
(2010) 10 KAR CK 0110
In the Karnataka High Court
Case No : Writ Petition No. 2862 of 2009

M.T. Kempegowda

APPELLANT

Vs

Sri. G.K. Ramesh Khumaar and Others

RESPONDENT

Date of Decision : 06-10-2010

Acts Referred:

Specific Relief Act, 1963 — Section 19, 20
Transfer of Property Act, 1882 — Section 52

Citation : (2011) 3 KarLJ 59

Hon'ble Judges : Anand Byrareddy, J

Bench : Single Bench

Advocate : C.S. Prasanna Kumar, for the Appellant; A.S. Krishna Bhat, for the Respondent

Final Decision : Dismissed

Judgement

Anand Byrareddy, J.—Heard the learned Counsel for the parties.

2. The facts are as follows:

The first Respondent herein has filed a suit for declaration, possession and mandatory injunction against Respondents 2 to 6 herein. It is claimed

that he is the owner of the suit schedule property which has been illegally occupied by Respondent No. 6, who has put up certain construction

therein and hence the suit.

The Petitioner was not a party to the suit. On learning of the pendency of the same, he had filed an application to implead himself as a party. It is

the Petitioner's case that one Nanjappa was the owner of the property. He was the father of Respondents 2 to 4 herein and the husband of

Respondent No. 5. It is claimed that the said Nanjappa had parted with the possession of the suit property for a consideration but, as there was a

statutory bar under the provisions of the Karnataka Prevention of Fragmentation and Consolidation of Holdings Act 1966, (hereinafter referred to

as "the Act" for brevity), to execute a sale deed - secondary documents, such as a power of attorney to enable the transferee to hold the property

and an affidavit to fortify the transfer, were said to have been executed as on 5.11.1988 in favour of one Krishnappa, Who in turn, similarly

transferred the same property in favour of one Hemalatha on 4.1.1989. The aforesaid Act was repealed with effect from 29.11.2000. The said

Hemalatha had thereafter executed a registered sale deed in favour of one Madhukar. This was said to have been ratified by the aforesaid

Krishnappa. Madhukar is said to have obtained a sanction of plan from the competent authority and had constructed a house and thereafter had

sold the suit property to the Petitioner under a registered sale deed dated 22.11.2006. The Petitioner claims that he was in possession thereof.

In the year 2008, according to the Petitioner, Respondent No. 1 is said to have informed that his suit in respect of the property was to be decreed

soon and that he should make preparations to vacate the property - this had prompted the Petitioner to approach the trial court with an application

to implead himself. That application was summarily rejected. The Petitioner had then approached this Court challenging that order. This Court

having set aside the order had directed the trial court to rehear the application. The trial court having again dismissed the application holding that

the Petitioner's sale deed was in violation of Section 52 of the Transfer of Property Act, 1882, (hereinafter referred to as " the TP Act" for

brevity) and hence would have no right to participate in the proceedings, the present petition is filed.

3. The learned Counsel for the Petitioner contends that the trial court has failed to take into account the several exceptions, that have been

recognized by a plethora of authorities - to the rule enunciated in Section 52 of the TP Act.

That the trial court has brushed aside the several transactions in respect of the suit property, much prior to the suit, commencing with the transfer of

the possession of the property by the father of Respondents 2 to 4 in the year 1988. And hence the alleged transfer in favour of Respondent No. 1

by Respondents 2 to 4 was not tenable as the property could no longer be claimed by them.

The further glaring circumstance that Respondents 2 to 4 were consenting witnesses to the sale deed in favour of the Petitioner's vendor, namely

the sixth Respondent, dated 13.3.2002 and therefore the same Respondents having executed a sale deed on 16.3.2002 was apparently a

fraudulent mischief which the trial court has completely glossed over.

The learned Counsel for the Petitioner has placed reliance on a large number of authorities to sustain the writ petition.

4. The learned Counsel for the Respondents, on the other hand, seek to sustain the impugned order and would contend that the blatant violation of

Section 52 of the TP Act, is apparent from the Plaintiff's own narration of the events and therefore the trial court has dismissed his application

consistent with the settled legal position and the several authorities cited are rendered in peculiar facts and circumstances of the cases decided

therein and cannot be mechanically applied to the Petitioner's case.

5. In the above facts and circumstances, the question to be considered is whether the Petitioner is entitled to contest the suit as a Defendant, in the

admitted circumstance that the sixth Respondent who had sold the property to the Petitioner had conveyed the same, without the leave of the

court, during the pendency of the suit.

The Petitioner's endeavour to trace the transfer of property to the year 1988, when the father of Respondents 2 to 4 is said to have parted with his

possession is not so material. The challenge in the suit was to the possession of the property by Respondent No. 6, under whom the Petitioner

claims. The said Respondent had filed his written statement in the suit as on 4.3.2004. The sale deed in favour of the Petitioner was admittedly

executed on 13.3.2006. The transfer therefore was in total defiance of the pending proceedings. This would definitely militate against the spirit and

object of Section 52 of the TP Act. The mala-fides sought to be alleged against Respondents 2 to 4, as narrated above does not blunt the

infraction.

Section 52 of the TP Act is extracted for ready reference. The same reads as follows:

52. Transfer of Property pending suit relating thereto. - During the pendency in any Court having authority within the limits of India excluding the

State of Jammu and Kashmir or established beyond such limits by the Central

Government of any suit or proceeding which is not collusive and in which any right to immovable property is directly and specifically in question, the property cannot be transferred or otherwise dealt with by any party to the suit or proceeding so as to affect the rights of any other party thereto under the decree or order which may be made therein, except under the authority of the court and on such terms as it may impose.

Explanation: For the purposes of this section, the pendency of a suit or proceeding shall be deemed to commence from the date of presentation of the plaint or the institution of the proceeding in a court of competent jurisdiction, and to continue until the suit or proceeding has been disposed of by a final decree or order and complete satisfaction or discharge of such decree or order has been obtained, or has become unobtainable by reason of the expiration of any period of limitation prescribed for the execution thereof by any law for the time being in force.

The scope of the doctrine of *lis pendens* which is expressed in the maxim "*ut lite pendente nihil innovetur*" which is enacted in Section 52 of the TP

Act is explained in the leading case of *Bellany v. Sabine* (1857) 1 D& J 586 . It was laid down therein that the doctrine rests on the foundation that

it would plainly be impossible that any action or suit could be brought to a successful termination if alienations *pendente lite* were permitted to

prevail. The Plaintiff would be liable in every case to be defeated by the Defendant's alienating before the judgment or decree, and would be

driven to commence his proceedings *de novo*, subject again to be defeated by the same course of proceeding.

The above was followed by the Privy Council in *Faiyaz Husain Khan v. Prag Narain* (1907) 34 I.A. 102, which is the leading case on the doctrine

of *lis pendens* in India. It was held that the Rule is based on expediency, i.e. the necessity for final adjudication. It is immaterial whether the alienee

pendente lite had or had not notice of the pending proceeding.

More recently the apex court has in the case of *Sanjay Verma v. Manik Roy* (2006) 13 SCC 608 held thus:

12. The principles specified in Section 52 of the T.P. Act are in accordance with equity, good conscience or justice because they rest, upon an

equitable and just foundation that it will be impossible to bring an action or suit to a successful termination if alienations are permitted to prevail. A

transferee pendente lite is bound by the decree just as much as he was a party to the suit. The principle of lis pendens embodied in Section 52 of

the T.P. Act being a principle of public policy, no question of good faith or bonafide arises. The principle underlying Section 52 is that a litigating

party is exempted from taking notice of a title acquired during the pendency of the litigation. The mere pendency of a suit does not prevent one of

the parties from dealing with the property constituting the subject-matter of the suit. The Section only postulates a condition that the alienation will

in no manner affect the rights of the other party under any decree which may be passed in the suit unless the property was alienated with the

permission of the Court

And in Arjan Singh Vs. Punit Ahluwalia and Others, , it was held thus:

17. Was the order of injunction operative so as to attract the provisions of Rule 2-A of Order 39 of the Code of CPC or invoking the inherent

jurisdiction of the court u/s 151 thereof? The Learned Trial Judge opined that it was so because it was for the court to pass an appropriate order

thereunder. The High Court, however, differed with the aforementioned finding of the learned trial Judge to hold that no order of injunction was

operative. It, furthermore, held that any transaction carried out in violation of the order of the court is void; it would be a nullity. The decision of the

High Court is based on the decisions of different High Courts including Pranakrushna v. Umakanta Panda, Phani Bhusan Dey V. Sudhamoyee Roy

and Harbalas V. State of Haryana. We agree with the High Court on this issue. If the order of injunction was operative up to a particular date,

technically the order of injunction shall not remain operative thereafter. The owner of the land Dr. Bawa and Defendant 2 Sanjeev Sharma, thus,

could have entered into the compromise. The effect thereof would be that the said deed of sale was not binding on the Appellant. It would be hit

by the doctrine of lis pendens, as adumbrated u/s 52 of the Transfer of Property Act. The said deed of sale would not come in the Court's way in

passing a decree in favour of the Appellant. Its validity or otherwise would not be necessary to be considered as the Appellant is not bound

thereby, Sanjeev Sharma and consequently Punit Ahluwalia would be deemed to be aware of the pendency of the suit. Even Section 19 of the

Specific Relief Act will be attracted.

21. The Learned trial Judge, however, was right in holding that the purported compromise was bad in law. It was unlawful being without any written consent of all the parties. We need not go into the question as to whether the same was fraudulent or not, but indisputably not only was the same not binding on the parties, the court in a case of this nature while considering the Appellant's case shall not take note of the fact that any deed of sale has been executed pursuant thereto. Respondent 3, as a logical corollary of these findings, would not be entitled to set up the plea of being bonafide purchaser for value without notice. The court may also pass such other order or orders, as it may deem fit and proper keeping in view its discretionary jurisdiction u/s 20 of the Specific Relief Act, 1963. To that extent the judgment of the learned trial Judge must be upheld and that of the High Court must be set-aside.

6. In the light of the facts and circumstances of this case and the law as applicable being plain, there is no merit in this writ petition. The exercise of addressing the large number of cases cited by the Petitioner is found to be unnecessary as it would lead to avoidable prolixity.

In the result the writ petition is dismissed.