
(2013) 04 SC CK 0135

In the Supreme Court Of India

Case No : Civil Appeal No. 3937 of 2013 (Arising out of SLP (C) No. 8987 of 2008)

Jehal Tanti and Others

APPELLANT

Vs

Nageshwar Singh (dead) through L.Rs.

RESPONDENT

Date of Decision : 18-04-2013

Acts Referred:

Civil Procedure (Maharashtra Amendment) Act, 1977 — Section 9A
Civil Procedure Code, 1908 (CPC) — Order 39 Rule 2A, 100(1)
Contract Act, 1872 — Section 23

Citation : (2013) 7 AD 95 : AIR 2013 SC 2235 : (2013) AIRSCW 2854 : (2013) AIRSCW 3663 : (2013) 3 AJR 349 : (2013) 4 AJR 653 : (2013) 4 ALD 117 : (2013) 100 ALR 842 : (2013) 3 AWC 3140 : (2013) 3 JLJR 85 : (2013) 6 JT 513 : (2013) 3 PLJR 171 : (2013) 2 RCR(Civil) 96

Hon'ble Judges : Sharad Arvind Bobde, J;G.S. Singhvi, J

Bench : Division Bench

Advocate : Amarendra Sharan and Awadhesh Kumar Singh, for the Appellant; Santosh Kumar and Madhurendra Sharma, for the Respondent

Final Decision : Allowed

Judgement

G.S. Singhvi, J.—This is an appeal for setting aside order dated 16.05.2007 passed by the learned Single Judge of the Patna High Court whereby she dismissed the second appeal filed by the Appellants and upheld the decree passed by 1st Additional District Judge, Jamui (hereinafter described as 'the lower appellate Court') in Title Appeal No. 20 of 1989/07 of 1999.

2. The Respondents filed suit for grant of a declaration that by virtue of the sale deed executed in their favour by Bhuneshwar Tanti, son of Dukhan Tanti, they have become owner of the suit property, but a cloud has been created on their rights by the judgment and decree passed in Title Suit No. 13 of 1977 filed by Smt. Pariya Devi (predecessor of the Appellants herein).

3. Smt. Pariya Devi contested the suit on several grounds including the one that

the sale deed was illegal and was not binding on her because the same had been executed in violation of the order of temporary injunction passed on 06.05.1971 in Suit No. 49 of 1970.

4. On the pleadings of the parties, the trial Court framed the following issues:

1. Whether the suit is legally maintainable.
2. Whether the suit is barred by law of limitation, estoppels, waiver and lis pendens.
3. Whether the Plaintiff has got valid cause of action to file the suit.
4. Whether the decree passed in Title Suit No. 13 of 1977 is fraudulent, collusive and not binding upon the Plaintiff.
5. Whether the Plaintiff has acquired title on the basis of sale deed dated 9.11.1973.
6. Whether the Plaintiff is entitled to any decree or relief.

5. After considering the pleadings and evidence of the parties, the trial Court dismissed the suit by holding that in view of the order of injunction passed in Suit No. 49 of 1970, Bhuneshwar Tanti was not entitled to execute the sale deed in favour of the Plaintiffs. The trial Court held that the Plaintiffs were very much aware of the order of injunction passed in Title Suit No. 49 of 1970 and said order dated 6.5.1971 passed by the learned Munsif was binding on the parties and their successors.

6. The lower appellate Court adverted to the pleadings of the parties and the order of injunction passed by the learned Munsif in Title Suit No. 49 of 1970 and held that once the suit was returned for being presented in the Court of competent jurisdiction, the order of injunction did not survive and the sale deed executed on 9.11.1973 cannot be castigated on the ground of violation of the injunction order. The lower appellate Court further held that the preliminary and final decrees passed in Title Suit No. 13 of 1977 were fraudulent and not binding on the Plaintiffs. Another finding recorded by the lower appellate Court was that sale deed dated 9.11.1973 was not hit by the doctrine of lis pendens. In view of these findings, the lower appellate Court allowed the appeal of the Respondents and decreed the suit filed by them.

7. The second appeal filed by the Appellants was dismissed by the learned Single Judge of the High Court by relying upon the judgment of this Court in Sri Amar Chand Inani Vs. The Union of India (UOI), She held that none of the questions raised in the second appeal could be termed as a substantial question of law.

8. We have heard learned counsel for the parties and carefully perused the record.

9. There cannot be any quarrel with the proposition of law laid down in Amar Chand Inani's case that a suit is deemed to have been filed on the date of

presentation of plaint before the competent Court but the same does not have any bearing on the question relating to legality of sale deed dated 9.11.1973 executed by Bhuneshwar Tanti during the currency of an order of injunction passed by the learned Munsif on 6.5.1971. It is not in dispute that as on 9.11.1973, i.e., the date on which the sale deed was executed, the order of injunction passed by the trial Court in Suit No. 49 of 1970 was operative. It is also not in dispute that the order of injunction remained effective till 1976 when the plaint was returned for presentation before the competent Court. In other words, till the refiling of the plaint, the order of injunction passed by the learned Munsif in Suit No. 49 of 1970 restraining the Defendants from alienating the suit property was in force and Bhuneshwar Tanti could not have executed the sale deed in favour of the Respondents herein.

10. The nature and effect of an alienation made in violation of an order of injunction was considered in *Tayabbhai M. Bagasarwalla and another Vs. Hind Rubber Industries Pvt. Ltd. etc.*, and the following propositions were laid down:

According to this section, if an objection is raised to the jurisdiction of the court at the hearing of an application for grant of, or for vacating, interim relief, the court should determine that issue in the first instance as a preliminary issue before granting or setting aside the relief already granted. An application raising objection to the jurisdiction to the court is directed to be heard with all expedition. Sub-rule (2), however, says that the command in Sub-rule (1) does not preclude the court from granting such interim relief as it may consider necessary pending the decision on the question of jurisdiction. In our opinion, the provision merely states the obvious. It makes explicit what is implicit in law. Just because an objection to the jurisdiction is raised, the court does not become helpless forthwith--nor does it become incompetent to grant the interim relief. It can, at the same time, it should also decide the objection to jurisdiction at the earliest possible moment. This is the general principle and this is what Section 9-A reiterates. Take this very case. The Plaintiff asked for temporary injunction. An ad interim injunction was granted. Then the Defendants came forward objecting to the grant of injunction and also raising an objection to the jurisdiction of the court. The court overruled the objection as to jurisdiction and made the interim injunction absolute. The Defendants filed an appeal against the decision on the question of jurisdiction. While that appeal was pending, several other interim orders were passed both by the Civil Court as well as by the High Court. Ultimately, no doubt, the High Court has found that the Civil Court had no jurisdiction to entertain the suit but all this took about six years. Can it be said that orders passed by the Civil Court and the High Court during this period of six years were all non est and that it is open to the Defendants to flout them merrily, without fear of any consequence. Admittedly, this could not be done until the High Court's decision on the question of jurisdiction. The question is whether the said decision of the High Court means that no person can be punished for flouting or disobeying the interim/interlocutory orders while they were in force, i.e., for violations and disobedience committed prior to the decision of the High

Court on the question of jurisdiction. Holding that by virtue of the said decision of the High Court (on the question of jurisdiction), no one can be punished thereafter for disobedience or violation of the interim orders committed prior to the said decision of the High Court, would indeed be subversive of the Rule of Law and would seriously erode the dignity and the authority of the courts. We must repeat that this is not even a case where a suit was filed in the wrong court knowingly or only with a view to snatch an interim order. As pointed out hereinabove, the suit was filed in the Civil Court bona fide. We are of the opinion that in such a case the Defendants cannot escape the consequences of their disobedience and violation of the interim injunction committed by them prior to the High Court's decision on the question of jurisdiction.

The learned counsel for Defendants 1 and 2 submitted that this is not a proceeding for contempt but a proceeding under Rule 2-A of Order 39 of the Code of Civil Procedure. The learned counsel submitted that proceedings under Order 39 Rule 2-A are a part of the coercive process to secure obedience to its injunction and that once it is found that the Court has no jurisdiction, question of securing obedience to its orders any further does not arise. The learned counsel also submitted that enforcing the interim order after it is found that the Court had no jurisdiction to try the said suit would not only be unjust and illegal but would also reflect adversely upon the dignity and authority of the Court. It is also suggested that the Plaintiff had instituted the present suit in the Civil Court knowing fully well that it had no jurisdiction to try it. It is not possible to agree with any of these submissions not only on principle but also in the light of the specific provision contained in Section 9-A of the CPC (Maharashtra Amendment). In the light of the said provision, it would not be right to say that the Civil Court had no jurisdiction to pass interim orders or interim injunction, as the case may be, pending decision on the question of jurisdiction. The orders made were within the jurisdiction of the Court and once this is so, they have to be obeyed and implemented. It is not as if the Defendants are being sought to be punished for violations committed after the decision of the High Court on the question of jurisdiction of the Civil Court. Here the Defendants are sought to be punished for the disobedience and violation of the order of injunction committed before the decision of the High Court in *The Special Land Acquisition Officer (7) Bombay and Bombay Sabarban District Municipal Corporation Vs. Vishanji Virji Mepani and another*, According to Section 9-A, the Civil Court and the High Court did have the power to pass interim orders until that decision. If they had that power they must also have the power to enforce them. In the light of the said provision, it cannot also be held that those orders could be enforced only till the said decision but not thereafter. The said decision does not render them (the interim orders passed meanwhile) either non est or without jurisdiction. Punishing the Defendants for violation of the said orders committed before the said decision (*Vishanji Virji Mepani*) does not amount, in any event, to enforcing them after the said decision. Only the orders are being passed now. The violations are those committed before the said decision.

The correct principle, therefore, is the one recognised and reiterated in Section 9--A-to wit, where an objection to jurisdiction of a civil court is raised to entertain a suit and to pass any interim orders therein, the Court should decide the question of jurisdiction in the first instance but that does not mean that pending the decision on the question of jurisdiction, the Court has no jurisdiction to pass interim orders as may be called for in the facts and circumstances of the case. A mere objection to jurisdiction does not instantly disable the court from passing any interim orders. It can yet pass appropriate orders. At the same time, it should also decide the question of jurisdiction at the earliest possible time. The interim orders so passed are orders within jurisdiction when passed and effective till the court decides that it has no jurisdiction to entertain the suit. These interim orders undoubtedly come to an end with the decision that this Court had no jurisdiction. It is open to the court to modify these orders while holding that it has no jurisdiction to try the suit. Indeed, in certain situations, it would be its duty to modify such orders or make appropriate directions. For example, take a case, where a party has been dispossessed from the suit property by appointing a receiver or otherwise; in such a case, the Court should, while holding that it has no jurisdiction to entertain the suit, put back the party in the position he was on the date of suit. But this power or obligation has nothing to do with the proposition that while in force, these orders have to be obeyed and their violation can be punished even after the question of jurisdiction is decided against the Plaintiff provided the violation is committed before the decision of the Court on the question of jurisdiction.

(Emphasis supplied)

11. The same issue was considered in *Vidur Impex and Traders Pvt. Ltd. and Others Vs. Tosh Apartments Pvt. Ltd. and Others*, , and it was held:

At the cost of repetition, we consider it necessary to mention that Respondent 1 had filed suit for specific performance of agreement dated 13.9.1988 executed by Respondent 2. The Appellants and Bhagwati Developers are total strangers to that agreement. They came into the picture only when Respondent 2 entered into a clandestine transaction with the Appellants for sale of the suit property and executed the agreements for sale, which were followed by registered sale deeds and the Appellants executed agreement for sale in favour of Bhagwati Developers. These transactions were in clear violation of the order of injunction passed by the Delhi High Court which had restrained Respondent 2 from alienating the suit property or creating third-party interest. To put it differently, the agreements for sale and the sale deeds executed by Respondent 2 in favour of the Appellants did not have any legal sanctity.

(Emphasis supplied)

12. In view of the aforesaid judgments, it must be held that one of the questions of law raised in the second appeal filed by the Appellants was a substantial question of law within the meaning of Section 100(1) CPC and the learned Single

Judge committed serious error by summarily dismissing the second appeal.

13. We may also notice Section 23 of the Indian Contract Act, 1872, which lays down that the consideration or object of an agreement is lawful, unless it is forbidden by law; or is of such a nature that, if permitted, it would defeat the provisions of any law; or is fraudulent; or involves or implies injury to the person or property of another; or the Court regards it as immoral, or opposed to public policy. In each of these cases, the consideration or object of an agreement is unlawful and every agreement executed with such an object or consideration which is unlawful is void. Since the sale deed was executed in favour of Respondent No. 1 in the teeth of the order of injunction passed by the trial Court, the same appears to be unlawful.

14. As a sequel to the above conclusion, the appeal is allowed, the impugned order is set aside and the second appeal is remitted to the High Court for fresh disposal. The High Court shall frame appropriate substantial question of law in the light of the observations made in this order and decide the appeal after giving opportunity of hearing to the parties with reference to the substantial question of law. If, during the course of hearing, the High Court finds that any other substantial question of law arises for its consideration then it shall be free to frame that question and decide the same after hearing the parties.