(1968) 05 GAU CK 0002

In the Gauhati High Court

Case No : Second Appeal No. 24 of 1964

Hem Chandra Choudhury APPELLANT

Vs

Ajadhya Bala Choudhury and Others RESPONDENT

Date of Decision : 24-05-1968

Acts Referred:

Citation : (1968) 05 GAU CK 0002

Hon'ble Judges : S.K. Dutta, C.J

Bench : Single Bench

Advocate : P. Chaudhury and B. Das, for the Appellant; J.C. Medhi, S.K. Goswami for Respondent No. 1 and D.K. Sarma, for the Respondent

Final Decision : Dismissed

Judgement

S.K. Dutta, C.J.—This is a second appeal. The Plaintiff''s case is as follows: The Plaintiff took lease for 8 years of 4 katha? of land of dag No. 399 of K.P. Patta No. 799 at Bharalumukh, GauhatI from Defendant No. 1 for the purpose of constructing dwelling houses. The lease was dated 9-6-39 and was duly registered. In pursuance of the terms of the lease the Plaintiff spent about Rs. 500/- in filling up the land and he constructed two houses of permanent nature and a pucca latrine at a cost of Rs, 2500/-. Thereafter on 24-4-46 Defendant No. 1 executed and registered another lease in continuance of the previous lease. This second lease was for 4 kathas 7 lessees of land of the aforesaid dag and it was for 10 years with effect from 1st Bahag 1353 B.S.

One of the terms of these leases was that if at any time the lessor wanted to sell the demised land she would sell the same to the lessee on payment of a reasonable price thereof. In pursuance of the said terms Defendant No. 1 sold 1 katha 8 lessas of the demised land to the Plaintiff at Rs. 3500/- per katha by a registered sale deed dated 16-8-54. Defendant No. 1 further assured the Plaintiff that if and when found necessary, she would sell the demised land to the plain-'' tiff at a reasonable price. Then on receiving an ejectment notice dated 24-11-56 the Plaintiff learnt that the Defendant No. 1 purported to sell 1 katha of the demised land to Defendant No. 2 by a sale deed dated 1-2-51 at Rs. 4000/-.

The Plaintiff was not aware of this sale, nor the Defendant No. 1 ever informed the Plaintiff of her intention to sell the land in question. The Defendant No. 1 by selling the said land to Defendant No. 2 broke the terms of the contract entered into with the Plaintiff. The sale of the land by ''Defendant No. 1 to Defendant No. 2 was collusive and with-, out consideration and fraudulent. The Plaintiff therefore has prayed for specific performance of the contract for sale and in the alternative a decree for Rs. 3000/- as compensation for breach of contract.

2. The trial Court dismissed the suit on contest with cost. The first appellate Court upheld the dismissal of the suit, but relieved the Plaintiff of the cost. Hence this appeal by the Plaintiff.

3. The first Appellate Court held that the Plaintiff had no knowledge of the sale of the suit land by Defendant No. 1 to Defendant No. 2. It further held that Defendant No. 2 was not a bona fide purchaser for value without notice. But the first Appellate Court dismissed the suit on the ground that no contract between the Plaintiff and the Defendant arose out of the stipulation in the lease that if the lessor wanted to sell the land, she would sell the same to the lessee on payment of a reasonable price thereof.

4. The said stipulation which is contained in paragraph 6 of the lease (Ex. 4) is in Assamese and it runs as follows:

(Stipulation in para 6 of the lease was here quoted in Assamese.)

(Be it stated that if I, the first party, am ever required to sell the land described in the schedule and if you, the second party, agree to purchase the same at a reasonable price, I shall sell it to you.)

5. In interpreting the above stipula tion the first Appellate Court relied on two cases viz., C, Govindaswami Pillai v. Doraiswami Mudali, AIR 1926 Mad 120 and V. Alagarsami Naidu Vs. Kathia Goundan and Others, In AIR 1926 Mad 120 the stipulation was as follows:

If it so happens that I have to sell it (the property) out of necessity, I will sell it to you for Rs. 60 and I bind myself to take the money from you and convey the land to you. I will give you ten days'' time from the date of my proposing to sell it within which time you should pay me the money and take the sale-deed from me. But if you fail to pay the money within 10 days I will overlook your right and claim and I will be at liberty to sell it as I like.

6. The Court held that this stipulation did not amount to a contract at all but it was only a binding offer and that the document could not be treated as a contract for there was nothing in it to compel the Defendant concerned to buy the property on the terms set out in it. In AIR 1931 Mad 799 the document contained the following stipulation:

As I have taken a sale deed from you of the site and the house mentioned below, I will be residing in the said site and house. While I so reside neither I nor my heirs shall mortgage or hypothecate or otherwise alienate the property. If myself or my heirs should not like to reside in the said site and house, we shall recovery the property to you for a price not exceeding the sale price of Rs. 60/-.

7. The Court observed that in this case there was no agreement absolutely binding on the purchaser to sell it within a particular time or at any time at all. He was bound to sell it back whenever he thought of parting with the property. It was, therefore, held that there was no offer but only an undertaking to make an offer and thus there was no case for specific performance of contract. It may be noted that in both the above cases the decisions were of a Single Judge. The matter came up before a Full Bench of the same High Court (Madras High Court), in Venkatachalam Pillai Vs. Sethuram Rao alias Lakshmikantha Sastriar and Another, . In this case the Court referred to the decision of the Privy Council in Sakalaguna Nayudu v. Chinna Munu-swami Nayakar, AIR 1928 PC 174.

I may, therefore, first discuss the decision of the Privy Council in that case. In that case the counterpart to the Bale-deed provided that the vendee should reconvey the property to the vendor after a period of 30 years from that date in case the vendor wished to have the property again and upon his paying a sum of Rs. 10,000/-. Their Lordships held that it was not a case of a mere standing offer by the vendee which could ripen into a contract to buy and sell only on the acceptance of that offer by the vendor by tendering of the purchase money. On the other hand, it was a completed contract between the parties.

In this case the Defendants were the eons of one Venkatapathi Naidu. By a deed dated 27th January, 1891, Venkata Subrahmanya Ayyar, on behalf of himself and as guardian of his minor eon Krishnaswami Ayyar sold the village of Siyatti to the abovementioned Venkatapathi for the consideration of Rs. 10,000/-. On the same day the parties executed what was called a counterpart document by which it was provided that Venkatapathi should recovery the village to Venkata Subrahmanya after a period of thirty years from that date in case Venkata Subrahmanya wished to have the village again and upon his paying to Venkatapathi the sum of Rs. 10,000/-. The Privy Council came to the conclusion that there was a completed contract made by that counterpart. In this connection the Privy Council observed as follows:

All the elements necessary to constitute a contract were present. There was an undertaking on the part of Venkatapathi to recovery the village to Venkata-subrahmanya and Krishnasami in the event of their calling for conveyance at the time and upon the terms set out in the ''counterpart document''. The time at which the option was to be exercised and the price which was to be paid for the property were specified.

8. It may be noted that in the stipulation in the lease Ex. 4 in the case be fore: me, the time at which the option is'' to be exercised is not a fixed period. Nor the price which is to be paid for the property is specified. It is said that reasonable

price should be paid. But there is no provision as to how the reasonable price will be determined if there is a dispute.'' In the case of AIR 1933 Mad 322 (FB), the stipulation was as follows:

If it happens that you or your heirs have to sell the property to others, then you must sell it to the Plaintiff or his heirs for the above price and also for such price as may be determined by arbitrators in respect of any building that may be constructed upon the land.

9. The Full Bench decided that this was a completed contract and made the following observation:

In the absence of any words to signify that the purchase was only optional with the Plaintiff or his heirs, it would not be unreasonable to hold that under this contract the vendee was bound to make the offer for resale and the vendor was equally bound to buy it, and we are prepared to hold accordingly.

10. In the stipulation which is under my consideration, it is. said that the lessee will buy the land if he agrees to do so. Obviously he is not bound by this stipulation to buy the land even if it is offered to him. So, in brief, in the stipulation in the case before me (1) no, time limit is fixed; (2) no price is specified; and (3) it is clearly said that the lessee will buy it if he agrees to do so.

11. In these circumstances, this stipulation cannot be a completed contract. There being no completed contract the question of specific performance or violation of a contract cannot arise. I therefore, find that the conclusion arrived at by the first Appellate Court is correct There is no force in this appeal which is dismissed. There will however, be no order as to costs.