiff. He had asked Phoolchand to find out a purchaser for the house. He admitted that he had no quarrel with Hayat, Kanhaiyalal and Uttamchand.

9. It appears strange that after the cancellation of Souda - Chitthi he did not go to anybody in connection with the sale of the house, nor did he ask Phoolchand to find another purchaser. He stated that he went to the house of Goverdhandas on his own accord on the previous day of executing the sale-deed in favour of the appellants. He further stated that he demanded Rs. 27,000/- for the house; the value was fixed at Rs. 25,000/-; nobody else was present when he had a talk with Goverdhandas on the day previous to the executing of the sale-deed, and it was agreed that there would be two sale-deeds of two portions of the house, for Rs. 25,000/- He asserted that before the Souda Goverdhandas and others had not seen the house in his presence as Goverdhandas had said that he had already seen the house 7 or 8 years back when he was a tenant of a portion of the shop.

He added that "Goverdhandas did not see the house in my presence". He denied that Dr. Govinddas and Ballabhadas saw the house in his presence. He further deposed that he did not say anything to Goverdhandas about the cancellation of Souda with Chouhan and denied that the house was measured in his presence. He asserted that the measurements were mentioned according to the measurements given in the gift-deed executed by his grand-father, and although he did not remember the year and the date of the gift-deed, he said that the gift-deed was with him at that time. We may mention that the gift-deed has not produced in the trial.

10. Dagdoo, in cross-examination, had admitted that no agreement was executed on a stamped paper in respect of the transaction.

11. According to Govinddas, appellant, he had a talk with Dagdoo on March 16, 1960, the sale-deed was executed on March 17, 1960, and registered on March 18, 1960. According to him, it was also settled in the presence of Dagdooji that two portions of the house, i.e. one for Rs. 15,000/- and the other for Rs. 10,000/- were to be sold, one to him and the other to Goverdhandas. He stated that all this talk took place at the shop of Goverdhandas. He deposed :

"I had no knowledge about the Souda-Chitthi of the plaintiff at the time of executing the sale-deed or prior to that Chhajjural never came to me or my shop. He never talked about the Souda-Chitthi executed in favour of the plaintiff. I did not take any measurement of the house. Kanhaiyalal never told me anything about the Souda-Chitthi of the plaintiff."

In cross-examination he stated that the statements of all the witnesses in this case were recorded in his presence. He also stated that he knew Dagdoo since childhood and passed daily by Dagdoo's house and Chouhan Store.

12. Ballabh Das, witness No. 2 for the appellants, is the brother of Govinddas. He stated that they had no knowledge at the time of sale-deed or prior to that, that Dagdoo had made Souda of the same house with the plaintiff. He denied that Hemraj or Chhajjural ever came to the shop of Goverdhandas to inform about the Souda. He denied that he ever got the house measured or that kanhaiyalal told him anything in connection with the Souda of the house. He also stated that the measurements mentioned in the sale-deed were written from the gift-deed that was with Dagdoo and that he had read the gift-deed but did not know its year or date. He said that he relied on the measurements mentioned in the gift-deed "because it was a Government (probably registered) document".

13. Goverdhandas, appellant, also appeared as a witness. He explained the absence of any Souda-Chitthi by saying that they did not feel that it was necessary to get the Souda-Chitthi as the sale-deed was to be executed on the very next day. He stated that Dagdoo came to his house on his own and he never talked to him about the house prior to March 16, 1960, and Dagdoo did not tell them anything about the Souda of the house with the plaintiff. He expressly denied that he was sitting at the shop of Hayat on the day the Souda of the plaintiff was executed. He asserted that "till this date I never sat at the shop of Hayat. I have no acquaintance with Hayat. I did not take any measurement of that house. The measurement mentioned in the sale-deed were written from the gift-deed which was with Dagdoo. Kanhaiyalal and Ramcharan never talked to me about the Souda of plaintiff. He further deposed :

"I did not examine the length and breadth mentioned in the gift-deed. I do not

remember the year of the gift-deed. I do not remember by whom the gift-deed was executed and in whose favour it was executed. I have no quarrel with Chhajjulal, Hayatkhan and Kanhaiyalal."

14. It will be noticed that the evidence is contradictory and we have to decide whose version is more acceptable. The learned counsel for the appellants contended that the onus of proof was very light on the appellants and they had discharged it by entering the witness-box and stating that they had no knowledge. We are unable to agree with him that in the circumstances of this case the onus was light on the appellants. The circumstances that tell heavily against the version of the appellants are these. First, all the parties are residents or have shops in the same vicinity and in places like this it is not probable that the appellants would not come to know of the execution of the agreement (Souda-Chitthi) of the plaintiff. Secondly, the haste with which the sale-deed in favour of the appellants was executed was unusual. It is more usual for an agreement to be executed in such cases rather than arrive at an oral agreement on one day and have the sale-deed executed the next day and registered the following day. For some reason the appellants were in a hurry to get the deed registered. What was the reason? In view of all the circumstances we are inclined to accept the evidence of Hem Raj Chouhan, and corroborated by Hayat, that Goverdhandas knew of the execution of the agreement with the plaintiff on March 1, 1960.

15. We are also inclined to accept the evidence that the appellants were seen measuring the shops and the property in dispute and their denial that they did not measure the property in dispute is futile. We have looked at the two deeds which were executed and we are not satisfied that the measurements mentioned therein could have been copied from the gift-deed.

16. In view of this we are inclined to believe the evidence of Kanhaiyalal that he saw Goverdhandas and others measuring the length and breadth of the shop with tape and he told them about the execution of the previous agreement with the plaintiff.

17. A point was based on the wording of notices, dated March 19, 1960 and March 28, 1960, from the plaintiff's pleader to Dagdoo. It was said that no mention was made in these notices that the appellants had notice of the agreement, dated March 1, 1960, and this showed that the story about notice to the appellants was not correct. We find it difficult to appreciate why a lawyer's notice calling upon Dagdoo to execute the conveyance should mention anything of the notice to the appellants.

18. It has also not been explained how the value of Rs. 15,000/- and Rs. 10,000/- was arrived at between the parties.

19. It seems to us that the High Court was right in holding that the onus of proof which lay on the appellants had not been discharged in the circumstances and in view of the evidence of this case. On the contrary it appears that they had express notice of the contract. If this is so, the appeal must fail and is dismissed with costs.

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