(2002) 01 BOM CK 0019

In the Bombay High Court

Case No : Civil Revision Application No. 22 of 2002

Goldmine Builders Pvt. Ltd.	APPELLANT
Vs	
Nazareth Joseph Perriera and Others	RESPONDENT

Date of Decision : 17-01-2002

Acts Referred:
Civil Procedure Code, 1908 (CPC) — Section 115, 151

Citation : (2002) 104 BOMLR 908(1)

Hon'ble Judges : D.Y. Chandrachud, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

D.Y. Chandrachud, J.—The order of the learned Trial Judge in this case reflects its strong sense of disapproval of the manner in which the consent terms came to be filed before the Court. That sense of disapproval, as the facts of this case would unfold, is justified. The learned Trial Judge has in the circumstances, by the order dated 9th November,. 2001 set aside the consent decree which was passed in the suit on 28th April, 2000 and restored the suit to the position as it obtained prior thereto.

2. The First to Fourth Respondents instituted a suit, being S. C, Suit No. 5207 of 1998 before the Bombay City Civil Court against the Fifth to Seventh Respondents and the Petitioner. The Petitioner was the Third Defendant to the suit. The Seventh Respondent herein, was the Fourth Defendant to the suit. In the suit, a prayer for declaration was sought that certain documents relating to an immovable property which forms the subject matter of the suit bearing Survey No. 864 (part), admeasuring about 441,10 sq. mtrs. along with House No. 154(A) known as "Pereira House", situated at Juhu Village, Juhu Tara Road, Mumbai - 400 049, were illegal and void and not binding upon the Plaintiffs. An injunction was sought against the First, Second and Third Defendants restraining them from acting upon those documents and from using them against the Plaintiffs. The case of the Plaintiffs was that the documents which had been

executed in favour of the First, Second and Third Defendants were obtained under threat, undue influence and misrepresentation. Contrariwise, the Plaintiffs claim to have executed certain documents in favour of the Fourth Defendant and it was expressly averred in the Plaint that the Fourth Defendant was a bona fide purchaser for value. The following averments in paragraphs 1, 10 and 11 are material in that context :-

The Defendant Nos. 1, 2 and 3 have unlawfully and forcibly trespassed on the suit property by obtaining signatures of the plaintiff or forging the signatures of the Plaintiffs on certain documents and papers, as more particularly set out herewith. Defendant No. 4, is a bona fide purchaser, for value, of the respective undivided shares, right, title and interest in the suit property from the Plaintiff and their mother Mrs. Mary Joseph Pereira (since deceased) as more particularly set out hereinafter.

Thereafter on ''or about 30th September, 1997, the Defendant Nos. 1, 2 and the said Directors of the Defendant No. 3, caused the Plaintiffs to sign several papers and documents and also took them to the office of Sub-Registrar of Assurance at Bandra, Mumbai, to admit execution by the Plaintiffs of the said documents. The Plaintiffs though requested the said persons to give copies of the documents the papers on which their signatures were obtained as such, the same were not furnished to the plaintiffs.

On the receipt of the said copies, the Plaintiffs have realised that the Defendant Nos. 1, 2 and the Directors of the Defendant No. 3 have obtained the signatures of the Plaintiffs on 30th September, 1997, on (1) Declaration and Indemnity dated 30th June, 1990, (2) Deed of Confirmation purportedly dated 29th September, 1997, (3) Irrevocable General Power of Attorney dated 30th September, 1997 and (4) Four Receipts signed by the respective Plaintiffs. Hereto annexed and marked Exhibits ''D'', ''E", ''F'' and G-1 to G-4, respectively are the copies of the said documents. By making the Plaintiffs signing the said documents, under coercion, threat, undue influence and misrepresentation as stated above, the Defendant Nos. 1 to 3 have purportedly obtained from the Plaintiffs, the confirmations of the alleged agreement dated 30th August, 1982 and the supplemental agreement dated 29th September, 1986. In the said documents it was further falsely recorded that the signatures of the plaintiffs were obtained by and on behalf of the Defendant No. 4, under misrepresentation and undue influence.

3. The suit which was instituted before the Trial Court was placed before the learned Judge on 28th April, 2000. It is common ground that when the matter came up for hearing, the learned Advocate appearing on behalf of the Plaintiffs had not filed his Vakalatnama and that an undertaking was filed that the same will be done during the course of the day. The learned Advocate appearing on behalf of the Plaintiffs applied for the withdrawal of the suit for non-prosecution against the Fourth Defendant whose Managing Director was present before the Court. The suit was consequently allowed to be withdrawn for non-prosecution as

against the Fourth Defendant. The learned Advocate appearing on behalf of the Plaintiffs and for the other Defendants tendered consent terms also dated 28th April, 2000 between the Plaintiffs and Defendant Nos. 1, 2 and 3 and a decree In terms thereof came to be passed by the Trial Court. Insofar as the consent terms are concerned, by and as a result thereof, the Plaintiffs confirmed that the documents which were executed in favour of the First Defendant were valid and of having placed the First Defendant in constructive possession of the suit property on 29th September, 1986. This was provided for in clauses 1, 2 and 3 of the consent terms. Thereafter, the following statements were made in clauses 5 and 6 of the consent terms:

5. All the Plaintiffs confirm with the Defendant Nos. 1 and 3 that all the writings, documents. Agreements for Sale, Power of Attorneys, affidavits, Declarations, Deeds of Conveyance and all such other documents pertaining to the suit property which they had executed with and in favour of the Defendant No. 4 (Mr. Vinod Anand M/s. Karimjee Pvt. Ltd.), were not executed with their own FREE WILL AND CONSENT.

6. All the Plaintiffs further confirm with the Defendant Nos. 1, 2 and 3 that in any case all the Plaintiffs jointly and severally on their own behalf as well as on behalf of their late mother, Mrs. Mary Joseph Pereira, have duly cancelled each and every writings. Agreements for Sale, Power of Attorney, affidavits, Declarations, Deeds of Conveyance and all such other documents they had executed with and in favour of the Defendant No. 4 with respect to the suit property vide their letters/ notices addressed to (1) Mr. Vinod Anand of M/s. Karimjee Pvt. Ltd., dated 30.9.1997, (2) The Sub-Registrar, Mumbai, dated 30.9.1997, (3) The City Survey Office, dated 10.10.1997 and (4) The Tehsildar''s office, dated 10.10.1997.

Clauses 5 and 6 of the consent terms thus, purport to record the confirmation of the Plaintiffs that all the documents including the Agreement for Sale, Power of Attorney, Declaration and Deeds of Conveyance pertaining to the suit property which were executed with the Fourth Defendant were not executed with the free will and consent of the Plaintiffs and that the Plaintiffs have duly cancelled each of the aforesaid writings and documents with respect to suit property. Clauses 5 and 6 refer to the Fourth Defendant perhaps because when the consent terms were drafted, the Fourth Defendant was still in the array of parties, Yet, as already noted earlier, the Fourth Defendant was expressly deleted from the array of parties when the matter came up before the Trial Court on 28th April, 2000 and it was only then that the consent terms which were signed as between the Plaintiffs and Defendant Nos. 1 to 3 were tendered before the Trial Court. Parties were aware of the fact that the Plaintiffs had expressly moved the Court on the basis of averments in the plaint to the effect that it was the Fourth Defendant who was a bona fide purchaser for value and that the documents which were executed in favour of Defendant Nos. 1 to 3, were vitiated by fraud, undue influence and coercion. There were two sets of documents which were purportedly executed by the Plaintiffs, one set with the First to Third Defendants and second with the Fourth Defendant. The Plaintiffs on the one hand and the First to Third Defendants on the other filed consent terms and the Plaintiffs expressly applied before the Court for deleting the Fourth Defendant from the array of parties which was permitted to be done. Surely, at that stage, the attention of the learned Trial Judge ought to have been drawn by the parties before the Court that clauses 5 and 6 of the consent terms purported to provide certain confirmations by the Plaintiffs in regard to the documents, Agreement for Sale, Declarations and Deeds of Conveyance which were executed with the Fourth Defendant. There can be no manner of doubt that if the attention of the Trial Court had been drawn on 28th April, 2000 to the aforesaid fact the question as to whether consent terms which would have a material bearing on the rights of an entity which was expressly deleted from the array of parties would have been considered by the Trial Court before any consent decree was passed. This was evidently not done.

4. The Trial Court was moved for setting aside the consent decree together with an affidavit in support of the Notice of Motion. The conduct of the Fourth Plaintiff is itself not free from taint. The case of the Fourth Plaintiff was that he and the other Plaintiffs had engaged an Advocate by the name of Mr. Nagvadaria and that there was no necessity for the other Plaintiffs to change that Advocate and to file the Vakalatnama of another Advocate, Mr. G. C. Singh. According to the Fourth Plaintiff, the Power of Attorney which was executed by him in favour of the First Plaintiff was a fabricated document. The Trial Court has declined to accept the evidence of the Fourth Plaintiff holding that he is not a trustworthy witness. The Fourth Plaintiff even denied his signature on the plaint, the Notice of Motion and the affidavit in support thereof as well as on the Vakalatnama. While he questioned the Power of Attorney allegedly executed by him, the Trial Court noted that the Power of Attorney was a duly registered document. The learned Trial Judge has in the circumstances, quite correctly discarded the testimony of the Fourth Plaintiff.

5. The learned Counsel appearing on behalf of the Petitioner sought to urge that since the Court was moved at the behest of the Fourth Plaintiff and the Trial Court has found that the aforesaid person was not a reliable or trustworthy witness, there was no justification for setting aside the consent terms. I do not find merit in this contention. It is true that the Court was moved for setting aside the consent decree by one of the parties to the litigation viz., the aforesaid Plaintiff, with a specific grievance. But, the jurisdiction which the Court has exercised is that which inheres in the Court to ensure that the process of the Court is not sullied or abused by litigating parties. The Trial Court has made a reference to the haste with which parties sought to move the Court, and has referred to the fact that even the Vakalatnama had not been filed by the learned Advocate for the Plaintiffs at the stage when the order came to be passed on 28th April, 2000. It may be as submitted by the learned Counsel appearing on behalf of the Petitioner, that there is a practice of furnishing an undertaking that

the Vakalatnama would be filed after the order is passed. It is not necessary to go into that question. The fact that the process of the Court was set in motion in this case by a party whose evidence could not be trusted is of no consequence because the facts of this case would show that both the sets of parties - the Plaintiffs on the one hand and the First to Third Defendants on the other, have joined together in filing consent terms and in inviting the Trial Court to pass a consent decree in terms thereof without apprising the learned Trial Judge of the fact that the consent terms would seriously impinge upon the rights of a third party which was originally a party to the suit but which on the express request of the Plaintiffs was allowed to be deleted from the array of parties. A consent decree which the Court is invited to pass in terms of consent terms may have the stamp of a contractual agreement between the parties who are signatories thereto. Equally, it has to be emphasised that the consent decree imparts to the agreement between the parties, the authority and imprimatur of a judicial order. Consequently, before the parties request the Court to pass a judicial order embodying the consent terms, it is the bounden duty of those parties to inform the Court if there are provisions contained therein which are liable to affect the Interest of third parties who are not before the Court. That degree of candour and fairness must be expected both from Counsel and parties alike. Unfortunately, the learned Trial Judge who passed the consent decree on 28th April, 2000 was not fully apprised of the fact and under the terms of the consent terms provisions were made which would seriously impinge upon the erstwhile Fourth Defendant who by the time the order was passed ceased to be a party before the Trial Court.

6. In these circumstances, there can be no manner of doubt that the learned Trial Judge was justified in setting aside the consent decree and in restoring the suit to the position in which it was immediately prior to the passing of the decree and before the Fourth Defendant came to be deleted as a party. The learned Counsel appearing on behalf of the Petitioner sought to urge that the Fourth Defendant is not a party to the consent terms and the simple consequence is that the Fourth Defendant would not be bound by the consent terms and whatever was said in the consent terms as regards the rights of the Fourth Defendant would have to be held to be of no consequence. The learned Counsel, therefore, submitted that the consent terms have to be simply ignored insofar as the Fourth Defendant is concerned. The matter cannot be allowed to rest on a simplistic assumption. The underlying rationale of the order of the Trial Court is that the probity and rectitude of the judicial process has to be maintained by the parties and those who appear before the Court. The proceedings before the Court do not involve only the parties to a litigation, but involve in a very fundamental way the administration of justice. The administration of justice cannot be allowed to suffer and where parties have in the facts of a case by their conduct affected the due administration of justice the Court is not powerless to exercise its jurisdiction. Section 151 of the Code of Civil Procedure, 1908 is intended to protect and safeguard the power of the Court to ensure that the course of justice

is not allowed to be abused.

7. There is, in the circumstances, no merit in the Civil Revision Application. The order which has been passed by the Trial Court does not in any event require the interference of this Court u/s 115 of the Code of Civil Procedure, 1908. The Civil Revision Application is rejected.

8. On the request of the learned Counsel for the Petitioner, the original Third Defendant, it is however clarified that the Third Defendant shall in the circumstances, be at liberty to move the Trial Court for recording any compromise that may be arrived at exclusively between him and the Plaintiffs to the suit before the Trial Court. Any such application shall, it is needless to say, be heard and disposed of by the Trial Court on its own merit.