
(1980) 09 MAD CK 0048
In the Madras High Court
Case No : S.A. No. 2463 of 1976

G.R. Radhakrishnan

APPELLANT

Vs

Rani Ammal and Others

RESPONDENT

Date of Decision : 08-09-1980

Acts Referred:

Registration Act, 1908 — Section 17
Specific Relief Act, 1963 — Section 20

Citation : AIR 1981 Mad 266 : (1981) 94 LW 176

Hon'ble Judges : V. Ramaswami, J

Bench : Single Bench

Judgement

1. This second appeal arises out of a suit filed for specific Performance of an agreement of reconveyance dated 10-1-1958. The suit properties originally belonged to one Narasimhalu Naidu father of the plaintiffs. The said Narasimhalu Naidu and his two sons who are the second and third plaintiffs in the suit. sold the properties to the defendant under a registered sale deed dated 9th January, 1958 for a sum of Rs. 10,000. On the next day namely 10th January, 1958, the defendant executed a registered agreement to reconvey the properties in favour of Narasimhalu Naidu and Plaintiffs 2 and 3. This document stated after a Period of ten years from 9th January 1958 and before 28th February, 1968 i. e., between 10th January, 1958 and 28th February, 1968 the said Narasimhalu Naidu and plaintiffs 2 and 3 shall have a right to repurchase the properties for the sum of Rs. 10,000. The other relevant portion will be discussed a little later when the argument of the learned counsel based on the recitals is considered. On 6th May, 1959 the second Plaintiff received a sum of Rs. 1150 from the defendant and in consideration of that money released whatever right he had under the agreement to reconvey. Similarly the third Plaintiff received another sum of Rs. 1150. and executed a release deed on 11th May 1959 releasing whatever right he had under the agreement to reconvey. These two release deeds were unregistered documents. The plaintiffs' father Narasimhalu Naidu died on 11th April 1966 leaving a Will dated 5th June 1965. Under the said Will

the said Narasimhalu Naidu bequeathed his Properties in favour of the first plaintiff and the children of plaintiffs 2 and 3. The schedule to this document included the suit properties in respect of which Narasimhalu Naidu and his two sons had a right of reconveyance. Subsequent to the death of Narasimhalu Naidu the second Plaintiff made an endorsement on the agreement of reconveyance, released his 1/9th share in the right of reconveyance referable to his right as an heir to his father for a consideration of R's. 500. The Present suit was filed Praying for a decree for specific Performance by the defendant of the agreement of reconveyance dated 10-1-1958 "by executing a conveyance in favour of the first Plaintiff". It is stated in the Plaint "the plaintiffs; state that the first Plaintiff alone is entitled to obtain a reconveyance under the Will of the late Narasimhalu Naidu. Plaintiffs 2 and 3 are not entitled to obtain a reconveyance or deal with the right of reconveyance of the late Narasimhalu Naidu in view of the terms of the testament of the father of the plaintiffs". The defendant filed a written statement mainly contending that the first Plaintiff is not entitled to specific Performance of the contract. For the sake of completeness however we may state that the defendant also questioned the truth and validity of the Will and also that the suit properties were the joint family Properties of Narasimhalu Naidu and they were not his self acquisitions. Among the various grounds on which the defendant stated that the plaintiff is not entitled to specific Performance one of them was that the first plaintiff is not entitled to specific performance as the agreement Provided that the rights therein cannot be assigned and as she does not claim as an heir of Narasimhalu Naidu in terms of the agreement. The trial Court found that the Will was not true and that even if it were to be held to be true. on a true construction of the same the first Plaintiff did not get any right to enforce the repurchase agreement. The trial Court also found that Exs. B. 5, B. 6 and B. 12 under which the second and third Plaintiffs have released their rights do not require to be registered and that the second Plaintiff gave up not only his one third right in the properties under the agreement of reconveyance, but also his one-ninth share in the one-third share of Narasimhalu Naidu. The trial Court also found that the third plaintiff had proven up his one-third right under the agreement of reconveyance. The trial Court then Proceeded to consider the claim of the Plaintiffs as heirs of the deceased Narasimhalu Naidu and overruling the objection of the defendant that such a claim as heirs was never Pleaded and could not be considered held that the first Plaintiff was entitled to specific performance of 2/9th share in the suit properties on dev6sit of the proportionate value in court. This was on the basis that in the share of Narasimhalu Naidu each plaintiff was entitled to one-third. i. e.. 1/9th of the total and since the third plaintiff had no objection for passing a decree in respect of his share also in favour of the first plaintiff. the first plaintiff will be entitled to 2/9th share. Accordingly the suit was decreed directing the defendant to execute a sale deed in respect of 2/9th share in the suit properties subject to the first plaintiff depositing the proportionate value into court within one month from the date of the decree. The trial Court also directed each party to bear their own costs. The defendant preferred A. S. No 164 of 1971 against that Dart of the decree

refusing at least proportionate costs in the suit. The plaintiffs preferred an appeal, A. S. 10 of 1972. claiming that the suit should have been decreed in its entirety and not with reference to 2/9th share in the suit properties alone. The learned District judge held that the Will was true and genuine and that the plaintiffs have properly proved the same. On the ground that the agreement to reconvey is one and indefeasible and even one of the persons in whose favour the agreement was executed is entitled to enforce the entirety of the agreement the lower appellate Court proceeded to consider whether the first plaintiff was entitled to get reconveyance of the entirety of the properties. Accepting the finding of the trial Court. that the Will does not refer to the reconveyance and it did not bequeath right under the document in favour of the first plaintiff or the children of plaintiffs 2 and 3. the learned District Judge proceeded to consider as to whether the first plaintiff will not be entitled to claim specific performance as an heir of Narasimhulu Naidu. The learned Judge then held that Exs. B. 5. B. 6 and B. 12 are unregistered release deeds and that reference of the right under the agreement to reconvey could be done only by a registered document as it related to immovable property and since the documents were unregistered. the release deeds were inadmissible in evidence and no reliance can be placed on Exs, B. 5 B. 6 and B. 12. Since the second and third plaintiffs had no objection for executing a reconveyance document in favour of the first plaintiff the appeal of the plaintiffs was allowed directing the defendant to execute a sale deed in favour of the first plaintiff in respect of the entirety of the properties. The defendant has preferred this second appeal.

2. The first legal contention which has to be considered and disposed of relates to the admissibility of Exs. B. 5. B. 6 and B. 12. As already stated under these three documents the second and third plaintiffs had released whatever right they had under the agreement for reconveyance dated 10-1-1958. The agreement to reconvey was a registered document. But there could be no doubt, and it has also been held so. in the decision reported in Chinnakkal Vs. Chinnathambi Goundan and Another, that an agreement of reconveyance does not create any interest in Immovable property and therefore, there was no necessity for registering such an agreement. If the agreement of reconveyance does not create any interest in Immovable property a fortiori a release of any right under that document will not also create any interest in Immovable property and therefore no registration is called for. I have, therefore. no doubt that a release deed releasing a right under an agreement of resale does not require any registration. The question is also not res integra and it is also covered by an authority. viz.. Sellappa Chetty and Others Vs. Marappa Goundar and Others, . In that case. the right of reconveyance was assigned under an unregistered document in favour of the plaintiffs in that case. The question for consideration was whether the assignment deed required any registration. It was held by the Division Bench that the assignment of the agreement to reconvey did not convey any present interest in Immovable property and that. it does not require to be registered: The decision in Chief Controlling Revenue Authority Revenue Board,

Madras Vs. Swami Gounder, did not deal with the question relating to registration. But the question for consideration in that case was whether an instrument by which the vendor gave up the right of reconveyance was a release falling under Art. 55 of Schedule I of the Stamp Act or was it a conveyance under Article 23. It was held that it was not a conveyance and it is a mere release deed. The question whether it has to be registered or not did not fall to be considered in that case. The decision of the Privy Council in Dayal Singh v. Indar Singh. AIR 1926 PC K was based on the Particular recitals in the agreement of sale where substantial amount was also paid. On the terms of, the document the Privy Council held that an interest in Immovable Property was created and that, therefore, it was compulsorily registerable u/s 17. It is not an authority for the Position that every agreement for sale or for reconveyance is compulsorily registerable. The two decisions in Chief Controlling Revenue Authority Revenue Board, Madras Vs. Swami Gounder, and Dayal Singh v. Indar Singh. AIR 1926 PC 94. relied on by the learned District Judge were therefore, no authorities for the Position that the release deeds executed by Plaintiffs 2 and 3 (in this case) are compulsory registerable. The finding of the learned District Judge that Exs. B-5, B-6 and B-12 are inadmissible in evidence is therefore clearly against law and cannot be accepted.

3. The next substantial question that was argued by the learned counsel for the defendant (appellant) is that under the terms of the Will the first plaintiff did not get any right to enforce the agreement of reconveyance dated 10-11-1958. The relevant Portion of the document relating to the property that was conveyed - reads as follows-

(not printed as the matter is in vernacular-Ed.)

The schedule to the document not only refers to the properties that were the "subject matter of the right of reconveyance, but also other properties. The learned counsel for the plaintiffs contented that the word in vernacular used in the above-extracted Portion refers to the right of reconveyance and not any other encumbrance over the properties. Apart from the fact that there is no evidence to show that the deceased had not created any encumbrance over any of the properties in the schedule and that, therefore, the word "encumbrance" referred to therein could not relate to any other encumbrance but only of the right of resale it is not also acceptable that the word (in vernacular) or encumbrance can be said to refer to the right of repurchase of the Suit Properties. An encumbrance is normally created by the owner of the property and so far as the properties that are the subject matter of the suit are concerned they had already been Purchased by the defendant and if the reconveyance is to be considered as even an encumbrance it could only refer to encumbrance created by the defendant and not an encumbrance created by deceased Narasimhalu. In fact though the trial Court held that the word (in vernacular) in the above extracted portion does not refer to the right of repurchase, the learned District Judge did not give any different finding. The appellate Court proceeded

on the assumption that the Will did not bequeath to the first plaintiff the right of the deceased under the reconveyance agreement. but Proceeded to consider the right of the first plaintiff for specific Performance as an heir to the deceased. The finding of the trial Court that the Will did not bequeath the right of Narasimhalu Naidu under the deed of reconveyance was. therefore. to be considered to have been confirmed by the finding of the lower appellate Court also. Though some plausible argument could be advanced on the basis that there is a reference to the Properties which are the subject matter of the suit in the schedule to the Will. I am unable to agree with the learned counsel for the respondent that from the mere fact that the schedule included the suit properties, the word (sic) is to be understood as having a reference to the right of repurchase. I may add that as pointed out by the learned counsel for the appellant-defendant. Certain properties which had already been conveyed are also included in the schedule and that shows that without reference to any right of the deceased the properties have been indiscriminately included in the schedule in the unregistered Will. I am, unable to interfere with the findings of the lower appellate Court than in this particular case in the context in which the word (in vernacular) is used it has no reference to the right of reconveyance.

4. The learned counsel for the respondents then strenuously contended that even if the Will did not bequeath any right under the agreement in. favour of the first plaintiff or any of the Plaintiffs. since the Plaintiffs as the daughter and the sons of the deceased Narasimhalu Naidu are class I heirs and all of them are before Court they are entitled to claim specific Performance as heirs of Narasimhalu Naidu. He also refers to the terms of Ex, A. 2. as entitling the heirs to enforce the agreement. In the Plaint the plaintiffs had not claimed specific performance as heirs of Narasimhalu Naidu or on the basis of any of the recitals in the deed of reconveyance. In fact, the plaint stated "the first plaintiff alone is entitled to obtain a reconveyance under the Will of the late Narasimhalu Naidu and plaintiffs 2 and 3 are not entitled to obtain a reconveyance of the late Narasimhalu Naidu in view of the terms of the tertament of the father of the plainriffs." The claim was, therefore, definitely based on the Will and but for such a claim the first plaintiff alone would not have been entitled to a claim for specific performance. She did not claim as the heir of Narasimhalu Naidu and as such, it is not possible for the plaintiffs to put forward any case for specific performance as heirs of their father. The argument of the learned counsel for the defendant on this point is not technical but it is one of substance. If the plaintiffs had come forward with a case that they are entitled to enforce the afreement of reconveyance as heirs of the said Narasimhalu Naidu there might have been open for the defendant to plead that they are neither the legal heirs nor entitled to benefit by reason of any conduct or for any other reason. Suffice it to say that since that was not out in issue and the defendant did not have any opportunity of stating his case with reference to the same. It could not have been dealt with by the trial Court during the arguments or by the appellate court. The case could not, therefore, be proceeded on the basis that the plaintiffs, even apart from the Will,. Are entitled

to enforce the agreement for reconveyance. In fact one of the pleas raised by the defendant in the written statement is that the first plaintiff is not entitled to specific performance as the agreement provides that the rights therein cannot be assigned and she does not claim as an heir of the deceased Narasimhalu Naidu in terms of the agreement. We have, therefore, to proceed on the basis that the right to enforce the agreement was based solely on the terms of the Will and since, as I have already held that the terms of the Will did not enable the first plaintiff to file a suit, the present suit was not maintainable.

5. The learned counsel for the respondents then vaguely pleaded that there is some sort of fiduciary relationship between the defendant and the second plaintiff and that precluded the defendant from acting in any manner prejudicial to the plaintiffs and that, therefore it was not open to him to plead in this case that the right of reconveyance was not enforceable, in its entirety. It appears that the defendant is an advocate and in cross-examination though denied any connection with Narasimhalu Naidu in his professional capacity admitted that under Ex. A. 10, the defendant had issued a notice on behalf of the second plaintiff to one Chokkammal in connection with some matter which is totally unconnected with the proceedings herein and that too, in the year 1964. I am unable to see how from this very fact any fiduciary capacity could be claimed as established between the plaintiffs and the defendant requiring any *uberrima fides* or any other particular conduct on the part of the defendant. It may also be mentioned that the second plaintiff as P. W. 1. has come and admitted in his evidence that the sale Ex. B. 4 dated 9-1-1958 was for adequate consideration. In fact he has stated it would have been worth only Rs.9,000/- at that time though the sale was for Rs. 10,000/- . In such circumstance, therefore, I am unable to find any point in the argument of the learned counsel for the respondents that there existed any fiduciary relationship between the defendant and the plaintiffs or that any further conduct other than a normal procedure was expected from the defendant in the matter of purchase or executing the agreement or reconveyance.

6. It was then contended by the learned counsel for the plaintiff respondent that the first plaintiff was entitled as one of the heirs of Narasimhalu Naidu, to get a reconveyance of the entirety of the properties on payment of the consideration of Rs. 10,000/-. This argument proceeded on the assumption that even apart from the Will the plaintiffs as heirs of Narasimhalu Naidu are entitled to file the suit for specific performance. As already stated, since they did not proceed on the basis that their claim is based on heirship this point does not arise for consideration. But even otherwise, I am unable to accept this argument because, essentially, the relief of specific performance is an equitable remedy. The defendant in this case had paid Rs. 1150/- for each of the plaintiffs 2 and 3 as early as in May 1959. When he got the release deeds and he had also paid Rs. 500/- to the second plaintiff after the death of Narasimhalu Naidu. In granting an equitable relief I could not ignore these payments by the defendant to plaintiffs 2 and 3 which are not disputed. Naturally therefore the value of the properties of the

defendant is much more than what he agreed for at the time when he executed the reconveyance. The plaintiff have never offered to reimburse the defendant the amount which they had received with or without interest and the equitable relief, therefore, could not be claimed by the plaintiffs in this suit. The plaintiffs are therefore, not entitled to any decree for specific performance and the suit was, therefore, liable to be dismissed. But since the decree of the trial Court granting specific performance of 2/9th share in the suit properties in favour of the first plaintiff was not questioned in appeal by the defendant it had become final and the decree of the trial court will have, therefore, to be confirmed, and accordingly, the judgment and decree of the lower appellate court are set aside and the judgment and decree of the trial court are confirmed. Though the defendant had filed an appeal in the lower appellate court against that portion of the decree disallowing costs in his favour. I do not think I can interfere with the judgment of the trial Court even on that aspect. The second appeal is accordingly allowed. The judgment and decree of the lower appellate court are set aside and the judgment and decree of the trial Court are restored. There will be no order as to costs in this second appeal.

7. The appellant will be entitled to refund of any costs if he had paid to respondents in pursuance of the decree of the lower appellate Court. Any money deposited by the appellant pending the second appeal in pursuance of any interim order granted by this court will also be refunded to the appellant defendant.

8. Appeal allowed.