

SUPREME COURT OF INDIA

Venkitalakshmi

Vs.

K.Raju

C.A.No.6258-6259 of 2019

(Uday Umesh Lalit and Vineet saran,JJ.,)

13.08.2019

JUDGMENT

Uday Umesh Lalit,J.,

SLP(Civil)No.23648-23649 of 2015

1. Leave granted.
2. These appeals arise out of the final judgment and order dated 28.03.2014 passed by the High Court of Judicature at Madras in Appeal Suit Nos. 646 and 647 of 1987.
3. The Appeal Suit Nos.646 and 647 of 1987 arose out of Civil Suits being, O.S. No. 704 of 1981 and O.S. No. 707 of 1981 on the file of the Principal Subordinate Court, Coimbatore, Tamil Nadu seeking specific performance in respect of agreements dated 16.07.1980 (Exhibit-A5) and 16.07.1980 (Exhibit-A6) respectively. As per Exhibit-A5 the original Defendants 1 and 2 in O.S. No.704 of 1981 entered into an agreement of sale with original Plaintiff - Ponnuswamy Nadar, while Exhibit-A6 was entered into between original Defendants 1 to 5 in O.S. No. 707 of 1981 with original Plaintiff - Ponnuswamy Nadar. The rival submissions of the parties including the case of the Plaintiffs in O.S. No.704 of 1981 was set out by the High Court in para nos.2 to 4 of its judgment as under:-

“2. The case of the plaintiffs in O.S.No.704 of 1981 is as follows:-

(a)Late S.N. Ponnuswamy Nadar entered into an agreement of sale with Kuppathal and Nanjammal, defendants 1 and 2, on 16.7.1980 for the purchase of the suit property and in that suit, the defendants 6 to 8, were later impleaded. Sale consideration was agreed at Rs.1,19,500/- and it was agreed that the sale would be completed within a period of 4 months from the date of agreement. The second item of property which is forming part of the first item of property was delivered in part performance of the contract on 7.11.1980 to the first plaintiff S.N. Ponnuswamy Nadar. On the date of agreement, an advance of Rs.5,000/- was paid. On 7.11.1980,

the defendants 1 and 2 namely, Kuppathal and Nanjammal requested the first plaintiff to extend time for completing the sale on the ground that there were standing crops on the field and that was agreed on condition of delivering a portion of the suit property and accordingly, the second item of the suit property was delivered to the first plaintiff on 7.11.1980 and time was extended by 10 months and that was also endorsed in the agreement of sale attested by witnesses. Again on 27.8.1981, further extension of time was granted for a period of 3 months and that was also endorsed in the agreement of sale. On 6.11.1981, a registered letter was sent by the first plaintiff to the defendants 1 and 2 expressing his readiness to purchase the suit property and demanded the execution of the sale deed by defendants 1 and 2 and that was followed by lawyer's notice on 16.11.1981. Meanwhile, the first plaintiff came to know that the defendants 1 and 2 fraudulently transferred the suit property in favour of the defendant Nos. 3 and 5, namely, R. Perumal, and R. Vijayalakshmi, in collusion with the first appellant herein. The defendants 2 to 5 attempted to interfere with the possession and enjoyment of the second item of the property. Therefore, the suit was filed for relief of specific performance.

(b) The first plaintiff was ready and willing to pay the balance sale consideration and the first plaintiff was having sufficient means for purchasing of stamp paper and other expenses for the due execution of the sale deed and the first plaintiff was willing to deposit the balance sale consideration into the Court. The defendants 1 and 2 are closely related to the defendants 4 and 5. With the intention of defrauding the first plaintiff and to defeat his legitimate rights, a fraudulent sale deed was executed by the defendants 1 and 2 in favour of the defendants 3 and 5. During the pendency of the suit the defendants 9 to 12 having full knowledge of the pending litigation entered into a joint venture by colluding with the defendants 1 to 8 and the defendants 9 to 12 claimed to have purchased the suit property from the defendants 3 to 8. The sale deed was alleged to have been executed in favour of the defendants 9 to 12 and nominal document was created with an intention of giving colour to their fictitious and fraudulent transfer and no consideration was paid towards sale deed and the sale in favour of defendants 9 to 12 was also hit by the doctrine of lis pendens. Therefore, the defendants 9 to 12 were added as parties to the suit. The first plaintiff Ponnuswamy Nadar died on 22.6.1989, leaving behind the plaintiffs 2 to 4 as his legal heirs and therefore, the plaintiffs 2 to 4 are entitled to get the relief of specific performance.

3. The defendants 1 and 2 filed a written statement contending that Ponnuswamy Nadar was a real estate dealer and speculator and he was a neighbour to the defendants and he was also aware of the agreement of sale the defendants 1 and 2 had entered into with the 4th defendant on 27.3.1979. Thereafter, the first plaintiff created the sale agreement in his favour as if the defendants agreed to sell the suit property to him and therefore, the agreement dated 16.7.1980 projected by the first plaintiff for filing the suit for specific performance was not a genuine document and the defendants 1 and 2 entered into an agreement of sale with the 4th

defendant on 27.3.1979 which was earlier in point of time and therefore, the first plaintiff cannot claim any right even under the agreement of sale. The first plaintiff also filed a criminal case against the defendants 1 and 2 for cheating and the defendants were convicted by the trial court and later acquitted in the appeal. Even in the criminal proceedings, genuineness of the agreement of sale dated 16.7.1980 was challenged by the defendants 1 and 2. Therefore, the defendants 1 and 2 are not liable to execute any sale deed and the plaintiffs are not entitled to the relief of specific performance.

4. The 4th defendant filed a written statement stating that the suit filed by the plaintiff is vexatious, false and liable to be dismissed. He questioned the truth, validity and genuineness of the agreement of sale dated 16.7.1980 alleged to have been entered into between the first plaintiff and the defendants 1 and 2 for the sale consideration of Rs.1,19,500/- and also the endorsement made on the agreement of sale and parting of possession of second item of property. The plaintiffs are not in possession of any portion of the suit property and there was no necessity to ask for extension of time to deliver possession and there was no agreement of sale between the first plaintiff and the defendants 1 and 2. The 4th defendant filed a suit in O.S.No.582 of 1981 on the file of the Subordinate Court, Coimbatore for specific performance of his agreement of sale dated 27.3.1979 and the defendants 1 and 2 entered appearance in that suit and under the agreement of sale dated 27.3.1979, an advance of Rs.60,000/- was paid by the fourth defendant and the sale consideration was fixed at Rs.1,75,000/- and possession was handed over to the 4th defendant in part performance of the agreement of sale and therefore, the 4th defendant is in absolute possession and enjoyment of the suit property. As the defendants 1 and 2 did not come forward to receive the balance sale consideration and execute the sale deed, the 4th defendant sent a notice dated 11.6.1981 by registered post calling upon the defendants 1 and 2 to receive the balance sale consideration and execute the sale deed. As there was no response to the notice, the fourth defendant filed the suit in O.S.No.582 of 1981 for specific performance. In that suit, I.A.No.794 of 1981 was filed for injunction and that was also granted and that would also prove that the 4th defendant was in possession of the suit property. After entering appearance in the suit O.S.No.582 of 1981, the defendants 1 and 2 demanded Rs.20,000/- more and after negotiation, the 4th defendant agreed to pay Rs.10,000/- and thereafter, two sale deeds were executed by the defendants 1 and 2 in favour of the defendants 3 and 5 as per the direction of the 4th defendant and thereafter, the first plaintiff in collusion with the defendants 1 and 2 filed the suit to defeat the rights of the defendants 3 to 5. The 4th defendant also issued a paper publication in "Malai Malar" dated 11.11.1981 informing the public about the sale deed in favour of the defendants 3 & 5. The plaintiff is a very close family friend of the defendants 1 and 2 and all of them colluded and created the agreement of sale dated 16.7.1980 to cause loss to the defendants 3 to 5. The defendants 3 and 5 are bona fide purchasers for value and therefore, they are entitled to get protection and they have no knowledge of the agreement of sale dated 16.7.1980. It is also stated that the agreement of sale in favour of the 4th defendant was earlier in point of time and the

sale deed was executed after the alleged agreement of sale dated 16.7.1980 was created in favour of the first plaintiff. Therefore, the plaintiffs are not entitled to the relief of specific performance.”

4. As regards the respective contentions of the parties raised in the plaint and the written statement in O.S.No.707 of 1981, the relevant paras in the judgment of the High Court were as under:-

“9. The plaint allegation in O.S. No.707 of 1981 is almost identical with the plaint allegations in O.S.No.704 of 1981 and in that suit, agreement of sale was entered into by the defendants 1 to 5 with the first plaintiff on 16.7.1980 and the consideration was fixed at Rs.1,19,500/- and 4 months time was fixed for completing the sale transaction. An advance of Rs.5,000/- was paid and on 7.11.1980, the defendants 1 to 5 requested the first plaintiff to extend the time by 10 months on the ground that there were standing crops and that was agreed, and 25 cents of the property was delivered to the first plaintiff on 7.11.1980 and that property has been shown as item No.2. Again, on 27.8.1981, the defendants 1 to 5 sought for further extension of time for 3 months and that was also agreed and both were endorsed in the agreement of sale. The first plaintiff was ready and willing to purchase the suit property but the defendants 1 to 5 were not ready and therefore, notice dated 16.11.1980 was issued by the first plaintiff to the defendants 1 to 7 demanding execution of sale deed. Thereafter, the defendants 1 to 5 sold the property to the defendants 6 and 7 and the defendants 1 to 5 have no right to sell the property after having entered into an agreement of sale with the first plaintiff on 16.7.1980 and the sale deed in favour of the defendants 6 and 7 are also not binding on the first plaintiff. The defendants 6 and 7 in collusion with the defendants 1 to 5 created sale deed in their favour. The first plaintiff was also ready to deposit sale consideration, if so directed by the court. The defendants 1 to 5 are closely related to the defendants 6 and 7 and, in order to defraud the first plaintiff and to defeat the legitimate right of the first plaintiff, the sale deeds were executed in favour of the defendants 6 and 7. The defendants 8 to 11 claimed to have purchased the suit properties from the defendants 6 and 7 and those sale deeds in favour of the defendants 8 to 11 are nominal documents and they have not come into force and there was no passing of consideration and as the properties were alleged to have been conveyed to the defendants 8 to 11, they were also made as parties. The first plaintiff died and the plaintiffs 2 to 4 were impleaded as legal representatives and they were also entitled for specific performance and injunction in respect of item 2 of the property.

10. The defendants 1 to 3 filed a statement stating that the first plaintiff was a real estate dealer and a speculator and he was a neighbour of the defendants and he was aware of the agreement between the defendants 1 to 5 entered into with the 6th defendant on 27.3.1979. Thereafter, the first plaintiff created agreement of sale to defeat the right of the defendants 1 to 3. The first plaintiff also filed a criminal complaint against the defendants 1 to 3 for the offence of cheating and the

defendants 1 to 3 were convicted by the trial court and the conviction was set aside in the appeal and in the criminal proceedings, the defendants 1 to 3 questioned the genuineness of the agreement dated 7.11.1980. Therefore, the plaintiffs are not entitled for the relief prayed for.

11. The Court Guardians of the defendants 4 and 5 filed a statement denying the agreement of sale dated 16.7.1980. It is stated that the defendants 6 and 5 are minors on that date and, therefore, they are not bound by the agreement of sale. The agreement was not for the benefit of the minors. No permission was obtained from the Court for entering into an agreement of sale. They also denied the allegation that on 7.11.1980 possession of 25 cents of property was given to the first plaintiff and questioned the means of the first plaintiff to pay the balance sale consideration. Therefore, the plaintiffs are not entitled to the relief of specific performance. The 6th defendant in O.S.No.707 of 1981 filed a written statement and the same was adopted by 7th defendant and the 4th defendant in O.S.No.704 of 1981 is the 6th defendant in O.S.No.707 of 1981 and he repeated the same allegations in the statement filed in O.S.No.704 of 1981 in the present suit. It is further stated that pursuant to the agreement of sale dated 27.3.1979 between the defendants 1 to 5 and the 6th defendant, two sale deeds dated 22.10.1981 and exchange deeds dated 19.10.1981 and 22.10.1981 were executed. The defendants 1 to 5 were demanding Rs.20,000/- over and above the agreed price in the agreement of sale dated 27.3.1979 and at the intervention of panchayatdars, they received Rs.10,000/- and executed document in favour of the defendants 6 and 7. It is also contended that the suit filed by the first plaintiff is a collusive suit and the first plaintiff and the defendants 1 to 5 are closely related and in order to defeat the rights of the defendants 6 and 7, the present suit was filed. The agreement of sale dated 16.7.1980 was also not genuine and the endorsements made on the agreement were also forged and created for the purpose of his case and no part of the property was given to the first plaintiff on 7.11.1980 and the plaintiffs were not having means to pay the balance sale consideration as per the agreement of sale and therefore, the suit is liable to be dismissed.”

5. During the pendency of said Suits, the original Plaintiff expired and his heirs were substituted in his place. Both the suits were tried together and the Trial Court by its judgement and order dated 25.03.1987 found that the agreement of sale dated 16.07.1980 (Exhibit-A5) entered into between the original Plaintiff and the Defendants 1 and 2 in O.S.No.704 of 1981 and so also the agreement of sale dated 16.07.1980 (Exhibit-A6) entered into between the original Plaintiff and the Defendants 1 to 5 in O.S.No.707 of 1981 were genuine agreements of sale; that time to complete the transaction was extended on 07.11.1980 and the endorsements in that behalf were also genuine endorsements, while agreement of sale dated 27.03.1979 (Exhibit-B19) was a got-up document which was ante dated. The Trial Court, thus, decreed both the Suits and granted decree for specific performance as prayed for.

6. The Defendants in the above-mentioned O.S.Nos.704 and 707 of 1981 being aggrieved filed Appeal Suit Nos.646 and 647 of 1987 in the High Court. The High Court, by its

judgment and order, presently under Appeal, allowed both the Appeal Suit Nos. 646 and 647 of 1987. On the basis of the submissions advanced by the Counsel, the following points were framed for consideration:-

“(i) Whether Ex.A.5 was executed by the defendants 1 and 2 in O.S.No.704 of 1981 and Ex.A.6 was executed by the defendants 1 to 3 in O.S. No.707 of 1981 as alleged by the plaintiffs?

(ii) Whether Exs. A.7 and A.8 were executed by the said defendants for extension of time and they also parted with possession of a portion of the suit property as stated in Exs.A.7 and A.8?

(iii) Whether Exs.A.9 and A.10 were executed by the aforesaid defendants seeking extension of time?

(iv) Whether the plaintiffs were ready and willing to perform their part of the contract as per Exs.A.5 and A.6?

(v) Whether Ex.A.39 equivalent to Ex.B.19 was executed by the defendants 1 and 2 in O.S.No.704 of 1981 and the defendants 1 to 3 in O.S. No.707 of 1981 in favour of the fourth defendant in respect of the entire suit properties in both the suits?

(vi) Whether the agreement Ex.A.39 equivalent to Ex.B.19 was a genuine document as alleged by the appellants?

(vii) Whether the defendants 4 to 12 in O.S.No.704 of 1981 and the defendants 6 to 11 in O.S.No.707 of 1981 are bona fide purchasers for value?”

7. The High Court answered first three points against the Plaintiff and held that the Plaintiff was not entitled to the relief of specific performance. Having ruled against the Exhibits-A5 and A6, the High Court went on to consider whether relief for specific performance could be granted in favour of the Plaintiff even assuming said Exhibits-A5 and A6 to be valid documents. The High Court disbelieved the theory that by Exhibits-A7 to A10 the time to complete the transaction was extended as contended by the Plaintiff and returned a finding that the Plaintiff was not ready and willing to perform his part of the contract and thus was not entitled to decree for specific performance.

8. We heard Mr. R. Balasubramanian, learned Senior Advocate in support of the appeals and Ms. E.R. Sumathy, learned Advocate for the respondents. Mr. Balasubramanian, learned Senior Advocate took us through the entire record and submitted that the view taken by the Trial Court was just and proper and no interference was called for in first appellate jurisdiction. It was submitted that by virtue of Exts.7 to 10, time to complete the transaction was extended and that the Plaintiff had shown his readiness and willingness and as such was entitled to decree for specific performance. Ms. Sumathy, learned Advocate, on the other hand, submitted that the High Court had rightly found that Exhibits 7 to 10 could not be believed. In her submission it was found, as a fact, that there was no

readiness and willingness on part of the Plaintiff.

9. It is crucial to note that as against the consideration of Rs.1,19,500/- only Rs.5,000/- were paid as earnest money on 16.07.1980. A finding of fact recorded by the High Court was to the effect that the Plaintiff had failed to prove that the time to complete the transaction was extended vide Exts.7 to 10. We have gone through the appreciation of evidence in that behalf and do not find any error. Once the theory that time for completion of transaction was extended gets demolished, the argument that there was readiness and willingness on part of the Plaintiff also gets completely weakened. Thus, the conclusions arrived at by the High Court are not in any way incorrect to justify interference in jurisdiction under Article 136(1) of the Constitution.

10. However, the fact remains that money amounting to Rs.5,000/- was parted with as early as in July 1980. Therefore, in the peculiar facts and circumstances of the present case, in our view, ends of justice would be met if the appellants are given some compensation over and above return of the earnest money. We, therefore, direct the respondents to make over a sum of Rs.5 lakhs (Rupees five lakhs) in lieu of return of earnest to the present appellants within eight weeks from today.

11. Subject to the aforesaid direction, the appeals stand dismissed. No costs.

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