

SUPREME COURT OF INDIA

S. Abdul Khader

Vs.

Abdul Wajid (D) by LRs.

S.L.P.(C) No.2770 of 2006

(Altamas Kabir and Markandey Katju JJ.)

11.09.2008

JUDGMENT

Altamas Kabir, J.

1. The special leave petition arises out of OS No.8198 of 1995 filed by the petitioner herein for specific performance of an Agreement for Sale dated 18th May, 1995, executed by the respondent No.1 in respect of the suit properties and for a direction upon the respondent to execute a sale deed in his favour and to deliver vacant possession of the suit land.

2. The case made out by the petitioner is that in view of the Agreement for Sale dated 21st February, 1995, executed by the respondent No.1 in his favour for a total consideration of Rs.4,30,000/-, he paid Rs.1,00,000/- in cash to the respondent No.1 as an advance towards the sale price when the said agreement was executed. Thereafter, several amounts were paid by the plaintiff to the respondent No.1 amounting to Rs.2,05,000/- in total. It was also mentioned in the plaint that the respondent No.1 had projected himself to be the owner of the suit property, being site No.18, in Survey No.51/3A situated at Byrasandra 35th Division of Bangalore, having purchased the same from one Prasanth M.Kumar who is now the respondent No.2 in the present Special Leave Petition. The respondent No.1 assured the plaintiff that the suit property was free from all encumbrances and that the original sale deed executed by the respondent No.2 was with the Deputy Commissioner on account of under valuation. The respondent No.1 also assured the plaintiff that he would produce the original sale deed at the time of registration, together with the records from the Corporation after assessment to register the property, since registration could not be done without the said records.

3. According to the plaintiff, he believed and trusted the respondent No.1 and waited till the end of October 1995, by which date the respondent No.1 had assured the plaintiff that he would complete the sale transaction. The respondent No.1, however, did not make any effort to complete the sale transaction inspite of repeated requests made to him by the petitioner to that effect, though the petitioner was always ready and willing to perform his

part of the contract regarding payment of the balance of the sale price after deduction of the amount already advanced by him.

4. It is also the plaintiff's case that only when he found that a compound wall was being constructed that he became suspicious of the motive of the respondent No.1 who, however, continued to assure him that the compound wall was being constructed only for the purpose of payment of tax and issuance of katha endorsement. The respondent No.1 once again assured the petitioner that he would complete the sale as soon as he was able to get the relevant record from the Corporation and the original sale deed executed in his favour from the Deputy Commissioner for Under Valuation.

5. However, the petitioner was surprised when he was served with a legal notice dated 17th November, 1995, indicating that the respondent No.1 had cancelled the Agreement for Sale which had been executed in his favour on 21st February, 1995. The petitioner, thereupon filed the suit for specific performance of the contract and for delivery of possession of the suit land to him, which was disposed of by granting the alternate relief of reimbursement of the monies advanced, together with interest at the rate of 9% per annum. The Trial Court, however, declined to order the execution of the said agreement in respect of the property on the ground that third party rights had intervened, as the respondent No.3 purchased the suit property without knowledge or notice of the prior sale agreement and was thus a bona fide purchaser for value without notice and was not affected by the provisions of Section 52 of the *Transfer of Property Act, 1882*, and the doctrine of lis pendens.

6. The matter was carried to the High Court by way of RSA No.781 of 2004, wherein the submissions advanced before the Trial Court were reiterated. Agreeing with the findings of the Trial Court, the High Court came to the finding that the Agreement for Sale between the respondent No.1 and the petitioner was not binding on the respondent No.3 since the respondent No.1 had no marketable title to the suit property for the sale thereof in favour of the petitioner. The agreements entered into on 21st February, 1995 and on 18th May, 1995, could not be enforced as he was not the owner of the property and was not empowered to execute any Agreement for Sale in respect thereof and the petitioner had not also sought the relief for specific performance against the other respondents. The High Court also held that the Trial Court had rightly found that the petitioner had allegedly made payment in favour of the Respondent No.1 without making any enquiry or verifying the records, and that he had done so at his own risk, as the said respondent had no authority to execute the sale agreement dated 18th May, 1995.

7. The High Court held further that the Respondent No.3 had prior to purchase of the said property made enquiries and ascertained that one Rafi Ahmed the lawful Power of Attorney holder of the 2nd respondent possessed the legal competence to sell the suit property in her favour. The High Court endorsed the view of the Trial Court that the respondent No.3 was a bona fide purchaser for value without notice after due enquiries made by her.

8. On the basis of the above, the High Court held that the Trial Court had rightly granted the alternative relief of repayment of the sums advanced while denying the

substantial relief for execution and registration of a sale deed in respect of the suit land in favour of the respondent. The High Court, however, was not unmindful of the steep rise in the price of immovable properties in urban areas, and, accordingly, enhanced the rate of interest from 9% granted by the Trial Court to 18% upon the amount decreed in favour of the petitioner. The appeal was partly allowed to the above extent.

9. The said judgment and order of the High Court has been challenged in these proceedings.

10. On behalf of the petitioner, it has been contended that the transaction between the respondent No.2 and the respondent No.3 was hit by Section 52 of the Transfer of Property Act, 1882, and the doctrine of lis pendens. It was urged that both the Trial Court as well as the High Court had erred in law in disallowing the petitioner's prayer for a direction upon the respondent No.1 to execute the sale deed in respect of the suit land and to make over possession thereof to the petitioner. It was also contended that both the courts below appear to have also lost sight of the provisions of Section 19(b) of the Specific Relief Act, 1963 which provides as follows:-

"19. Relief against parties and persons claiming under them by subsequent title. - Except as otherwise provided by this Chapter, specific performance of a contract may be enforced against-

(a) either party thereto;

(b) any other person claiming under him by a title arising subsequently to the contract, except a transferee for value who has paid his money in good faith and without notice of the original contract;

(c)

(d)

(e)"

11. In this regard Ms. Kiran Suri, learned advocate, who appeared for the petitioner, firstly referred to the decision of this Court in *Nivarti Govind Ingale and Ors. Vs. Revanagouda Bhimanagouda Patil*¹ wherein this Court had expressed the view that when the father of the respondent had obtained the sale deed in the name of the minor, he was also bound by the agreement of reconveyance. Having received the money, he had not executed the sale deed. Necessarily, the plaintiff was entitled to seek specific performance and any subsequent sale would be barred by the doctrine of lis pendens. Therefore, the subsequent purchaser was bound by the decree of specific performance and was liable to reconvey the property to the plaintiff.

12. Ms. Suri also referred to the decision of this Court in *Hardev Singh vs. Gurmail Singh (dead) by Lrs.*², , wherein this Court dealt with the scope of Sections 41, 43 and 52 of the *Transfer of Property Act, 1882*. On examining the said provisions, this Court held that the requirement of Section 41 and the proviso thereto was not a requirement for the applicability of Section 43 and hence even if a subsequent purchaser was aware of the pending litigation at the time of purchase of the suit property, it would disentitle him to the benefit of Section 43. It was further held that Section 52 did not operate to render a sale deed executed during the pendency of the suit void, as the said transaction was not hit either by Section 52 of the Transfer of Property Act or Section 23 of the Contract Act, 1872.

13. In effect, the case made out on behalf of the petitioner is that the subsequent purchaser steps into the shoes of the judgment-debtor and is thus bound by any decree passed against the judgment-debtor.

14. The petitioner also appears to have relied on an affidavit affirmed by the respondent No.1, Abdul Wajid, since deceased, which has been referred to as a "consent agreement" which indicates that the General Power of Attorney earlier notarized in favour of the respondent No.1 on 3rd April, 1995, stood cancelled with consent and a fresh agreement had been entered into by the respondent No.2 in favour of Rafi Ahmed who, in his capacity as the holder of the second Power of Attorney executed by the respondent No.2 in his favour on 18th June, 1995, had sold the suit property in favour of the petitioner. It was also the case of the petitioner that since the aforesaid document had been disclosed for the first time in the written statement filed by the respondent No.3, Sufia Bi, on 28th October, 2003, the same did not inspire confidence and the courts below erred in dismissing the plaintiff's claim for specific performance of the agreement on the erroneous finding that the petitioner was not ready and willing to conclude the sale.

15. Ms. Suri submitted that the findings of both the trial court and the High Court regarding the petitioner's readiness and willingness to conclude the sale was contrary to the evidence adduced and was, therefore, liable to be set aside and the suit was liable to be decreed for specific performance in respect of suit land.

16. On the other hand, Mr. S. N. Bhat, learned advocate, submitted that the submissions advanced on behalf of the petitioner was without any foundation since the very basis of the petitioner's suit, namely, the Agreement for Sale executed in his favour by the respondent No. 1 on 21st February, 1995, was invalid since on that date the respondent No.1 had no power or authority to execute the said Agreement in respect of the suit property. Mr. Bhat submitted that the Power of Attorney, which had been executed by respondent No.2 in favour of the respondent No.1 on 3rd April,1995, was revoked and hence the Agreement for Sale executed in favour of the petitioner by

the respondent No.1 on 18th May, 1995 was without any legal authority. Mr. Bhat submitted that after revocation of the said Power of Attorney in favour of the respondent No.1, the respondent No.2 gave another General Power of Attorney to Rafi Ahmed on 9th June, 1995 on the basis whereof the said Rafi Ahmed executed the sale deed in favour of the respondent No.3, who claimed that he came to know about the Agreement for Sale which is purported to have been executed by the respondent No.1 in favour of the petitioner on 18th May, 1995.

17. Mr. Bhat urged that on both counts the petitioner's suit had been rightly dismissed. Firstly, that the respondent No.1 was neither the owner nor the person authorized to enter into an Agreement for Sale with the petitioner on 21st February, 1995. The respondent No.3 had been found to be a bonafide purchaser for the value without notice, which did not affect his title to the suit property in any way. Mr. Bhat urged that whether the respondent No.3 had knowledge of the earlier Agreement for Sale, had been considered by the Trial Court as well as the High Court and no fresh materials have been shown before this Court, which would warrant interference with such findings of facts.

18. Mr. Bhat urged that since both the courts below had on a detailed analysis of the evidence on record found that the respondent No.3 was a bonafide purchaser for value without notice, the Special Leave Petition was liable to be dismissed.

19. Having carefully considered the submissions made on behalf of the parties, we are not inclined to reappraise the evidence once again in these proceedings. We shall, therefore, confine ourselves only to the legal aspects of the Special Leave Petition.

20. On the merits of the case of the parties, it is clear that when the first Agreement for Sale was executed by respondent No.1 in favour of the petitioner, he did not possess any power to enter into the agreement with the petitioner. For a brief period such power was given to him but was again withdrawn. Accordingly, on the two dates which are relevant for our purpose, namely, 21st February, 1995 and 18th May, 1995, the respondent No. 1 had no legal right in respect of the suit property. Consequently, the agreement executed by the respondent No.1 in favour of the petitioner on 21st February, 1995, had no legal sanction and the suit for specific performance on the basis thereof was incompetent.

21. Moreover, as far as the respondent No.3 is concerned, the Agreement for Sale entered into with him by Rafi Ahmed on the strength of the General Power of Attorney issued in his favour by the respondent No.2 on 8th June, 1995 was valid and protected by the provisions of Section 19(b) of the *Specific Relief Act, 1963*.

22. Furthermore, it is well established that granting relief of specific performance is purely discretionary and is dependent on the provisions of Section 20 of the aforesaid Act and the Court under Section 21 thereof has the power to award compensation for breach of contract instead of decreeing the suit for specific performance, as has been done in the present case and, in our view, quite rightly.

23. Since we are in agreement with both the trial Court as well as the High Court that the respondent No. 1 had no legal authority to enter into an Agreement for Sale with the petitioner when he was not vested with the authority to do so, no interference is called for with the judgment impugned in the Special Leave Petition, which is accordingly dismissed.

24. There will, however, be no order as to costs.

¹[1997 (1) SCC 475]

²[2007 (2) SCC 404]