

PETITIONER:
KALLATHIL SREEDHARAN A ANR.

Vs.

RESPONDENT:
KOMATH PANDYALA PRASANNA & ANR.

DATE OF JUDGMENT: 08/08/1996

BENCH:
RAMASWAMY, K.
BENCH:
RAMASWAMY, K.
G.B. PATTANAIK (J)

CITATION:
JT 1996 (8) 40 1996 SCALE (6)311

ACT:

HEADNOTE:

JUDGMENT:

O R D E R

Leave granted.

These appeals by special leave arise from the judgment and order dated August 10, 1995 of the Kerala High Court made in A.S. Nos.147 and 303 of 1987. The appellants were the plaintiffs. The first respondent and her son Sailesh were defendants in O.S. No.56/80 for partition between the co-parceners. Therein Prabha Cinema Theatre situated in Cannanore was allotted to them in a compromise decree, subject to their paying a sum of Rs.1,55,000/- each to the plaintiff and the second defendant therein within three months from the date of the compromise decree dated 22.10.80. Since the amount could not be paid, the theatre was brought to sale at a court auction dated June 24, 1982 and was sold for a sum of Rs.5,44,000/-. The auction was to be confirmed on or before July 25, 1982. Since she was not in a position to pay the amount, she had through her brother, DW-2 approached the appellant. In furtherance of the understanding, the appellant was to deposit Rs. 2,10,391/- in the court before confirmation of the sale towards the 1/3rd of the amount deposited plus 5% of the founding fees. Accordingly, the appellant had lent that amount with a condition that the respondent and her son would sell the theatre to the appellant, the later agreeing to pay a further sum of Rs.2 lakhs. In other words, he had agreed to purchase the theatre for 5,44,000/- and 2 lakhs. It is the case of the appellant that the contract came to be executed on July 22, 1982 and the sale was set aside on deposit of the amount advanced by the appellant.

When he issued a notice to the respondent to get the sale deed executed in furtherance of the agreement, she pleaded that it was not intended to be executed; rather, it was by way of security for loan. Consequently, the appellant laid the suit for specific performance. Therein the appellant prayed for decree for specific performance and in the alternative for refund of the amount advanced by him,

namely, Rs.2,10,391/-. The trial Court noticing that the appellant had not had the sanction of the civil Court under Section 8 of the Hindu Minority and Guardianship Act, 1956 held that the agreement of sale to the extent of half share of the minor was not valid in law. However, since the respondent had executed the agreement decreed to the extent of her half share in the theatre a decree for specific performance was granted subject to the appellant depositing a sum of Rs.1,61,609 towards the half share of the first respondent. Both the appellant as well as the respondents file the appeals against the decree of the trial Court. The High Court in the impugned judgment reversed the decree of the trial Court even to the extent of granting the decree for specific performance against the first respondent and granted alternative relief of refund of the amount advanced by the appellant. Thus, these appeals by special leave.

Though the first respondent had pleaded in her written statement and an issue was raised that due to her impecunious circumstances the appellant and her brother DW-2 Premarajan had a dominating influence over the first respondent and, therefore, the agreement of sale was vitiated by undue influence, that plea was negatived by the trial Court as well as the appellate Court. Therefore, it is not necessary to dwell at length on this issue though the learned counsel for the respondent sought to press the same for our consideration. Shri Venugopal, learned senior counsel for the appellants has strenuously contended that in view of the findings concurrently recorded by the High Court as well as the trial Court that the agreement is not vitiated by either fraud or undue influence and the first respondent having received the consideration to discharge the decree debt to set aside the sale, the High Court was not right in reversing the decree of the trial Court and granting the decree of refund of the amount advanced by the appellant. In view of the admitted finding that she was not in a position to discharge the compromise decree debt and when the theatre was brought to sale at her instance the appellant had advanced the money and agreed to purchase the theatre for a sum of Rs.7,44,000/-. In the partition suit, the parties valued the theatre at around Rs.8 lakhs and, therefore, the consideration shown is adequate. Since the agreement was found to be voluntarily executed by the respondent, though the Court had discretion in granting or refusing to grant specific performance, the High Court has committed error of law in refusing to grant specific performance of the agreement.

Shri Nair, learned counsel for the respondent, on the other hand contended that the evidence discloses that the respondent was in hard up circumstances to discharge the decree debt; when she approached the respondent, it would be obvious that the agreement was for lending the money with an intention to pay back the amount but not for enforcement of the agreement; even though it is now found to be valid agreement, due to the evidence adduced by the respondent that the value of the theatre even as on the date of the agreement was more than Rs.24 lakhs the consideration shown in the agreement was inadequate; considering the impecunious situation in which the respondents came to be placed and the value of the property, the High Court had properly exercised its discretion; this Court may not interfere under Article 136 of the Constitution with the discretion exercised by the High Court since the appellant was recompensated by refund of the earnest money with interest as decreed by the High Court; the discretion was exercised by the High Court on sound principles and, therefore, it is not a case warranting

interference.

Having regard to the respective contentions, the question that arises for consideration is: whether the agreement dated July 22, 1982 for sale of the cinema theatre is to be specifically enforced? When the special leave petitions were filed, the appellants had filed an affidavit stating that they are not claiming specific performance as regards half share of the second respondent minor. It would be obvious that since the mandatory requirement of sanction from the Court for alienating the property of the minor, as required under Section 8 of the Hindu Minority and Guardianship Act, had not been obtained, the contract of sale to the extent of the half share of the minor is void and it does not bind the minor. The courts have rightly declined to exercise discretion on sound principle of law to protect the estate of the minor.

The question then is: whether the High Court committed any error of law warranting interference by refusing to exercise discretion? The High Court after elaborate consideration and appreciation of the evidence recorded the findings as under:

"Obviously, the irresistible inference is that the defendant did not want to part with the property and did not intend to get the auction sale set aside solely for the benefit of a third party, namely, the plaintiffs. We are of the view that taking advantage of the situation in which the defendants as judgment-debtors were placed, the plaintiffs tried to secure for themselves the properties, not negotiations for them on equal terms. There can be no dispute that the price obtained at the Court auction was not the fair market price of the properties. The valuation of the property for Rs.26,13,415/- given by DW3, a retired Assistant Executive Engineer, PW2, is of course disputed on the ground that the plaintiffs have no notice when he valued the property; nor was he appointed by the Court to do the same. Of course, there is some force in this objection. Nevertheless, the property, according to us, cannot be valued at less than Rupees 15 lakhs. It is true that, that by itself is no ground to refuse the enforcement of the contract. But, this has some significance when it is taken along with other factors, namely, the situation in which the defendants were placed, that is to say, unless they could find the necessary money for depositing into court to set aside the auction sale and to conduct the proceeding for this purpose, they had no prospect of regaining title to the properties. Hence we hold that it would not be

just and proper to direct the defendants to execute the sale deed in pursuance of Ext. A1 agreement. Point No.3 is, therefore, answered in favour of the defendants.

But, however, the plaintiffs would be entitled to claim the alternative relief asked for in the plaint. This consists of the return of Rs.2,10,391/- gives an advance with interest at 6% per annum. Since admittedly the defendants regained the property on payment of the aforesaid amount by the plaintiffs treating the same as advance towards the price of the property agreed to be sold, the defendants are bound to refund the same to the plaintiffs."

The High Court thus, on appreciation of evidence, has concluded that the value of the property would be at least Rs.15 lakhs. Though that circumstance itself may not be a ground to refuse enforcement of the contract, the Court has taken into consideration the impecunious circumstances in which the contract came to be executed by the respondents and since the first respondent-woman was in hard up circumstances, the agreement was held to be not specifically enforceable.

Section 20 of the Specific Relief Act, 1963 deals with discretion and jurisdiction to the Court, It says that the Court is bound to grant such relief merely because it is lawful to do so, but at the same time it enjoins that the discretion of the Court should not be arbitrary but sound and reasonable, guided by judicial principles and capable of correction by a court of appeal. It would thus be seen that the discretion given to the Court of equity is required to be exercised not arbitrarily but on sound and reasonable basis guided by judicial principles,

It is seen that the appellant had himself admitted in the cross-examination that he was not particular to have the agreement enforced with the respondent for the purchase of Prabhat Cinema Theatre since he was already having theaters in Cannanore itself. He says that "if Premarajan had asked me to give two lakhs or more to pay the Prabhat theatre, I would not have purchased it on that day. I have no idea of purchasing the Prabhat theatre." But finding the situation in which the first respondent was situated, he was willing to purchase the property on paying an additional sum of Rs.2 lakhs towards the respondent-judgment debtors' share and tried to secure the theatre for the judgment-debtors. It would, thus, be seen that the appellant was already having the theatres. He was not serious about purchasing the theatre. But since she had offered to sell the theatre to him, he had agreed to purchase the property, It is seen that the cinema theatre is a joint property between the first respondent and her minor son. Considered from this perspective and in view of the finding recorded by the High Court on appreciation of the evidence, we are of the view that the High Court has not committed any error of law in declining to exercise the discretion in favour of the appellant by granting decree for specific performance. Instead, it granted decree for refund of the amount advanced by the appellant to discharge the decree debt which she owed to salvage the theatre from being confirmed in the Court auction. Considered from this perspective, we are of the

opinion that the discretion exercised by the High Court is on sound principles and, therefore, it does not warrant interference.

The appeals are accordingly dismissed. No costs.

JUDIS