

CASE NO.:
Appeal (civil) 4574 of 1998

PETITIONER:
TEK CHAND & ORS.

Vs.

RESPONDENT:
DEEP CHAND & ORS.

DATE OF JUDGMENT: 23/02/2001

BENCH:
U.C. Banerjee & K.G. Balakrishnan

JUDGMENT:

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K.G. BALAKRISHNAN, J.

Defendants 5 to 8 in a suit for specific performance are the appellants herein. The first respondent-plaintiff, Deep Chand filed a suit for specific performance against the second respondent, Kare, who was the owner of the suit property measuring 26 Kanals and 2 Marlas situated in Village Prithla of Faridabad District. The first respondent agreed to purchase the land from Kare for a consideration of Rs. 35,000/- per acre and an agreement was entered into between these two parties on 8.12.1986. The first respondent paid an amount of Rs.8,000/- to Kare on the date of the agreement and Kare had to execute the sale-deed by 25th May 1987, but this date was further extended upto 15th June, 1987. However, Kare did not execute the sale-deed as promised by him. Therefore, the first respondent was constrained to file a suit for specific performance.

The second respondent, Kare, who was the sole defendant in the suit, filed a written statement contending that he was not the real owner of the property and that it belonged to his children. He also alleged that he had mortgaged the property in favour of one Gopal. The first respondent-plaintiff, thereupon impleaded the children of Kare as defendants 2 to 4 in the suit and they are respondents 3 to 5 herein. The first respondent-plaintiff later came to know that the children of Kare had effected certain alienation in favour of the appellants herein. Therefore, the appellants were impleaded as defendants 5 to 8 in the suit.

The first defendant-Kare, though admitted the agreement, alleged that he never intended to execute a sale-deed in favour of the first respondent-plaintiff, but only a mortgage. He denied the thumb impression found on the agreement for sale. Defendants 2 to 4, who are the children of Kare, also filed a written statement alleging that there was a Family Settlement whereby the properties were given to them and that after the Family Settlement, they had filed a suit for declaration of title in respect of the suit property and a decree was passed in their favour on

1.10.1987. They admitted having executed subsequently four sale deeds in favour of defendants 5 to 8 in respect of a portion of the suit property.

The appellants, who were defendants 5 to 8 in the suit, claimed title over the property. They alleged that on 20.10.1986 they had entered into an agreement with Kare for the sale of the property for Rs.32,000/- per acre. Kare, however, did not execute the sale deed, but transferred the property in favour of his children and when the appellants insisted for enforcement of the said agreement, the children of Kare honoured the same by executing the four sale deeds and handed over the possession of the property. The appellants contended that the first respondent was not entitled to the decree for specific relief. The trial court dismissed the suit on the ground that by virtue of the decree dated 1.10.1987 passed in favour of defendants 2 to 4, they had become the owners of the property and so long as that decree was not challenged by the first respondent-plaintiff in any proceedings, he was not entitled to seek specific relief of the contract entered into by him with Kare. However, the trial court allowed the recovery of the advance amount paid by the first respondent. Thereafter, the first respondent filed an appeal against the decree and judgment of the trial court. The appellate court reversed the decree and held that the agreement entered into by the first respondent with Kare was a true and genuine document; that the Family Settlement as also the decree passed by the civil court in favour of defendants 2 to 4 were collusive transactions; and that defendants 2 to 4 had no right to alienate the property. It was further held that such alienation in favour of defendants 5 to 8 had been made after the filing of the suit by the first respondent-plaintiff and they are hit by the doctrine of lis pendens. Aggrieved by the judgment of the appellate court, the present appellants filed a Second Appeal, which was dismissed by the High Court of Punjab & Haryana at Chandigarh. It is against that judgment of the High Court, the present appeal is filed.

We heard learned counsel for the appellants, Mrs. Madhu Tewatia and learned senior counsel for the first respondent, Shri M.L. Verma. Counsel for the appellants contended that the agreement entered into by the first respondent-Plaintiff with Kare was on 8.12.1986 and this was subsequent to the agreement entered into by the appellants with Kare, which was on 20.10.1986. Therefore, it was contended by the counsel for the appellants that Kare had executed the subsequent agreement with the first respondent-plaintiff with a view to defeat the interest of the appellants. It was urged that Kare had executed the Family Settlement Deed in favour of his children to see that the appellants did not get the benefit of the agreement entered into by them with Kare. The counsel for the appellants contended that when defendants 2 to 4 executed the sale- deeds in favour of the appellants, they acquired a valid title over the property on the basis of the decree passed by the civil court on 1.10.1987 and, therefore, all the alienations are valid and the appellants are bonafide purchasers for value.

Learned counsel for the first respondent, on the other hand, contended that the agreement entered into by the first respondent with Kare was a true and genuine document and Kare had executed the Family Settlement to defeat the

interests of the first respondent. It was further submitted that the decree obtained by defendants 2 to 4 against Kare was a collusive decree. The first respondent disputed the genuineness of the agreement entered into between Kare and the present appellants.

It has been found by all the courts that the agreement entered into by the first respondent with Kare was a true and genuine document and the first respondent had paid Rs.8,000/- as advance. It was also proved that Kare had committed a breach of the contract and failed to execute the sale-deed in favour of the first respondent.

It is pertinent to note that Kare executed a Family Settlement in favour of his children, defendants 2 to 4 and immediately thereafter, defendants 2 to 4 filed a suit for declaration of the title over the property. Kare, who was a defendant in the suit, did not contest the suit and the decree was passed in favour of defendants 2 to 4. It is clearly a collusive decree obtained by defendants 2 to 4. In respect of the suit property, four sale-deeds were executed by defendants 2 to 4. 7 Kanals and 4 Marlas of property was sold in favour of appellants 1 to 3 by defendants 2 and 3 and an extent of 15 Kanals and 6 Marlas was transferred to appellants 1 to 3 by defendants 2 to 4. Both these documents were executed on the same day, i.e. 4.9.1989. The total consideration for the sale deed executed in favour of appellants 1 to 3 was Rs.76,500/-, but an amount of Rs.60,000/- was retained by the vendees as mortgage amount payable to the mortgagee. Two other documents were also executed by defendants 2 to 4. One document is in favour of the fourth appellant, Jawahar Singh, in respect of 3 Kanals and 12 Marlas of land for a sum of Rs.18,000/-. The total purchase amount in respect of all these sale deeds comes to Rs.1,32,300/-. Out of this, an amount of Rs.60,000/- was retained as mortgage money and the balance amount of Rs.72,311/- was paid to defendants 2 to 4. The execution of the Family Settlement Deed and subsequent suit for declaration of title followed by execution of the sale-deeds on the basis of the decree obtained by them are clearly collusive transactions intended to defeat the interest of the first respondent.

The counsel for the appellants contended that the appellants had entered into an agreement with Kare as early as on 20.10.1986 for purchase of suit property for a consideration of Rs.32,000/- per acre, but Kare, in turn, defeated their interest and transferred the property to his children. It is important to note that the appellants had not taken any steps to enforce the agreement entered into by them with Kare and they did not adduce any evidence to prove that they had taken any steps to enforce the alleged agreement. The two courts have rightly held that the family Settlement, the decree passed by the civil court and the various sale deeds executed by defendants 2 to 4 in favour of the appellants are collusive transactions brought about to defeat the interest of the first respondent. The respondents 2 to 4 had no previous agreement with the appellants for sale of this property, even then they readily executed the sale deeds in their favour.

In view of these factual circumstances, we do not find any merit in this appeal. The counsel for the appellants@@
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lastly contended that the appellants are in possession of the suit property and they had discharged the mortgage executed by Kare in favour of one Mohan Lal. It was prayed that the amount of Rs.60,000/- paid by the appellants to the mortgagee may be directed to be paid by the first respondent.

In the result, we direct the first respondent-plaintiff to deposit the balance consideration of Rs. 1,06,170/- before the executing Court and the appellants herein are directed to execute a sale-deed in favour of the first respondent-plaintiff, Deep Chand, within a period of two weeks thereafter. On their failure to execute the sale-deed, the first respondent- plaintiff would be at liberty to get the sale deed executed through court. The sale consideration to be deposited by the plaintiff shall be disbursed to these appellants as directed in the judgment and decree of the first Appellate Court. If these appellants produce a registered release-deed in respect of the mortgage in favour of Mohan Lal, entire sale consideration be disbursed to the appellants. If the appellants fail to produce a release deed within a period of 2 weeks of the date of the deposit of the amount by plaintiff, Deep chand, he would be allowed to get refund of Rs. 60,000/- and would be at liberty to redeem the mortgage.

The appeal stands disposed of. The cost of this appeal shall be borne by the parties.@@
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(U.C. Banerjee)

(K.G. Balakrishnan) @@
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February 23, 2001