

CASE NO.:
Appeal (civil) 7601 of 1999

PETITIONER:
Sargunam (Dead) By LR.

RESPONDENT:
Chidambaram & Another

DATE OF JUDGMENT: 07/10/2004

BENCH:
ASHOK BHAN & S.H. KAPADIA

JUDGMENT:
J U D G M E N T

KAPADIA, J.

This civil appeal, by grant of special leave, is directed against the judgment and order dated 24.2.1999 passed by the High Court of Karnataka in RFA No.464 of 1992 decreeing the suit filed by respondent no.1 herein in the Court of VIth Additional City Civil Judge, Bangalore, being Suit No. O.S. 8296 of 1980.

For the sake of convenience, the parties herein are referred to as they are arrayed in the trial Court.

The facts giving rise to this civil appeal are as follows:\027

By an agreement for sale dated 14.6.1979, R. Srinivasan, (since deceased) agreed to sell the suit premises bearing No.15/18/1, Cambridge Road, Ulsoor, Bangalore to Shri Chidambaram (respondent no.1 herein) for a sum of Rs.16000/-. Under the said agreement, Srinivasan agreed to complete the sale by 13.11.1979. Under the said agreement, the vendor agreed to sell the suit premises free from all encumbrances. The vendor agreed to deliver the title deeds to the plaintiff. On the execution of the agreement, the vendor received Rs.3000/- from the plaintiff. However, the said vendor, defendant no.1, failed to carry out his obligations under the agreement. He failed to deliver the title deeds. He failed to clear the property free from encumbrances.

In the circumstances, the plaintiff issued legal notices on 5.11.1979 and 9.11.1979 to the vendor to carry out his obligations under the said agreement. On 29.11.1979, plaintiff came to know that the vendor, defendant no.1, had purported to sell the suit premises in favour of Smt. Sargunam (since deceased), defendant no.2. In the circumstances, the plaintiff instituted suit bearing no.8296 of 1980 in the Court of VIth Additional City Civil Judge., Bangalore (hereinafter referred to as "the trial Court").

In the suit, it was alleged by the plaintiff that the conveyance dated 29.11.1979 executed by defendant no.1

in favour of defendant no.2 was sham and bogus. That defendant no.2 had notice of the suit agreement. The plaintiff further submitted that he was always ready and willing to comply with his obligations under the suit agreement; that defendant no.1 had committed breach thereof and consequently, he was entitled to specific performance of the suit agreement.

By written statement dated 9.7.1981, defendant no.1 alleged that he had terminated the suit agreement as the plaintiff had failed to complete the sale within the time stipulated in the suit agreement; that defendant no.1 had given notice of termination to the plaintiff which notice came to be returned with the postal remarks "refused" and, consequently, he had sold the property to the second defendant.

On 7.8.1981, defendant no.2 filed a memo adopting the written statement of defendant no.1 dated 9.7.1981.

On 20.11.1986, defendant no.2 filed her amended written statement. By the said written statement, defendant no.2 alleged that the sale in her favour dated 29.11.1979 was in pursuance of the agreement dated 15.4.1978 executed by defendant no.1; that she was the bona fide purchaser for value without notice; that she had no notice of the suit agreement when she entered into the conveyance with defendant no.1 on 29.11.1979; that she was the prior purchaser and in the circumstances, the sale in her favour was protected.

After framing the issues and after recording evidence, the trial Court inter alia held that the time was essence of the suit agreement (Ex.P1); that the plaintiff had failed to complete the sale by 13.11.1979; that the plaintiff had failed to pay the balance amount by 13.11.1979, which period was essence of the contract; that defendant no.1 was always ready and willing to comply with his part of the contract and, therefore, he had every right to sell the suit premises vide Ex.P17 dated 29.11.1979 to the second defendant. The trial Court further held that the plaintiff had failed to prove that defendant no.2 had notice of the suit agreement (Ex.P1); that Ex.P17 was pursuant to the agreement dated 15.4.1978 (Ex.D4) and in the circumstances, the plaintiff had failed to prove that Ex.P17 was sham, bogus and nominal. Consequently, vide judgment and order dated 24.9.1992, the trial Court dismissed the suit.

In appeal, the High Court, as the First Appellate Court, re-appreciated the evidence and came to the conclusion that the second defendant had notice of Ex.P1 dated 14.6.1979 at the time of the sale, Ex.P17; that Ex.D4 dated 15.4.1978 was concocted and was made to defeat the claim of the plaintiff; that the signatures of the vendor on Ex.D4 differed from signatures on Ex.P17; that defendant no.2 did not prove her signature on Ex.D4; and in the circumstances, Ex.P17 was not protected. In the circumstances, the High Court reversed the findings of the trial Court and decreed the plaintiff's suit.

Being aggrieved, legal representative of defendant no.2 has come to this Court by way of this civil appeal.

Mr. S. Muralidhar, learned counsel appearing on

behalf of the original defendant no.2 (appellant herein) submitted that the trial Court had exercised its discretion on the basis of evidence on record in refusing the relief for specific performance sought by the plaintiff and in the circumstances, the High Court should not have interfered with the findings of fact recorded by the trial Court. He contended that prior to the suit agreement, Ex.P1, defendant no.2 had agreed to purchase the suit premises from defendant no.1 as far back as 15.4.1978 vide Ex.D4, and, therefore, defendant no.2 was the prior purchaser of the suit premises. He contended that in pursuance of Ex.D4, defendant no.1 had executed Ex.P17 in favour of defendant no.2; that the balance consideration of Rs.11,500/- was paid by defendant no.2 to defendant no.1 at the time of the conveyance Ex.P17; that Ex.D4 has been duly signed by the vendor and the vendee and was duly attested and, therefore, the High Court had erred in coming to the conclusion that Ex.D4 was concocted. Learned counsel further submitted that defendant no.2 had no notice of Ex.P1 when she entered into the conveyance Ex.P17 and that defendant no.2 had paid the balance consideration of Rs.11,500/- without notice of Ex.P1. In the circumstances, it was urged that the trial Court was right in dismissing the suit.

Lastly, it was urged that defendant no.2 was in possession of the suit premises for last couple of years and consequently, the High Court ought to have refused the decree for specific performance as passing of such a decree would cause greater hardship to the second defendant as compared to the plaintiff.

In this civil appeal, two points arise for determination viz. \026 whether it is proved before the trial Court that defendant no.2 was a bona fide purchaser for value without notice and whether the plaintiff has proved that Ex.P17 was sham, bogus and nominal sale entered into to defeat the claim of the plaintiff.

In the case of Jagan Nath v. Jagdish Rai reported in [AIR 1998 SC 2028], it has been held that where a transferee has knowledge of facts which would put him on enquiry which if prosecuted would have disclosed a previous agreement, such transferee is not a transferee without notice of the original contract within the meaning of exception in section 19(b) of the Specific Relief Act, 1963.

Similarly, in the case of Baburam Bag v. Madhab Chandra Pallay reported in [AIR 1914 Cal. 333], it has been held that possession of a property by a tenant affects subsequent purchaser with notice of the tenant's rights, and if the purchaser fails to make enquiry, into the nature of that possession, he cannot claim to be a transferee without notice under section 27(b) of the Specific Relief Act, 1877.

In the light of the above tests, we may now examine the evidence on record. At the outset, it may be noted that on 12.2.1980, the above suit was filed in which the plaintiff inter alia alleged that Ex.D4 was never acted upon by defendants no.1 and 2 and that Ex.P17 was not entered into pursuant to Ex.D4. It was further alleged that defendant no.2 had notice of Ex.P1 at the time she entered into the conveyance Ex.P17. On 9.7.1981, defendant no.1 filed his written statement. He did not

deny the above allegations mentioned in the plaint. On 7.8.1981, defendant no.2 adopted the written statement of defendant no.1. She filed a short memo stating that she was adopting the written statement of defendant no.1. On 20.11.1986, after five years, defendant no.2 files an amended written statement in which she denies for the first time the aforesaid allegations of the plaintiff concerning Ex.D4. She does not explain the delay in not filing the written statement for five years. In his evidence, DW1 conceded that Ex.P17 does not refer to Ex.D4. He further conceded that in the conveyance Ex.P17, there was no recital stating that the conveyance was being executed pursuant to Ex.D4. In the circumstances, it cannot be said that Ex.P17 was executed pursuant to Ex.D4. Further, there is no evidence to show that time to complete the sale under Ex.D4 was ever extended by defendant no.1.

PW1 in his evidence has deposed that he was a tenant of the suit premises from 1945; that defendant no.2 had instituted an eviction suit under section 21(1)(h) of the Karnataka Rent Control Act, 1961 on the ground of bona fide requirement after she had entered into the conveyance Ex.P17. PW1 in his evidence has further stated that he had entered into the agreement Ex.P1 with defendant no.1 when he came to know that defendant no.1 intended to sell the suit premises. It is at this stage that PW1 offered to purchase the suit premises. PW1 has further deposed that the agreement Ex.P1 was for Rs.16000/- whereas the conveyance Ex.P17 was for Rs.12000/-. PW1 further deposed that he had paid Rs.3000/- as advance on 14.6.1979, at the time of entering into the agreement Ex.P1. PW1 in his evidence has further deposed that defendant no.1 had agreed to deliver title deeds of the suit premises to him; that defendant no.1 had agreed to sell the suit premises free from all encumbrances; that the final sale was to be completed by 13.11.1979, by which time defendant no.1 had agreed to free the suit premises from all encumbrances; that after entering into the agreement Ex.P1, defendant no.1 informed PW1 that the title deeds were with the money lender; and accordingly on 5.10.1979 PW1 paid a further sum of Rs.1000/- to the first defendant to enable him to get back the title deeds. PW1 in his evidence has further deposed that he had given legal notices on 5.11.1979 and 9.11.1979 calling upon defendant no.1 to complete the sale; that, however, defendant no.1 had failed to carry out his contractual obligations and in the circumstances PW1 instituted the suit for specific performance.

On behalf of defendant no.1, DW1 was examined. DW1 is the husband of defendant no.2. DW1 is the constituted attorney of defendant no.2. DW1 deposed in his evidence that before entering into the conveyance Ex.P17, defendant no.1 had informed DW1 that Ex.P1 was executed on account of coercion and threats given by PW1. This evidence has been rightly relied upon by the High Court to come to the conclusion that defendant no.2 had notice of Ex.P1 when she entered into conveyance, Ex.P17, on 29.11.1979. DW1 has not given any reason as to why there is no reference to Ex.D4 and Ex.P1 in the conveyance Ex.P17. DW1 has not produced any evidence to show that defendant no.1 had extended the time to complete the sale under Ex.D4, as alleged by

defendant no.2. In the circumstances, the High Court was right in coming to the conclusion, on the above evidence, that defendant no.2 has failed to prove that she was a bona fide purchaser of the suit premises for value without notice.

Lastly, the evidence on record indicates that Ex.P17 was a nominal sale. It was executed in order to defeat the plaintiff's claim. In this connection, the evidence on record shows that the signatures of the vendor on Ex.D4 do not tally with the signatures with Ex.P17. There were two attesting witnesses who were examined on behalf of the defendants. Both the attesting witnesses have deposed that the signatures of defendant no.1 on Ex.D4 did not tally with the signatures on Ex.P17. Therefore, the High Court was right in coming to the conclusion that Ex.D4 was a concocted document. In the circumstances, we do not see any reason to interfere with the findings recorded by the High Court.

As stated above, it was urged on behalf of defendant no.2 that the present case falls under section 20(2)(b) of the Specific Relief Act, 1963; that in the present case, the family of defendant no.2 is in possession of the suit premises for the last couple of years; that the performance of the contract Ex.P1 would involve hardship on the defendant whereas its non-performance would involve no hardship on the plaintiff. We do not find any merit in this argument.

In the case of Mademsetty Satyanarayana v. G. Yelloji Rao and others reported in [AIR 1965 SC 1405], it has been held that the jurisdiction to decree specific performance is discretionary and the Court is not bound to grant such relief merely because it is lawful to do so; that in cases where one of the three circumstances mentioned in section 20(2) is established, no question of discretion arises. Hence, in this case, we are required to examine, on facts, whether the circumstances in section 20(2)(a) or section 20(2)(b) are established.

In the case of P. D'Souza v. Shondriilo Naidu reported in [(2004) 6 SCC 649] it has been held that Explanation-I appended to section 20 clearly stipulates that mere fact that the contract is onerous to the defendant or improvident in its nature would not constitute an unfair advantage within the meaning of section 20(2).

Applying the above tests to the facts of the present case, we find that defendant no.2 was aware of plaintiff's possession in the suit premises as a tenant. Defendant no.2 had filed, in the Court of Small Causes, Bangalore, HRC No.10561/81 for eviction of the plaintiff herein, under section 21(1)(h) of the Karnataka Rent Control Act, 1961. A bare reading of the order dated 14.10.1985 passed by the Small Causes Court in the above eviction suit indicates that defendant no.2 was put to notice that in case the plaintiff succeeds in the suit for specific performance, defendant no.2 will have to vacate. In the circumstances, it cannot be said that second defendant was not in a position to foresee the ensuing hardship. Hence, section 20(2)(b) is not applicable to the facts of the present case. In any event, as stated above, defendant no.2 had notice of Ex.P1 when she entered into the

conveyance Ex.P17.

In the result, the appeal fails and is dismissed, with no order as to costs.

JUDIS