

Rameshwar Swarup (dead) by Lrs.

Vs

Saroj Tyagi (Smt) and Others

Civil Appeal No. 3346 of 1981

(K. Venkataswami, A.P. Misra JJ)

12.10.1998

JUDGMENT

VENKATASWAMI, J. -

1. In spite of service of notice, the respondents remained unrepresented. Hence, we requested Mr. R. Sundaravaradan, learned Senior Advocate, to assist the Court as amicus curiae.

2. The issue that arises for our consideration out of the judgment dated 22-7-1981 of the Allahabad High Court in SA No. 1103 of 1973, is : can a party (purchaser) to a sale agreement of a property in the Cantonment area rescind the contract on the ground that the permission given by the Military Estate Officer (for short "MEO") was conditional, when under the contract the purchaser had undertaken to get the permission.

3. Brief facts are as under :

The property in question is a bungalow on Plots Nos. 258 and 258-A situated at Old Grant (Ed. : Old grant refers to General Order by Governor General-in-Council (GCO) No. 179, dated 12-9-1836 under which the vendor was holding the property. See 1986 Supp SCC 720) on the Mall Road in the Cantonment area, Meerut. The appellants (hereinafter called "the vendors") are the owners of the suit property. The first respondent (hereinafter called "the vendee") entered into an agreement with the appellants (vendors) on 3-11-1965 for the purchase of the suit property for a consideration of Rs. 70,000. In terms of the agreement, a sum of Rs. 11,000 was paid as earnest money to the vendors on 11-10-1965. The vendee filed a suit for recovery of the said amount of Rs. 11,000 contending, inter alia, that the understanding was that the vendors would get unconditional permission from the MEO, Meerut, for the transfer; that the vendors have cunningly incorporated in the said agreement that the permission from the MEO for the agreed sale shall be obtained by the vendees; that there were minors among the vendors and by concealing that factor the agreement was entered into and that there were already proceedings pending for the resumption of the suit property. On the basis of the above allegations, the suit for recovery of the earnest money was filed.

4. The vendors resisted the suit denying each and every one of the allegations in the plaint. According to the vendors, the express term of the agreement was that it was for the vendee to obtain the permission for the transfer of the property from the MEO; that there were no minors among the vendors on the date of the agreement as alleged; that there were no proceedings pending for

resumption as pleaded in the plaint and that the vendee was fully aware of the condition that she had to get the permission from the MEO for the sale of the property.

5. The trial court, on the basis of the pleadings and evidence, found that the vendee was entitled to get back the money as the conditional permission given by the MEO would amount to no permission at all and the vendee was not obliged to purchase the property.

6. The vendors, aggrieved by the judgment and decree of the trial court, preferred an appeal to the Additional District Judge, Meerut, in Civil Appeal No. 517 of 1970. The first appellate court, on reappraisal of the pleadings and evidence, found that the permission granted by the MEO for the transfer of the suit property was not conditional and that the vendee was not entitled to wriggle out of the sale agreement; that there were no resumption proceedings pending at the time of or prior to the sale agreement; that the vendee knew that it is for her to get the permission from the MEO and that the amount paid by the vendee being the earnest money and she, having committed a default, cannot ask for refund of the said money. On the basis of these findings, the first appellate court allowed the appeal and dismissed the suit filed by the vendee.

7. Aggrieved by the judgment and decree of the first appellate court, the vendee preferred Second Appeal No. 1103 of 1973 before the Allahabad High Court.

8. A learned Single Judge of the Allahabad High Court was of the view that the second appeal could be decided on a single point, namely, whether the conditional permission given by the MEO would amount to no permission at all and, therefore, the vendee was not obliged to go ahead with the sale agreement and consequently she can claim for refund of the earnest money paid for the purchase of the property. The High Court construed that the permission given by the MEO being a conditional one, would amount to no permission and, therefore, the vendee was entitled to rescind the contract and claim for refund of the earnest money. In that view of the matter, the High Court reversed the judgment of the first appellate court and restored that of the trial court, which decreed the suit filed by the vendee. The present appeal by special leave is filed against the said judgment of the Allahabad High Court.

9. Mr. P. S. Mishra, learned Senior Counsel appearing for the appellants (vendors), elaborately argued the matter challenging the conclusion of the High Court by referring to the provisions of the Contract Act, 1872, Transfer of Property Act, 1882 and the Specific Relief Act, 1963. He also cited judgments of the Privy Council and of this Court in support of his contentions. He contended that the earnest money, being part of the sale consideration, cannot be recovered when the sale transaction fell through at the instance of the vendee and that the conditional permission given by the MEO was not unusual having regard to the situation of the property in the Cantonment area. He also submitted that the parties to the agreement knew that the property was liable for resumption in accordance with the provisions of the Cantonments Act, 1924 and the Rules framed thereunder.

10. Mr. R. Sundaravaradan, learned Senior Counsel appearing as amicus curiae, also argued the matter elaborately contending that the conditional permission given by the MEO was no permission at all and, therefore, the vendee was under no obligation to proceed further under the agreement. According to the learned counsel, the contract fell through on account of a collateral reason for which the vendee was not responsible. As the vendee was not responsible for the failure of the contract, she was justified in claiming refund of the earnest money paid by her. He also cited several decisions in support of his submissions.

11. After considering the rival submissions and perusing the High Court judgment, we are of the view that we need not consider all the points raised by the counsel on both sides when the only question decided by the High Court was with reference to the scope of the permission granted by the MEO and the consequences thereof. If we come to the conclusion that the permission given by the MEO in this case was no permission at all, then the vendee must succeed. If we hold it otherwise, the vendors should succeed.

12. It is common ground that under the agreement, the vendee undertook to get the permission from the MEO and the vendee knew about it. Clause 5 of the agreement provides that in case the MEO did not accord the permission, the vendee will be absolved of her liability to purchase the property and will be entitled to get her money back. The condition on which reliance was placed by both the parties and subject to which the permission by the MEO was given, reads as follows :

"That the purchaser gives a certificate to the effect that he has no intention to represent against the resumption proceedings when decided by the competent authority."

13. The High Court held that the above condition was not in accordance with any law and wholly unjustified, and according to the learned Judge, the MEO had no right to impose such a condition so as to take away the right of filing objection by the vendee whenever resumption was done. Though the resumption itself was to be made under the provisions of the Cantonments Act and the Rules framed thereunder, by virtue of the condition imposed, according to the learned Judge, the purchaser could not resist the resumption even in a case where the resumption was not in accordance with law. Construing the condition in the manner stated above, the High Court concluded that such a permission would be no permission in the eye of law and, therefore, the vendee was entitled to rescind the contract and claim refund of the earnest money. Whether the High Court was right in construing the condition in the manner stated above is the only question to be decided in this appeal.

14. The parties knew that the property was situated in the Cantonment area. The finding of the first appellate court was that the husband of the vendee was a graduate and the vendee herself was literate and they knew about the terms of the agreement fully well. Even the trial court, which decreed the suit, found that the vendee must be presumed to have been aware of the legal position with regard to resumption in respect of the property in the Cantonment area. Knowing the legal position of the properties situated in the Cantonment area, the vendee had entered into an agreement. It is also not in dispute that it is the vendee who had undertaken to obtain the permission for the purchase of the property from the MEO and the only obligation on the part of the vendors was to make available all necessary papers and assist the vendee in getting the permission. It is again an undisputed fact that there was no express or implied condition that the vendors must get an unconditional permission from the MEO. Bearing these factors in mind, if we look into the condition imposed by the MEO, we are unable to sustain the conclusion of the High Court on the effect of the condition referred to above. The High Court erred in holding that the purchaser was prohibited from challenging any future resumption, even if the resumption proceedings were contrary to the provisions of the Cantonments Act and the Rules regarding resumption. The High Court should not have construed the condition imposed by the MEO by giving a narrow and literal meaning to the condition. Instead the condition should have been read down on the facts of the case. If the authorities proceed for resumption contrary to the express provisions of the Act and the Rules, it is always open to the aggrieved party to challenge the same and the condition imposed, as noticed above, cannot be construed to mean that even though such resumptions were contrary to the provisions, they cannot be challenged. The mere fact that at a future point of time, the property in

the Cantonment area would be liable for resumption in accordance with law, will not clothe the vendee to repudiate the sale agreement. Except the plea regarding the nature of the condition imposed by the MEO, the High Court had not found the other pleas against the vendor. If we construe the condition as not unusual having regard to the situation of the property in the Cantonment area, the necessary corollary would be that the vendee, on the facts of this case, could not have repudiated the sale agreement. The only ground which weighed with the High Court to reverse the judgment of the first appellate court, as noticed earlier, was regarding the nature of the condition. For the reasons stated above, we hold that the said conclusion arrived at by the High Court on the nature of the condition cannot be sustained. The appeal has to be and is accordingly allowed with no order as to costs. The suit filed by the first respondent will stand dismissed.

15. We place on record our appreciation to the learned Senior Counsel, Mr. R. Sundaravaradan, for the assistance rendered to this Court.