

Lourdu Mari David and others

Vs

Louis Chinnaya Arogiaswamy and others

SPL. Leave Petn (Civil) No. 14751 of 1996

(K. Ramaswamy, G. B. Pattanaik JJ)

09.08.1996

ORDER

1. The special leave petition arises from the judgment of the Division Bench of the High Court of Madras made on 12-6-1996 in LPA No. 72/91. The petitioner had filed O.S. No 6/77 on September 10, 1980 before the Second Additional Sub-Judge at Pondicherry for specific performance of the agreement of sale dated October 18, 1976 to convey the property in possession as tenants under the agreement. It is their case that a sum of Rs. 31, 000/- was sale consideration and a sum of Rs. 4,000/- and odd was paid as part consideration. The balance consideration was 28,500/-. He was always ready and willing to perform his part of the contract but the respondents were avoiding to execute the sale deed. Though the trial Court found that respondent 1 and 2 committed breach of the agreement of sale but denied to them specific performance of the agreement on the ground that respondent No. 3 was a bona fide purchaser for value without notice of prior agreement with the petitioner. The petitioner filed the appeal in the High Court. Pending appeal, he died. Therefore, his legal representatives have come on record. The learned single Judge by judgment and decree dated September 11, 1980 agreed with those findings and held that the 3rd respondent was a bona fide purchaser without notice of the agreement. In the impugned judgment, the Division Bench rejected the claim on the additional ground that the plaintiff did not come to the Court with clean hands. Therefore, he is disentitled to relief of the specific performance. Under Section 20 of the Specific Relief Act, 1963. (for short, 'the Act') the decree for specific performance is in the discretion of the Court but the discretion should not be refused arbitrarily. The discretion should be exercised on sound principles of law capable of correction by an appellate Court.

2. It is settled law that the party who seeks to avail of the equitable jurisdiction of a Court and specific performance being equitable relief, must come to the Court with clean hands. In other words the party who makes false allegations does not come with clean hands and is not entitled to the equitable relief. The division Bench has pointed out in the judgment three grounds which disentitle the plaintiff to the equitable relief as he came with a positive case of incorrect and false facts as set out in paragraphs 4 to 6 thus :

"On a perusal of the records we are entirely in agreement with the view expressed by the learned Judge. It is quite clear that the plaintiff has not come to court with the clean hands. There are three circumstances which are pointed out by the learned Judge and we find that they are sufficient to warrant refusal of the claim for specific performance. First is that the plaintiff claimed that he was already in possession of Door. No. 2/53 as a lessee and he was given possession of Door No. 1/53 on the date of the agreement itself, viz., 18-10-1979 by defendants 1 and 2. But in the course of evidence he did not say anything about taking possession pursuant to the sale

agreement. On the contrary, he deposed falsely that he did not mention in the plaint about getting possession of Door No. 1/53 on 18-10-1976. It is mentioned in the evidence that Door No. 1/53 was not given to the plaintiff at any time in December, 1976. The tenant who was occupying the said portion has vacated the same and gave possession to defendants 1 and 2 who in turn handed over the same to third defendant. Thus, the case of the plaintiff regarding possession of Door No. 1/53 is false. Learned counsel contends that there was no mention in the plaint as to the date on which he took position of Door No. 1/53. The contention is not correct. In para 5 of the plaint it is mentioned specifically that in pursuance of the agreement, the plaintiff who was in possession of item No. 2 was given possession of item No. 1 on that date and that he was in possession of both the items since then under the agreement dated 18-10-1976. This plea is clearly false DW-3 who was occupying Door No. 1/53 has given evidence that the portion was vacated on 12-12-1976 by his father by taking a sum of Rs. 2500/- from the prior owner. The plaintiff has himself stated as PW-1 that the tenant delivered possession to the owner of the property on 15-12-1976. That belied his case that he had taken possession even on the date of agreement viz., 18-10-1976. But, in another place P.W. 1 has stated that the tenant of Door No. 1/53 vacated the portion on 5-12-1976. Thus, his evidence is not only false, but also discrepant.

5. The second circumstance is that the plaintiff has made an express allegation in paragraphs 7 and 9 of the plaint that he informed the third defendant in the first week of December 1976 about the agreement when the third defendant inspected the house for the purpose of purchasing the same. This plea is also false. P. W. 1 has not chosen to make a whisper about this in his deposition. On the other hand, it is contended that there is no denial of the said allegation in the written statement but it is not correct. In the written statement, the third defendant has clearly stated that at no time he had any talk with the plaintiff and he was never informed about the agreement with the plaintiff.

6. The third circumstance is that the plaintiff claimed that he had paid a sum of Rs. 400/- in addition to the sum of Rs. 4,000/- paid as advance to the second defendant at the latter's request for vacating Door No. 1/53. In the deposition he had stated that he had mentioned the same, in his plaint, but it is not so. It is also a false plea as found correctly by the learned Judge. The above three circumstances are sufficient to uphold the refusal of the specific performance. It has been held by this Court repeatedly that a person who has come to Court with a false plea is not entitled to the equitable relief of specific performance."

3. In addition, the Division Bench also agreed with the learned single Judge and held that the third respondent had no knowledge whatever of the plaintiff's agreement and, therefore, he was a bona fide purchaser for value without notice. This is a concurrent finding of fact after appreciation of evidence. It would thus be seen that on both the grounds, the courts below rightly refused to exercise the direction on legal principles to grant specific performance. It does not, therefore, warrant interference.

4. The special leave petition is dismissed. Petition dismissed.