

(1916) 03 BOM CK 0011
In the Bombay High Court

Gangaram Ganpati Bhopale

APPELLANT

Vs

Laxman Ganoba Shet

RESPONDENT

Date of Decision : 15-03-1916

Acts Referred:

Citation : AIR 1916 Bom 95 : 37 Ind. Cas. 360

Hon'ble Judges : Basil Scott, C.J;Heaton, J

Bench : Division Bench

Judgement

1. The plaintiff sued for a declaration that a certain Immovable property belonged to him and for a decree that possession of the same should be delivered to him by the defendant. He bases his title upon a purchase of the properties in question from Narayen Ganpati on the 5th of December 1911. It has been held by the lower Appellate Court that prior to this date the plaintiff had notice of the execution of a contract for the sale of the same property by Narayen to the defendant. The defendant contends that he has paid to Narayen portion of the purchase-money agreed upon and that the balance was to be paid after the sale-deed was passed. It is found by the lower Appellate Court that nearly half of the purchase-money was in fact received by Narayen from the defendant under the contract of sale.

2. The question is whether the defendant has a good defence to a suit by a purchaser from Narayen who can rely upon a registered sale-deed and whether he can, notwithstanding the sale-deed, retain possession of the property on the ground that the plaintiff purchased with notice of the defendant's contract.

3. The defendant's right to enforce the benefit of the obligation of his intended vendor against the purchaser with notice is expressly affirmed by Section 40 of the Transfer of Property Act, as explained by the illustration. The plaintiff is moreover, according to the Specific Relief Act, Section 3, a trustee for the defendant of the land purchased by him: see illustration (g). Section 91 of the Indian Trusts Act affirms the same Rule as the Specific Relief Act. The Legislature has herein adopted the Jaw applied in the cases of Daniels v. Davison (1809) 16

Ves. 249 : 10 R.R. 7 : 33 B.R. 978 and Potter v. Sanders (1846) 6 Hare 1 :67 E.R. 1057 : 77 R.R. 1. It is not contended that in the defendant's contract any date is fixed for performance nor is there any evidence that before he learnt of the plaintiff's purchase, the defendant had any notice that the vendor would refuse performance. Therefore at the date of the plaintiff's suit, namely, the 16th of April 1912, a suit by the defendant against his vendor for specific performance would have been within time and if the plaintiff was at the date of suit in the position of a trustee for the defendant, the latter is clearly entitled to enforce that position up to the end of the litigation. It must not be taken from the above remarks that the defendant would be in a worse position in relation to the plaintiff if at the date of suit his right to sue his vendor for specific performance had been barred, since he is a defendant now relying upon his possession. In this connection reference may be made to Orr v. Sundra Pandia 17 M. 255 : 6 Ind Dec. 176 : Krishna Menon v. Kesavan and Rangnath Sakhamam v. Govind Narasim 28 B. 639 : 6 Bom. L.R. 592.

4. The result is that the plaintiff cannot profit by his conveyance except to stand in the shoes of his vendor and receive the balance of the purchase money due, on payment of which he would have to convey to the defendant. This, however, is not the relief which he seeks, and the result is that his suit for possession must fail.

5. This decision may appear to be inconsistent with the result arrived at in Lalchand Motiram v. Lakshman Sahadu 28 B. 466 : 6 Bom. L. & 510 and in Kurri Veerareddi v. Kurri Bapireddi 29 M. 336 : 1 M.L.T. 153 : 16 M.L.J. 395, from which, if rightly decided, it would appear that the defendant would have no defence against a suit by his vendor for possession, although by reason of the statutory provisions above referred to, he has a complete defence against his vendor's assignee, notwithstanding that the latter has no greater knowledge than the vendor possessed.

6. It may be necessary hereafter, when a suitable occasion arises, to consider in a Full Bench, whether the Transfer of Property Act necessarily involves such inconsistent positions. The facts of the present case do not raise the question decided in Lalchand Motiram v. Lakshman Sahadu (6). When the question does arise for consideration, the observations of the Privy Council in Immadipattam Thirugnana Kondama Naik v. Periya Dorasami 24 M. 377 p. 384 : 28 I.A. 46 : 5 C.W.N. 217 : 7 Sar. P.C.J. 811 and the words "of itself" in the last clause of Section 54 of the Transfer of Property Act, to which attention was called by Sir Lawrence Jenkins in Karalia Nanubhai v. Mansukhram 24 B. 400 : 2 Bom. L.R. 220 : 12 Ind. Dec. 799, will doubtless be considered.