

CASE NO.:
Appeal (civil) 5066 of 2007

PETITIONER:
A. Lewis & Anr. etc

RESPONDENT:
M.T. Ramamurthy & Ors

DATE OF JUDGMENT: 31/10/2007

BENCH:
Tarun Chatterjee & P. Sathasivam

JUDGMENT:
JUDGMENT
(Arising out of SLP (C) No. 19240 OF 2006)
P. Sathasivam, J.

- 1) Leave granted.
- 2) This appeal is directed against the final judgment dated 13.07.2006 passed by the High Court of Karnataka at Bangalore in R.F.A. Nos. 827 and 718 of 2000 whereby the High Court dismissed the appeals preferred by the appellants.

BRIEF FACTS:

- 3) The appellants filed the above appeal seeking declaration of ownership over the suit property with recovery of possession and mesne profits. The suit property in question is in respect of two different portions of premises bearing No. 26, Nissan Huts, Austin Town, Bangalore which originally belonged to Muniyappa, respondent No.3 herein (since deceased). On 23.12.1982, a registered sale deed was executed by respondent No.3 herein in favour of respondent No.1. Respondent No.1 issued a notice to respondent No.3 and the other occupants of the suit property for handing over possession of the suit property. A reply was sent by counsel on behalf of Defendant No.1 in each suit claiming that the sale deed pleaded by respondent No. 1 was not genuine and contending that respondent No.3 had entered into an agreement of sale on 04.10.1982 in respect of the said suit property in favour of the appellants herein for a sale consideration of Rs.14,000/-. It was also stated that an amount of Rs.10,000/- had already been paid as part of sale consideration and actual possession was also delivered to the said purchasers in part performance of the agreement to sell. Therefore, Respondent No.1 herein filed two suits bearing O.S. No. 10607 of 1985 and O.S. No. 10609 of 1985 on the file of the XXVIII Additional City Civil and Sessions Judge, Mayo Hall at Bangalore claiming that he is the absolute owner of the suit schedule property and for possession from first defendant, respondent No.2 herein, along with mesne profits. By common judgment, the learned trial Judge decreed the suits declaring respondent No.1 herein, as the owner of the suit schedule property and directed the appellants herein to deliver possession of the suit property to the plaintiff within six months from the date of the receipt of the order and also directed that the plaintiff is entitled to mesne profits from 10.7.1985 and a further direction was also given to initiate an enquiry for determination of mesne profits under Order XX Rule 12 C.P.C. Challenging the said judgment, defendant Nos. 3 & 4, appellants herein, filed R.F.A. Nos. 827 and 718 of 2000

and defendant No.2, respondent No.3 herein, filed R.F.A. Nos. 730 and 830 of 2000 before the High Court. The High Court dismissed all the four appeals with costs and directed defendant Nos. 1, 3 and 4 to hand over vacant possession of the suit property within six months. Aggrieved by the judgment in R.F.A. Nos. 827 and 718 of 2000, this appeal has been preferred by way of special leave before this Court.

4) We heard Mr. S. Balaji, learned counsel for the appellants and Mr. K.K. Mani, learned counsel for the respondents and perused all the relevant materials and records filed in this Court.

5) Learned counsel for the appellants mainly contended that the High Court committed an error in dismissing their appeals on the ground that Ex.D-1 Agreement to sell dated 04.10.1982 is antedated. According to him, in view of the fact that it was not the case of the contesting respondents herein, the High Court ought not to have reversed the finding of the fact in the appeal. On the other hand, learned counsel appearing for the contesting respondents, after taking us through the entire materials including the pleadings of both the parties, conclusion of the trial Judge and the decision arrived at by the High Court, submitted that there is no valid ground for interference. In view of the assertion of the counsel for the appellants, we have carefully perused the judgment of the High Court as well as the other materials. It is true that the High Court in para 21 of its judgment has concluded \023considering these factors, I am of the opinion that this document, Ex.D-1 must have come into existence subsequent to the sale deed to defeat the rights of the plaintiff and, therefore, Additional issue No.5 in each case has to be answered in the negative.\024 First of all, there is no specific finding either by the trial Court or by the High Court to the effect that Ex.D-1 Agreement to sell is antedated. On the other hand, the trial Court as well as the High Court considered the claim of the plaintiffs based on Ex.P-1 dated 23.12.1982 as well as the defence of the contesting defendants based on agreement of sale dated 04.10.1982.

6) As rightly pointed out by the High Court, the existence of right to claim protection under Section 53-A of the Transfer of Property Act would not be available if the transferee just kept quiet and remained passive without taking effective steps. Further, he must also perform his part of the contract and convey his willingness. On the other hand, the factual finding is that there was no intimation by defendant Nos. 3 and 4 to perform their part of contract to claim protection of Section 53-A of the Transfer of Property Act. Likewise, as rightly concluded by the courts below, there is no material to show that the plaintiff had notice of agreement of sale Ex.D-1 in favour of defendant Nos. 3 and 4. The conclusion of the High Court that defendant Nos. 3 and 4 or even defendant No.1 who claims through them are not entitled to protection of Section 53-A of the Transfer of Property Act is acceptable and the argument contrary to the said conclusion is liable to be rejected.

7) As rightly pointed out, the sale deed executed by the second defendant in favour of the plaintiff is not only a registered document but the plaintiff apart from offering his evidence, has also examined the scribe of the document and both the courts below rightly found that Ex.P-1 has been proved in accordance with law. It is not in dispute that Ex.D-1 is an unregistered document. It is also not in dispute that the said document has not been produced until defendant Nos. 3 and 4 were impleaded. Considering the

evidence and of the claim that second defendant was in need of money for discharging his antecedent debts and for family maintenance etc., both the Courts disbelieved his version and rightly concluded it was highly doubtful that the agreement of sale had been executed by him prior to the sale deed. Only after analyzing all the above-mentioned material aspects, the High Court has rightly concluded that Ex.D-1 must have come into existence subsequent to the sale deed in order to defeat the rights of the plaintiff. If the High Court dismissed the appeal based on the only reason as argued by learned counsel for the appellants, it would be appropriate to remit it to the High Court for fresh disposal on all aspects. However, as observed earlier, the High Court as the first appellate court analyzed the entire evidence and concluded that the plaintiff had proved that the sale deed had been executed in his favour by Defendant No.2 under Ex.P-1, consequently confirmed the decision of the trial Court in decreeing the suits as prayed for. We are in entire agreement with the said conclusion and unable to accept the argument of learned counsel for the appellants.

8) In the light of the above discussion, the appeal fails and is dismissed. No costs.