

# SUPREME COURT OF INDIA

Arjan Singh

Vs.

Punit Ahluwalia

C.A.No.3573 of 2008

(S.B. Sinha and Lokeshwar Singh Pantia JJ.)

14.05.2008

## JUDGMENT

### **S.B. Sinha, J.**

1. Leave granted.

2. Dr. S.R. Bawa was the owner of a property bearing House No.169, Section 11-A, in the town of Chandigarh. Two suits for specific performance of contract in respect of the said property were filed in the Court of Civil Judge, Chandigarh; one of them filed by the appellant on the basis of a purported oral agreement for sale entered into on or about 20.6.1995 for a consideration of Rs.32, 00,000/- in terms whereof allegedly a sum of Rs.3, 20,000/- was deposited in his account through Banker's Cheque on 22.6.1995. The said agreement of the appellant was repudiated by Dr. S.R. Bawa in or about October 1995. A suit for specific performance was filed on 20.11.1995. An ex parte order of injunction was issued passed therein for a limited period but was admittedly extended from time to time, the last one having been extended upto 16.10.1996. An application for extension was filed but no order was passed.

“Relying on or on the basis of a purported agreement dated 20.6.1995, Sanjeev Sharma also filed a suit on 1.2.1996 for specific performance of contract in respect of the suit property which also stood repudiated by Dr. Bawa. Even in that suit, the Trial Court granted an injunction. Sanjeev Sharma applied for and was impleaded as a defendant in the suit filed by the appellant by an order dated 14.10.1997. Similarly, the appellant's application for being impleaded as a defendant was allowed by an order dated 18.12.1997.

The issues in both the suits being identical, parties led similar evidence in both the suits. The principal defendant, Dr. Bawa, however, did not lead evidence.”

3. The suit filed by Mr. Sanjeev Sharma was referred to the Lok Adalat. However, no settlement was arrived at.

“A purported compromise was, therefore, entered into by and between Dr. Bawa and Sanjeev Sharma. On or about 19.2.2003, a consent decree was passed, pursuant where to or in furtherance whereof, a deed of sale was executed by Dr. Bawa in favour of one Puneet Ahluwalia, a nominee of Sanjeev Sharma. Appellant filed an application under Order 23 Rule 3 for the recall of the order dated 19.2.2003. Punit Ahluwalia was also impleaded in the said suit as Defendant No.3. By reason of an order dated 21.1.2006, the said application for recall was allowed by the learned trial Judge opining:

(1) The consent decree purported to have been entered into by and between Dr. Bawa and Sanjeev Sharma being in terms of the second part of Order 23 Rule 3 of the Code of Civil Procedure, the same was not valid as deed of sale executed pursuant thereto; and

(2) Although the order of interim injunction passed in the case of the appellant was not extended beyond 16.10.1996, as an application had been filed therefor and as the appellant could not suffer owing to an act of the Court and the same being violative of the order of injunction, the deed of sale was invalid in law.”

4. The High Court, however, while exercising its revisional jurisdiction by reason of the impugned judgment, set aside the said order of the learned Judge on the premise that it is the first part of Order 23 Rule 3 which was applicable in the case. It was opined that as the interim order was not extended, the question of execution of any deed of sale in violation of the said order of injunction did not arise.

5. Mr. J.L. Gupta, learned senior counsel appearing on behalf of the appellant, would contend:

“(1) The High Court committed a manifest error in passing the impugned order insofar as it failed to take into consideration that it was a case where the first part of Order 23 Rule 3 would apply; and

(2) In view of the well known legal principle that any party cannot suffer owing to the fault on the part of the Court, the deed of sale dated 25.3.2003 must be held to be bad in law.”

6. Mr. Dhruv Mehta, learned counsel appearing on behalf of the respondent, on the other hand, would urge:

“(1) From the order sheet dated 4.3.2003, it would appear that the willingness of the parties to the suit to enter into a compromise was expressed and, thus, although the appellant was aware thereof, he did not raise any objection to the recording of the compromise dated 19.2.2003

(2) The purported application for recall dated 31.7.2003 was not maintainable as an appeal against the order dated 19.2.2003 lay before the higher court.

(3) An order of injunction having been made operative upto 16.1.1996, it is wrong to contend that the order of injunction by reason of a legal fiction or otherwise could continue beyond and, in any event, the appellant having not taken any step to obtain an order of injunction thereafter, the impugned order cannot be found fault with.

(4) Assuming that there was any breach of the order of injunction, the consequence thereof having been provided in terms of Order 39 Rule 2A of the Code of Civil Procedure, thus, the court could have taken recourse only thereto, thus, its power under Section 151 of the Code of Civil Procedure could not be taken recourse.

(5) The contention of the appellant that the sale deed became inoperative in law is fallacious.”

7. Order 23 Rule 3 of the Code of Civil Procedure reads thus:

"3. Compromise of suit--Where it is proved to the satisfaction of the Court that a suit has been adjusted wholly or in part by any lawful agreement or compromise in writing and signed by the parties, or where the defendant satisfies the plaintiff in respect of the whole or any part of the subject-matter of the suit, the Court shall order such agreement, compromise or satisfaction to be recorded, and shall pass a decree in accordance therewith so far as it relates to the parties to the suit, whether or not the subject-matter of the agreement, compromise or satisfaction is the same as the subject-matter of the suit:

Provided that where it is alleged by one party and denied by the other that an adjustment or satisfaction has been arrived at, the Court shall decide the question; but no adjournment shall be granted for the purpose of deciding the question, unless the Court, for reasons to be recorded, thinks fit to grant such adjournment.

Explanation.--An agreement or compromise which is void or voidable under the *Indian Contract Act, 1872 (9 of 1872)*, shall not be deemed to be lawful within the meaning of this rule."

8. The said provision indisputably is in two parts. The first part applies where the parties to the suit enters into a compromise in terms whereof a decree may become executable on the basis of the compromise. The second part, however, shall apply in a case where the claim of the plaintiff stands satisfied and no further action is required to be taken by the parties in terms of the consent decree.

“It may be true that parties to the suit signed the compromise petition. But, indisputably, the appellant herein has a rival claim. The suit filed by him, vis-à-vis, the one of Sanjeev Sharma was required to be considered together. The court could

exercise its discretionary jurisdiction in one of the suits or the other, having regard to Section 20 of the *Specific Relief Act, 1963*. By reason of a compromise or otherwise, the claim of the appellant could not have been defeated. When a compromise is entered into, the Court has a duty to see as to whether the same meets the requirements of law. A compromise decree which does not satisfy the requirements of law is not legal. It would be unlawful. It, therefore, cannot be recorded.

The terms of the compromise may, briefly be noticed:

"(d) That the defendant No.1 admits the claim of the plaintiff and the said defendant No.1 has no objection if the suit of the plaintiff for specific performance is decreed in favour of the plaintiff and against the defendant No.1 and the defendant No.1 shall get the Sale Deed executed in favour of the plaintiff or in the name of the nominee(s) on or before 31.3.2003 subject to the balance payment of consideration price amounting to Rs.24.75 lacs by way of Banker's cheque/draft in the name of the defendant No.1 and the defendant No.1 shall hand over the physical vacant possession of first floor and the symbolic possession of the tenanted portion of the house in question.

(e) That the defendant No.1 is to go back to States and the execution of decree is mandatory to be performed within the above-mentioned time and in the case of fails to pay the balance amount of Rs.24.75 lacs with the said stipulated period the defendant No.1 shall not be entitled to sale deed by way of its execution and it will be presumed that the plaintiff had no funds to purchase the property.

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(i) That the defendant No.2 Arjan Singh has also filed a suit against the defendant No.1 in respect of the same property i.e. House No.169, Sector 11-A, Chandigarh alleging the contract having taken place on 21.6.1995 after the contract of the plaintiff with defendant No.1. The said suit is also pending in the Court. The plaintiff is a pro forma defendant in the said suit and no relief has been claimed against the plaintiff in the said suit. The outcome of the said suit shall be the sole responsibility of the defendant No.1 and the liability in the said suit qua the earnest money, damages, interest shall be the responsibility of defendant No.1 alone."

9. It is only pursuant to or in furtherance of the said purported terms of settlement; the deed of sale was executed on 25.3.2003.

“The settlement entered into by and between the parties proceeded on the assumption that no decree for specific performance would be passed in the case of the appellant. It wrongly recorded that the appellant is only a proforma defendant in the suit.”

10. The learned Trial Judge, while recording the compromise, categorically held:

"Ld. Counsel for the plaintiff has stated that the compromise has been affected between the parties and compromise Ex.C-1 has been placed the file. Both the parties i.e. the plaintiff and the defendant No.1 had got their statements recorded separately that they have agreed that the suit of the plaintiff is decreed as per the compromise. In view of the compromise Ex.C- 1 no claim has been made against the defendant No.2. Heard.

The suit of the plaintiff is decreed as the defendant No.1 has admitted the claim of the plaintiff for specific performance and he had agreed that he shall get the sale deed executed in favour of the plaintiff or in the name of the nominee(s) on or before 31.3.2003 subject to balance payment of consideration price amounting to Rs.24.75 lacs and the defendant No.1 shall handover the physical vacant possession of the first floor and the symbolic possession of the tenanted portion of the house in question.

The plaintiff shall complete formalities and inform defendant No.1 or his counsel 3 days before the execution and registration of the sale deed.

There is no order as to costs. Suit of the plaintiff is decreed in view of the compromise Ex.C-1 which is to be read as part of the decree. Decree sheet be prepared accordingly and file be consigned to the record room after due compliance."

11. One of the questions, therefore, which arose for consideration, is as to whether the first part or second part of Order 23 Rule 3 of the Code of Civil Procedure would apply. The Trial Judge, in our opinion, has rightly held that it was a case where the first part of Order 23 Rule 3 would apply. As the appellant was not a party to the settlement, the same was not binding on him. The issue is directly covered by a judgment of this Court in *Pushpa Devi Bhagat (Dead) through LR. Sadhna Rao (Smt.) v. Rajinder Singh & Ors.*<sup>1</sup> wherein two questions which had been framed were:

"(i) Whether the appeal filed by Pushpa Devi under Section 96 of the *Code of Civil Procedure* against the consent decree was maintainable.

(ii) Whether the compromise on 23.5.2001 resulting in a consent decree dated 18.7.2001 was not a valid compromise under Order 23 Rule 3 CPC."

The said questions were answered in the following terms, opining:

"19. What is the difference between the first part and the second part of Rule 3? The first part refers to situations where an agreement or compromise is entered into in writing and signed by the parties. The said agreement or compromise is placed before the court. When the court is satisfied that the suit has been adjusted either wholly or in part by such agreement or compromise in writing and signed by the parties and that it is lawful, a decree follows in terms of what is agreed between the parties. The agreement/compromise spells out the agreed terms by which the claim is admitted or adjusted by mutual concessions or promises, so that the parties thereto can be held to

their promise(s) in future and performance can be enforced by the execution of the decree to be passed in terms of it. On the other hand, the second part refers to cases where the defendant has satisfied the plaintiff about the claim. This may be by satisfying the plaintiff that his claim cannot be or need not be met or performed. It can also be by discharging or performing the required obligation. Where the defendant so "satisfies" the plaintiff in respect of the subject-matter of the suit, nothing further remains to be done or enforced and there is no question of any "enforcement" or "execution" of the decree to be passed in terms of it."

12. The compromise, in our opinion, was unlawful. What would be its effect is the question. But before we advert thereto, another finding of the learned Trial Judge may also be noticed.

13. The learned Trial Judge passed an interim order on 2.2.1996, which was periodically extended. Indisputably, by reason thereof, Dr. Bawa was restrained from transferring the property. A similar order of injunction was passed in Sanjeev Sharma's case which was made absolute on 28.5.1997.

14. It is, however, again beyond any dispute that the said order of injunction continued from time to time. It was operative till 16.10.1996. It has been noticed by the learned Trial Judge that an application for extension was filed. However, because the Presiding Officer was on leave on 16.10.1996 and later the matter was transferred to another court, the interim order was neither extended nor vacated.

15. Was the order of injunction operative so as to attract the provisions of Rule 2A of Order 39 of the Code of Civil Procedure or invoking the inherent jurisdiction of the court under Section 151 thereof?

“The learned Trial Judge opined that it was so because it was for the court to pass an appropriate order thereunder. The High Court, however, differed with the aforementioned finding of the learned Trial Judge to hold that no order of injunction was operative. It, furthermore, held that any transaction carried out in violation of the order of the court is void; it would be a nullity. The decision of the High Court is based on the decisions of different High Courts including *Pranakrushna and others v. Umakanta Panda and Others*<sup>2</sup>, *Phani Bhushan Dey v. Sudhamoyee Roy & Anr.*<sup>3</sup> and *Harbalas and others v. The State of Haryana and Others*<sup>4</sup>.”

16. We agree with the High Court on this issue. If the order of injunction was operative upto a particular date, technically the order of injunction shall not remain operative thereafter. The owner of the land Dr. Bawa and the defendant No. 2 Sanjeev Sharma, thus, could have entered into the compromise.

“The effect thereof would be that the said deed of sale was not binding on the appellant. It would be hit by the doctrine of lis pendens, as adumbrated under Section 52 of the Transfer of Property Act. The said deed of sale would not come in the Court's way in passing a decree in favour of the appellant. Its validity or otherwise

would not be necessary to be considered as the appellant is not bound thereby. Sanjeev Sharma and consequently Puneet Ahluwalia would be deemed to be aware of the pendency of the suit. Even Section 19 of the Specific Relief Act will be attracted.”

17. Reliance has been placed by *Mr. Gupta on Surjit Singh v. Harbans Singh*<sup>5</sup> wherein this Court opined:

“4...In defiance of the restraint order, the alienation/assignment was made. If we were to let it go as such, it would defeat the ends of justice and the prevalent public policy. When the Court intends a particular state of affairs to exist while it is in seisin of a lis, that state of affairs is not only required to be maintained, but it is presumed to exist till the Court orders otherwise. The Court, in these circumstances has the duty, as also the right, to treat the alienation/assignment as having not taken place at all for its purposes...”

18. There cannot be any dispute with regard to the aforementioned proposition of law. This decision answers the questions raised by Mr. Mehta that the consequences of violating the order of injunction must be kept confined only to Rule 2A of Order 39 of the Code of Civil Procedure. We must also take notice of the fact that even a court in exercise of its inherent jurisdiction under Section 151 of the Code of Civil Procedure, in the event of coming to the conclusion that a breach to an order of restraint had taken place, may bring back the parties to the same position as if the order of injunction has not been violated. [*Gurunath Manohar Pavaskar and Ors. v. Nagesh Siddappa Navalgund and Ors.*<sup>6</sup>]

19. Furthermore, in a given case, the court may also invoke the rule as adumbrated in *Hadkinson v. Hadkinson*<sup>7</sup>. The said principle, however, has been explained by this Court in *Pravin C. Shah v. K.A. Mohd. Ali and Another*<sup>8</sup> stating:

"21. The observations can apply to the courts in India without any doubt and at the same time without impeding the disciplinary powers vested in the Bar Councils under the Advocates Act.

{See also *Bar Council of India v. High Court of Kerala*<sup>9</sup>}

20. However, as in this case, no order of injunction was breached, the said principle has no application.

“The deed of sale, therefore, need not be set aside. It will have its own effect having regard to Section 52 of the Transfer of Property Act and Section 19 of the Specific Relief Act.

The learned Trial Judge, however, was right in holding that the purported compromise was bad in law. It was unlawful being without any written consent of all the parties. We need not go into the question as to whether the same was fraudulent or not, but indisputably not only the same was not binding on the parties, the court in a case of

this nature while considering the appellant's case shall not take note of the fact that any deed of sale has been executed pursuant thereto. Respondent No.3, as a logical corollary of these findings, would not be entitled to set up the plea of being bona fide purchaser for value without notice. The court may also pass such other order or orders, as it may deem fit and proper keeping in view its discretionary jurisdiction under Section 20 of the *Specific Relief Act, 1963*. To that extent the judgment of the learned Trial Judge must be upheld and that of the High Court must be set aside.

We, however, do not agree that the appellant cannot be made to suffer for violation of the order of the court but as the legal principle stated in the judgment of the learned Trial Judge in that behalf is not correct, the same would not apply in this case. As no order of injunction was operative, the court cannot pass an order of injunction with retrospective effect so as to take away the right of the parties created for the said purpose. To the said effect, the court must make a distinction between an incidental proceeding and a supplemental proceeding. An order of injunction can be passed in terms of the provisions of the supplemental proceedings contained in Section 94 of the Code of Civil Procedure. An express order must be passed while giving effect to the supplemental proceedings which is additional to the incidental power of the court. The distinction is fine but real.”

21. For the reasons aforementioned, the impugned judgment is set aside to the aforementioned extent. The appeal is allowed in part. In the facts and circumstances of the case, Respondent No.2 and 3 must bear the costs of the appellant. Counsel's fee assessed at Rs.50,000/- (Rupees fifty thousand only).

<sup>1</sup>[(2006) 5 SCC 566]

<sup>2</sup>[AIR 1989 Orissa 148]

<sup>3</sup>[91 Calcutta Weekly Notes 1078]

<sup>4</sup>1973 Punjab Law Journal, 84]

<sup>5</sup>[AIR 1996 SC 135: (1995) 6 SCC 50]

<sup>6</sup>[2007 (14) SCALE 283]

<sup>7</sup>[(1952) 2 All ER 567]

<sup>8</sup>[(2001) 8 SCC 650]

<sup>9</sup>[(2004) 6 SCC 311]