

(2008) 05 SC CK 0104

In the Supreme Court Of India

Case No : Civil Appeal No. 6764 of 2001

Guruswamy Nadar

APPELLANT

Vs

P. Lakshmi Ammal (D) through LRs. and Others

RESPONDENT

Date of Decision : 01-05-2008

Acts Referred:

Specific Relief Act, 1963 — Section 16, 19
Transfer of Property Act, 1882 — Section 52

Citation : AIR 2008 SC 2560 : (2008) AIRSCW 3583 : (2008) 4 ALD 5 : (2008) 4 ALLMR 431 : (2008) 5 ALT 4 : (2009) 2 BomCR 403 : (2008) 106 CLT 533 : (2008) 3 GLH 371 : (2008) 6 JT 555 : (2008) 4 LW 806 : (2008) 6 MhLj 521 : (2009) 2 MLJ 949 : (2008) MPLJ 465 : (2009)

Hon'ble Judges : Lokeshwar Singh Pant, J; A. K. Mathur, J

Bench : Division Bench

Advocate : G. Ganesh, C. Manishankar, Pratap Venugopal, Surekha Raman and Dileep P., for K.J. John and Co, for the Appellant; S. Balaji, S.R. Sharma, Madhusmita Bora, S. Srinivasan and M.J. Paul, for the Respondent

Final Decision : Allowed

Judgement

A.K. Mathur, J.—This appeal is directed against the order dated 19.10.2000 passed by the Division Bench of the Madras High Court whereby the Division Bench has dismissed the appeal affirming the judgment and decree passed by learned Single Judge. Hence the present appeal.

2. Brief facts which are necessary for disposal of this appeal are a suit for specific performance was filed on the basis of an agreement for sale dated 4.7.1974 under which the first defendant in the suit had through her husband and power of attorney holder contracted to sell a house property in sum of Rs.30,000/-. A sum of Rs. 5,000/- was given as advance and the remaining Rs. 25,000/- was to be paid before 31.7.1974. The said amount was not paid by 31.7.1974. The owner again sold the suit property to the appellant herein on 5.5.1975 for a sum of Rs. 45,000/- and possession in question was handed over to the appellant herein. Therefore, the plaintiff filed the aforesaid suit for enforcement of the

specific performance of contract. The trial court dismissed the suit holding that the agreement was genuine but a false story was put up by the defendant/owner that he signed the agreement under the influence of liquor and it further held that the defendant who is appellant before us purchased the suit property for bona fide consideration. Therefore, no decree for specific performance could be passed in favour of the plaintiff & learned trial court dismissed the suit. On appeal the learned Single Judge reversed the judgment and the decree passed by the trial court and decreed the suit for specific performance. Aggrieved against the order passed by learned Single Judge, an appeal was preferred by the second purchaser (the appellant herein) before Division Bench and that appeal of the second purchaser was dismissed by the Division Bench by its order dated 19.10.2000 and hence the present appeal on grant of leave.

3. We have heard learned Counsel for the parties and perused the record. It will be relevant to mention here that the second purchase by the appellant was on 5.5.1975 i.e. two days after the filing of the suit for specific performance on 3.5.1975. Though the applicability of Section 52 of the Transfer of Property Act, 1882 was not considered by the trial court, however, the first appellate court i.e. learned Single Judge while granting the decree for specific performance found that the subsequent purchase made by the appellant- defendant was also bona fide for value and without notice of the agreement to sell but the said sale was subordinate to the decree that could be made in the suit for specific performance which was instituted prior to the sale in favour of the second purchaser. The main argument which was advanced before learned Single Judge was that Section 19 of the Specific Relief Act, 1963 provides that a decree for specific performance against a subsequent purchaser for bona fide who has paid the money in good faith without notice of the original contract can be enforced as the same is binding on the vendor as well as against the whole world. As against this, it was contended by the respondents that Section 52 of the Transfer of Property Act which lays down the principle of lis pendens that when a suit is pending during the pendency of such suit if a sale is made in favour of other person, then the principle of lis pendens would be attracted. In support of this proposition a Full Bench decision of the Allahabad High Court in Smt. Ram Peary and Others Vs. Gauri and Others, as well as a Division Bench judgment of the Madras High Court was pressed into service. Therefore, the question before us in this case is what is the effect of the lis pendens on the subsequent sale of the same property by the owner to the second purchaser. Section 19 of the Specific Relief Act clearly says subsequent sale can be enforced for good and sufficient reason but in the present case, there is no difficulty because the suit was filed on 3.5.1975 for specific performance of the agreement and the second sale took place on 5.5.1975. Therefore, it is the admitted position that the second sale was definitely after the filing of the suit in question. Had that not been the position then we would have evaluated the effect of Section Section 52 of the Transfer of Property Act. But in the present case it is more than apparent that the suit was filed before the second sale of the property. Therefore, the principle of lis

pendens will govern the present case and the second sale cannot have the overriding effect on the first sale. The principle of lis pendens is still settled principle of law. In this connection, the Full Bench of the Allahabad High Court in Smt. Ram Peary (supra) has considered the scope of Section 52 of the Transfer of Property Act. The Full Bench has referred to a decision in Bellamy v. Sabine (1857) 44 ER 842 at p.843) wherein it was observed as under:

It is scarcely correct to speak of lis pendens as affecting a purchaser through the doctrine of notice, though undoubtedly the language of the Courts often so describes its operation. It affects him not because it amounts to notice, but because the law does not allow litigant parties to give to others, pending the litigation, rights to the property in dispute, so as to prejudice the opposite party.

Where a litigation is pending between a plaintiff and a defendant as to the right to a particular estate, the necessities of mankind required that the decision of the Court in the suit shall be finding, not only on the litigant parties, but also on those who derive title under them by alienations made pending the suit, whether such alienees had or had not notice of the pending proceedings. If this were not so, there could be no certainty that the litigation would ever come to an end.

Similarly the Privy Council in Faiyaz Husain Khan Vs. Munshi Prag Narain, where the Court lay stress on the necessity for final adjudication and observation that otherwise there would be no end to litigation and justice would be defeated. The Full Bench of Allahabad High Court further referred to the work of Story on Equity IIIrd Edition, (para 406) which expounded the doctrine of lis pendens in the terms as follows:

Ordinarily, it is true that the judgment of a court binds only the parties and their privies in representations or estate. But he who purchases during the pendency of an action, is held bound by the judgment that may be made against the person from whom he derives title. The litigating parties are exempted from taking any notice of the title so acquired; and such purchaser need not be made a party to the action. Where there is a real and fair purchase without any notice, the rule may operate very hardly. But it is a rule founded upon a great public policy; for otherwise, alienations made during an action might defeat its whole purpose, and there would be no end to litigation. And hence arises the maxim pendent elite, nihil innovetur; the effect of which is not to annul the conveyance but only to refer it subservient to the rights of the parties in the litigation. As to the rights of these parties, the conveyance is treated as if it never had any existence; and it does not vary them.

Normally, as a public policy once a suit has been filed pertaining to any subject matter of the property, in order to put an end to such kind of litigation, the principle of lis pendens has been evolved so that the litigation may finally terminate without intervention of a third party. This is because of public policy otherwise no litigation will come to an end. Therefore, in order to discourage that same subject matter of property being subjected to subsequent sale to a third

person, this kind of transaction is to be checked. Otherwise, litigation will never come to an end.

4. Our attention was invited to a decision of this Court in *R.K. Mohammed Ubaidullah and Ors. v. Hajee C. Abdul Wahab (D) by L.Rs. and Ors.* AIR 2000 SC 1658. In this case it was observed that a person who purchased the property should made necessary effort to find out with regard to that property, whether the title or interest of the person from whom he is making purchase was in actual possession of such property. In this case, the plaintiff filed the suit for specific performance of contract and during the pendency of the suit, rest of the defendants brought subsequent transaction of sale by the defendant in their favour claiming the title to the suit property on the ground that they were the bona fide purchasers for value without notice of prior agreements in favour of plaintiff and they were also aware that the plaintiff was in possession of the suit property as a tenant for last several years and that they did not make any inquiry if plaintiff had any further or other interest in the suit property on the date of execution of sale deed in their favour apart from that he was in possession of the property as a tenant. In that context their Lordships observed that subsequent purchaser cannot be said to be bona fide purchaser of the suit property for value without notice of suit agreement and plaintiff would be entitled to relief of specific performance. Their Lordships after considering the effect of Section 19 of the Specific Relief Act as well as Section 52 of the Transfer of Property Act held that subsequent purchaser has to be aware before he purchases the suit property. So far as the present case is concerned, it is apparent that the appellant who is a subsequent purchaser of the same property, he has purchased in good faith but the principle of *lis pendens* will certainly be applicable to the present case notwithstanding the fact that u/s 19(b) of the Specific Relief Act his rights could be protected.

5. Mr. S. Ganesh, learned senior counsel appearing for the appellant has tried to persuade us that the plaintiff did not prove and plead that he was ready and willing to perform his part of the contract it is open to the second purchaser to raise this issue and in support thereof, he relied on a decision of this Court in *Ram Awadh (Dead) by Lrs. and Others Vs. Achhaibar Dubey and Another*, wherein their Lordships have observed that there is an obligation imposed by Section 16 on the Court not to grant specific performance to a plaintiff who has not met the requirements of Clauses (a), (b) and (c) thereof. Their Lordships further observes that the Court is not bound to grant a decree for specific performance to the plaintiff who has failed to aver and to prove that he has performed or has always been ready and willing to perform his part of the agreement the specific performance whereof he seeks. Therefore, such plea can be raised by subsequent purchaser of the property or his legal representatives who were defendants in the suit. Similarly, in *Union of India (UOI) and Others Vs. G. Vasudevan Pillay and Others*, , it was also emphasized that the plea that the plaintiff was to prove that he was ready and willing to perform his part of the contract. It is personal to him. The subsequent purchasers have got only the

right to defend their purchase on the premise that they have no prior knowledge of the agreement of sale with the plaintiff. They are bona fide purchasers for valuable consideration, though they were not necessary parties to the suit. But in the present case, the second purchaser was a defendant in the suit and this plea was also considered by learned Single Judge and it found that there was sufficient allegation made in the plaint that the plaintiff was ready and willing to perform his part of the contract. This aspect was dealt with by learned Single Judge in its order dated 24.7.1990 and learned Single Judge in paragraph 8 held as follows:

On the first of these submissions, I find that as against the definite plea in paragraph 7 of the Plant that Plaintiff has been and is still ready and is still ready and willingly specifically to perform the agreement on her part of which the 1st Defendant has had notice. The only plea in the written statement of the 1st Respondent is "the allegations in Para 7 of the Plaint that this Defendant is aware of the contract is denied as false". Thus, it is found that there is no denial at all t the plea that the Plaintiff was ready and willing to perform her part of the contract. Likewise, the 2nd Respondent also has not denied the said plea, in his written statement. Further, to the specific averment in para 5 of the Plaint "by the latter part of July, 1974, the Plaintiff informed the Defendants of her readiness to complete the sale", there is no specific denial at all. There is only a vague and evasive denial by the 1st Respondent as follows:

The allegation contained in para 5 of the Plaint are frivolous and denied." Likewise, the 2nd Respondent also has not specifically denied the above said averment in the Plaint.

Therefore, from this finding it is more than apparent that the plaintiff while filed the suit for specific performance of the contract was ready and willing to perform her part of the contract. This argument was though not specifically argued before the Division Bench, the only question which was argued was whether the principle of *lis pendens* will be applicable or Section 19 of the Specific Relief Act will have overriding effect to which we have already answered. In the present case the principle of *lis pendens* will be applicable as the second sale has taken place after the filing of the suit. Therefore, the view taken by the Division Bench of the High Court is correct and we do not find any merit in this appeal and the same is accordingly dismissed with no order as to costs.

*A reproduction from ILR (Kerala Series)