

CASE NO.:
Appeal (civil) 418 of 2001

PETITIONER:
M.M.S.Investments, Madurai and Ors

RESPONDENT:
V. Veerappan and Ors

DATE OF JUDGMENT: 11/04/2007

BENCH:
Dr. ARIJIT PASAYAT & S.H. KAPADIA

JUDGMENT:
J U D G M E N T

(With Civil Appeal No. 419 of 2001)

Dr. ARIJIT PASAYAT, J.

C.A.No. 418 of 2001

This appeal is directed against the judgment of the Madras High Court. Letters Patent Appeal was filed questioning correctness of the order passed by a learned Single Judge in A.S.No. 796/1987 dated 2.11.1999. The order was passed on a preliminary objection raised by the respondents in the appeal.

Background facts in a nutshell are as follows:

O.S.No.247 of 1981 on the file of the Sub Court, Madurai was filed by Veerappan, the first respondent for specific performance of an agreement for sale dated 23.1.1978. Respondents 2 to 9 were impleaded in the suit as owners of the property and it was alleged that the owners had entered into an agreement with him and as the agreement was not complied with, the suit was filed. After the decree was passed by the trial Court, the defendants through their power of attorney sold large extent of properties including the subject matter of the suit in favour of certain other persons who are the present appellants. In the mean time, defendants 1 to 5 filed appeal in A.S. No. 796 of 1987 before the High Court against the Judgment and decree in O.S. No. 247 of 1981 and the appellants herein being subsequent purchasers filed C.M.P. 3707 of 1989 to implead themselves as appellants 6 to 9 in the appeal on the ground that original appellants 1 to 5, the erstwhile owners, were trying to collude with the first respondent. Appellants 1 to 5 filed C.M.P. No. 4388 of 1990 to withdraw their power of attorney in favour of one Chakrapani and Sethuraman. A learned Single Judge of the High Court dismissed C.M.P. No. 3707 of 1989 filed by the appellants herein seeking impleadment and allowed C.M.P. No. 4388 of 1990 by order dated 28.6.1990. The appellants filed L.P.A. No. 113 of 1990 against the order of dismissal of C.M.P. No 3707 of 1989 and also sought for leave to file an appeal against the order allowing C.M.P. No. 4388 of 1990. Both the L.P.A. and C.M.P. No.9570 of 1990 seeking leave to appeal were disposed of by a common order dated 28.3.1990. L.P.A. 113 of 1990 was allowed and with the result the appellants were impleaded as appellants 6 to 9 in the appeal and A.S. No.796 of 1987 was

also directed to be disposed on merits.

The High Court after analyzing the rival submissions came to hold as follows:

"Therefore, we are inclined to hold that having regard to the facts and circumstances of the case, there is no bar for the appellants to raise any issue on the merits of the appeal for consideration in the appeal except the defence of readiness and willingness as provided under Section 16 (c) of the Specific Relief Act, 1963.

In the result, the appeal is ordered accordingly. No costs. Consequently, connected C.M.P. is dismissed."

(underlined for emphasis)

Learned counsel for the appellants submitted that the plea relating to readiness and willingness can be raised in a suit for specific performance of contract. Strong reliance is placed on a decision of this Court in Ram Awadh (dead) by Lrs. And ors. v. Achhaibar Dubey and Anr. (2000 (2) SCC 428). Learned counsel for the appellants, therefore, has submitted that the High Court was not justified in its view.

Learned counsel for the respondents on the other hand supported the judgment of the High Court.

Questioning the plea of readiness and willingness is a concept relatable to an agreement. After conveyance the question of readiness and willingness is really not relevant. Therefore, the provision of the Specific Relief Act, 1963 (in short the 'Act') is not applicable. It is to be noted that the decision in Ram Awadh's case (supra) relates to a case where there was only an agreement. After the conveyance, the only question to be adjudicated is whether the purchaser was a bona fide purchaser for value without notice. In the present case the only issue that can be adjudicated is whether the appellants were bona fide purchasers for value without notice. The question whether the appellants were ready and willing is really of no consequence. In Ram Awadh's case (supra) the question of the effect of a completed sale was not there. Therefore, that decision cannot have any application so far as the present case is concerned. Once there is a conveyance the concept would be different and the primary relief could be only cancellation.

Learned counsel for the appellants submitted that since the purchasers step into the shoes of the vendor, the question of readiness and willingness can be pressed into service. This plea is clearly without substance because the purchasers had to prove that they are bona fide purchasers for value without notice. The readiness and willingness aspect will not give any relief to them. That being the position, the appeal is sans merit and is dismissed. There will be no order as to costs.

C.A. No. 419 of 2001

In view of the dismissal of C.A.No.418 of 2001, no order needs to be passed in this appeal.