SUPREME COURT OF INDIA

Gorakhram Sadhuram

v.

Laxmibai, wife of Inderlal Nandlal

(Saiyid Fazl Ali, Patanjali Sastri, Mahajan, Mukherjea and Das JJ.)

March 14, 1950

Judgment

Mahajan J. (for the Court)

1. This is an appeal from a judgment and decree of the High Court of Judicature at Bombay dated January 26, 1948 reversing the decree passed by Chagla J. on July 07, 1947.

2. The suit was brought by one Laxmibai, wife of Inderlal Nandlal of Malad on May 26, 1943 for specific performance of an agreement dated April 29, 1929, said to have been arrived at between her and Messrs. Gorakhram, Sadhuram, a firm carrying on business at bankers and commission agents at Kalbadevi Road, Bombay. By the agreement the defendants were to transfer the bungalow in suit at Malad to the name of the respondent whenever demanded on payment of costs of such transfer and were to debit the sum of Rs. 40,000 the value of the bungalow, to the current account of the firm of Messrs Thackersidas Nandlal, of which the plaintiff's husband and father-in-law were the owners and which firm was indebted in a large amount to Messrs. Gorakhram Sadhuram.

3. The principal defence to the suit was that the plaintiff was not a party to the agreement and could not therefore sue upon it. It was also pleaded that the suit was barred by S. 66, CPC, but no issue was raised on the point and the plea was later on abandoned. In spite of the abandonment of the plea, the point was argued at the hearing.

4. Chagla J. dismissed the plaintiff's suit and held that the plaintiff not being a party to the agreement, could not claim specific performance of it. He further held that the suit was barred by S. 66, CPC. This decision was reversed in appeal by Bhagwati and Tendolkar JJ. on the finding that the plaintiff was a party to the agreement and was ready and willing to perform her part of the contract. It was further held that the suit was not barred by S. 66 CPC. Chagla J. has also held that the plaintiff was not ready and willing to perform her part of the contract inasmuch as her husband was not in a position to pay the sum of Rs. 40,000, the price fixed for the conveyance of the house.

5. This aspect of the case, however, was not pressed before the Court of appeal by the counsel for the respondent and was not agitated before us. Having regard to the terms of the agreement which was arrived at between the parties, the defendants were bound on being called upon to do so, to transfer and convey the property to the name of the plaintiff, she being under an obligation to pay the costs, charges and expenses in connection therewith. The consideration money of such transfer, i.e. Rs. 40,000 had to be debited on account of the firm. There was no question whatever of any cash payment having to be made by the firm or its partners.

6. Mr. Setalvad contested the judgment of the High Court in appeal on three grounds. (1) That the High Court had erroneously held that the plaintiff was a party to the contract and could claim specific performance of it. It was contended that this finding was not supported by evidence on the record and really ran counter to it. (2) That the suit was barred by S. 66, CPC. (3) That specific performance being a discretionary relief and the position of the parties having altered since 1929, the Court should not specifically enforce the agreement after a period of over 14 years.

7. In order to judge the propriety of these contentions it is necessary to state a few facts. The plaintiff's husband and father-in-law effected a number of mortgages in favour of the appellant firm

the first of them having been made on September 20, 1922. This mortgage comprised the property in dispute which is a bungalow at Malad, a suburb of Bombay. In the year 1925 a suit was brought on this mortgage and a preliminary decree passed in favour of the appellant on April 15, 1925. This was made absolute on April 08, 1926. Proceedings in execution of the final decree were pending when on August 28, 1929 the agreement in dispute was made.

8. The terms of the agreement are contained in two letters dated August 29, 1929 and August 30, 1929. The letters are in these terms :

"I. To Shahji Gorakhramji Sadhuramji. Please read Jaigopal (salutations) of Nandlal and Inderlal Nandlal. Further, our two ginning factories and one pressing factory together with the compound etc. at Panderkowda which were mortgaged with you for Rs. 3,15,000 are sold by us to you for Rs. 3,15, 000. We shall execute any documents which you may ask us to do at the time you got the same transferred to your name. Further the house at Kalbadevi in Bombay, the home at Gaiwadi and the bungalow at Malad which have been mortgaged for Rs. 540,000 are sold by us for Rs. 4,40,000 as follows :

The house at Kalbadevi 1,15,000 and the bungalow at Malad for Rs. 40, 000. Further, you have obtained a decree against us and also obtained an order for auction sale by the Commissioner. Whether you get the properties auctioned or sold, we shall agree to both these things. Whenever you ask us to execute any documents in respect thereof, we shall do the same. We shall not raise any objection.

Further, you will have to get bungalow one in number at Malad transferred to the name of the mother of Chiru Kanhaiyalal Devda. Whatever expenses incurred in that behalf will be borne by her. You will please debit Rs. 40,000 to us. And our diamond ring one in number is pledged with you. The same shall have to be given to the mother of Chiru Kanhaiyalal. Please debit Rs. 1,500 in respect thereof to us.

Further, as regards monies that may remain due to you under the mortgage and current accounts, we shall pay the same, to you whenever we can. Further, our heir shall not be entitled to raise any objection in this behalf. He shall have to agree to all these arrangements.....29-8-29."

II. "To Shahji Nandlalji Thakerseydasji and Inderlalji Nandlalji. Please read Jaigopal (salutations) of Gorakhram Sadhuram. Further, your letter dated 10th of Bhadarva Vad (i.e. August 30, 1929) is received. What is stated therein is agreed to by us. You have asked us to get transferred bungalow 1 at Malad to the name of Shah Kanhaiyalalji's mother and to give one diamond ring to her. We agree to the same whenever you ask us to get the bungalow transferred to her name, we shall do so at your costs. We shall give one ring of diamond to her August 30 or 31, 1929."

9. In pursuance of this arrangement the diamond ring was given by the appellants to the plaintiff respondent within a month or two of its date. On April 30, 1930 the appellants purchased the Malad house at the auction sale. The sale was confirmed on July 04, 1930 and a sale certificate was obtained by the appellants in their name but the cost of the stamp for the sale certificate was paid on behalf of the plaintiff by her husband or father-in-law but out of her money.

10. It is common ground now that the plaintiff was put in possession of the house soon after and she placed her furniture in it, effected repairs and paid the taxes. As a matter of fact, the taxes were paid by the appellants and subsequently recovered in cash from the plaintiff either directly or through her husband. Considerable amount was spent by her in effecting improvement to the house and she remained in possession of it and even now is in possession of it. When she demanded a conveyance from the appellant firm, they declined to do so with the result that the plaintiff had to bring this suit.

11. After confirmation of the sale of this property and other properties the appellants obtained a personal decree against the mortgagors on August 18, 1930 in the sum of Rs. 5,89,000 with future interest. In the year 1931 the plaintiff's father-in-law died. Her husband was adjudicated insolvent a few months after the institution of the suit.

12. The first question for determination is whether in view of the contents of the two letters above mentioned and the oral evidence in the case it can be held that the plaintiff was a party to the contract in respect of the diamond ring and the Malad house. The letter of August 29, 1929 in clear terms states that the bungalow was to be transferred in the name of the plaintiff and the expenses of the conveyance were to be borne by her and that the diamond ring was to be given to her. The letter of acceptance given by the appellants accepted this proposal. It proceeded however to state that whenever the mortgagors asked the bungalow to be transferred in the name of the plaintiff it will be done at their cost and the ring will be given to her.

13. The letters are not formal legal documents and no question was raised that the parties were not *ad idem* about the terms of the arrangement. There can, however, be no question that the intention of the parties was as expressed in the first letter that plaintiff would have to pay the costs of the conveyance and get it executed in her name. The appellants agreed to this. In the letter of acceptance the appellants were treating the mortgagors and their family including the plaintiff as one group because it is obvious enough that the transfer of the house in the name of the plaintiff was with the intention of benefiting her, her children, and, as a matter of fact, the whole family. As regards the ring, she was the sole promisee as it belonged to her.

14. The oral evidence in the case consists of the depositions of three witnesses, namely, the plaintiff, her husband, Inderlal Nandlal, and her son Kanhaiyalal. All the witnesses unanimously stated that the arrangement which was finally evidenced by the two letters above mentioned was made at a meeting held at the Kalbadevi house of the mortgagors in the presence of all the family members. The creditors were represented by their muneem Murlidhar who unfortunately is dead and therefore could not appear in the witness box.

15. Kanhaiyalal deposed that he was sitting near his father and grandfather and Murlidhar and that his mother was sitting nearby in an adjoining room, that the plaintiff told him that as the accounts were being settled she should get the house to give in and some jewellery, that as instructed by his mother, he went and communicated this to Murlidhar. It was not denied that she is a purdanashin lady and would not herself take part in any negotiations. She could only speak through her son or her husband and the question as to whether she was a party to the agreement or not has to be decided not on the basis that she herself actively took part in the talk but on the basis that she was vitally interested in the agreement that she demanded the house for herself and the creditor's representative made certain stipulations with her though the actual talk on her behalf was done by her son or husband.

16. The evidence amounts to this that a demand was made by the plaintiff from the creditor for the house and the jewellery and the reply was that it had been decided to give her the ring and the Malad house and to this she assented. The plaintiff in her statement deposed that she and Murlidhar agreed to the transfer of the Malad house in her name and also as to the ring, that she agreed to pay the costs of the transfer, that Murlidhar was sitting opposite to her and though he was not willing to give the house and the ring to her husband and father-in-law on the ground that they were speculators, he was prepared to give them to her if she wanted both these things. The statement of the plaintiff read as a whole shows that she was a party to the negotiations that were being carried on with the creditor on behalf of the family and was not present there as a mere silent spectator.

17. The creditor's representative was interested in arriving at a settlement of his claim with the whole family and not only with the two mortgagors. It was the family property that had been mortgaged and was going to be sold in execution of the mortgage decree. The decree-holders in order to avoid any objections to sale of joint family property either by the debtors on by their son or by the plaintiff, thought it prudent to make an arrangement to which all members of the family were parties so that they might not harass them in execution proceedings and in bringing to sale the property. It would not have been to their advantage to enter into an arrangement only with the mortgagors because it would then be open to the other members of the family who had claims on the joint family property to raise all kinds of objections to the sale of the property. It was to avoid these objections that this arrangement was arrived at.

18. The mortgagors were quite willing to part with the mortgaged property but the other members of the family would not have joined this arrangement unless they got some benefit out of it, and were able to salvage part of the joint family estate for themselves and their descendants and also for the comfortable living of the mortgagors as well. If this arrangement was only going to be with the two debtors, then it was unnecessary for the creditor's representative to come for this purpose to the residential house of the debtors and meet all the members of the family at a conference.

19. Plaintiff's presence at the meeting suggests that it was intended to bind her with the terms of the arrangement by giving her the ring and the house, so that later on she may not raise any objection claiming the ring as her *stridhana* property and making a claim for the house for her residence. It was also thought to have the son there because he might claim that the mortgages had been made for debts which were not binding on him because they had been incurred not for family purpose but for speculation. In view of these circumstances I am not prepared to disbelieve the plaintiff when she states that she and Murlidhar agreed to the terms incorporated in the letter as regards the house and the ring.

20. Chagla J. though he accepted her evidence as to the facts stated by her, was not prepared to hold on that statement that actually the agreement was made between her and Murlidhar. He thought that the arrangement made between the husband and the father-in-law of the plaintiff and Murlidhar was only communicated to her. We have carefully read the evidence of the plaintiff and we consider that she has given her statement in a straightforward manner and we see no reason to disbelieve her statement when she says that both she and Murlidhar agreed to the terms of the arrangement. The clause in the debtors' letter that she would be liable for payment of costs of the conveyance could not have been entered in it without her consent. About the ring, it was she and she alone who would have been keen to get it and without her demand having been met the amicable settlement could not have been made.

21. The plaintiff's husband, Inderlal Nandlal, also deposed that Murlidhar had told his wife that the diamond ring and the house would be given to her whenever she wanted them and that it was agreed that she would pay the cost of the transfer of the Malad Property in her name. Mr. Setalvad laid considerable stress on certain statements elicited in his cross-examination. The witness said that the plaintiff did not understand accounts & was not present when the accounts were being settled, that Murlidhar was not willing to give anything to him and to his father, but that he was willing to transfer the house to his wife, that he and his father agreed not to object to the auction sale if Murlidhar agreed to transfer the Malad house to his wife's name, and that the terms of the agreement were settled between Murlidhar on the one hand and by him and his father on the other and that his wife was present in the room.

22. It was urged that according to this statement the agreement was really made between Murlidhar and the plaintiff's husband and father-in-law and that the plaintiff's statement that she

had arrived at an agreement with Murlidhar about the house and the ring cannot be accepted as true. We do not see any force in this contention. On the materials on the record it cannot be doubted that the demand for the diamond ring and for the release of the house from the mortgagees emanated from the plaintiff.

23. Whether that demand was conveyed to the creditor's representative directly by her or through her son or husband is not very material because such a procedure would be in keeping with the habits and modes of the life of the people who were transacting the business. It also cannot be doubted that the creditor's representative was not prepared either to give the ring or the house to the mortgagors who would not have retained these things for a very long time and the very purpose of giving them would have been defeated. Thus the promise to give the house and the ring could only have been made to the person who made the demand and that person therefore would be the promisee under this agreement as regards these two items of property.

24. The creditor's representative, whether directly in conversation with her or by an open declaration in her presence, made a promise to the plaintiff that the house and the ring would be given to her. That she did become the promisee under his contract is clearly proved not only by the oral evidence but from the recital in the first letter in which it was clearly stipulated that she would pay the costs of the conveyance. It was in the status of a promisee that the conveyance had to be executed in her name. This construction of the agreement is fully supported by the conduct of the promisers immediately after the contract had been made.

25. The promisors started performing their promise within two months of its having been made by directly handing over the ring to the plaintiff regarding which demand was conveyed to them by her through her husband. As soon as they succeeded in buying the property at the auction sale, they called upon the promisee who had undertaken the obligation to pay the expenses of the conveyance through the proper channel, to meet the stamp expenses in connection with the sale certificate. They further allowed her to occupy the property. The two Courts below have found that the defendants had incurred the expenses of payment of municipal taxes, etc., concerning the bungalow but that the recovered these amounts from the plaintiff. That finding is supported by the oral evidence on the record.

26. The defendants also stood by and allowed the promisee through her husband to spend considerable sums of money on repairs and remodelling of the house. In all respects the defendants fully fulfilled their part of the promise but defaulted in executing the conveyance. When the whole promise has been substantially fulfilled and it only remains to pass legal title by the execution of a conveyance, the objection raised as to the plaintiff not being a party to the contract seems to be fulfil. It was expressly agreed that the conveyance would be executed in her name and she was therefore entitled to demand that. The decision of the High Court therefore on this point is affirmed and the contention of Mr. Setalvad negatived.

27. The contention that S. 66, Civil P.C. bars the suit has, in our opinion, no substance whatever. The appellants when they purchased the house at the auction sale were buying the property for themselves. They had undoubtedly entered into an agreement with the plaintiff that when they purchased the property at the auction sale they would convey it to her but that is not material for the application of S. 66. The property was purchased by them for a sum of Rs. 20,000. The conveyance to the plaintiff has to be for a debit of Rs. 40,000. The plea of *benami* purchase in such a situation could not be sustained and was rightly rejected by the High Court in appeal. The appellants purchased the property for themselves so that by acquiring it in their name they may be able to fulfil their agreement of sale with the plaintiff. In these circumstances, the provisions of S. 66 do not operate as a bar to the suit.

28. The last contention of Mr. Setalvad is equally without force. To all intents and purposes the plaintiff has been in possession of the house since the date of the agreement. She has incurred all the expenses in respect of taxes etc., she has made repairs in the house without any objection and has spent considerable sums of money on it and she has been residing in it. All that is now required is a formal document of title in her favour. The contention therefore that the suit is a belated one and that the position of the mortgagors has altered cannot be a ground to defeat her suit, particularly when the appeal court has granted her the relief claimed by her.

29. It was argued that the plaintiff could also maintain the suit as a beneficiary if she was not a party to the contract. It is unnecessary to examine this contention in view of the decision that she was actually a party to the agreement and could maintain the suit.

30. The result therefore is that this appeal fails and is dismissed with costs.

Case Number(s)
Civil Appeal No. 38 of 1948

Statute(s) referred

Statute	Section/Article	Para
Code of Civil Procedure, 1908	Section 66	3, 4, 6, 27

Advocate(s)
Not stated in the source text.
(P) – Provisional