
(2015) 03 BOM CK 0146

In the Bombay High Court

Case No : First Appeal No. 1082 of 1996, Civil Application No. 1080 of 2011,
Civil Application No. 4629 of 2013 and First Appeal No. 1082 of 1996

Prem Kaliaandas Daryanani

APPELLANT

Vs

Natvarlal C. Modi and Others

RESPONDENT

Date of Decision : 26-03-2015

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 1 Rule 10, Order 1 Rule 10(2)
Income Tax Act, 1961 — Section 230 A
Specific Relief Act, 1963 — Section 19, 27

Citation : (2015) 4 ABR 315 : (2015) 4 ALLMR 346 : (2015) 4 BomCR 309 :
(2015) 6 MhLj 120

Hon'ble Judges : A.P. Bhangale, J.;Abhay Shreeniwas Oka, J.

Bench : Division Bench

Advocate : R.M. Nakhwa and Vasanta Dhavan, for the Appellant; Gobinda Mohanty and K.C. Prusty, Advocates for the Respondent

Judgement

A.P. Bhangale, J.—Heard submissions at the bar. The first appeal is preferred against the judgment and order dated 10-01-1996 passed by learned learned III Joint Civil Judge Senior Division, Pune whereby the Special Civil suit No. 568 of 1993, was partly decreed and the Trial Court awarded Decree in the sum of Rs.50,000/-(Rupees Fifty Thousand) with interest at the rate of Rs 21% per annum from the date 1st December, 1986, till final realisation.

2. The facts briefly mentioned are :-

Original defendants Natwarlal C. Modi and others owned suit property admeasuring five acres out of land bearing Survey No. 122 Hissa No. 3, 4A, and 5 with total area of 241 Ares situated at village Karla, Taluka Maval District Pune. They had in the year 1986 approached the appellant(Original Plaintiff) intending to sell the suit property. Oral agreement took place. The Plaintiff agreed to purchase the suit property for the sum of Rs.50,000/-(Rupees Fifty Thousand). The Defendants agreed to give clear marketable title to the suit property, agreed

to procure certificate under Section 230 A of the Income Tax Act, demarcate the suit property and then to hand over the possession of the suit property to the Plaintiff for the consideration of Rs 50,000/- (Rupees Fifty Thousand). The Plaintiff paid the entire sum in November 1986 by a post dated Cheque bearing no. 24158 dated 01-12-1986 drawn upon Bank of Oman Limited payable to the Defendant No. 1, Mr. Natwarlal C. Modi. In First or second week of December 1986, the Defendants had brought the written agreement to the Plaintiff and took signature of the Plaintiff stating that it was informal and agreed to bring the proper agreement embodying all the terms and conditions agreed between the parties. The plaintiff was put in possession of the suit property with effect from 01-12-1986. The defendants had failed to execute the sale deed as agreed. Hence Plaintiff sent notice dated 20th March, 1991. It was falsely replied as the defendants were intending to create third party interest in the suit property. The Plaintiffs lodged criminal case no. 41 of 1993 as well in the Court of metropolitan Magistrate, at Mumbai. The suit for specific performance of the contract was filed as the defendants failed to execute their Part of the contract and committed the breach and took the disadvantage. The defendants failed to file the written statement and the suit had proceeded without the written statement. 3. The trial court acting upon the pursis filed on behalf of the defendants that the defendants had sold the suit property in 1991 and that they were no longer owners of the suit property blamed the Plaintiff for not taking steps to add the subsequent purchaser as party to the suit. The trial court on the ground that the defendants were no longer owners of the suit property refused the grant of decree for the specific performance of contract. The trial court did note that Exhibit-28 was the agreement to sell and that the amount of consideration of Rs.50,000/- (Rupees Fifty Thousand) was paid to defendants and further that the Defendants had failed to execute the sale deed in favour of the Plaintiff. The trial Court held that the Plaintiff had failed to lead evidence as to the extent of special damages claimed. The unchallenged amount of Rs.50000/- (Rupees Fifty Thousand) with interest claimed was thus decreed while the decree for specific performance was refused. The suit was thus partly decreed.

4. Advocate Shri. Nakhwa for the appellant invited our attention to the ruling in *Kasturi Vs. Iyyamperumal and Others*, and others reported in *Kasturi Vs. Iyyamperumal and Others*, to submit that the trial Court ought to have insisted upon the further particulars and ordered joinder of necessary and proper parties to the suit when by a pursis the defendant informed the trial court that the suit property was sold to some third party, without furnishing any details or particulars as to when, how and to whom the suit property was sold. The trial Court ought to have observed that no proper, just and effective decree can be passed in the absence of necessary and proper parties. Hon'ble Supreme Court in the case of *Kasturi Vs. Iyyamperumal* (Supra), reiterated the legal position that necessary parties and proper parties can alone seek to be impleaded as parties to a suit for specific performance. The Apex Court held that necessary parties are those persons in whose absence no decree can be passed by the

court or those persons against whom there is a right to some relief in respect of the controversy involved in the proceedings; and that proper parties are those whose presence before the court would be necessary in order to enable the court effectually and completely to adjudicate upon and settle all the questions involved in the suit although no relief in the suit was claimed against such person. Referring to suits for specific performance, this Court in *Kasturi* (Supra), held that the following persons are to be considered as necessary parties: (i) the parties to the contract which is sought to be enforced or their legal representatives; (ii) a transferee of the property which is the subject-matter of the contract. The Apex Court also explained the legal position that a person who has a direct interest in the subject-matter of the suit for specific performance of an agreement of sale may be impleaded as a proper party on his application under Order 1 Rule 10 C.P.C. Supreme Court concluded that a purchaser of the suit property subsequent to the suit agreement would be a necessary party as he would be affected if he had purchased it with or without notice of the contract, but a person who claims a title adverse to that of the defendant vendor will not be a necessary party. The legal position with reference to the language of Order I Rule 10(2) of the Code of Civil Procedure is:-The general rule in regard to impleadment of parties is that the plaintiff in a suit, being *dominus litis*, may choose the persons against whom he wishes to litigate and cannot be compelled to sue a person against whom he does not seek any relief. Consequently, a person who is not a party has no right to be impleaded against the wishes of the plaintiff. But this general rule is subject to the provisions of Order I Rule 10(2) of Code of Civil Procedure ("Code" for short), which provides for impleadment of proper or necessary parties. The said sub-rule is extracted below:

"(2) Court may strike out or add parties: The Court may at any stage of the proceedings, either upon or without the application of either party, and on such terms as may appear to the Court to be just, order that the name of any party improperly joined, whether as plaintiff or defendant, or whose presence before the Court may be necessary in order to enable the Court effectually and completely to adjudicate upon and settle all the questions involved in the suit, be added." 5. The broad principles which should govern impleadment of party as defendant may be stated thus:

(1) The Court can, at any stage of the proceedings, either on an application made by the parties or otherwise, direct impleadment of any person as party, who ought to have been joined as Plaintiff or Defendant or whose presence before the Court is necessary for effective and complete adjudication of the issues involved in the Suit.

(2) A necessary party is the person who ought to be joined as party to the Suit and in whose absence an effective decree cannot be passed by the Court.

(3) A proper party is a person whose presence would enable the Court to completely, effectively and properly adjudicate upon all matters and issues, though he may not be a person in favour of or against whom a decree is to be

made.

(4) If a person is not found to be a proper or necessary party, the Court does not have the jurisdiction to order his impleadment against the wishes of the Plaintiff.

(5) In a Suit for specific performance, the Court can order impleadment of a subsequent purchaser who took the conveyance with knowledge and notice of the suit Contract as proper party before the Court so as to decide the limited issue as to enforceability of the agreement to Sell.

6. The question that fell for consideration is as to whether the person who is the transferee from the trickster defendant-respondent intending to defeat the suit claim of the plaintiff, and clandestinely effecting the transfer in favour of the person who is having express or implied notice and knowledge about the dispute/suit for specific performance, can be impleaded as party under Order 1 Rule 10 on the basis of sale deeds executed in their favour by the defendants ?

7. The answer in our opinion is in the affirmative for following reasons :

Regarding addition of Party the ruling by Hon"ble Supreme Court in Civil Appeal No. 1518 of 201, arising out of Special Leave Petition (Civil) No. 24159 of 2009) Thomson Press (India) Ltd. Vs. Nanak Builders and Investors P. Ltd. and Others, , need to be referred here for the proposition that any subsequent transferee with notice/knowledge of earlier agreement can be added as proper party to the suit. 8. At this stage, we would also like to refer Section 19 of the Specific Relief Act which reads as under:

"19. Relief against parties and persons claiming under them by subsequent title. Except as otherwise provided by this Chapter, specific performance of a contract may be enforced against -

(a) either party thereto;

(b) any other person claiming under him by a title arising subsequently to the contract, except a transferee for value who has paid his money in good faith and without notice of the original contract;

(c) any person claiming under a title which, though prior to the contract and known to the plaintiff, might have been displaced by the defendant;

(d) when a company has entered into a contract and subsequently becomes amalgamated with another company, the new company which arises out of the amalgamation;

(e) when the promoters of a company have, before its incorporation, entered into a contract for the purpose of the company and such contract is warranted by the terms of the incorporation, the company;

Provided that the company has accepted the contract and communicated such acceptance to the other party to the contract."

9. From the bare reading of the aforesaid provision, it is clear that a contract for specific performance may be enforced against the parties to the contract and the persons mentioned in the said section. Clause (b) of Section 19 makes it clear that a suit for specific performance cannot be enforced against a person who is a transferee from the vendor for valuable consideration and without notice of the original contract which is sought to be enforced in the suit. Bonafide transferee for value without notice of the defect in title of the vendor is undoubtedly protected as a policy of law but not the fraudulent vendor creating third party interest with a view to defeat the valid claim on the basis of the contract entered in to by him with the plaintiff.

10. The trial Court was therefore obliged to consider the provisions of Order 1 rule 10 of the Civil procedure Code to order joinder of the subsequent Transferees of the suit property as necessary and/or proper party/parties to the suit pending before it, particularly when a pursis was filed in a pending suit before the trial Court, informing it that suit property is sold by the defendants in the year 1991. Thus There was execution of a transaction in respect of the suit property subsequently after the suit Contract/agreement was executed/entered in to between the Plaintiff and the defendants. The Plaintiff who filed the suit against the defendant was entitled to seek relief and proceed against all persons claiming under the defendants as may be likely to be legally affected by the decree that may be passed in favour of the Plaintiff in the pending suit. It is duty of the learned trial judge to vigilantly observe the requisite procedure to frame all the relevant issues, meet all the points in controversy before him, and record findings in respect of them to decide the suit on merits and according to law as would be necessary to enable it to effectually and completely adjudicate upon and settle all the questions involved in the suit. In a suit for specific performance of a contract for sale, the issue to be decided is the enforceability of the contract entered into between the appellant (Plaintiff) and Respondents (Ori. Defendants) who agreed to sell the suit property to the Plaintiff. The main issues as to whether contract was executed by the appellant and Respondents for sale of the suit property-contracted property-, whether the plaintiff was ready and willing to perform his part of the contract and whether the appellant-Plaintiff is entitled to a decree for specific performance of a contract for sale against Respondents-vendor and persons claiming under vendor. Such a suit in our opinion, can not be thrown out merely because of the unscrupulous litigant invented a trick or two of filing pursis in this case informing about transfer to third party to defeat the suit claim by creating third party interest during pendency of the dispute so as to affect enforceability of the suit agreement to Sell. The subsequent transferee, if any, may in such case be added as proper party, even if considered as not necessary party, for to ensure that proper and effective decree is passed pursuant to final adjudication on merits in respect of the real controversy between the parties, in presence of all the persons interested in the result of the suit controversy. Subsequent Transferee of the suit property would be subject to the decree that may be passed in the suit for specific performance of the

agreement to sell/Contract an his presence before the trial court would be proper. At the same time trial judge must note that issue as to enforceability of the agreement to sell/ Contract is real controversy to be decided in such suit for specific performance of the Contract and the issues arising in such suit cannot not be widened beyond it by unnecessarily importing in suit the complicated questions of title raised by any third party to the Contract. Suffice it to state that such complicated issues of title claimed or raised by third party to the suit agreement/Contract can be decided by independent suit or proceeding according to law. For deciding the question as to who is a proper party in the suit for specific performance the guiding principle is that the presence of such a party is necessary to adjudicate the controversies involved in the suit for specific performance of the contract for sale. Thus, the question in the civil suit is to be decided keeping in mind the real scope of the suit. The question that is to be decided in a suit for specific performance of the contract for sale is primarily the enforceability of the contract /agreement entered into between the parties to the contract. True it is that, if every third person seeking addition as defendant is added in such a suit, the scope of the suit for specific performance would be widened and it would be practically converted into a suit for title. Therefore, for effective adjudication of the controversies involved in the suit to decide whether the agreement to sell is enforceable according to law, presence of such third parties may not be necessary. But in the facts and circumstances of the case impleadment of third party claiming under the vendor may be proper when the court finds that there was a ploy on the part of the trickster defendant to defeat the suit claim by effecting transfers subsequent to the execution of the suit agreement and third party took the transfer with express or implied knowledge or notice of the suit agreement, then it becomes duty of the trial court to decide the suit finally, effectively and completely so as to adjudicate the real controversy in the pending suit. The very existence of the court is to do justice between the parties and it is always in the interest of public policy and justice to avoid the multiplicity of judicial proceedings requiring the court to decide again in respect of the same subject matter. Equity will enforce specific performance of the contract for sale against the vendor himself and against all persons claiming under him by a title arising subsequently to the contract except a bonafide purchaser for valuable consideration who have paid their money and taken a conveyance without notice of the original contract. The statement of the law in equity is exactly what is meant by the first two clauses of S.27, Specific Relief Act. Thus, when the defendant has committed breach of the contract and can be blamed for it, the plaintiff has choice to pray for the relief of rescission of any contract/conveyance executed subsequent to the suit contract, which is voidable at his option because it is unlawful for causes not apparent on it's face but for execution of which the defendant is to be blamed for his dishonest act.

11. Having regard to the law discussed hereinabove and in the facts and circumstances of the case and also for the ends of justice the subsequent transferees or persons claiming under them ought to be added as proper party-

defendants in the suit though issue for decision in the pending special civil suit need not be enlarged beyond the scope of the decision as to enforceability of the suit agreement according to law.

12. We therefore set aside the Decree passed in special Civil suit no. 568 of 1993 and request the trial Court i.e. Civil Judge Senior Division, Pune to take steps according to law so as to decide the real controversy between the Parties to the suit after framing all the necessary relevant issues in the suit and to record findings on merits and in accordance with law. We direct the parties to this appeal to appear in the trial Court on 30th April 2015 at 11 a.m. Appeal allowed accordingly. No order as to costs under the circumstances.

13. Civil Application No. 4629 of 2013 is accordingly rejected.

14. Civil Application No. 1080 of 2011 would not survive as the Trial Judge would proceed according to law to dispose off the pending Special Civil Suit No. 568 of 1993 on merits and in accordance with law.

15. Before parting with the order, we clarify that the subsequent transferee/s added by the trial court after order as to impleadment as party-defendant shall be permitted to take all such defences which are available to the vendor as the party-defendant on the ground that the added party-defendant derived title, if any, from the vendor on the basis of purchase of the suit property subsequent to the agreement with the plaintiff and during the pendency of the suit. The trial Court shall decide the suit as expeditiously as possible on it's own merits according to law without being influenced by our observations.