
(1969) 09 SC CK 0071

In the Supreme Court Of India

Case No : Civil Appeal No's. 1128 and 1129 of 1966

Nidamarthi Surayya and Another

APPELLANT

Vs

Parvathneni Ramakrishnaih and Others

RESPONDENT

Date of Decision : 24-09-1969

Acts Referred:

Citation : (1969) 1 UJ 702

Hon'ble Judges : J. M. Sehlat, J;I. D. Dua, J;C. A. Vaidyalingam, J

Bench : Full Bench

Final Decision : Dismissed

Judgement

Shelat, J.—Both these appeals are under special leave and relate to a piece of land admeasuring about 93 acres situate in the village Ninavaram near Vijayawada. The land came to respondent 3 under a deed of " settlement dated Februarys, 1944 executed by her mother in her favour.

2. On April 29, 1950 respondent 3 and her husband, Ramamurthy Pantulu (since "deceased), executed an agreement for Sale (Ex.B-9), in favour of respondent 2 and received Rs.5,400/- as earnest out of Rs. 30,000/-, that being the agreed consideration. The agreement provided that respondent 3 would pay a further sum of Rs. 9,600/- at the time of the execution of the sale deed and the balance of Rs. 15,000/- in 3 Annual installments of Rs.5,000/- each. It also recited the fact that respondent 3 and her said husband delivered possession of the said land to respondents 1 and 2 on that very day.

3. On June 15, 1950 respondent 3 and her said husband went to Madras and executed a deed of sale (Ex.A-5) conveying thereby the said land in favour of the appellants for a consideration of Rs. 20,000/-. The appellants paid Rs. 3,000/- to respondent 3 and for the balance of Rs. 17,000/- executed a promisory note. As regards possession, the sale deed provided as follows:

"You (i.e. the appellants) shall have to take possession of the property covered by this sale. In regard to the same we shall assist you to the fullest extent. As

soon as you take possession of the land it is agreed that the 1st individual of you (i.e appellant 1) shall pay the amount due under the promisory note executed in our favour."

The liability to pay Rs. 17,000/- under the said promisory note was thus to arise only on the appellants obtaining possession of the land.

4. Appellant 1 and his brother, appellant 2, filed a suit a possession in Vijayawada Court on the strength of the said sale deed (Ex. A-5), being suit No.125 of 1953, making respondent 3 and her deceased husband defendants in their capacity as vendors and respondents 1 and 2 as persons in possession. The claim was based on the footing that the said sale deed was executed in pursuance of, an agreement for sale dated April 26, 1950 and that agreement being prior in time than the one dated April 29, 1950 in favour of respondent 2 it took precedence. In her written statement respondent 2 alleged that the said alleged agreement for sale put up by the appellants in the suit was not executed on April 26, 1950 as alleged, but was brought into existence on the date when the said sale deed (Ex.A-5). was executed and that the agreement Ex.B-9 in her favour was prior in time and any rights created by the said deed of sale in favour of the appellants would be subject to her rights under the agreement of sale in her favour. Respondents 2 filed in her turn suit No 126 of 1953 for specific performance of the agreement Ex.B-9 in her favour. The Trial Judge raised several issues in the two suits. But the principal issue on which the two suits were disposed of was "Whether the prior agreement pleaded by plaintiffs (the appellants herein) dated 26-4-50 is true and enures for the benefit of the plaintiffs."

5. Obviously, the success of the appellants' suit depended on their proving that an agreement for sale was brought into existence on April 26, 1950 and for that they depended on the evidence of P. W.3 who acted in the transaction as their agent. The Trial Judge after examining the evidence adduced by the parties as also the probabilities of the case observed as regards the alleged agreement Ex.A-1 dated April'26, 1950 and the role played by the appellants' agent, P.W. 3, as follows : .

"If there was an agreement like Ex.A-1 on 26-4-50, Ramamurthi Pantulu would never have given possession of the lands to the 2nd defendant on the date of Ex. B-9 Feeling herself the real owner 2nd defendant filed a petition, the original of Ex.B-12, on 30-4-50 itself for getting subsidy for 3 wells. She has been paying cist, and Ex.B-15 is one of the cist receipts. I am convinced from the evidence on record that P.W.3 played most unworthy part of a villain and P.Ws.,1 and 2 joined hands with him, and all of them played huge fraud upon the 3rd defendant and her innocent husband, late Ramamurthi Pantulu."

He accepted the contention of respondent 2 that the agreement Ex- A-1 was ante-dated and that it was brought into existence on the day that the sale deed Ex. A-5 was executed in favour of appell ants. In that view he dismissed that

appellants suit and decreed the suit filed by respondent 2, i.e. Suit No 126 of 1953, grantin specific performance in the following terms :

"In the result, there will be a decree in O.S. No. 126/53 in favour of the plaintiff declaring her light to get a sale-deed executed by the 1st defendant in this suit in respect or the suit lands on her depositing into Court the entire balance of sale consideration with interest thereon as per the terms of Ex B-9 within a month from this date. It is further decreed that on such deposit the 1st "defendant shall execute a sale-deed-- -- -- it is further decreed that on plaintiff's failure to deposit the amount she shall forfeit her right to specific performance and would lose the advance amount of Rs. 5,400/- paid by her----".

A little later, on an application by respondent 2, the Trial Judge amended the said decree by providing therein that the appellants should join in the sale-deed to be executed by respondent 3 in favour of respondent 2 as con6rming parties. This was presumably done to ensure a proper title in favour of respondent 2, free from any possible claim by the appellants or any person claiming through them.

6. Aggrieved by the said decree and the said order directing them to join in the conveyance, the appellant filed in High Court three appeals and a revision petition, being appeals Nos. 304, 305 and 354 of 1955 and C R.P. 1263 of 2955, raising therein the same contentions which they had unsuccessfully urged before the Trial Judge. The High Court heard the appeals and the revision together and after an elaborate examination of the evidence, oral and documentary, dismissed them confirming the decrees passed by the Trial Judge. On the main issue as to whether respondent 3 and her late has bard had entered into the said alleged agreement for sale on April 26, 1950 as alleged by the appellants and their agent, P.W 3, the High Court confirmed the (sic) of the Trial Judge that agreement was brought into existence when the file-deed Ex. A-5 was executed at Madras in favour of the appellants and that to give priority to it against any claim that may be made by respts. 1 & 2 the appellants and respt. 3 and her husband in collusion with each other other ante-date it dating it as of April 26 1950." As to the reason why respondent 3 and her late husband became parties to such a transaction, the High Court was of the view that the deceased husband of respondent 3 was anxious to get the sale price all at ones instead of waiting for its full payment for 3 years under Ex. B-9 in favour of respondent 2, and therefore, agreed with the appellants sell to them the said land even for Rs. 20,000/-. As to the appellants' allegation that the agreement in their favour was made on April 26, 1950, the High Court was clear that was not true and agreed with the Trial Judge that it was antedated with a view to give an appearance that it was in point of time earlier then Ex. B-9. What appears to have impressed the High Court was the improbability of respondent 3 and her late husband agreeing to sell the land to an undisclosed principal of P.W. 3/ when P.W. 3 was known to them not to have the wherewithal to pay the price and did not even give any advance amount. Equally improbable was the fact, according to the High Court, that having already received Rs. 5,400/- as earnest from respts. 1 and 2 and

having got them to agree to a price of Rs. 30,000/-, respt. 3 and her husband would abide by any alleged earlier agreement under which they would have to sell the land at a clear loss of Rs. 10,000/. The High Court was also of the view that if there was such an earlier agreement it was impossible that respondent 3 and her husband would have delivered possession of the land to respondent 2 on April 29, 1950. On a scrutiny of the facts and circumstances of the case the High Court recorded its conclusion thus :

"The lower Court has considered the evidence in all its aspects and has reached the conclusion that Ex. A 1 was not executed on the date it bears but that it was got up subsequently. On this conclusion, with which we are in entire agreement, it must follow that the agreement of sale Ex. B-9, in favour of the 2nd defendant, must prevail."

In this view, the High Court dismissed the appeals and the revision application and confirmed the decrees passed by the Trial Judge in the two suits. In doing so, the High Court provided that respondent 3 should deposit Rs. 3,000/- in Court which the appellants could withdraw as repayment of the amount admittedly received from then by respondent 3.

7. Counsel for the appellants raised two contentions before us; (1) that the High Court was in error in holding that the agreement for sale in favour of the appellants was ante-dated, and (2) that the High Court should have vacated the decree for specific performance in favour of rspt. 1 & 2 by reason of their having failed to carry out the condition laid down by the Trial Court, namely, that they should deposit the balance of the purchase price, Rs. 24,600/-, in court within one month from the date of the decree, on the failure of which the decree expressly provided that they would forfeit the right to specific performance as also the earnest amount of Rs. 5,400/ paid by them.

8. Counsel., however, conceded that as far as his first contention was concerned, there was a concurrent finding of both the courts that the agreement for sale in favour of the appellants was ante-dated and that finding being one of fact he could not ask us to re-open it unless he was in a position to show that it had been wrongly arrived at. He argued, however, that the finding, though concurrent, should be reviewed by us as the High Court had failed to give full significance to three facts. The first fact, according to him, was that in his anxiety to sell the land, the late husband of respondent 3 had at first tried to dispose of the land by an auction. In that auction respondents 1 and 2 took part but gave a bid of Rs. 10,000 only. He argued that having given a bid for Rs. 10,000 only at that auction, it was highly improbable that they would later on raise their offer suddenly to Rs. 30,000/-. He urged that was done because they must have come to know that the appellants had already entered into an agreement to purchase the land for Rs. 20,000/-.

9. There is in our view no merit in this contention. The fact that the husband of respondent 3 had tried to dispose of the land by auction and that respondent 1

and 2 had then given a bid for Rs. 10,000/- only and the price so offered being low, the husband of the 3rd respondent had himself given a higher bid so that the land may not be knocked down in favour of respondents 1 and 2 for such a low consideration we recall before the Trial Judge and the High Court. Despite these facts, both of them had come to the finding, on assessment by each of them of the evidence on record, that the agreement for sale in favour of the appellants was antedated to justify the sale in their favour as against the prior agreement in favour of respondents 1 and 2. It may be that respondents 1 and 2, prepared though they were to pay as such as Rs. 30,000/-, might have desired to get the property or as low price as possible at the said auction. That did not mean that they would not raise the price they were prepared to pay when they knew that respondent 3 and her husband were not prepared to sell the land at the amount at which they gave their bid. In fact they did pay Rs.5,400/- as earnest and also agreed to pay Rs. 9,600/- at the time of the execution of the sale deed and even obtained possession from respondent 3 and her husband. What really weighed with the High Court was the fact that at the time when the alleged agreement in favour of P. W. 3 was said to have been made, P. w. 3 did not after to pay any advance or earnest nor did he disclose who his principles were. Knowing that P. W 3 was not in a position to pay the consideration and not knowing also who were the persons at his back, it was hardly likely that respondent 3 and her husband would bind themselves down to such a nebulous bargain. The conclusion of the High Court and the Trial Judge was that they agreed to sell the land for Rs. 20,000/- only to the appellants, though there was an agreement to sell it at Rs. 30,000/-, because they found that for the balance of Rs. 15,000/- under that agreement they would be obliged to wait for 3 years. If they were to get Rs.20,000/- all rates once from the appellants, they were prepared to go to Madras where the appellants were and throw aside the bargain they had solemnly entered into with respondents I and 1.

10. The second fact which the High Court did not take into account according to counsel was the reference to certain delta land which the appellants, were prepared to exchange in consideration of the land in question. That fact, according to him, went to show that the agreement must have been entered into at the date shown therein. This fact also was taken notice of by the High Court and the High Court not unjustifiably came to the conclusion that the delta land was referred to in that agreement for showing that the bargain between the appellants and respondent 3 and her late husband would be considered worthwhile though it was for Rs. 20,000/- only and only Rs. 3,000/- were to be paid then and the rest by a promissory note. This conclusion, as we have already stated, cannot be considered to be unwarranted, because, if respondent 3 and her husband were serious about the exchange of the said delta land, surely the agreement in favour of the appellants could not have been altogether silent about the price at which the delta land was to be exchanged and the exact quantity of such land which was to be exchanged. It is impossible to conceive that respondent 3 and her husband, who were anxious to dispose of the land

inquestion, would have entered into any bargain for an exchange of land of which even the price was not yet ascertained, and therefore, the quantity they would get in exchange and be satisfied with a mere promissory note under which they would get Rs. 17,000/- only when the appellants got possession. If the agreement in favour of the appellants had been entered into before the one in favour of respondents 1 and 2 was made arid before possession was given to respondents 1 and 2, it could never have provided that the balance of Rs. 17,000/- thereunder would be payable only on the appellants getting possession, as on April 26, 1950 possession was still with respondent 3 and it would have been delivered straightaway to the appellants. There was thus inherent evidence in the agreement dated April 26, 1950 that it was not made on that date.

11. The third fact which the High Court was said not to have taken notice of was that respondents 1 and 2 had no intention to pay Rs. 30,000/- and that their intention was to grab possession of the land on payment of Rs. 5,400/- only. This argument amounts merely to a conjecture, for, there was nothing in the evidence to show that respondents 1 and 2 had no intention to pay the full consideration. Indeed, the agreement provided, in addition to Rs. 5,400/- already paid, for the payment of Rs. 9,600/- at the time of the execution of sale deed. The fact that they were serious about the sale in their favour was amply demonstrated by the fact that they insisted on specific performance knowing that if the Court allowed it they would have to pay the balance immediately though under their agreement they were to pay the balance within 3 years.

12. The last argument was that the decree passed by the Trial Court was defective inasmuch as it should have passed an order for delivering up of the promissory note to the appellants by respondent 3. We do not see any substance in this argument also, firstly, because no such prayer was made by the appellants either before the Trial Court or the High Court, and secondly, because the balance of Rs. 17,000/- payable under the promissory note was to become due only on the appellants obtaining possession. Once the Court had passed a decree for specific performance in favour of respondents 1 and 2, the question of the appellants remaining liable to pay anything under the promissory note could not arise at all and even though formally the promissory note was not ordered to be delivered back, the absence of such an order did not affect the validity of the decree for specific performance.

13. It is impossible thus to concede to the argument that the High Court and the Trial Court were not justified in coming to conclusion that the agreement in favour of the appellants was ante-dated and was not in fact made on April 26, 1950 as alleged by them.

14. As regards the 3rd respondents' failure to satisfy the condition of depositing the balance of the purchase price in Court, it is true that the decree did provide that she should deposit in court that amount within a month from the date of the decree and that on her failure to do so she would forfeit not only her right to specific performance but also Rs. 5,400/- paid by her as advance. Counsel for

the appellants/contended that respondent 3 having failed to deposit within the time appointed by the Court, her right to specific performance failed, and consequently, the sale-deed in favour of the appellants remained effective. This very contention was raised before the High Court but the High Court recorded that what had happened was that the amount was paid out of court, that respondent 3, as the vendor, had filed a receipt therefore in the Trial Court, that "the sale amount must be deemed to have been paid by the 2nd defendant" and that the fact that instead of depositing it in the Court it was paid to the 3rd respondent made no difference. This was done on the statement made before the High Court by or on behalf of respondents 1 and 2, which statement was not repudiated by or on behalf of respondent 3 though she was separately represented by counsel. Counsel for the appellants who also was there did not deny the statement.

15. It appears, however, that when the appellants filed their application for certificate for leave to appeal to this Court they made an allegation therein that the statement made by or on behalf of respondents 1 and 2 that a receipt was filed in the Trial Court, evidencing payment out of Court could not be correct because when the appellants applied to the Trial Court for certified copies of the receipt, the requisite entry in the Court register and the affidavit to the effect that such payment was made, the order of the Trial Court was that these papers were not on its file. From its order dated September 4, 1961, it appears that the High Court took no notice of this objection presumably for the reason that the question of payment of the price was between respondents 1 and 2 on the one hand and respondent 3 on the other, and if respondent 3 was satisfied about the payment there was nothing further to be done. The High Court, therefore, rejected the application for certificate on the simple ground that its judgment was one of affirmance and the appellants were not entitled to a certificate as no substantial point of law was involved in the appeals.

16. In the SLP filed by the appellants in this Court they again raised the same contention. But it appears from the order passed by this Court on February 12, 1964 that special leave was granted not on the ground that there was failure on the part of respondents 1 and 2 to satisfy the said condition in the decree had made a modification in the decree passed by the Trial Court by ordering the return of Rs. 3,000/- paid by the appellants to the vendors as part of the sale price, a contention which was left open for the respondents to contest at the time of the the hearing of these appeals.

17. In our view, the question as to whether the condition as to the depositing of the balance of the sale price was one between respondents 1, 2 & respondents 3. That condition was inserted in the decree, as is generally done in decrees for specific performance, for the benefit of the vendors who were directed to execute the sale-deed. Therefore, so long as respondent 3 was satisfied that the sale price was paid by respondents 1 and 2, the question of any further proof as regards such payment did not arise. If respondent 3 was satisfied that the

purchase price was paid to her and she was ready to specifically perform the agreement, as directed by the Court, we do not see how the appellants can raise any contention as regards any alleged failure on the part of respondents 1 and 2 to satisfy the said condition in the decree. We, therefore, do not see any merit in this contention also.

18. The result is, that the appeals are dismissed with costs, but there shall be only, one hearing fee.