
(2001) 12 CAL CK 0035
In the Calcutta High Court
Case No : S.A. No. 005 of 1999

P. Poppan and Another

APPELLANT

Vs

Karia Gounder and Others

RESPONDENT

Date of Decision : 10-12-2001

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 100
Specific Relief Act, 1963 — Section 14, 19

Citation : (2002) 1 CALLT 382 : (2002) 2 CHN 40 : (2002) 1 ILR (Cal) 219

Hon'ble Judges : Ashim Kumar Banerjee, J

Bench : Single Bench

Advocate : Abdus Sattar, for the Appellant; Haradhan Banerjee, for the Respondent

Final Decision : Allowed

Judgement

A.K. Banerjee, J.

(i) Is an oral contract enforceable in law?

(ii) When there is no time stipulated for execution of the contract for sale of Immovable property is the contract enforceable in law?

(iii) Is the primary onus of proof for compliance u/s 19(b) of the Specific Relief Act upon the purchaser third party or the plaintiffs/vendors?

2. These are three questions which are required to be answered in this Second appeal and the cross-objection filed by the opposite parties.

3. The Instant second appeal was admitted by an order dated 17th November, 1999, See T. Poppan and Another Vs. Karia Gounder and Others, by the Division Bench, unfortunately no question of law has been framed on which the instant appeal is to be heard. Hence, I have formulated the above questions at the time of hearing and allowed the parties to advance their arguments.

4. The facts of this case would depict that there had been an oral agreement for

sale between the plaintiffs and the defendant Nos. 1 and 2 for sale of the land in question. The time was not the essence of the contract. Plaintiffs refused to perform their obligations, on the contrary sold the property to the defendant No. 3. The trial Court dismissed the suit for specific performance on the ground that the oral contract was not enforceable in law.

5. The First Appellate Court negated the said finding and held that the oral contract, being a contract for sale of Immovable property was enforceable in law and a specific performance could be asked. The First Appellate Court, however, felt that the subject contract was not enforceable in law. In view of the fact that there was no stipulation with regard to the time and as such, the contract was uncertain to be performed. The prayer for specific performance was liable to be rejected.

6. The First Appellate Court also held that u/s 19(b) of the Specific Relief Act it was for the plaintiffs to prove that the defendant No. 3 was not a bonafide purchaser for value without knowledge. Since there was no evidence to the said effect the decree for specific performance could not be granted.

7. The instant appeal was heard and by a Judgment and decree dated 14th September, 2000 the appeal was allowed. However, the said judgment and decree of the Second Appellate Court was set aside on review on 15th March, 2001 as the learned Judge did not frame the issues, which is the prerequisite of Section 100 of the Code of Civil Procedure. Accordingly, the appeal was readmitted and was directed to be heard afresh.

8. As I have said earlier that since the Court of Appeal at the time of admission did not frame the questions of law I have framed the questions of law at the time of hearing and allowed the parties to advance their arguments.

9. On the first issue, Mr. Abdul Sattar, appearing for the Plaintiffs/ appellants, submitted that oral contract was a valid contract and since the contract had been proved the same was enforceable in law.

10. Mr. Haradhan Banerjee, learned counsel, appearing for the defendants/ respondents, did not dispute such proposition of law in his usual fairness. Moreover, I find that the First Appellate Court held that the oral contract was enforceable in law. In my view, the First Appellate Court correctly held so as this is most elementary proposition of law that an oral contract is enforceable in law provided it is proved to have been entered into by and between the parties. Since it was a contract for sale of Immovable property under the provision of Specific Relief Act such contract was enforceable in law and the parties were entitled to seek specific performance of the same.

11. Hence, I answer the first question in the affirmative and allowed the appeal on the said score.

12. With regard to the second question, Mr. Sattar, learned counsel submitted that when an agreement does not provide for any time limit within which it has

to be performed it is presumed, that the said agreement is to be performed within a reasonable period and since the plaintiffs filed the suit within a period of three years after waiting for a reasonable time the general law of limitation would apply and the suit for specific performance is maintainable on the said score and decree is a matter of course, Immediately after the agreement for sale is proved. The First Appellate Court ever after coming to the conclusion on appreciation of the evidence that the contract for sale was proved, had refused specific performance on the ground that the contract was uncertain and was Incapable of being performed. Such decision of the First Appellate Court was contrary to the settled principle of law. When a contract for sale stipulates a time limit in that event, the time is to be considered as an essence of the said contract and the said contract is enforceable and the parties willing to perform the same can ask for a decree for specific performance against the other parties Immediately on expiry of the said period. However, when time is not stipulated in the contract it is expected that the same would be performed by the parties within a reasonable period. In the Instant case the plaintiffs had waited for a reasonable time as would appear from the evidence as had been scanned by the First Appellate Court and as the suit was brought within the general period of limitation, being three years, the decree for specific performance could be refused on the ground that there was no time stipulated for the same.

13. Hence, I answer this question in the affirmative in favour of the appellants and against the respondents.

14. The third and last issue is really crucial in the Instant case. Section 19(b) of the Specific Relief Act protects a bonafide purchaser for value without any knowledge of existence of a prior contract for sale to defend a suit for specific performance Initiated on the basis of an earlier contract. Section 19 of the Specific Relief Act provides that a suit for specific performance can be brought not only against the vendor but also against the third party who is claiming under the vendor by virtue of a subsequent transaction. Exception provides that if a third party is unaware of the earlier agreement and relying in the good faith has purchased a property with valuable consideration he is protected from such action i.e. the transaction between the vendor and the third party although subsequent to the earlier contract for sale of which specific performance is being asked, cannot be nullified. When a plaintiff comes with a suit for specific performance he has to discharge his primary onus that there has been a valid agreement for sale between him and the vendor and the vendor is refusing to perform his part of the obligation despite the plaintiffs willingness to comply with his part of the obligation under the contract. Once this onus is discharged the decree is a matter of course. If there has been any subsequent transaction the same is of no effect at all. The subsequent transferee is also bound by the said decree and the subsequent sale is automatically null and void and is liable to be cancelled. In such circumstances, to prevent the transaction subsequently held, the subsequent transferee will have to prove that he was unaware of the earlier agreement and he is a bonafide purchaser for value without knowledge of the

prior agreement. Hence, such onus is upon the transferee defendants and as such, unless and until, such primary onus is discharged by the subsequent transferee the decree is a matter of course. Learned Judge of the First Appellate Court approached the problem from a complete angle. Such approach, in my view, is erroneous and does not have any support of law. Learned Judge erroneously held that the fact that the subsequent transferee was not a bonafide purchaser for value without consideration had to be proved by the plaintiffs initially and according to the learned Judge of the First Appellate Court, that the plaintiffs would have to establish u/s 106 of the Evidence Act that the transferee had the special knowledge of the fact in Issue. The learned Judge of the First Appellate Court held "definitely the burden of proving the existence of the special fact of knowledge rests upon the plaintiff Nos. 1 and 2 who could not discharge the same by tendering any sort of evidence."

15. This finding of the learned Judge is totally erroneous and does not have any support of law.

16. The apex Court in the case of R. K. Mohammed Ubaidullah and Others Vs. Hajee C. Abdul Wahab (D) By Lrs. and Others, held that Section 19(b) protects the bonafide purchaser in good faith for value without knowledge of the original contract. This protection is in the nature of exception to the general rule and hence, the onus of proof on good faith is on the purchaser who takes the plea that he is an innocent purchaser. In my view, the First Appellate Court totally overlooked this aspect and approached the problem from a totally different angle and came to a conclusion which has no support of law.

17. Hence. I hold that finding of the First Appellate Court on the said score is bad and as such, is liable to be reversed. I therefore, answer this question in the affirmative in favour of the appellants and against the respondents.

18. In such view of the matter, in my view, the suit has to be re-heard on this limited issue by giving an opportunity to the defendant No, 3 to discharge his onus on that score.

19. Mr. Abdus Sattar, learned counsel appearing for the plaintiffs appellants, submitted that the parties had got opportunities before the trial Court to adduce evidences. The defendant has chosen not to adduce any evidence and as such it is not a fit case for remand and he is entitled to decree as prayed for.

20. In my view, this litigation has suffered a lot because of the erroneous decisions of the Courts below. The trial Court proceeded on a complete erroneous proposition of law. The First Appellate Court while correcting the same committed mistakes again. On perusal of the, records. I find that opportunities were asked for by the defendants to adduce evidence. However, their application was rejected and the defendants were not allowed to adduce evidence at that Juncture. It is not possible for me to come a definite conclusion as to what prompted the learned Judge to refuse opportunities to the defendants for adducing evidence. It might be that the learned Judge was under a complete

erroneous view that the subject suit was based on a none Issue as according to him, the oral agreement for sale was not enforceable and prolonging the Issue by granting adjournment to the defendants would not serve any purpose. However, the First Appellate Court corrected the said mistake and even at that stage the First Appellate Court erroneously held that the primary onus was upon the plaintiffs and as the same was not properly discharged the decree of specific performance could not be granted. Since I have held that the primary onus was upon the defendant No. 3 and having regard to the facts and circumstances of the case as discussed by me hereinbefore. I feel that an opportunity should be given to the defendant No. 3 prove his contention and to discharge his primary onus required in law. To do substantive Justice, I feel that this is fit case for remand on a limited scope.

21. Considering the above, I feel that since both the Courts below proceeded on erroneous concept of law and approached the problem from a wrong angle, to set the matter right I should remand the case before the Civil Judge, Senior Division, Andaman and Nicobar Islands, Port Blair to decide on the following issues:

(I) Was the defendant No. 3 aware of the subject agreement for sale prior to his purchase?

(II) Was the defendant No. 3, a bonafide purchaser for value without notice of the prior agreement? (III) Is the defendant No. 3 entitled to protection u/s 19(b) of the Specific Relief Act?

22. By virtue of the power conferred upon me under Order 41 Rule 25 of the Code of Civil Procedure, I direct the learned Civil Judge, Senior Division, Andaman and Nicobar Islands, Port Blair to hear the Original Suit No.8 of 1994 on the above Issues by allowing all the parties to adduce their respective documentary and oral evidence. The learned Civil Judge, Senior Division will decide on the aforesaid issue on the basis of the additional evidence to be given by the parties in terms of this order and shall return the records along with the evidence to the Second Appellate Court together with his findings thereon and the reasons therefore within a period of three months from the date of receipt of the records from this Court

23. Lower Court records be sent down immediately. The appeal may come up in the list after receipt of the lower Court records along with the additional evidences and finding and reasons as directed by this order.