SUPREME COURT OF INDIA

Pratap Lakshman Muchandi

Vs.

Shamlal Uddavadas Wadhwa

C.A.No.666 of 2002

(A.K.Mathur and Markandey Katju JJ.)

18.01.2008

JUDGMENT

A.K.Mathur, J.

1. Both the Civil Appeals arise against the order passed by the Karnataka High Court in RFA Nos.290 & 311 of 1993 dated 17.12.1999. Therefore, both the appeals are disposed of by a common order.

2. The brief facts which are necessary for the disposal of these appeals are that a suit was filed on the basis of an agreement to sell dated 24.4.1982 for a consideration of Rs.1,20,000/- for property, namely, open space with some dilapidated room bearing CTS No.4094/1B/2 admeasuring 472 square yards, College Road, Belgaum. The agreement was executed by the first defendant as the Kartha of Hindu joint family along with other defendant Nos.2 to 4. A sum of Rs.10, 000/- was paid as advance and the agreement was to be concluded within six months. As the defendants did not execute the sale deed within the stipulated time, a suit was filed by the plaintiff after giving notice dated 10.5.1983 for enforcement of the agreement to sell. The defendant Nos.1 to 5 also filed a suit being O.S.No.236 of 1982 for injunction against defendant Nos.6 to 15 and took a plea that because of the pendency of their suit, they could not execute the sale deed and they would execute the sale deed after decree in their favour was passed.

3. The plaintiff suspected their movements and, therefore, he filed the present suit. Defendant Nos.1 to 3 filed a common written statement admitting the joint Hindu family consisting of defendant Nos.1 to 4. But they denied that the 1st defendant was the Kartha of the family. They admitted that the suit property was an ancestral property and they were the absolute owners. They also denied the agreement to sell and receipt of the advance. They further took a plea that they agreed to sell the property for a sum of Rs.1, 70,000/- at the first instance and the deed of the agreement was typed and signed by the parties and the earnest money in sum of Rs.10, 000/- was paid and they were willing to sell the property for a sum of Rs.1, 70,000/- and as the plaintiff did not pay the balance sum, therefore, the sale deed could not be executed. The defendant No.4 was a minor when the suit was instituted, but became major during the pendency of the suit and he

denied that the defendant No.1 was his natural guardian. The defendant No.5 also claimed 1/5th share in the property. The defendant No.1 died during the pendency of the suit and his other daughter was brought on record as defendant No.1 (a). She also filed a written statement denying the agreement of sale. Defendant No.6 contended that there was no collusion between the defendant Nos. 6 to 15 and defendant Nos.1 to 4.

4. They also contended that the agreement cannot be enforced as against them as defendant Nos.1 to 5 were never in possession of the suit property. Defendant Nos.6 to 15 claimed the ownership by way of adverse possession and claimed to be in such exclusive possession from the year 1957 onwards with the knowledge of defendant Nos.1 to 5. Therefore, it was contended that the agreement of sale was not enforceable because of the latches on the part of the plaintiff. On the basis of these pleadings, nine issues were framed and then three more additional issues were framed. The Trial Court after analyzing the evidence decreed the suit and directed the defendant Nos. 1(a) to 5 to execute the sale deed in favor of plaintiff by receiving the balance consideration of Rs.1,10,000/- and hand over possession, at the same time, a decree was passed evicting the defendant Nos.6 to 15 from the premises in question. The Trial Court further directed defendant Nos.6 to 15 to hand over the possession to the plaintiff. Aggrieved against this judgment and decree passed by the Trial Court, two appeals were preferred before the High Court. Both the appeals were taken up together. The grievance of defendant Nos. 1 to 5 was that the agreement of sale was not proved and appeal by another batch of persons who were directed to be evicted from the premises in question and to hand over the possession, was filed, i.e. Appeal No.311 of 1883 and Appeal No.290 of 1993. Both these appeals were tagged together.

5. The High Court again reviewed the evidence and while hearing the appeals, it felt that document executed by P.W.1 contained some corrections or erasure. Consequently, the document was sent for the expert opinion and after receipt of the report of the Assistant Director (questioned document), Forensic Science Laboratory, Bangalore, evidence of erasure was found and subsequent typing of figures of Rs.1, 20,000/- was detected. Both the parties were directed to file their objection to the report of the Handwriting Expert. The High Court framed following two questions, viz.

> "(i) Whether the agreement of sale is true and binding on all the defendants?
>
> (ii) Whether the defendants 6 to 15 perfected their title over suit property by way of adverse possession?"

6. The High Court, after review of the evidence came to the conclusion that because of the legal necessity as admitted by the defendants, an agreement of sale was executed for the aforesaid property and a sum of Rs.10, 000/- was taken as advance. The High Court also observed that defendant No.1 was the Kartha of the family, who died and it was not open to his sons to challenge that there was no family necessity for sale of the property. So far as the agreement to sell was concerned, the High Court also affirmed the finding of the trial court and did not find any reason to take a different view of the matter. The High Court also affirmed that in fact, the agreement of sale was for a sum of Rs.1, 20,000/- and not for Rs.1, 70,000/- as alleged. So far as the possession by the defendant Nos.6 to 15 was concerned, the Trial Court as well as the High

Court affirmed that the plea of adverse possession was very vague and these persons were carrying on timber business in suit property and it was very difficult to hold that they perfected their title by way of adverse possession. It was also observed that these persons were in permissive possession. It was also found by both the Courts below that there was no evidence to show that the title was perfected by way of adverse possession. Consequently, the High Court confirmed the finding of the Trial Court. Aggrieved against this judgment, two appeals were filed and they were tagged together, and are being disposed of by this common order.

7. Learned counsel for the appellants submitted that the findings given by both the Courts below cannot be accepted and in support thereof, learned counsel invited our attention to a number of decisions of this *Court i.e. V.Pechimuthu v. Gowrammal*[1] *Swarnam Ramachandran (Smt) & Anr. V. Aravacode Chakungal Jayapalan*[2] *S.V.R.Mudaliar (Dead) by LRs. & Ors.V. Rajabu F. Buhari (Mrs.) (Dead) by LRs. & Ors*[3]*. & P.C.Varghese v. Devaki Amma Balambika Devi & Ors*[4]*. Mr. K.Ramamoorthy,* learned senior counsel appearing for the appellants in Civil Appeal No.666 of 2002 submitted that both the Courts below could not have passed an eviction decree against the appellants in these very proceedings as they were claiming the property by way of adverse possession, and in support thereof, he has invited our attention to a decision of Bombay High Court in *Mohd. Hanif (deceased by LRs) & Ors. V. Mariam Begum & Ors*[5]*. and an English decision in Tasker v. Small*[6]*.*

8. We have heard learned counsel for the parties and perused the record. As per the findings given by both the Courts below it is clear that the agreement to sell was entered into for family necessity and the same was agreed by the father of the defendant though the father died during the course of the pendency of the suit. Therefore, he could not be examined. Learned counsel has submitted that the appreciation done by both the Courts below is not correct and in fact the property was not agreed to be sold for Rs.1,20,000/- but the consideration money was Rs.1,70,000/- and the appellants themselves were not willing to pay the remaining amount. Hence he submitted that the agreement to sell cannot be executed.

9. We have examined the record and found that as per the evidence on record what is apparent is that the agreement to sell in question was for the purpose of family necessity only and it does not lie in the mouth of the sons to deny the agreement to sell for which a sum of Rs.10, 000/- was already received. After going through the evidence also we are of opinion that the Courts below have correctly appreciated the testimony and rightly reached the conclusion that the agreement to sell was for Rs.1, 20,000/- only. So far as the allegation of interpolation in the document in question i.e. agreement to sell was concerned, it was sent for examination by the Handwriting expert, and the report of the expert was received and the same was accepted. The opinion of expert was that there is erasure but not tampering with the document. The document in question is genuine and has been rightly acted upon by both the Courts below. In this connection, learned counsel invited our attention to various decisions referred to above but that does not make any difference in the matter because factually we are satisfied that the agreement to sell was executed for family necessity. Therefore, the various decisions referred to by learned counsel for the appellants do not take the case of the appellants any far. Hence we are of opinion that the agreement to sell was executed for family necessity and the appellants cannot get out of it.

10. But at the same time it is also true that the agreement to sell was executed way back in the year 1982. Since after 1982 much water has flown under the bridge, the value of the real estate has shoot up very high, therefore, while exercising our jurisdiction under Section 20 of the Specific Relief Act, 1963 we would like to be equitable and would not allow the sale of property to be executed for a sum of Rs. 1,20,000/-. The litigation has prolonged for almost 25 years and now at last reached at the end of the journey. Therefore, we have to settle the equity between the parties. We hold that the agreement to sell was genuine and it was executed for bona fide necessity but because of passage of time we direct that the respondents shall pay a sum of Rs.5 lacs in addition to Rs.1,10,000/- as out of Rs.1,20,000/-, Rs.10,000/- has already been paid as advance. On receipt of Rs.1, 10,000/- and Rs.5 lacs [Rs.6, 10,000/-] the appellants shall execute the agreement to sell for the property in question.

11. Mr. Ramamoorthy, learned senior counsel for the appellants in C.A.No.666 of 2002 submitted that in this appeal an order of eviction cannot be passed and in support of that invited our attention to a decision of *Bombay High Court in Mohd. Hanif (deceased by Lrs) & Ors. V. Mariam Begum & Ors*[7]and *English decision in Tasker v. Small*[8] It is true that the appellants in this appeal did not claim the property in question by way of adverse possession but neither before the trial court nor before the High Court the appellants could show any justification for the possession of the property in question. We also asked Mr.Ramamoorthy under what legal sanction the appellants are in possession of the premises in question. He has failed to point out anything except by way of permissible possession by the appellants in C.A.No.666 of 2002. Therefore, the occupation of these appellants in C.A.No.666 of 2002 was at best a permissible possession and now that we are enforcing the agreement to sell and direct the appellants in C.A.No.728 of 2002 to execute the sale deed in respect of the property in question in favour of the respondent-plaintiff,we cannot permit the appellants to continue in possession of the property in question. Apart from this in order to put quietus to the whole litigation it would be just and proper that the appellants in C.A.No.728 of 2002 should be directed to hand over the vacant possession of the property in question to the respondent-plaintiffs on payment of a sum of Rs.6,10,000/- [Rs.5,00,000/- + Rs.1,10,000/-] to the appellants. We cannot leave the matter again for another round of litigation as otherwise the respondent-plaintiff will have to file another case for taking possession of the property in question and it will take another decade or so. Therefore, in order to do complete justice, it is directed that the appellants in C.A.No.728 of 2002 shall hand over the possession of the property in question to the respondent-plaintiffs in the event of the respondent-plaintiffs paying a sum of Rs.1,10,000/-, the original amount agreed in the agreement for sale and over and above a sum of Rs.5,00,000/- i.e. Rs.6,10,000/- within a period of three months from today and on receipt of the aforesaid amount, the appellants in C.A.No.728 of 2002 shall hand over the possession of the premises in question. In case the appellants fail to hand over the possession of the property in question, the respondent-plaintiff may resort to the help of the police authorities for taking vacant possession of the property in question.

12. As a result of our above discussion, both the appeals are disposed of with no order as to costs.

13. Since we have disposed of the civil appeals as indicated above, the contempt petitions are also disposed of in the light of the above order.

Cases Referred

[1]*(2001) 7 SCC 0617*
[2]*(2004) 8 SCC 0689*
[3]*(1995) 4 SCC 0015*
[4]*(2005) 8 SCC 0486*
[5] *AIR 1986 Bom. 0015*
[6]*1824-34 ALL ER 0317*
[7]*AIR 1986 Bom. 0015*
[8]*1824-34 All ER 00317*