

Valiammal Rangarao Ramachar

Vs

Muthukumaraswamy Gounder and Another

Civil Appeals Nos. 1505-1506 of 1969

(D.A. Desai, A.D. Koshal, R.B. Misra JJ)

22.07.1981

### JUDGMENT

1. These two appeals arise out of a suit filed by the 1st respondent in each appeal for specific performance of a contract dated June 17, 1956 entered into in his favour by original defendant 1 for sale of properties described in Schedules 'A' and 'B'. The present appellant Valiammal was defendant 2 and she claimed that the original defendant 1, now described as the vendor, had entered into a contract Ex. A-1 on May 2, 1956 for sale of the property mentioned in Schedule 'B'. The trial court dismissed the suit of the plaintiff. In the appeal preferred by the plaintiff to the High Court, the judgment and decree of the trial court was reversed and a decree for specific performance was granted. Present two appeals are filed by a consolidated certificate under Article 133(1)(a) and (c) of the Constitution of India (as these stood at the relevant time). Once appeal is by the original defendant 2 and another appeal is by the original defendant 1, the vendor.

2. The contentions raised in both these appeals related merely to questions of fact depending upon the appreciation of oral and documentary evidence.

3. Mr Natesan, learned counsel for the original defendant 2 Valiammal urged that the High Court was in error in holding that the agreement in her favour was anti-dated. In order to substantiate this contention Mr Natesan took us through both documentary and oral evidence. Having examined the evidence as read by him in the light of the comments made by the High Court we are satisfied that the High Court recorded a correct finding that the agreement in favour of original defendant 3 was ante-dated. There are some tell-tale circumstances unerringly leading to this conclusion but one of which we must take note of is an interpolation of a material nature in Ex. B-1, styled as counterpart agreement, Ex. A-1 being the contract for sale entered into by the vendor-defendant 1 in favour of the present respondent 2, the original plaintiff. This interpolation is indisputably established by a tell-tale circumstance that the interpolated portion is absent in Ex. A-1 which was entered into with the original plaintiff. The interpolation is motivated inasmuch as when translated it meant that the plaintiff who seeks specific performance of his contract was aware of and had the knowledge of an agreement which the vendor appears to have entered into with original defendant 2. There was hardly any explanation about the interpolation offered to the High Court and in fact none was forthcoming to us also. A motivated interpolation in a solemn document completely vitiates the document. And we call it a motivated interpolation because the price of 'B' Schedule properties offered by defendant 2 who resists now the specific performance in favour of the original plaintiff is less than what is offered by the original plaintiff in the agreement Ex. A-1. Common course of human conduct has upto now indicated to us that solemn agreements have been violated when more price is offered, but here is a breach attempted for a lesser price and by a fairly crude attempt which stares in the face. Apart from many others, this one circumstance clearly indicates that the High

Court was a fully justified in recording the conclusion that the agreement in favour of original defendant 2 was certainly ante-dated or at any rate was not one good enough to deny specific performance to the original plaintiff. Therefore the appeal preferred by the original defendant 2 must fail on this ground alone.

4. There is then the appeal by the original vendor. His grievance is that whatever be his conduct, on the material on record the plaintiff, who seeks specific performance, was never ready and willing to perform his part of the contract and therefore he is not entitled to a decree for specific performance. Vendor's appeal is limited to Schedule 'A' properties alone. A list of dates supplied to us would indicate that the suit for specific performance was filed six days before the date fixed for the registration of the sale deed to be executed by the vendor in favour of the plaintiff and that he had not paid Rs 1500 which he was bound to pay before the agreed date for registration of the sale deed and Rs 9000 to be paid at the time of the registration of the sale deed. This aspect has been examined by the High Court. One feature of which we must take note of is that there was one defendant 3, described by Mr Sarathi as an interloper, we may rather call him a speculator. He claimed an earlier agreement with the appellant vendor for sale of Schedule 'A' properties. The resultant situation is this. The vendor entered into an agreement, Ex A-1, with the plaintiff for sale of Schedules 'A' and 'B' properties. He entered into an agreement with original defendant 2 for sale of Schedule 'B' properties for a lesser price and then there appeared on the scene original defendant 3 who claimed an oral agreement for sale in respect of 'A' Schedule properties. He had given notice to the plaintiff intimating to him not to take the sale deed because he also claims an agreement for sale in his favour in respect of Schedule 'A' properties. The High Court was, therefore, correct in assessing the whole situation when it said that after the solemn agreement with the original plaintiff the vendor took different steps to defeat the same which impelled the plaintiff to seek the assistance of the court a few days prior to the date for registration of the sale deed. After evaluating the other circumstances appearing in evidence the High Court recorded a conclusion that the plaintiff was always ready and willing to perform his part of the contract and looking specifically to the conduct of the vendor in this case where apparently he appears to be a party to a forgery of a document, though we do not say so, but certainly a forged document appears to have been used in a judicial proceeding we see no reason to take a different view which will have to be based on the testimony of defendant 1 which fails to carry conviction. We therefore, under these circumstances, do not differ from the view taken by the High Court that the plaintiff was always ready and willing to perform his part of the contract. Accordingly the vendor's appeal also fails and is dismissed.

5. Both the appeals, C.As. Nos. 1505-1506 of 1969, are accordingly dismissed with costs throughout in one set only in favour of the plaintiff alone.

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