

SUPREME COURT OF INDIA

(1) Vijaya Shrivastava; (2) Rear Admiral R.R. Sood (Retd.)

Vs

Messrs Mirahul Enterprises and Others

Appeal (Civil) 1209-1210 of 2003; Civil Appeal Nos.1211-1212 of 2003

(Arijit Pasayat and S. H. Kapadia, JJ)

19.07.2006

JUDGMENT

DR. ARIJIT PASAYAT, J.

Two suits bearing no.450/86 and 451/86 were filed in the Delhi High Court for specific performance of the agreement dated 2.11.1983 in which it was alleged that defendant nos.1 to 5 (developers) had agreed to sell to the plaintiffs two flats in Mirahul Apartments, Green Park Extension, New Delhi. The above two suits claimed from the developers execution of the sale deed and refund of the alleged loan amount extended by the vendees to the developers. The defendant-developers submitted that there was no conclusive agreement between the parties and that the agreement dated 2.11.1983 was a provisional agreement which the plaintiff required to avail of the loan from HDFC Bank. During the pendency of the suits, the defendant-developers conveyed a portion of the suit flat to the 6th defendant, viz., S.S. Mohd. Arshad, a resident of Madras. Therefore, the plaintiffs (appellants herein) amended the plaint and alleged that the conveyance in favour of Mohd. Arshad dated 9.6.1987 was a sham transaction and that the vendees were not bound by such transaction.

In the said suits, the learned single judge framed the following issues:

"Suit No.451/86:

1. *Whether the plaint has been signed and verified by a person competent to do so and suit instituted by a duly authorized person? OPP*

2. *Whether the agreement dated 2.11.1983 executed between the plaintiff and the defendants 1-5 and set up by the plaintiff, is binding in all respects on the parties? OPP*

3. *If issue No.2 is held in favour of the plaintiff, whether defendants 1-5 are not liable to execute the sale deed and transfer possession of the flat measuring 1156 sq. ft. to the plaintiff? OPDs 1-5*

4. *Whether the plaintiff is liable to pay to defendants 1-5 any sum over and above the admitted sum of Rs.2, 64, 261/- in execution of agreement to sell? OPDs 1-5*

5. *Whether the plaintiff was ready and willing to perform his part of the agreement at all material points of time? OPP*

6. *Whether the plaintiff/her husband made any additional to writings as part of the agreement to sell dated 2.11.1983, as alleged by defendants 1-5? If so, to what effect? OPDs 1-5*

7. *Whether any sum by way of loan was advanced to defendants 1-5 by the plaintiff? If so, what amount and during what period and on what terms and whether plaintiff can seek relief in respect to said loan in the present suit? OPP*

8. *In case defendants are held entitled to recover from the plaintiff in the event of specific performance being granted, any amount of Rs.2, 64, 261/- then whether the plaintiff is entitled to claim adjustment for the excess claim against the alleged loan amount?*

9. *Whether the sale or parting with possession by defendants 1-5 of one bed room of that flat in question in favour of defendant no.6 is fraudulent, illegal and not binding on the plaintiff for the reasons stated in paras 24(a) to 23(i) of the plaint? OPP*

10. *Relief. OPP*

Suit No.450/86:

1. *Whether the plaint has been signed and verified by a person competent to do so and suit instituted by a duly authorized person? OPP*

2. *Whether the agreement dated 2.11.1983 executed between the plaintiff and the defendants 1-5 and set up by the plaintiff, is binding in all respects on the parties? OPP*

3. *If issue no.2 is held in favour of the plaintiff, whether defendants 1-5 are not liable to execute the sale deed and transfer possession of the flat measuring 955 ft. to the plaintiff? OPDs 1-5*

4. *Whether the plaintiff is liable to pay to defendants 1-5 any sum over and above the admitted sum of Rs.2, 68, 000/- in execution of agreement to sell? OPDs 1-5*

5. *Whether the plaintiff was ready and willing to perform his part of the agreement at all material points of time? OPP*

6. *Whether the plaintiff/her husband made any additional to writings as part of the agreement to sell dated 2.11.1983, as alleged by defendants 1-5? If so, to what effect? OPDs 1-5*

7. *Whether any sum by way of loan was advanced to defendants 1-5 by the plaintiff? If so, what amount and during what period and on what terms and whether plaintiff can seek relief in respect to said loan in the present suit? OPP*

8. *In case defendants are held entitled to recover from the plaintiff in the event of specific performance being granted, any amount of Rs.2, 68, 000/-, then whether the plaintiff is entitled to claim adjustment for the excess claim against the alleged loan amount?*

9. *Relief. OPP"*

By judgment and order dated 5th July 1996, the learned single judge decided all the issues in favour of the plaintiffs and granted specific performance of the agreement for immovable property. However, the learned single judge found that the conveyance dated 9.6.1987 executed by the defendant-developers in favour of defendant no.6 was collusive and accordingly the claim of defendant no.6 of being a bona fide purchaser for value without notice was rejected. By the said judgment, the learned single judge granted decree in respect of flat no. S-2 and flat no.S-1 respectively in favour of the original plaintiff. However, the learned single judge refused to grant decree for refund of the loan and, therefore, four appeals were filed before the division bench of the Delhi High Court bearing RFA (OS) Nos.29, 30, 41 and 42 of 1996. Even defendant no.6 joined the developers in their appeal and reiterated that he was a bona fide purchaser of a portion of the suit land for consideration without notice.

By the impugned judgment dated 10th May 2002, the division bench allowed the appeals filed by the developers by holding that the suit agreements dated 2.11.1983 were provisional agreements; that they were inconclusive and accordingly the plaintiff-appellants herein were not entitled to claim specific performance of the agreement for immovable property. Surprisingly, none of the other

issues were answered by the division bench.

In our view, the division bench ought to have answered all the issues which were framed by the trial court. All the issues are inter-connected. For example, in the suit, the plaintiff-appellant has alleged that there were two separate transactions one for sale of the flat and another for specific performance of the agreement under which interest-free loan was extended to the developers. Whether the loan amount was adjustable towards the price payable to the developers was an important issue which has a linkage with the agreement for sale of flats. We do not wish to express any opinion on any of the said issues.

In the circumstances, we are of the view that the division bench ought to have given findings on all the issues referred to hereinabove.

It was vehemently urged on behalf of the original plaintiffs who are the appellants before us that the findings on other issues need not be called for particularly in view of the fact that defendant no.6 had not filed the written statement in the suit. We do not find any merit in this argument. In the said suit, a specific issue was framed by the single judge as to whether the sale deed dated 9.6.1987 in favour of defendant no.6 stood vitiated on account of collusion between the developer and the subsequent purchaser. This issue was answered in favour of the plaintiff. The suit was decreed inter alia on that basis. Defendant no.6 was also asked to join in execution of conveyance with defendant nos.1 to 5 in favour of the plaintiffs. Aggrieved by the decision of the learned single judge, all the six defendants preferred RFAs. They have challenged all the findings of the learned single judge. In the appeals, defendant no.6 has categorically submitted that he was a bona fide purchaser for value without notice. Therefore, we are of the view that the division bench ought to have given its findings not only on the conclusiveness of the suit agreement but also on the remaining issues including the finding on the issue of collusion between the developer and defendant no.6, as alleged by the plaintiffs.

The doctrine of lis pendens was invoked by the learned counsel appearing on behalf of the plaintiffs- appellants. He submitted that the alienation in favour of defendant no.6 had taken place during the pendency of the suit and, therefore, the decree passed by the single judge was binding on defendant no.6. We do not find any merit in this argument.

In the case of Jayaram Mudaliar v. Ayyaswamy reported in , it has been held as follows:

"The purpose of section 52 of the Transfer of Property Act is not to defeat any just and equitable claim but only to subject them to the authority of the Court which is dealing with the property to which claims are put forward."

To the same effect is the judgment of the Kerala High Court in K.A. Khader v. Rajamma reported in 1993 Indlaw KER 327.

In the present case, it may also be noted that the plaintiffs have alleged that the sale deed dated 9.6.1987 is vitiated by collusion and, therefore, not binding on the plaintiffs. As stated above, this issue is decided against defendant no.6 by the single judge. Decree has been passed against defendant no.6. He has preferred RFA to the division bench, in which he has categorically stated that he was a resident of Madras; that, he had given power of attorney to the managing partner of M/s. Mirahul Enterprises; and that, he was a bona fide purchaser for consideration and without notice. This issue is very relevant because even if in a given case, the contract is found to be concluded, still the Court can refuse specific performance if the subsequent purchaser is found to be a bona fide purchaser for value without notice. On this point, we do not wish to express any opinion. We have only given reasons in respect of our conclusion that the division bench of the High Court should have decided all the above quoted issues which the single judge has decided while passing the decree in favour of the plaintiffs. In the circumstances, the following order is passed:

The Registry is directed to place the above Civil Appeals for further hearing on 4.12.2006. In the meantime, we are directing the division bench of Delhi High Court to return to us the findings on all the above- quoted issues in RFA (OS) Nos.29, 30, 41 and 42 of 1996.