
(2015) 07 BOM CK 0276
In the Bombay High Court
Case No : Second Appeal No. 482 of 1992

Pandurang Bayaji Pisal

APPELLANT

Vs

Dagadu Arjuna Jadhav and Others

RESPONDENT

Date of Decision : 02-07-2015

Acts Referred:

Specific Relief Act, 1963 — Section 19(b)

Citation : (2015) 4 ALLMR 855 : (2015) 4 BomCR 710 : (2015) 5 MhLj 228

Hon'ble Judges : R.K. Deshpande, J

Bench : Single Bench

Advocate : Pratibha Shelke i/b R.A. Thorat, for the Appellant; Prashant Bhavake and P.M. Arjunwadkar, Advocates for the Respondent

Final Decision : Allowed

Judgement

R.K. Deshpande, J—Special Civil Suit No. 115 of 1988 filed by the appellant-plaintiff was dismissed by the trial Court by its judgment and order dated 12.10.1990. The appellant, who is the original plaintiff, preferred Regular Civil Appeal No. 443 of 1990, which is partly allowed by the lower appellate Court on 03.08.1992. The lower appellate Court has passed a decree for specific performance of contract in favour of the appellant-plaintiff and against the defendant No. 1 in respect of the agriculture land Block No. 91, situated at Bopegaon, to the extent of 29R of land excluding 2R of land which was purchased by Defendant Nos. 3 and 4 under a registered sale deed dated 11.04.1988 from the defendant nos. 1 and 2. None of the defendants are before this Court in this second appeal, but it is the plaintiff who is before this Court challenging the judgment and decree passed by the Courts below to the extent it refuses to grant a declaration that the sale deed dated 11.04.1988 executed by the defendant Nos. 1 and 2 in favour of defendant Nos. 3 and 4 be declared as not binding the plaintiff. The finding recorded by the lower appellate Court that the plaintiff has established contract dated 03.05.1982 for sale of suit land for total consideration of Rs. 27,000/- with the defendant Nos. 1 and 2, is not in

dispute. The plaintiff has already paid an amount of Rs. 25,000/- towards part consideration and this is also accepted by the lower appellate Court. The lower appellate Court has, therefore, directed the plaintiff to pay the balance amount of Rs. 2,000/- to get the sale deed executed from the defendant Nos. 1 and 2. It is also not in dispute that the suit property is Block No. 91, admeasuring total 31R, out of which 2R of land was sold by the defendant Nos. 1 and 2 to the defendant Nos. 3 and 4 by sale deed dated 11.04.1988. The agreement dated 03.05.1982 with the plaintiff was in respect of the entire 31R of land and it was prior in point of time of sale deed dated 11.04.1988.

2. In the aforesaid factual background, one of the substantial questions of law framed by this Court while admitting the matter on 26.11.1992 was, whether the lower appellate Court was justified in excluding the area of 2R of land sold to the defendant Nos. 3 and 4 by the defendant Nos. 1 and 2 in terms of sale deed dated 11.04.1988?

3. With the assistance of the learned counsel appearing for the appellant, I have gone through the pleadings. A specific prayer made in the plaint is to declare the sale deed dated 11.04.1988 executed by defendant Nos. 1 and 2 in favour of defendant Nos. 3 and 4 in respect of 2R of land out of Block No. 91 is not binding upon the plaintiff. In terms of Section 19(b) of the Specific Relief Act, 1963, if the transferee establishes that he has purchased the land in good faith for valuable consideration without notice of the original contract then only the specific performance can be refused. The defendant Nos. 1 and 2 who sold the land did not file a written statement. The defendant Nos. 3 and 4 who purchased the land have opposed the relief claimed by the plaintiff. The purchasers of the property subsequent to the contract in question were required to plead and prove that they are the bona fide purchasers for valuable consideration, in good faith, without notice of the earlier contract. There is neither any pleading nor any evidence brought on record to establish this fact by the defendant Nos. 3 and 4. The plaintiff has specifically averred and proved that he was put in possession of the entire property by way of part performance of contract on the date of execution of the contract itself. In view of this, lack of knowledge of earlier contract cannot be sustained.

4. Both the courts below have recorded the finding that the agreement contains a clause that the plaintiff is put in possession of the entire property. The plaintiff has not claimed a relief of possession of the suit property from the defendants. The courts below have held that since the plaintiff did not take any steps to get his name mutated in the record of right, it cannot be said that he is in possession of the suit property merely on the basis of such a clause in the contract. The courts below have missed the fact that the mutation can be done only upon execution of the sale deed and after transfer of the property. Merely because the agreement was executed in favour of the plaintiff, it was not a transfer of the property and hence no significance could have been attached to such a fact. The courts below after having accepted that the plaintiff has established the

possession over the suit property and in the absence of their being any evidence, the findings recorded that the defendant Nos. 3 and 4 are bona fide purchaser of 2R of land for valuable consideration in good faith without notice of the contract, is perverse and cannot be sustained. The substantial question of law is, therefore, answered accordingly. In the result, the second appeal is allowed. The judgment and decree passed by the lower appellate Court in Regular Civil Appeal No. 443 of 1990 on 03.08.1992 is hereby quashed and set aside only to the extent it refuses to grant declaration that the sale deed dated 11.04.1988 is not binding upon the plaintiff. The plaintiff is entitled to such declaration. It is, therefore, held that the sale deed dated 11.04.1988 executed by the defendant Nos. 1 and 2 in favour of defendant Nos. 3 and 4 is not binding upon the plaintiff. The decree passed by the lower appellate Court is, therefore, modified to that extent and rest of the decree is maintained. No order as to cost.