(1959) 01 OHC CK 0012

In the Orissa High Court

Case No : First Appeal No. 57 of 1953

Silla Chandra Sekharam APPELLANT

Vs

Lalita Shahuani and Another RESPONDENT

Date of Decision : 07-01-1959

Acts Referred:
Specific Relief Act, 1877 — Section 18, 18(2)
Transfer of Property Act, 1882 — Section 43

Citation : AIR 1959 Ori 169 : (1959) 25 CLT 448

Hon'ble Judges : Narasimham, C.J;G.C. Das, J

Bench : Division Bench

Advocate : H. Mahapatra and R.N. Misra, for the Appellant; B.K. Pal and R.K. Ratho, for the Respondent

Final Decision : Dismissed

Judgement

Narasimham, C.J.—This is a plaintiff''s appeal against the decision, of the Additional Subordinate Judge of Berhampur, partially decreeing his suit for specific performance of a contract for sale of a house situated in Berhampur Town. The house originally belonged to one Gopinath Sahu who died sometime in 1943 leaving a widow Lalita Shahuani (defendant No. 2) and a son named Ramchandra Sahu. On 21-2-1951, the said Ramchandra Sahu executed a registered deed of agreement (Ext. 1) agreeing to sell that house for Rs. 6000/- to the plaintiff within one year from that date and received an advance of Rs. 300/- in presence of the Sub-Registrar. It was alleged by the plaintiff that the said agreement was entered into by Ramchandra Sahu as manager of a Hindu joint family consisting of himself and his mother (defendant No. 2) that the sale of the house was for legal necessity, and that consequently it was binding on the interests of his mother also. His mother (defendant No. 2) however refused to join in the execution of the saje deed and the two defendants, sometime in June 1951, attempted to sell the house to some other person.

The plaintiff thereupon gave notice to all concerned and brought this suit, out of which this appeal arises, for specific performance of contract; or, in the alternative, for damages and recovery of the advance of Rs. 300/- paid by him. Defendant No. 1 denied that he was the karta of the family and further alleged that the contract was entered into under undue influence. He also stated that the sale of the house was not for legal necessity and as such was not finding on the interests of his mother. He was always ready and willing to sell his share of the house to the plaintiff, but the plaintiff insisted on his mother joining the execution of the sale deed and this insistence was mainly responsible for his inability to perform his part of the contract. His mother (defendant No. 2) challenged the contract as not binding on her mainly on the ground that her son (defendant No. 1} became addicted to bad habits, kept a concubine, and squandered away all his patrimony by reckless living. She, therefore alleged that the contract for the sale of the house was not for legal necessity and consequently not binding on her interests.

2-3. The trial Court held that the contract was not vitiated by undue influence, that the value put on the house at Rs. 6000/- was a fair value on the date of the contract and that defendant No. 1 was clearly bound by the same. But he held that the contract was not entered into for legal necessity and as such ''would not bind the interests of his mother (defendant No. 2). He accordingly decreed the suit) for specific performance so far as the interests of defendant 1 in the house were concerned, and directed that defendant to execute a sale deed in favour of the plaintiff and further declared that the plaintiff would be entitled to have joint possession of the house, along with defendant 2 on certain terms specified by him.

4. The plaintiff filed this appeal urging that the contract was for legal necessity and as such was binding on the interests of the defendant 2 also. The appeal was admitted on 9-12-1953. But on 21-1-1955, defendant 2 died leaving no other heir except derendant No, 1. Mr. H. Mohapatra on behalf of the plaintiff-appellant, therefore, urged that the question as to whether the contract was for legal necessity so as to bind the interests of defendant 2 also, has now become academic and that the plaintiff was entitled to specific performance of the contract in respect of the entire interest of the joint family in the house which has now devolved on defendant 1.

He relied on the well known rule of "feeding the estoppel" which has been substantially recognised in S. 18(a) of the Specific Relief Act. He did not seriously challenge the finding of the trial Court to the effect that the contract was not for legal necessity. The recital in the deed of agreement (Ext. 1) shows that defendant 1 agreed to sell the house for repayment of antecedent debts amounting to Rs. 2700/- and also for maintenance of himself, for minor expenses and also for purchase of a smaller ''house for the use of the family. So far as the antecer dent debts amounting to Rs. 2700/- are concerned the deed does not say that they were incurred for the benefit of the estate.

There was also no evidence worth the name to show that the plaintiff made bona fide enquiries about the existence of legal necessity before entering into the agreement. I must, threfore, fully endorse the finding or the trial court to the effect that the agreement was not covered by legal necessity and, as such, would not bind the interests of defendant No. 2.

5. The main question that now arises for consideration is whether the plaintiff can rely on clause (a) of S. 18 of the Speciiic Relief Act and compel defendant No. 1 to convey to him the entire interest of the family in the house which devolved on defendant 1 after the death of his mother (defendant 2). The material portion of S. 18 may now be quoted:

"When a person contracts to sell or let certain property having only an imperfect title thereto, the purchaser or lessee, (except as otherwise provided by this Chapter) has the following rights:

(a) If the vendor or lessor has subsequently to the sale or lease, .. acquired any interest in the property the purchaser or lessee may compel him to make good the contract out of such interest". The language of the clause clearly shows that there must, first, be a sale of the property by a person having an imperfect title thereto before me applicability of this section can be considered. It, after such a sale, that person acquires any interest in the property the vendee may compel him to make good the original contract out of such interest. This is clear from the use of the words "subsequently to the sale or lease acquired any interest in the property".

If, however, there was no sale at all and the transaction between the two remain in the stage of a mere agreement to sell, this Section cannot in terms apply. Mr. Pal therefore contended that the appellant cannot rely on this section inasmuch as defendant 2 had not sold the house till now. He further urged that the use of the words Vendor'' and ''lessor'' in this section and the use of the expression ''party to a contract'' in some of the preceding sections such as S. 14 or 11, would show that where the contract had not been completed by a regular sale the Legislature used the expression ''party to a contract'' and that the use of the word Vendor'' shows that there must be a completed sale.

According to Mr. Pal, therefore, it is only when a person having an imperfect title executes a sale deed in favour of another person and subsequent to such sale acquires further interest in the property that the vendee would be entitled to compel him to execute a fresh sale deed conveying that additional interest also. If, however, there was no sale and the transaction still remained in the stage of contract only S. 18 of the Specific Relief Act would have no application.

6. In my opinion, Mr. Pal''s contention is correct. It is true that the expression ''vendor'' by itself may not be decisive and it may be urged with some justification that this expression is used not only to denote a person who has actually sold the property after due execution of the sale deed, but also a would-be seller. Thus in Section 25 that expression, in the context, would appear to include a would-be vendor also. But the most decisive words are "subsequently

to the sale" found in Section 18. There must be a completed sale by the person having an imperfect title to the property before the Court can consider the applicability of Section 18.

7. In the instant case admittedly there was no such sale. Defendant 1 merely agreed to sell the house to the plaintiff but did not execute the sale deed. It is true that after he entered into the contract for sale and prior to his execution of the sale deed he acquired a further interest in the property on account of the death of his mother and the devolution of her interest in the house in his favour. This, however, took place after the passing of the judgment and decree by the lower Court.

8. Mr. H. Mohapatra, on behalf of the appellants, relied on the observations of the Supreme Court in Kalyanpur Lime Workers Ltd. Vs. State of Bihar and Another, in support of his contention that the principle of Section 18(a) of the Specific Relief Act may be applied even though there may be no completed sale or lease. In that case the State of Bihar had agreed to grant lease to Kalyanpur Lime Works, for a period of twenty years from 15-4-1934 believing that they had full title to grant such lease. But it was subsequently found that there was a prior lease and that consequently the State of Bihar could not perform their part of the contract. The prior lease expired in 1948 and thereafter there was no legal impediment in the way of the State of Bihar executing a lease in favour of Kalyanpur Lime Works and thus performing their part of the contract.

In a suit for specific performance of contract filed by Kalyanpur Lime Works their Lordships of the Patna High Court in Dalmia Jain and Co. Ltd. Vs. Kalyanpore Lime Works Ltd. and Others, held that the principles of Section 18(a) of the Specific Relief Act may be invoked by the Lime Company even though there was no completed lease as required by the language of Section 18(a). In paragraphs 60 and 61 of their judgment this aspect was considered but their Lordships did not think it necessary to decide the question because it was considered that apart from the language of Section 18(a) of the Specific Relief Act, a party to a contract may ask for specific performance if the other party whose title was originally imperfect acquires perfect title later on.

They relied on a passage in Fry''s Specific Performance (Article 994). The illustration given in Art. 995. in support of that passage, viz. Clayton v. Duke of Newcastle (1862) 2 C Ch. 112 related to a case whore there was an actual sale by a person having an imperfect title and his title became perfect subsequently, and it was held that he was bound to make good the same. Their Lordships of the Supreme Court, in Kalyanpur Lime Workers Ltd. Vs. State of Bihar and Another, endorsed this view of the Patna High Court but they did not examine the question as to whether the language of Section 18(a) of the Specific Relief Act would justify the view that even though there was no completed sale or completed lease the benefit of that section can be invoked. Hence that decision cannot be taken as authority so far as the construction of Section 18(a) of the Specific Relief Act is concerned.

9. Mr. Mohapatra thereupon contended that if such a narrow interpretation be given to Section 18(a) of the Specific Relief Act, Section 43 of the Transfer of Property Act would become practically nugatory and that consequently Section 18 of the Specific Relief Act should be construed as laying down a general principle applicable even to cases where there was no completed sale or lease. I am unable to accept this argument. The Specific Relief Act came into force in 1877 whereas the Transfer of Property Act, came into force in 1882. It is true that there is some overlapping between section 43 of the Transfer of Property Act and Section 18(a) of the Specific Relief Act, hut there is an essential difference between the two. Section 43 of the Transfer of Property Act applies only where there is fraudulent or erroneous representation by the transferor and there is a transfer of property for consideration.

Then, at the option of transferee such transfer may operate on any interest which the transferee may acquire in the property at any time. Section 18(a) of the Specific Relief Act is however restricted to two classes of transfers only namely sale or lease, and not to any other class. Moreover, it is unnecessary that there should be either a fraudulent or erroneous misrepresentation by the transferor. It applies where there is a sale or lease by person having an imperfect title, irrespective of the representation that he might have made to the purchaser or lessee. Merely because there is some overlapping between the two sections, it will not be proper to give an artificial construction to Section 18 of the Specific Relief Act ignoring the meaning of the words "subsequently to the sale" which clearly show that there must be a completed sale before the section be applied. In my opinion, therefore, this section has no application.

10. Moreover, the aforesaid Supreme Court decision and the Patna decision are both distinguishable from the present case in one important respect. There the would-be lessor acquired a perfect title prior to the institution of the suit and in such, a case there may be some justification for applying the equitable principles of Section 18(a) of the Specific Relief Act though, in terms, that section may not apply. There as no English decision in support of this proposition, but in Corpus Juris Secundum, Vol. 81 at p. 442 the American Law is stated to be as follows:

"Title acquired or perfected after contract: The vendor, if he is able to convey title at the time of the hearing, will not be heard to say that he had no title at the time of the contract. The vendee may have the benefit of his after-acquired title."

But no authority has been cited, to show that if at the time of the commencement of the litigation the vendor''s title is imperfect, but after the decision of the trial Court his title becomes perfect, the principles of Section 18(a) of the Specific Relief Act may be applied. In the instant case, at the time of institution of the suit the contracting party, viz., defendant 1 had only an imperfect title. It was only at the appellate stage that his title became perfect due to the death of his mother and the devolution of the interest on him. Generally, in appeals, the appellate Court is concerned with the adjudication of the rights of the parties as they were at the time of the institution of the suit and not with their rights which they may acquire subsequently. In the absence of any clear authority I am not inclined to extend the principle of Section 18(a) of the Specific Relief Act to case of this type especially when, in terms that section does not apply.

11. I see no ground for decreeing the plaintiffs suit for specific performance of the contract of sale of (he entire interest which defendant 1 has now acquired in the house. The judgment and decree of the lower Court are maintained and this appeal is dismissed with costs.

Das, J.

12. I agree.

