

## SUPREME COURT OF INDIA

Nivarti Govind Ingale

Vs.

Revanagouda Bhimanagouda Patil

(K Pamaswamy and G Pattanaik JJ.)

18.11.1996

### ORDER

Delay condoned.

Substitution and impleadment allowed.

Leave granted.

We have heard learned counsel on both sides. This appeal by special leave arises from the judgment and order of the Karnataka High Court, made on January 6, 1992 in RSA No. 933/78.

The admitted position is that one Radhabai, mother of the appellants was the owner of 4 acres 38 gunthas of land in Paschayapur Village in Bijapur Taluka and District in Karnataka State. According to her, she, with a view to dig a well in R.S. No. 299, namely, the same land, had obtained a loan in the year 1961 from the father of the respondent in the a sum of Rs. 1,000/-, Since she was not in a position to complete the digging of the well, she approached again for a sum of Rs. 2,000/- to complete the well. the respondent's father who is a Constable had advanced the money on the condition that she would execute the sale deed in favour of his minor son, i.e., the respondent. Accordingly, she executed the sale deed with an agreement of re-conveyance which was accordingly executed on August 31, 1961. She stated that she has paid from time to time a sum of Rs. 7,000/- and she asked the respondent to execute the re- conveyance and the respondent had not executed the deed of re-conveyance. Consequently, she filed the suit for specific performance. The trial Judge decreed OS No. 4/1966 on the file of the Additional Munsif, Bijapur on April 3, 1976. On appeal, the Additional Civil Judge allowed the appeal on November 7, 1977 and dismissed the suit. The second appeal was dismissed by the High Court. Thus, this appeal by special leave.

The High Court found that since the agreement of re- conveyance was not for the benefit of the minor, the decree for specific performance cannot be granted. The leave of the court was not obtained for entering into such an agreement and, therefore, the appellant is not entitled to the benefit of the specific performance. We find no force in the reasoning of the High Court in the facts and circumstances of this case. It is seen that appellant's mother is the owner of the property. She had obtained loan from the respondent and executed the sale deed with an agreement of re-

conveyance. When the father of the respondent had obtained the sale deed in the name of the minor, obviously he is bound by the agreement of re-conveyance as well. Having received the money, he had not executed the sale deed. Necessarily, the appellants are entitled to seek the specific performance. Under these circumstances, the question that agreement was not for the benefit of the minor which is a legal proposition, cannot be applied to the facts. It is contended that subsequent purchaser from the father of the respondent of the self-same property, without knowledge of the pendency of the suit is bound by the agreement. We find no force in the contention. The appellants have been seeking the remedy in the civil suit; any subsequent sale will be barred by the doctrine of lis pendens. Therefore, the subsequent purchaser is bound by the decree of specific performance and liable to reconvey the property to the appellants. The decree of the trial Judge is accordingly restored and that of the High Court and the Additional Civil Judge stand set aside. The remedy of recovery of the purchased money from the respondent may be sought in an appropriate action.

The appeal is accordingly allowed. No costs.