(1997) 10 AP CK 0025

In the Andhra Pradesh High Court

Case No : L.P.A. No. 100 of 1994

S. Hussain and Another APPELLANT

Vs

Shah Purchand and Others RESPONDENT

Date of Decision : 15-10-1997

Acts Referred:

Guardians and Wards Act, 1890 — Section 29
Hindu Minority and Guardianship Act, 1956 — Section 8
Specific Relief Act, 1963 — Section 16, 19

Citation : (1998) 2 ALD 244 : (1998) 2 ALT 669 : (1999) 1 CivCC 76

Hon'ble Judges : P. Venkata Rama Reddy, J;B.V. Ranga Raju, J

Bench : Division Bench

Advocate : Mr. C.R. Pratap Reddy, for the Appellant; Mr. C.P. Sarathy, for the Respondent

Judgement

P. Venkata Rama Reddy, J.—This L.P, A. arises out of thejudgment of our learned brother Gopal Rao J., in AS.No. 1565 of 1984 filed by the respondent-plaintiff against the judgement in O.S.No. 12 of 1979 (On the file of Additional Subordinate Judge, Guntur).

2. The suit was filed by the respondent-plaintiff for specific performance of the agreement of sale dated 19-9-1976 (Ex: A, 1) admittedly entered into between the first defendant in the suit acting for himself as well as the minor sons i.e. Defendant Nos.2 and 3 and the plaintiff. An alternative relief for awarding ''damages'' to the tune of Rs.40,000/- representing die consideration paid under Ex:A.1 was also sought for. The suit schedule properly consists of two mulgies/ shops together with adjacent vacant site situate in Guntur town. It is not in dispute that the suit schedule premises is part of the larger building belonging to defendant Nos.1 to 3 which was subsequently purchased under an agreement of sale dated 27-3-1978 (Ex:B.5) by the appellants herein (Defendant Nos.4 and 5 in the suit). It is also not in dispute that the property in question is joint family property. The trial Court refused to grant the specific performance on the ground that the appellants herein (Defendant Nos.4 and 5 in the suit) are bona fide

purchasers for value without notice. However, a decree was granted for payment of Rs.40,000/- in terms of the alternative relief sought for.

3. Alter the judgement was rendered in the suit, the appellants herein got the sale deed registered and such sale- deed was executed by Defendant Nos.2 and 3'' as well who by that time became majors. However, in view of the indisputable legal position that the said sale which was effected pending the litigation is hit by the doctrine of its pendens, its validity and binding nature is subject to the ultimate outcome of the legal proceedings. Hence, the learned Counsel for the appellant has very rightly not placed reliance on the factum of execution of the sale deed subsequent to the disposal of the suit.

4. On appeal, the learned single Judge held that Defendant Nos.4 and 5 (appellants in L.P.A.) are not bona fide purchasers for value. The learned Judge also rejected the contention that Ex.A1 was not intended to be acted upon and it was meant to be only as a security for payment of the amount due under promissory notes - Ex. A3 and A4, which the defendant executed in favour of the plaintiff. It was also held that Ex.A1 is a genuine agreement of sate and there were no grounds at ail to refuse the main relief of specific performance sought for in the suit. Accordingly, the appeal was allowed and a decree for specific performance of the agreement of sale (Ex:A.1) was granted subject to the usual conditions regarding the deposit of the balance amount and the stamp papers etc.. Aggrieved by the judgment in appeal, the present L.P.A. is preferred by Defendant Nos.4 and 5 in the suit (Respondent Nos.4 and 5 in the appeal).

5. The first and the foremost contention of the learned Counsel for the appellants is that this is a typical transaction of a money lender exploiting the helplessness of a debtor and inducing him to execute an agreement of sale for the purpose of securing the amounts advanced to him. It is contended that the whole transaction is an unconscionable one whereunder valuable property worth one lakh of rupees was sold for a paltry sum of Rs.40,000/-. We find no force in this contention. No doubt, Ex:A.1 Agreement does not make any secret of the fact that by the dale of agreement, the first defendant owed a sum of Rs.32,000/- under two promissory notes dated 14-2-1976 (E,\\:A3) and dated 6-3-1976 (Ex:A4). It was also recited in Ex.A1 that the sale was necessitated for the purpose of discharging debts which he incurred in connection with building. From this background, it is not possible to infer that Ex.A1 was not an agreement of sale in the true sense of the term but it was only a security for the payment of outstanding loan. It is not a case where the agreement of sale was executed contemporaneously at about the time of borrowing the money under the two promissory notes. The agreement (Ex:A.1) was roughly six months later. The first defendant is an educated person, he being a retired official. There is no apparent explanation why he should execute Ex:A. 1 by way of security, without mentioning the same, even if the plaintiff had insisted on him to do so. The Agreement itself contemplates the payment of money due under the promissory notes towards sale consideration and that it constitutes a valid consideration for

a contract of sale is not in dispute. Another significant factor which goes against the appellants'' case is that after the defendants received the telegrams (Exs:A5 and A6) referring to the agreement of sale (Ex:A1) and forewarning the appellants not to proceed with the sale, no reply was sent either by Defendant Nos. 1 or Defendant Nos.4 and 5. At this stage, if really Ex:A1 was intended to be a security cover for the loans taken, the first defendant or even the appellants should have come forward with an offer to discharge the entire debt due under the promissory notes, while clarifying the true purpose and nature of the agreement. It is not the case of the appellants that they requested the first defendant to discharge the loans and to have the agreement cancelled. On the other hand, DW2 specifically staled in the cross-examination that he did not go to the plaintiff after receiving Ex:A.5. This conduct on the part of the defendants cuts at the root of the plea taken by them. The other subsidiary aspect which has been adverted by the learned Counsel for the appellants is that having regard to the market value of the property, the sale consideration of Rs.40,000/- was grossly low and unfair to the first defendant. It is pointed out that as per the evidence on record, an amount of Rs.45,000/- was taken on loan from L.I.C. on the strength of the mortgage of the same property long back and the value of the plaint schedule property would therefore be much more. We find" it difficult to accept this contention either. Except the bare averment in the written statement of Defendant No.1 that the properly was worth rupees one lakh, no other evidence was let in as regards the value of the plaint schedule property. That apart, there is no evidence as to the details of the property mortgaged or offered as security to L.I.C. In other words, there is nothing on record to establish that the loan was raised on the security of plaint schedule properly alone but not the entire building. In Ex: A.1. while referring to L.I.C. loan, there was only a general or omnibus reference to the building, but not any particular portion of the building.

6. The next endeavour of the learned Counsel for the appellants was to assail the conclusion of the learned single Judge that the appellants cannot be treated as bond fide purchasers for value without notice. Even here, the appellants contention has no merit. In this connection, it is contended by the learned Counsel for the respondents with much force that the principle envisaged by Section 19(b) of the Specific Relief Act is attracted to a case of a prior agreement holder and a subsequent transferee under a registered sale deed and it has no application as between the prior agreement holder and the subsequent agreement holder. Reliance is placed in this connection on the phrase ''transferee''. Even without going into this question, we are of the view thal the other requirements of Clause(b) of Section 19 are not satisfied. Firstly, as held by the Division Bench of Madras High Court in Veeramalai Vanniar (Died) and Others Vs. Thadikara Vanniar and Others, , Ihe subsequent transferee should establish that he paid full price in good faith without notice of prior agreement. It was observed by the Division Bench consisting of Ramamurti and Alagiriswami, JJ.

"The plain language of the sub-section (b) shows thai the subsequent transferee can retain the benefit of his transfer by purchase which, prima facie, he had no right to get, only after satisfying the two conditions concurrently.....

In the instant case, admittedly the full price has not been paid at the time when controversy arose and even at the time when the suit was filed.''''

7. In the instant case, admittedly substantial part of the sale consideration due as per Ex:B5 was paid after coming to know of the prior agreement of sale in favour of the plaintiff-respondent. Secondly, on the facts of the case, it is difficult to say that the appellants acted bow fide i.e. in good faith. As already staled, even after the appellants received the telegram (Ex. A5) apprising them of the prior agreement of sale, the appellants did not bother about the same. They went on paying further amounts to the various creditors of the Defendant No.l towards the payment of balance of sale consideration. This conduct on the part of the appellants was taken into consideration by the learned single Judge in rejecting their plea. It may be stated here that the trial Court came to the conclusion that the appellants were bonaftde transferees without notice mainly for the reason that they paid considerable amounts towards debts to the third parties and also made improvements to the property and all this would not have been done if they merely wanted to gamble with litigation. We find it difficult to endorse this reasoning and at any rate we find no error in the approach of the learned single Judge in not endorsing such view taken by the trial Court.

8. The learned Counsel placed reliance on the decisions of the Supreme Court in Kanshi Ram Vs. Om Prakash Jawal and others, and Lourdu Mari David and others Vs. Louis Chinnaya Arogiaswamy and others, in order to remind us of the well-known principle that the particular facts and circumstances of the case may justify the grant of alternative relief of awarding damages/compensation rather than specific performance and also the proposition that the plaintiff should approach the Court for equitable relief of specific performance wilh clean hands. We do not think that on the fads of this case, the said principles have any application.

9. There remains the contention that as far as the minor''s share is concerned the decree for specific performance should not have been granted in asmuchas the sanction of the Court as required by Section 8 of Hindu Minority and Guardianship Act read with Section 29 of the Guardians and Wards Act, was not accorded. The sanction for alienation was not obtained from the Court by the first defendant. It is contended that the sale is not binding on minors. In this context the learned Counsel placed reliance on (he decision of the Supreme Court in Kallathil Sreedharan and Another Vs. Komath Pandyala Prasanna and Another, wherein specific performance was declined in the case of a contract for transfer of minor''s share in immovable property without obtaining the previous permission of the Court. The facts of the said case are entirely different. That was a case of contract entered into by the mother in regard to property which fell to the share of the minor in a compromise decree. In the present case, the property is admittedly joint family property. The alienation by the manager of the

joint Hindu family who might incidentally happen to be the natural guardian of the members of the family is not altogether prohibited under law. If at all, the purported alienation is voidable. After Defendant Nos.2 and 3 attained majority, they have not taken steps to avoid the sale transaction nor did they file an additional written statement repudiating or questioning the agreement of sale (Ex.A1). In fact Defendant Nos.2 and 3 have not filed any appeal in this Court questioning the decree. That apart, no issue was framed and evidently, this plea was not raised either before the trial Court or the first appellate Court. It is not appropriate to entertain this plea for the first lime as it is not merely a legal plea but also a plea requiring consideration of various factual aspects.

10. It is then faintly contended by the learned Counsel for the appellants that the promissory notes (Exs A3 and A4) were executed by Defendant No. 1 in favour of the firm namely, ''Sha Chamnaji Bhurmal Kottuvariki, Guntur'' but not in favour of the plaintiff. It is seen from a perusal of the promissory notes that the plaintiff is described as the sole proprietor of the said business. In any case, this aspect was not put in issue at any earlier stage of the proceedings.

11. Hence, we find no merit in the appeal and it is accordingly dismissed. We make no order as to costs- A decree for specific performance with the usual directions shall be drawn up. It is needless to state that the factum of allowing the appeal by the learned Single Judge and affirmation thereof by this Letters Patent Bench means the grant of relief of specific performance with the attendant relief of possession which has been sought for in the plaint.