

SUPREME COURT OF INDIA

Nanjegowda & Anr.

Vs.

Gangamma & Ors.

C.A.No.2006 of 2006

(Markandey Katju and Chandramauli Kr. Prasad,JJ.,)

25.08.2011

JUDGMENT

Chandramauli Kr.Prasad,J.,

1. Defendant No.1 Nanjegowda and his wife defendant No.3 Jayamma are before us by special leave against the judgment and decree of affirmance.

2. Plaintiff No.1 Gangamma is the wife of late Honnanna. Plaintiff no.2 Vanajakshi is the daughter of plaintiff no.1, whereas plaintiff no.3 Nagesha and defendant no.2 Manjunatha are her sons. Plaintiffs filed the suit for declaration and possession over an area measuring East to West 50 feet and North to South 15 feet with a house built thereon measuring 15x12 feet, appertaining to survey No. 70/19, situated at Kamakshipalya, Saneguruvanahalli, Yeshwanthapur Hobli, Bangalore North Taluk in the State of Karnataka.

3. According to the plaintiffs, the property originally belonged to one Ramakrishna. He had purchased the same under a registered sale deed dated 13th December, 1978. The aforesaid Ramakrishna sold the said property to Honnanna by a registered sale deed dated 5th June, 1980. According to the plaintiffs, Honnanna executed the power of attorney in respect of the suit property in favour of defendant nos.1 and 3 which came to an end on his death on 13th July, 1986. Defendant nos.1 and 3 hereinafter referred to as the defendants (appellants herein) contested the suit. They have not denied that Honnanna had purchased the property on 5th June, 1980 from Ramakrishna. However, they claim title over the property on the basis of an agreement to sale dated 27th November, 1982. It is further case of the defendants that there being a ban on registry of the property, an irrevocable power of attorney was executed by Honnanna on 14th July, 1985 as also an affidavit of the same date.

4. On the basis of the pleadings of the party, the Trial Court framed various issues including the issue as to whether defendant nos. 1 and 3 had acquired title to the property after the death of Honnanna. The Trial Court on appraisal of evidence, came to the conclusion that defendants had failed to prove that Honnanna executed an agreement to sale in favour of defendant no.3 Jayamma. The Trial Court further held that plea of the defendants that

Honnanna delivered possession of the scheduled property in the light of the agreement dated 27th November, 1982 on the date of agreement is false. In coming to the aforesaid conclusion, the Trial Court referred to the contents of the general power of attorney which indicated that Honnanna had given the general power of attorney in favour of Jayamma to manage the property. While doing so, the Trial Court observed as follows:

"48.....what can be made from these recitals is that Honnanna was in possession of the schedule property upto the date of execution of said general power of attorney i.e. 22.7.1985. That being so, the contention of defendants 1 and 3 that Honnanna delivered portion of the schedule property referred to in the agreement of sale dated 27.11.1982 on the alleged date of agreement of sale is found to be false....."

5. In the light of the aforesaid findings, the Trial Court decreed the suit and on appeal by the defendants, the High Court had dismissed the appeal and affirmed the judgment and decree of the Trial Court.

6. Mr. Girish Ananthamurthy, learned Counsel appearing on behalf of the appellants submits that Honnanna executed an agreement to sale in favour of defendant no.3 Jayamma and she was put in possession. According to him, after the execution of the agreement to sale, the ban on the registration of the documents was not lifted and accordingly Honnanna executed an irrevocable power of attorney and sworn affidavit,acknowledging possession on 14th July, 1985. He draws our attention to the agreement to sale (Ext.D-1) dated 27th November, 1982 and the affidavit dated 14th July, 1985 (Ext. D-3) and contends that Honnanna having delivered the possession of the property, notwithstanding the fact that sale deed has not been executed and registered, defendants shall have right over the property. In this connection, our attention has been drawn to Section 53A of the Transfer of Property Act, 1882 (hereinafter referred to as the `Act'). On this ground alone, according to the learned Counsel, the courts below ought to have dismissed the suit.

7. Mr. S.N. Bhat, learned Counsel appearing on behalf of the plaintiffs-respondents, however, contends that the plea put forth by the defendants that they were handed over the possession of the property in part performance of the Contract is unfounded on fact and hence Section 53A of the Act is not remotely attracted. He points out that the findings recorded by the Trial Court, as affirmed by the High Court that possession was not delivered to the defendants is on appraisal of evidence which does not call for interference in this appeal.

8. We have bestowed our consideration to the rival submissions. Section 53A of the Act which is relevant for the purpose reads as follows:

"53A. Part performance- Where any person contracts to transfer for consideration any immoveable property by writing signed by him or on his behalf from which the terms necessary to constitute the transfer can be ascertained with reasonable certainty, and the transferee has, in part performance of the contract, taken possession of the property or any part thereof, or the transferee, being already in

possession, continues in possession in part performance of the contract and has done some act in furtherance of the contract, and the transferee has performed or is willing to perform his part of the contract, then, notwithstanding that where there is an instrument of transfer, that the transfer has not been completed in the manner prescribed therefore by the law for the time being in force, the transferor or any person claiming under him shall be debarred from enforcing against the transferee and persons claiming under him any right in respect of the property of which the transferee has taken or continued in possession, other than a right expressly provided by the terms of the contract: Provided that nothing in this section shall affect the rights of a transferee for consideration who has no notice of the contract or of the part performance thereof."

From a plain reading of the aforesaid provision, it is evident that a party can take shelter behind this provision only when the following conditions are fulfilled. They are:

“(i) The contract should have been in writing signed by or on behalf of the transferor;

(ii)The transferee should have got possession of the immovable property covered by the contract;

(iii)The transferee should have done some act in furtherance of the contract; and

(iv)The transferee has either performed his part of the contract or is willing to perform his part of the contract. A party can take advantage of this provision only when it satisfies all the conditions aforesaid. All the postulates are sine qua non and a party cannot derive benefit by fulfilling one or more conditions.”

9. Bearing in mind the aforesaid principle, we, now, proceed to consider as to whether defendants have satisfied all the requirements. Had they got possession of the immovable property covered by the contract necessary for invocation of Section 53A of the Act? Agreement to sale dated 27th November, 1982 recites that Honnanna had delivered the possession of property to defendant no.3 Jayamma. According to the defendants, there had been ban on registration of documents, hence Honnanna executed an irrevocable power of attorney on 14th July, 1985. The contents of the general power of attorney show that the property at that particular time was in possession of Honnanna, the transferor. This would be evident from the following recital in the power of attorney:

"The vacant site as mentioned in the schedule below which is in my possession acquired through the registered Sale Deed dated 05.05.1980 registered in the Office of the Sub- Registrar, Bangalore North Taluk, in Book No. 1, Volume 3236 page 210-230 No. 1363, I have hereby given the power in favour of you to look after and manage completely on my behalf as I am unable to manage for inevitable reasons."

(underlining ours)

10. Had defendant no.3 Jayamma got possession of the property in pursuance of the agreement to sale dated 27th November, 1982, there was no occasion for Honnanna to recite in clear terms that he was in possession of the property. In view of the aforesaid, we are of the opinion that the finding recorded by the Trial Court as affirmed by the High Court that defendants did not get possession of the property after execution of the sale deed is on correct appreciation of facts, which do not call for interference in this appeal. In view of this finding, in our opinion, the provision of Section 53A of the Transfer of Property Act is not attracted and defendants cannot take advantage of that.

11. In the result, we do not find any merit in this appeal which is dismissed accordingly but without any order as to the costs.