

(1984) 10 GUJ CK 0006

In the Gujarat High Court

Case No : Civil Revision Application No. 170 of 1981

Kanbi Vaju Vasta, Botad

APPELLANT

Vs

Kanbi Popat Vasta and Another

RESPONDENT

Date of Decision : 15-10-1984

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 20 Rule 14, 38 , 47
Transfer of Property Act, 1882 — Section 52

Citation : AIR 1985 Guj 184 : (1985) 1 GLR 365

Hon'ble Judges : B.K. Mehta, J

Bench : Single Bench

Advocate : P.V. Hathi, for the Appellant; D.D. Vyas, for the Respondent

Judgement

1. The original decree-holder being aggrieved by the order of the learned Civil Judge (J. D.) Botad dated September 29, 1979 dismissing his execution application seeking to execute the consent decree passed in Regular Civil Suit No. 169 of 1974 on the file of the said Court, has come by way of this revision application to this Court. The decree holder who is the applicant herein and respondent No. 1 are brothers and each one of them was in cultivation and possession of the respective portion of the land of S. No. 106 situate within the revenue limits of village Kariyani admeasuring acres 6-08 gunthas and acre 4-19 gunthas respectively. Since the said land was not divided by metes and bounds, they were cultivating their respective portions of land according to their convenience. Since the judgment-debtor-respondent No. 1 herein was trying to dispose of the portion of the land in his possession to respondent No. 2, the applicant filed a suit for possession being Regular Civil Suit No. 169 of 1974 in the Court of Civil Judge (J. D.) Botad on the ground that he has a right to pre-emption on the said portion of the land. In that suit a compromise was arrived at and a consent decree was passed in terms thereof. According to the decree, it was agreed by and between the parties that respondent No. 1 shall sell the portion of land in his possession admeasuring acres 4-19 gunthas to the applicant for a sum of Rs. 1500/ and he will execute necessary deed of

conveyance within 15 days of the date of the decree. The consent decree was granted by the Court on October 6, 1976. It appears that respondent No. 1 executed a deed of conveyance in favour of Vashram Govan respondent No. 2 - herein on October 10, 1976 and thus tries to forestall the execution of the decree. The applicant, therefore, applied for the execution of the decree on December 24, 1976 joining original judgment-debtor and the purchaser as party-respondents. One of the contentions urged on behalf of the judgment-debtor was that the decree was not capable of being executed. On behalf of the purchaser it was contended in the memo of objections to the execution application that the possession of the land was handed over to the purchaser-respondent No. 2 herein in terms of the agreement to sell executed by the judgment-debtor in his favour on May 29, 1974 and the purchaser was not aware that any suit was filed nor was a party to the consent decree which is in the nature of a contract and therefore not executable. The learned Judge dismissed the execution application on the ground that the decree-holder has not acted according to the decree inasmuch as he has failed to tender the amount of consideration viz. Rs. 1500/- within 15 days of the date of the decree, and that it was not within his jurisdiction or power or authority to extend the time of tender in view of the provision contained in O. 20 R. 14 of the Civil P. C. It is this order which has been challenged in this revision application.

2. I am of the opinion that this revision application must be allowed obviously for the following reasons. The learned Judge, with respect to him, misconstrued the consent decree. There is no prior obligation on the part of the decree-holder to tender the amount of consideration. On the contrary, the judgment-debtor-respondent No. 1 herein agreed and undertook to execute a sale deed in respect of the portion of the land in his possession and cultivation in favour of the decree-holder within 15 days of the date of the decree. It is only when the judgment-debtor expresses his readiness and willingness to execute the deed of conveyance that the decree-holder was under obligation to pay the consideration. As a matter of fact, in the present case, the judgment-debtor has hardly within five days of the passing of the consent decree executed the conveyance deed in favour of Vashram Govind respondent No. 2 herein, that is, on Oct. 12, 1976. In that state of affairs, the decree-holder could not have tendered the amount. The learned Judge was clearly in error in expressing his inability to extend the time under O. 20 R. 14 of the Civil P. C. Even if the consent decree in question is taken as a decree for pre-emption in respect of a particular sale of the property, the decree did not specify any date on which the pre-emptor, i.e. the decree-holder had to deposit the amount, failing which the suit stood dismissed. I do not think that the consent decree in question was one decreeing the claim to pre-emption in respect of a particular sale of the property. It should be noted that R. 141 of O. 20 provides for the form of the decree in a pre-emption suit. It cannot be invoked in a case where there is no decree granting the claim of pre-emption in respect of a particular sale of the property. The decree in question is a more in the nature of a decree of specific

performance of an agreement to sell and, therefore, the Court would not be justified in rejecting the execution of the decree on the ground that the decree-holder has failed to pay the amount of consideration. The learned Judge, therefore, in my opinion, has failed to exercise the jurisdiction which he was bound to exercise by executing the decree against both the respondents since respondent No. 1 had no right to transfer the property or otherwise deal with it so as to affect the rights of the decree-holder under the decree during the pendency of the suit which is deemed to commence from the date of the presentation of the plaint in the Court and would continue until complete satisfaction of the decree has been obtained (see S. 52 of the Transfer of Property Act).

3. On behalf of respondent No. 2 a serious attempt was made to persuade me that respondent No. 1 was not in a position to give the possession of the property in execution of the decree since he had already delivered the possession thereof to respondent No. 2 in pursuance of the agreement to sell executed by him in his favour and in respect of which ultimately he has executed a deed of conveyance. In the alternative, it was urged that one of the conditions for application of S. 52 of the T. P. Act as is in force in Gujarat is not satisfied inasmuch as S. 52 of the T. P. Act as amended by the Bombay Act No. 14 of 1939 in its application to pre-re-organised State of Bombay was extended and applied to the entire State of Bombay by the T.P. (Bombay Pro-vision for Uniformity and Amendment,) Act No.57 of 1959. One of the conditions for application of the principle of lis pendente contained in S. 52, namely registration of the notice of pendency of such suit under S. 18 of the Indian Registration Act, 1908 has not been satisfied. I do not think that either of these contentions has much substance in it. The first contention is stated for merely rejecting it. Under S. 52 of the T. P. Act if during the pendency of the suit in which any right to immovable property is directly and specifically in question, a party to the suit has no right to transfer or otherwise deal with such property so as to affect the right of any other party thereto under any decree or order which may be made therein except under the authority of the Court and on such terms as it may impose, the purchaser of such property would not get any right, title or interest therein. Explanation to S. 52 clarifies that for purposes of the section the pendency of the application or suit is deemed to be commenced from the presentation of the plaint till the decree is satisfied. In the present case, it is an admitted position that respondent No. 1 executed a deed of conveyance in favour of respondent No. 2 only after the consent decree was made in favour of the applicant and, therefore, respondent No. 1 tried to transfer the property during the pendency of the suit. If that is the factual situation, I do not think that respondent No. 2 can successfully resist the claim of execution of the decree-holder. The alternative contention that in view of the amended S. 52, as is in force in Gujarat, the doctrine of lis pendens would be attracted only if the notice of pendency of the suit is registered under S. 18 of the Indian Registration Act has also no force in it since the question is concluded by the decision of the Supreme Court in Anand

Nivas Ltd. v. Anandji Kalyanji AIR 1965 SC 114. It should be recalled that a similar contention was urged in the case before the Supreme Court that the doctrine of lis pendens contained in S. 52 did not operate against the appellant-company which was not bound by the decree obtained against the original tenant. Reliance was sought to be placed in support of this contention on the provision contained in the Transfer of Property and Indian Registration (Bombay Amendment) Act No. 14 of 1939 and also on the Transfer of Property (Bombay Provision for Uniformity and Amendment) Act No. 57 of 1959. While negating the contention, the Supreme Court held that the Bombay Act No. 14 of 1939 was intended to apply to the situs of immovable property and not the Court proceedings and, therefore, the application of rule lis pendens is in respect of the proceedings relating to immovable property situate in certain areas, namely, immovable property situate wholly or partly in Greater Bombay (vide S. 2 of Act No. 14 of 1939). The Transfer of Property Act No. 57 of 1959 merely extended the provisions of Act No. 14 of 1939 to other parts of re-organised State of Bombay but since there was no notification issued under proviso to S. 2 of the Act No. 14 of 1939 directing that the provision of the Act would apply to such notices relating to immovable properties situate wholly or partly in other areas as, may be specified in the said notification the amended provision of S. 52 would not come in force in other areas of the re-organised State of Bombay including Saurashtra where the property with which I am concerned in this revision application is situate. It is precisely on this point that the Supreme Court ruled in Anand Nivas (Private) Ltd. Vs. Anandji Kalyanji Pedhi and Others, that the Transfer of Property (Bombay Amending) Act No. 57 of 1959 also would not be helpful and the trustees of the respondent-trust were entitled to execute the decree which they had obtained against the original tenant against the sub-tenant the appellant Company also. In that view of the matter, therefore, I am of the opinion that both these contentions urged on behalf of respondent No. 2 should be rejected. The order of the executing Court therefore is set aside and the matter is sent back to the Executing Court for proceeding ahead with the execution application according to law.

4. Revision Application allowed accordingly. Rule is made absolute with costs.

5. Revision allowed.