

(1997) 03 BOM CK 0047
In the Bombay High Court
Case No : Second Appeal No. 4 of 1987

Bajrang alias Hanumant Tatyaba Kakade and Another	APPELLANT
Vs	
Smt. Babubai Pujari and Others	RESPONDENT

Date of Decision : 04-03-1997

Acts Referred:

Evidence Act, 1872 — Section 101
Transfer of Property Act, 1882 — Section 41

Citation : (1997) 4 ALLMR 363 : (1997) 4 BomCR 462 : (1997) 2 CivCC 314 :
(1997) 2 MhLj 855 : (1997) 4 RCR(Civil) 474

Hon'ble Judges : R.M. Lodha, J

Bench : Single Bench

Advocate : Rajesh More, for A.V. Anturkar, for the Appellant; A.R.S. Baxi, for respondent Nos. 1 and 2 and S.G. Surana, for the Respondent

Final Decision : Dismissed

Judgement

R.M. Lodha, J.—This second appeal is at the instance of original defendants Nos. 1 and 2 aggrieved by the judgment and decree dated 31-3-1986 passed by IIIrd Additional District Judge. Solapur whereby the said Court modified the judgment and decree passed on 24-3-1983 by the Civil Judge, Malsiras.

2. The only question that is canvassed during the course of arguments in this second appeal and which requires answer is :- Whether the original defendant No. 1 is bona fide purchaser of the disputed land comprising of gat No. 846 and 856 situate at Tabulwadi, Taluka Malsiras from original defendants Nos. 3 to 6.

3. The aforesaid question arises from the facts which briefly can be summarised as under:-

Jagannath Tukaram was the original owner of the land comprising of gat No. 846 and 856 situate at Tabulwali, Taluka Malsiras and the house property details of which are given in paragraphs 1 and 2 of the plaint. He died on 23-4-59 leaving behind Babulal (original plaintiff No. 1), Vishranti (original plaintiff No. 2.),

Kalavati (original defendant No. 3) Vijaya (original defendant No. 4), Rajabai (original defendant No. 5) and Chhaya (original defendant No. 6). All the aforesaid six heirs accordingly succeeded Jagannath Barav having 1/6th share in the aforesaid properties. The original defendants Nos. 3 to 6 aforesaid sold the disputed property comprising of gat No. 846 and 856 to Bajrang alias Hanumant Tatyaba Kakade (original defendant No. 1) by sale deed dated 30-6-1979. The original plaintiffs filed the suit against the defendants for partition and possession in respect of their 1/6 share in the aforesaid land and also the relief that the sale deed dated 30-6-1979 whereby the defendants Nos. 3 to 6 sold the disputed property to defendant No. 1 be declared as not binding on them. The plaintiffs claimed past as well as future mesne profits. The defence set out by the defendants Nos. 1 to 3 was that after the death of Jagannath the plaintiffs received their share and they are not concerned with the suit property. According to them, after the death of Jagannath names of defendant Nos. 3 to 6 were entered in the revenue record and they cultivated the land for about 20 years and, therefore, the claim of the original plaintiff, if any, shall be deemed to have been relinquished. The defendant No. 1 set out defence that he was bona fide purchaser for valuable consideration without notice and he had taken due care and made proper enquiries before purchase of the aforesaid land. After recording the evidence and hearing the learned Counsel for parties, the trial Court held that plaintiffs were entitled to the possession in respect of the house property and were also entitled to get declaration that the sale deed executed by defendant Nos. 3 to 6 in favour of defendant No. 1 was not binding. The trial Court also held that the plaintiffs failed to prove that the plaintiffs Nos. 1 and 2 released their share in lieu of Immovable property as alleged in paragraph 2 of the written statement. Accordingly on 24-2-83 the trial Court decreed plaintiffs suit declaring that they had 1/6th share each in the suit house and as regards the land sold by defendant Nos. 3 to 6 in favour of defendant No. 1, the trial Court decreed that the plaintiffs will have 1/6th share each in the consideration of Rs. 10,000/- received by defendant Nos. 3 to 6 only.

4. The plaintiffs were dissatisfied with the part of the judgment and decree passed by the trial Court whereby it granted decree in favour of the plaintiffs in respect of agricultural land by directing that they will have 1/6th share each in the consideration of Rs. 10,000/- received by the defendants Nos. 3 to 6 and thereby refusing to grant the decree of partition and possession in respect of their 1/6th share each in the agricultural land. The appellate Court after hearing the parties allowed the appeal and modified the decree of the trial Court by directing that the plaintiffs are also entitled to partition and separate possession of their share in the agricultural land of gat No. 846 and 856 situate at Tandulwadi, Taluka Malsiras.

5. There is no dispute that the suit property originally belonged to Jagannath Tukaram Gurao and after his death the original plaintiffs and the defendant Nos. 3 to 6 succeeded his estate including the house property as well as the agricultural land. Before me also there is no dispute that the plaintiffs as well as

defendant Nos. 3 to 6 have 1/6th share each in the house property as well as the agricultural lands. The only question is whether the defendant No. 1 who purchased the agricultural land comprising of gat No. 846 and 856 situate at Tandulwadi is a bona fide purchaser for value without notice and, therefore, the sale deed executed by defendant Nos. 3 to 6 in favour of defendant No. 1 cannot be effected and plaintiffs cannot claim 1/6th share each in that property which has been sold by defendant Nos. 3 to 6 in favour of defendant No. 1. From the available material it is seen that after the death of Jagannath Tukaram Gurao, the mutation in respect of the aforesaid agricultural land was entered in favour of defendant Nos. 3 to 6. The said mutation entry of course has been holding the field for about 20 years. There is no other evidence led by the defendant No. 1 that he made further inquiries to find out about the title of the property or that there were other owners. The moot question, therefore, is whether the purchaser of an agricultural land who purchases such land after verifying mutation entry can be said to have taken reasonable care in purchasing the property. Can such a purchaser of an agricultural land be termed as bona fide purchaser who has not verified title of the vendor? Mutation entry of an agricultural land is only fiscal entry and is not a document of right and title and, therefore, if a person purchases agricultural land on the basis of a mutation entry, without further making enquiry about the title, it cannot be said that the purchaser had taken reasonable care before the purchase of the agricultural land. The mutation entry in the name of the vendor does not dispense with the duty of the vendee to make requisite and usual enquiry into the title of the vendor and unless the vendee is able to prove that he has made the usual enquiry into the title of the vendor, on the basis of verification of mutation entry, such vendee cannot be said to be entitled to protection u/s 41 of the Transfer of Property Act. The oft quoted and well known passage is reiterated in *Bailey v. Barnes*, 1894 (1) Ch 25 which aptly describes the obligation of the vendee before the purchase and that reads thus:

"A purchaser of property is under no legal obligation to investigate his vendor's title. But in dealing with real property, as in other matters of business, regard is had to the usual course of business; and a purchaser who wilfully departs from it in order to avoid acquiring a knowledge of his vendor's title is not allowed to derive any advantage from his wilful ignorance or defect which would have come to his knowledge if he had transacted his business in the ordinary way."

6. The aforesaid is the test which has to be applied to find out whether the purchaser acted bona fide and took reasonable care and caution in making usual enquiry into the title. If he succeeds in showing that even if he had transacted the business in ordinary way he was not in a position to gather that there was none other owner than the vendors, then, such vendee could be described as bona fide purchaser. On the other hand, if while transacting the business in the ordinary way the vendee would have come to know that there were owners other than the vendor, it cannot be said that such vendee has acted bona fide.

7. In *Bai Gulabbai v. Shri Datoariji Mohangarji*, 1907 (9) Bom LR, a Division Bench of this Court held that no purchaser can protect himself against a claim of the real owner merely by saying that he had no notice of real owner's title. It has been held therein as under :

"Reasonable care is to be expected from every one who claims to have purchased free from a really existing right, equitable or legal, and when the purchaser has failed to exercise it he cannot claim that the real owner should be called on to prove his good faith and innocence instead.

"It is open to the defendant to show that he took reasonable care to ascertain that his transferor, the first defendant, had power to make the transfer, and that the second defendant himself acted in good faith; that is to say, with due care and attention, and having so acted, discovered nothing which would put him on further enquiry. It is also open to the defendant in such case to show that by the action of the real owner or beneficiary, he was induced to believe and intentionally induced to believe that the transferor had the power which he purported to exercise."

8. In *Kanji Vs. Parmanand*, in the case of transfer by ostensible owner it has been held that the transferee cannot be protected in the absence of reasonable and ordinary prudence on his part to a certain power of transferor.

9. In law if the vendor has only partial interest in the property and disposes of the property of an interest greater than he really has. In such event also the vendee has to establish and prove that he had taken reasonable care and made full enquiries about the title of the property purchased by him. No person can dispose of an interest in the property that is not vested in him and the only exception is that if the purchaser has purchased the property bona fide after making usual enquiry into the title as a reasonable and prudent man of business would do, even if the property has been sold by that person who does not have full interest in the property, such purchaser can be protected. However, the onus lies on the purchaser to establish that he had acted in good faith and purchased the property after making full enquiries into the title of the vendor and all reasonable care was taken by him before the purchase.

10. Applying the aforesaid principles, it would be seen that in the present case except that the agricultural land sold by defendant Nos. 3 to 6 in favour of defendant No. 1 was mutated in their favour, there is no evidence to suggest much less to establish that the defendant No. 1 made full enquiry in the title of the vendors defendants Nos. 3 to 6. As already observed a mutation entry of agricultural land in the revenue record is only fiscal entry and that by itself is not a document of title and on the basis of that entry it cannot be assumed that the person in whose favour the entry stands is the title holder of the land. Thus, it is clear that the reasonable care of ordinary man of business expected at the time of transaction was lacking and the defendant No. 1 cannot be said to have taken reasonable steps in making enquiry in the title of defendant Nos. 3 to 6 before

purchasing the property in question and, therefore, he cannot be said to be bona fide purchaser for valuable consideration without notice.

11. The Appeal Court therefore cannot be said to have committed any error in granting the decree in favour of the plaintiff.

12. The learned Counsel for the appellant relied on the decision of this Court in *Bai Hakimbu & ors. v. Dayabhai Rugnath* AIR 1939 Bom. 508 and the judgment of the Lahore High Court in *Parbhu v. Shamsud Din & anr.*, AIR 1943 Lah 199. None of these decisions has any application in the facts and circumstances of this case. In *Baja Han* case (*supra*) the question was whether plaintiff was a transferee in good faith, and for consideration and, therefore, transfer was not void ab initio even when it has resulted in failing or defeating the other creditors of transferor and this Court observed that at the time of the transfer the darkhast of both the plaintiffs and defendant was pending against Fida Ali. Murli had become insolvent and it was open to Fida Ali to pay his profit to other of his creditor in preference to others although it was to execute its decree by landlord. On its face the said judgment has no application. In *Vasuram's* case (*supra*) the question related to section 63 and 63-A of the Transfer of Property Act and the question was whether mortgagee can secure cost with interest if he was bona fide mortgagee with possession. *Vasuram's* case also has no application in the facts and circumstances of the case.

13. In view of the discussion aforesaid, I find no merit in the second appeal and it is dismissed with no order as to costs.