
(1960) 02 CAL CK 0021
In the Calcutta High Court
Case No : A.F.A.D. No. 239 of 1952

Satya Mandalini and Another	Vs	APPELLANT
Sahadur Mondal and Others		RESPONDENT

Date of Decision : 04-02-1960

Acts Referred:

Registration Act, 1908 — Section 47
Specific Relief Act, 1877 — Section 27
Transfer of Property Act, 1882 — Section 40(2)
Trusts Act, 1882 — Section 91

Citation : AIR 1962 Cal 40 : 64 CWN 775

Hon'ble Judges : P.N. Mookerjee, J;Niyogi, J

Bench : Division Bench

Advocate : Bejoy Bhose, for the Appellant; Manindra Nath Ghose, for the Respondent

Final Decision : Allowed

Judgement

P.N. Mookerjee, J.—This is the defendant's second appeal, arising out of a suit for specific performance. In the view, which we are taking it is not necessary to go into any controversial question of fact, inasmuch as the case has to be remanded to the Court of appeal below for re-hearing and further consideration, as the appeal before it, out of which this instant second appeal arises appears to have been disposed of on a point of law, more or less of a preliminary nature, upon a wholly wrong view of the same.

2. The facts, relevant for our present purpose, stand as follows :

The suit property originally belonged to defendant No. 1 Padmabati. According to the plaintiffs, Padmabati agreed to sell the said property to the plaintiff Nos. 1 and 2, who were respectively the wives of plaintiffs Nos. 3 and 4. The alleged stipulated price was Rs. 599/- and the agreement in Question was stated to have been made on January 27, 1950, when Padmabati took Rs. 100/- from the plaintiffs Nos. 3 and 4, in part-payment of the aforesaid stipulated price, under

the aforesaid agreement. According to the plaintiffs, the balance of the consideration money, viz. Rs. 499/-, was paid to Padmabati upon execution of the sale deed or conveyance on 31st January, 1950, when the parties went to the Registration Office for completing the transaction, but, as it was late for the purpose of registration, that was put off till the next day. Thereafter, however, Padmabati on some pretext or other, delayed the matter and, eventually, on coming to know that Padmabati and her brother had arranged to sell away the suit property to or in the name of defendant No. 4, wife of defendant No. 3, they, before, registration of this defendant's Kobala, though after presentation of the same for registration, informed the said defendants of the above earlier agreement in their (plaintiffs') favour, but, in spite of the said notice or intimation, the said Kobala was registered, thus compelling the plaintiffs to institute the present suit.

3. The defence was a complete denial of the plaintiff's agreement and also of the receipt of any money by Padmabati from the plaintiffs. The defence, further, was that the defendants Nos. 3 and 4, or, more accurately, defendant No. 4 was a bona fide purchaser for value without notice, and hence her or their title under the above disputed kobala would prevail.

4. The learned Munsif over-ruled all the defences and decreed the plaintiffs' suit for specific performance. On appeal, the learned Additional District Judge also found in favour of the plaintiffs on the question of their agreement for purchase, as aforesaid, and of full payment of the stipulated price of Rs. 599/- and also execution of the kobala in their favour by Padmabati and the putting off of its registration by her on false pretexts. These are concurrent findings of fact, made by the two Courts below, and they are not liable to be re-opened now, they not being, open to challenge in second appeal. These findings are, therefore, affirmed and maintained.

5. That leaves us with the only other defence, namely, the special and specific defence, raised by the defendants Nos. 3 and 4, that they were bona fide purchasers for value without notice and hence they are protected in law against the plaintiffs' claim. That defence appears to have been overruled by the learned Additional District Judge, rather summarily, upon the view that, as, admittedly, the defendant or defendants concerned received notice of the plaintiffs' agreement before registration of their kobala, although after the said kobala had been presented for registration, they could not be regarded as bona fide purchasers for value without notice for purposes of Section 27(b) of the Specific Relief Act, which is the statutory provision, directly relevant on the point. We do not think that this view of the learned Additional District Judge is justified in law, notwithstanding observations to the contrary in some of the reported decisions, which tend to support the same. To those decisions, we shall immediately turn and point out, with respect, how and why, in spite of the above observations, contained therein, we are inclined to take a different view and we shall also state, in brief, our view of the law on the point. That, however, though sufficient

for disposal of this appeal, will not necessarily put an end to the present litigation, as the plea of notice, raised by the plaintiffs, rests not only on the actual notice, given by them at the registration office, as aforesaid, but also on constructive notice, arising out of certain circumstances, on which the parties do not agree but which, though not investigated by the learned Additional District Judge in view of his summary opinion on the point of law, certainly, require investigation for determination of the true rights of the parties and would now be fully and properly investigated by the Court of appeal below, to which the matter will go back for that purpose. It may be necessary in that connection to consider the effect and implication of the well-known decision of this Court on the point in the case of Baburam Bag v. Madhab Chandra, ILR 40 Cal 565.

6. Turning to the decisions on Section 27(b) of the Specific Relief Act, to which reference has been made above, We -shall take up first the case of the Allahabad High Court, reported in Kuer Nehal Singh and Another Vs. Lala Sewa Ram and Others, . The statement of law, made by the learned Allahabad Judges in the said case, apparently, supports the view of the learned Additional District Judge, but that statement appears to be wholly inconsistent with the position, indicated in "the earlier part of the said Allahabad judgment itself, (Vide the first two paragraphs of the judgment at p. 129 of the Report (IC) : (at p. 112 of AIR), where their Lordships purport to hold that, if the defendant "only received notice" of the contract "during the registration proceedings" the plaintiff would fail). In the context, the aforesaid Allahabad decision seems to be rather self-inconsistent On Gudur Ranga Reddi, died, and Others Vs. Gundala Pitchi Reddi and Another, , it is enough to say that, strictly speaking, the point, there decided, was that a payment,--or, rather, an intended payment,--by way of adjustment,--as distinguished from a payment in cash, as is the case here,--would not be a payment of money within the meaning of Section 27(b) of the Specific Relief Act and the defence of bona fide purchase for value without notice, was mainly overruled on that ground. It is worth noting, however, that, in the same High Court, a different view has been taken on the above point in the later Madras decision in the case of In Re: Subban Samban, , and, substantially also, in the latest Madras case, Srimathi Mary Joseph Vs. Tayub Mahamed Hajee Moosa and Co. and Another, . The Bombay decision in the case of Himatlal Motilal v. Vasudeo Ganesh, ILR 36 Bom 446 is, strictly speaking, no authority, supporting the view of the learned Additional District Judge, as that, also, was in substance, a case of part-payment of the consideration money, although stray observations, here and there, made by the learned Bombay Judges in the said case, may convey a different impression. Possibly, the best support to the above view of the learned Additional District Judge is obtainable from the Patna decision, reported in Loknath Loknath Prosad Singh and Another Vs. Shah Wahib Hussain and Others, . But that case, also, is distinguishable from the present case, as, there, the defendant's Kobala was not actually registered and the learned Judges expressly proceeded upon that footing and placed reliance on "that distinctive feature, reserving opinion on cases, where the kobala has been actually

registered (vide p. 183), although, in their statement of the law, they, apparently, took the same view as the learned Additional District Judge has taken on the present occasion, and refused to apply the equitable rule as enunciated in the English authority, reported in *Blackwood v. London Chartered Bank of Australia* (1874) 5 P. C 92. Be that as it may, it is perfectly clear that all the aforesaid decisions, which tend to support the view of the learned Additional District Judge, did not put proper emphasis on the wording of the relevant statute (Section 27(b) of the Specific Relief Act) which lays stress upon payment of money by the transferee--and we are not unmindful of not ignoring the importance of this last word "transferee" without notice and in good faith and does not go further and require registration of the document (conveyance) without notice. There is also no difficulty in reconciling this view with either Section 40(2) of the Transfer of Property Act or Section 91, read with Section 95, of the Indian Trusts Act, which appear to be cognate or allied statutory provisions. The three statutes, read together, may well mean and contemplate a transferee, who has got the document executed and paid money in good faith, without notice, and who, eventually, gets the said document duly registered, thus giving it effect retrospectively from the date of its execution u/s 47 of the Indian Registration Act. This latter provision is enough to make such a transferee, a transferee in law from the date of execution of the particular document and thus "a transferee who has paid his money in good faith without notice" (vide Section 27(b) of the Specific Relief Act), or "a transferee who has acquired the property in good faith without notice" (vide Section 91 of the Trusts Act), or "a transferee for consideration without notice", as mentioned in Section 40(2) of the Transfer of Property Act, and reconciles all the said statutes with the equities of the situation, as expounded in the leading case of (1874) 5 PC 92, *supra*. We do not, accordingly, find any sufficient reason to deviate from the said equitable rule or principle for giving effect to any of the aforesaid statutory provisions.

7. It may be added here that the above view that defendant No. 4 was a "transferee" from the date of execution of her kobala, which was subsequently registered, is well supported by authorities (Vide, e. g. *Jadunandan Prosad Singh v. Deo Narain Singh* 16 Cal W. N. 612 *Nabadwip Chandra Das and Others Vs. Loke Nath Roy and Others*, , *Faiyazuddin Khan Vs. Mt. Zahur Bibi*, , and *Sadei Sahu Vs. Chandramani Dei and Another*, , where Section 47 of the Indian Registration Act was applied to over-ride, inter alia, attachments and lis pendens, vide also *Mina Kumari Bibi v. Bijoy Singh Dudhuria*, 44 Ind App 72: (AIR 1916 PC 238)). If, then, she had paid the full price or consideration money before that date and before getting any notice of the plaintiffs' contract she (defendant No. 4) Would, undoubtedly, be a protected transferee under any of the above quoted statutory provisions.

8. In the above view, which seems to us to be more equitable and appears to us to have greater justification in law on the statute or statutes themselves, we would allow this appeal, set aside the decision of the learned Additional District Judge and send the case back to the learned lower appellate Court to consider,

fully and properly, in accordance with law, the question of notice.--actual or constructive,--as indicated above. This remand, however, is subject to the affirmance of the finding or findings, to which duo reference has been made by us at an earlier stage, and the case should be dealt with on that footing.

9. Costs of this appeal will abide the final result of the suit.

Niyogi, J.

10. I agree.