

Natarajan

v.

Vedachalam & Others

(Supreme Court Of India)

(ASHOK BHAN AND S.H. KAPADIA.JJ.,)

C. A. No. 2319 of 2003 | 15-09-2004

1. Plaintiff Respondents 1 and 2 (hereinafter referred to as "the plaintiff-respondents") filed the suit for partition against Defendant 1, the appellant herein, with the averment that the suit property belonged to one Palani Ammal who in turn had purchased the same from Bonjean Francois as per sale deed dated 23-3-1966. Palani Ammal died intestate on 16-2-1972 leaving behind her husband, four sons and a daughter as her heirs. Her husband died on 9-10-1981. The sons and the daughter inherited the property to the extent of 1/5th share each. The defendants were living together and enjoying the house property as co-owners. Since the legal heirs of Palani Ammal were in financial difficulties and required funds desperately to perform the marriage of Radhakrishnan, one of the heirs, the legal heirs including the appellant agreed to sell the house to the plaintiff respondents.

2. After making the offer the appellant backed out and refused to sell his share but he had no objection to the sale being made by his brothers and the sister of their shares of the suit property. The three brothers and the sister sold the property to the extent of 4/5th share in favour of the plaintiff respondents by a registered sale deed dated 7-8-1982 for a consideration of Rs 46,000. Possession of the said property was delivered and the plaintiff-respondents were put in possession to the extent of 4/5th share of the suit property.

3. It was further averred that the plaintiff respondents issued a notice on 7-9-1982 to the appellant requiring him to come forward to effect the partition of the suit property. The appellant in his reply dated 17-9-1982 claimed right of pre-emption in terms of S.4 of the Partition Act, 1893 (for short "the Act"). The appellant denied the allegations made in the notice.

4. In the written statement filed by the appellant the averments made in the plaint were denied. It was pleaded by him that he was and is ready and willing to purchase the suit property from the plaintiff-respondents. The allegations made by the plaintiff respondents in the plaint that he had acquiesced to the sale of the property in favour of the plaintiff respondents was denied by him. On the basis of the pleadings of the parties the following issues were framed:

"1. Whether the 1st defendant by his conduct acquiesced in purchase of the suit property by the plaintiff on 7-8-1982?

2. Whether the 1st defendant is still entitled to right of pre-emption?

3. Whether the plaintiff has to pay court fee under S.37(2) of the Court Fees Act?

4. Is not the plaintiff entitled to partition and separate possession of the property purchased by him under sale deed dated 7-8-1982?

5. To what other relief is the plaintiff entitled to?"

5. On Issue 1 the Trial Court recorded the finding that the appellant had the knowledge all through regarding the sale of the property by his brothers and sister. That the brothers and the sister had at the first instance offered to sell the property to the appellant and, on his refusal to purchase the same, the property was sold by them to the plaintiff respondents with the consent of the appellant. In short, the finding recorded was that the appellant had acquiesced in the sale made by the remaining co-sharers in favour of the plaintiff respondents. Similarly, other issues were also decided in favour of the plaintiff respondents. The suit filed by the plaintiff respondents was decreed.

6. Aggrieved against the judgment of the Trial Court, the appellant filed appeal in the High Court which was heard by a learned Single Judge. The learned Single Judge affirmed the findings recorded by the Trial Court on Issue 1 as well as on other issues. It was held that the appellant had acquiesced in the sale made by his brothers and the sister in favour of the plaintiff respondents. It has specifically been noted by the learned Single Judge that the appellant did not lead any documentary evidence in support of his claim.

7. Aggrieved against the order passed by the learned Single Judge, the appellant filed letters patent appeal which has been dismissed by the Division Bench by the order impugned in this appeal. The Division Bench also came to the same conclusion as the learned Single Judge and the Trial Court and held that the appellant had consented to the sale made in favour of the plaintiff respondents.

8. The finding recorded by the Trial Court as well as the learned Single Judge in the first appeal and the Division Bench in the letters patent appeal on acquiescence of the appellant to the sale of the property in favour of the plaintiff respondents is a finding on fact which does not call for any interference at this stage of the proceedings.

9. The appeal is accordingly dismissed with no order as to costs.