

HON'BLE SRI JUSTICE M. SATYANARAYANA MURTHY

SECOND APPEAL No.994 of 2001

JUDGMENT:

This Second Appeal under Section 100 of Code of Civil Procedure (for short 'CPC') is filed by the appellant/defendant No.5 challenging the decree and judgment in O.S.No.774 of 1978 on the file of Principal District Munsif, Chittoor, who is respondent No.1 in A.S.No.159 of 1986 on the file of Additional Senior Civil Judge, Chittoor, whereby the suit filed by the plaintiff was dismissed by the trial Court and the same was allowed in appeal by the first appellate Court setting aside the decree Judgment of the trial Court.

2. For convenience of reference, the parties to the appeal will hereinafter be referred, as ranked in O.S.No.774 of 1978 before Principal District Munsif, Chittoor, through out the judgment.

3. The Appellant is the defendant No.5—G.Narayanaswami Naidu,S/o G. Subba Naidu, who is the alleged subsequent purchaser of the property. Plaintiff—Y. Narayanaswami Naidu filed suit for specific performance of agreement of sale executed by D.1 to D.4, marked as Ex.A.1, in favour of plaintiff, agreeing to sell the schedule property for Rs.5930/- and received Rs.1000/- as advance on the same day. Subsequently, the plaintiff came to know that defendant Nos. 1 to 4 executed registered Sale Deed dt. 5.07.1978 in favour of D.5 for Rs.7000/- conveying the schedule property in his favour. As the defendant Nos. 1 to 4 failed to execute the agreement of sale, despite readiness and willingness to perform his part of obligation of the plaintiff under

the agreement of sale, he demanded defendant Nos. 1 to 4 to execute registered sale deed, but they did not cooperate for the execution of registered Sale Deed by receiving balance of sale consideration. Therefore, defendant Nos. 1 to 4 being the vendors and defendant No.5 being the subsequent purchaser under Ex.A.2, are liable to execute registered Sale Deed in his favour and prayed to pass a decree in favour of plaintiff.

4. Defendant No.1 to 4 remained *ex parte*.

5. 5th defendant alone filed Written Statement contending that he is a *bona fide* purchaser for valuable consideration without notice of agreement of sale in favour of plaintiff while contending that Ex.A.1 was brought into existence in collusion with defendant Nos. 1 to 4 by the plaintiff to defeat the Sale Deed executed in his favour. It is further contended that he is continuing in possession and enjoyment of the property as a lessee from 1984 on payment of lease amount of Rs.300/- and when defendant Nos. 1 to 4 offered to sell the land, he agreed to purchase the same on 2.2.1998 and obtained agreement of sale for Rs.7,000/- and later he obtained regular Sale Deed and became absolute owner of the property, since then he is in continuous possession and enjoyment of the property, as owner. It is specifically contended that he paid consideration by discharging the debts due by defendant Nos. 1 to 4 to Chellamma under a Mortgage Deed Dt.15.07.1978, K. Chandra Reddy, amount due under a decree and also to Vasudeva Naidu. After execution of Sale Deed in favour of 5th defendant, there were some mis-understandings between him and other defendants regarding discharge of debt due to the aforesaid

persons and to K. Nagamma, who filed I.P.No.4/1979 on the file of Subordinate Judge's Court, Chittor. As it was against the wish of the defendants, the agreement of sale marked as Ex.A.1 with ante date was brought into existence by D.1 to D.4 in collusion with the plaintiff, who are closely related to one another, thus, defendant No.5 is *bona fide* purchaser for valuable consideration, without notice of agreement of sale marked as Ex.A.1, and he is entitled to protection under Specific Relief Act.

6. Basing on the pleadings, the trial Court framed the following issues for trial:

- i) Whether the plaintiff is entitled to specific performance of the suit agreement?
- ii) Whether the suit agreement is ante-dated?
- iii) Whether the Sale Deed in favour of defendant No.5 by defendant Nos. 1 to 4 is not true and valid ?
- iv) To what relief the plaintiff is entitled to?

7. During trial, on behalf of plaintiff, PWs. 1 to 4 were examined and Exs. A.1 and A.2 were marked. On behalf of defendants, Dws.1 and 2 were examined and Exs. B.1 and B.2 were marked.

8. Upon hearing argument of both counsel, the trial Court dismissed the suit with costs.

9. Aggrieved by the decree and judgment of the trial Court dismissing the suit, the unsuccessful Plaintiff preferred Appeal No.159 of 1986 before Additional Senior Civil Judge, Chittor, and the first appellate Court, after analyzing the entire evidence, came to the conclusion that the consideration paid under Ex.A.2 was not actually paid and the alleged payment of discharge of debt due to

various persons by Defendant No.5 was not reflected in the original of Ex.A.2—original of registered Sale Deed, apart from the fact that his continuation in possession and enjoyment as a lessee by the date of execution of original of Ex.A.2 is also not reflected, thereby concluded that original of Ex.A.2 is sham and nominal and that the alleged purchaser—D.5 is not a *bona fide* purchaser for valuable consideration without notice and passed a decree in favour of plaintiff directing defendant Nos. 1 to 4 to execute Ex.A.1—Agreement of Sale while directing defendant No.5 to join with D.1 to D.4 in execution of the registered Sale Deed.

10. Defendant No.5 in O.S.No.774 of 1978 on the file of Principal District Munsif, Chittor, being aggrieved by the decree and judgment of the first appellate Court, preferred the present Second Appeal raising several substantial questions of law.

11. The appellant formulated nine substantial questions of law in the ground of appeal. However, during hearing, this Court found only Question No.(a) and (b) are one question since (a) and (b) are having same effect and (c) and (d) as one question and other questions are not the questions of law much less substantial questions of law to be decided by this Court in the present appeal. Therefore, the following, are the substantial questions of law formulated by this Court are:

1) Whether the first appellate Court is right in decreeing the suit when the suit itself was filed for enforcing the terms of the agreement of sale—Ex.A.1 without seeking the relief of setting aside or canceling Ex.A.2—Sale Deed dt. 15.07.1978?

- 2) ***Whether the trial Court is right in holding that defendant No.5 is not a bona fide purchaser for valuable consideration, who is entitled to seek protection under Section 19 (b) of Specific Relief Act, if not, the decree and judgment of first Appellate Court is liable to be set aside?***

12. The first and foremost contention raised by the learned counsel for appellant/defendant No.5 before this Court, during argument, is that without seeking the relief of cancellation or setting aside the transaction covered by original Sale Deed dt. 15.07.1978, no decree can be passed for specific performance of contract or agreement of sale since the title is already transferred to defendant No.5 by executing original of Ex.A.2 and therefore, until cancellation or setting aside the transaction covered by original of Ex.A.2, he is deemed to be the owner of the property and the title cannot be divested by passing decree for specific performance. He further contended that defendant No.5 is a *bona fide* purchaser for valuable consideration since he discharged debts due by the defendant Nos. 1 to 4 to several creditors including the creditor who filed IP, since, Ex.A.1 is not a registered document, the question of attributing any notice to the appellant does not arise under Section 3 of Transfer of Property Act. Therefore, 5th defendant is a *bona fide* purchaser for valuable sale consideration without notice of Ex.A.1 and he is entitled for protection under Section 19(b) of Specific Relief Act. But, the first appellate Court did not consider these contentions in proper perspective and committed an error in decreeing the suit setting aside the decree and judgment passed by the trial Court and prayed to set aside the decree passed by first appellate Court in

A.S.No.159 of 1986 on the file of Additional Senior Civil Judge, Chittor, and dismiss the suit in toto.

13. Whereas, Sri V.R.Reddy, learned counsel for Respondent No.1, the plaintiff, would contend that the purpose of impleading the subsequent purchaser is only to re-convey the title, which vested on him, directing him to join in execution of regular conveyance in favour of original agreement holder, placed reliance on a judgment reported in ***Durga Prasad and another v. Deep Chand and others***¹. In such case, the question of seeking relief of cancellation of original Sale Deed—Ex.A.2 does not arise since the transfer of right in the property is permitted by impleading the subsequent purchaser.

14. He also further contended that the questions of law formulated by the appellants are not actual questions of law within the meaning of Section 100 of CPC since the questions (a) and (b) is not without any factual foundation in the Written Statement and therefore, the same cannot be considered as substantial questions of law and relied on a judgment reported in ***Santosh Hazari v. Purushottam Tiwari (dead) by Lrs.***², and ***Hero Vinoth (Minor) v. Seshammal***³ and on the strength of these principles, the learned counsel for appellant contended that substantial questions of law formulated by the appellants are not the substantial question of law and the Court need not to decide those questions in the present appeal. He also further drawn the attention of this Court to prove that defendant No.5 is not a *bona fide* purchaser for

¹ AIR 1954 SC 75

² AIR 2001 SC 965(1)

³ (2006) 5 SCC 545

valuable consideration, since the initial onus is not discharged by defendant No.5, who is claiming as *bona fide* purchaser, without notice, to claim protection under Section 19 (b) of Specific Relief Act and relied on a judgment of Apex Court in ***R. K. Mohammed Ubaidullah and others v. Hajee C. Abdul Wahab (deceased) by L.Rs⁴***, prayed to dismiss the second appeal on all grounds.

15. Based on rival submissions of both the counsel, I would like to answer the substantial question of law formulated by this Court in para No.11, as follows:

- 1) ***“Whether the first appellate Court is right in decreeing the suit when the suit itself was filed for enforcing the terms of the agreement of sale—Ex.A.1 without seeking the relief of setting aside or canceling Ex.A.2—Sale Deed dt. 15.07.1978?”***
- 2) ***Whether the trial Court is right in holding that defendant No.5 is not a bona fide purchaser for valuable consideration, who is entitled to seek protection under Section 19 (b) of Specific Relief Act, if not, the decree and judgment of first Appellate Court is liable to be set aside”?***

16. **Question No.1:** The first and foremost contention raised by the learned counsel for appellant/defendant No.5 is that without seeking cancellation of original Sale Deed, the relief of specific performance of agreement of sale cannot be granted. In the Written Statement, no such plea was raised and even otherwise no such plea was raised either before the trial Court or before the first Appellate Court inviting any finding from the Courts and as no such ground was raised, both the Courts below did not answer the

⁴ (2000) 6 SCC 402

question. But, for the first time, in the second appeal filed under Section 100 of CPC, such question is raised and invited a finding from this Court without any factual foundation.

17. Section 19 (b) of Specific Relief Act enables the plaintiff in a suit for specific performance to implead the subsequent purchaser as a party to the suit and the purpose of impleading the subsequent purchaser, a 3rd party to the agreement, is to divest the title, which is vested on the subsequent purchaser, on account of execution of regular registered Sale Deed. In fact, a suit for specific performance is only to compel the parties to the agreement to perform their obligation, but in special circumstances, when the property was transferred to a 3rd party, the subsequent purchaser can be impleaded to divest the title, which is vested on him on the date of execution of the document, though impleading of a 3rd party is beyond the scope of the suit for specific performance of contract or agreement of sale, since, the subsequent purchaser claiming title through vendor of plaintiff who is a party to the agreement. Therefore, the purpose of impleading the subsequent purchaser is only for limited purpose i.e, to divest the title that vested on him. Section 19 of Specific Relief Act deals with the category of persons against whom specific performance can be granted, it includes the persons claiming under them by subsequent title to him, and specific performance of a contract can be enforced. Among them, the subsequent purchaser is also included in Clause (b). However, a transferee, for value who has paid his money in good faith and without notice of the original contract is in the purview of the said clause but fall within the exception clause, a transferee, must say that he has purchased the

property for valuable consideration, which is the subject matter of the suit for specific performance of contract or agreement, and he has paid money to the vendor in good faith and he had no notice of the earlier contract of sale, specific performance of which is sought to be enforced against him. Thus, the principle embodied under Section 19 (b) of Specific Relief Act, extended protection to the *bona fide* purchaser for valuable consideration, who obtained a legal estate at the time of purchase without notice prior to agreement of sale, who is sought to be enforced in a suit for specific performance, is proper and necessary party to the suit.

18. The cancellation or annulment of Sale Deed i.e, an Instrument, is governed by Section 31 of Specific Relief Act (for short 'the Act') and not Sections 10 to 23 of the Act. The relief of cancellation or annulment of Sale Deed is independent relief. Therefore, a party to the instrument or document, alone is competent to annul the document or instrument, but if a 3rd party wanted to annul or cancel the document or instrument, such party has to seek a declaratory relief under Section 34 of Specific Relief Act, in view of the principle laid down in **Suhrid Singh @ Sardool Singh v. Randhir Singh and Others**⁵. Therefore, the plaintiff being a 3rd party to the instrument i.e., Original of Ex.A.2—registered Sale Deed, is incompetent to seek cancellation or annulment of original of Ex.A.2. In fact, he need not seek relief of cancellation, since, specific mode under Section 19 (b) of Specific Relief Act provides how to transfer the right vested on a 3rd party, who is subsequent purchaser. Therefore, the plaintiff need not

⁵ (2010) 12 SCC 12.

seek the relief of cancellation of the document in a suit for performance to divest the title that vested on a 3rd party i.e., subsequent purchaser.

19. Learned counsel for respondent No.1/plaintiff drawn the attention of this Court to a judgment reported in ***Durga Prasad's*** case, referred above, wherein the Apex Court to decide the necessity of subsequent purchaser to implead, the purpose or necessity of impleading the subsequent purchaser held that where there is a sale of the property in favour of a prior or subsequent transferee and the subsequent transferee has, under the conveyance outstanding in his favour, paid the purchase-money to the vendor, then in a suit for specific performance brought by the prior transferee, in case he succeeds, the question arises as to the proper form of decree in such a case. The practice of the Court in India has not been uniform and three distinct lines though emerge. According to one, the proper form of decree is to declare the subsequent purchase void as against the prior transferee and direct conveyance by the vendor alone. Second considers that both vendor and vendee should join, while a third would limit execution of the conveyance to the subsequent purchaser alone. Accordingly, the proper form of decree is to direct specific performance of the contract between the vendor and the prior transferee and direct the subsequent transferee to join in the conveyance so as to pass on the title which resides in him to the prior transferee. Thus, in view of the principle laid down in the above judgment, impleading of a 3rd party i.e., subsequent purchaser, and direct him to join in execution of the registered sale deed by his vendor in favour of the plaintiff, who obtained the

property after agreement of sale, is sufficient to convey title to the property while divesting the title that vested on him.

20. In any view of the matter, the plea raised before this Court is not based on any factual foundation in the Written Statement and such plea is raised before this Court for the first time in the second appeal. Even if it is a pure question of law, such contention is unsustainable.

21. This plea is supported by another judgment of the High Court of Himachal Pradesh reported in **Rajinder Singh v. Sushil Kumar and others**⁶ and the main contention raised before the High Court of Himachal Pradesh is that in a suit filed for specific performance, the plaintiff has to seek the relief of cancellation of sale deed executed in favour of a 3rd party, the appellant therein. In the absence of the relief, the suit could not have been decreed against the plaintiff. While considering [Section 19\(a\)\(b\)](#) of the Specific Relief Act, 1963 specific performance of a contract may be enforced against either party thereto or any other person claiming under him by a title arising subsequently to the contract, except a transferee for value who has paid his money in good faith and without notice of the original contract. The aforesaid provision is clear. The present appellant being a transferee subsequent to the agreement by vendor with the plaintiffs, decree for specific performance is executable against him even without seeking cancellation of the Sale Deed executed in his favour, by the original Owner. Therefore, the law declared by the High Court of Himachal Pradesh is directly on the issue, but it is not binding precedent,

⁶ AIR 2007 HP 1

however persuaded by the same and following the judgment of the Apex Court in **Durga Prasad**'s case, referred supra, this Court can safely conclude that the plaintiff is not required to seek, relief of cancellation of original Sale Deed marked as Ex.A.2 since one of the recognized mode of divesting the title is to implead a 3rd party and direct to execute sale deed in favour of plaintiff along with original vendors, the defendant Nos. 1 to 4 herein, Therefore, I find no force in the contention of learned counsel for appellant. Accordingly, the substantial question of law is answered in favour of plaintiff and against defendant No.5.

22. **Question No.2:** One of the major contentions of the 5th defendant is that he purchased the property prior to Ex.A.1 i.e., under agreement of sale and later obtained a registered Sale Deed while continuing in possession and enjoyment as a lessee on payment of annual lease of Rs.300/- and that he had no notice of execution of Ex.A.1, hence, he is entitled to protection under Section 19 (b) of Specific Relief Act.

23. Whereas, the contention of the respondent No.1 herein/plaintiff is that defendant No.5 is a subsequent purchaser and that no consideration was passed under original Registered Sale Deed and that the alleged agreement of sale and lease are concocted for the purpose of defence in the present suit to claim benefits under Section 19 (b) of Specific Relief Act. The basis for claiming title to the property is the original of Ex.A.2, the registered Sale Deed. As seen from Ex.A.2, equivalent to Ex.B.1, cash consideration of Rs.7000/- was paid on the date of execution of

original of Ex.A.2. Ex.B.2 is an agreement under which defendant No.5 allegedly purchased the property prior to execution of Ex.A.1.

24. A bare look at the contents of Ex.A.2, there is no reference about Ex.B.2 and payment of any amount towards advance of sale consideration. If really, defendant No.1 purchased the property under Ex.B.2—agreement of sale on 2.2.1978, he is a prior purchaser of the property since Ex.A.1 is dated 1.07.1978. If really, he purchased the property, there must be reference about the execution of agreement of sale in Ex.A.1 and payment of advance and receipt of balance on the date of execution of the registered sale deed. In the absence of any such reference, Ex.B.2 cannot be believed.

25. To claim benefit under Section 19 (b) of Specific Relief Act, it is for the defendant to prove that he purchased the property without notice of earlier agreement of sale of Ex.A.1 and that he paid money under the registered Sale Deed *bona fide* without notice. The burden is upon defendant No.5 to establish that he is a *bona fide* purchaser for valuable consideration. Otherwise, he is disentitled to claim benefit under Section 19 (b) of Specific Relief Act.

26. In R.K. **Mohammed Ubaidulla**'s case, referred supra, the Apex Court while considering purport of Section 19 (b) of Specific Relief Act and rights of a *bona fide* purchaser for valuable consideration held that when a party claiming that he purchased the property, without notice of earlier agreement of sale, paid money in good faith, has to prove that he purchased the property *bona fide* by paying money consideration and held as follows:

“As can be seen from Section 19 (a) and (b) extracted above specific performance of a contract can be enforced against (a) either party thereto and (b) any person claiming under him by a title arising subsequent to the contract, except a transferee for value who has paid his money in good faith and without notice of the original contract. Section 19(b) protects the bona fide purchaser in good faith for value without notice of the original contract. This protection is in the nature of exception to the general rule. Hence the onus of proof of good faith is on the purchaser who takes the plea that he is an innocent purchaser. Good faith is a question of fact to be considered and decided on the facts of each case. Section 52 of the Penal Code emphasizes due care and attention in relation to the good faith. In the General Clauses Act emphasis is laid on honesty.”

27. As can be seen from Section 19 (a) and (b) of Specific Relief Act, specific performance of contract can be enforced against either party thereto or any other person claiming under him by a title arising subsequently to the contract, except a transferee for value who has paid his money in good faith and without notice of the original contract. Section (b) of the Act, protects the bona fide purchaser in good faith for value without notice of the prior contract. This protection is in the nature of exception to the general rule. Hence, the onus of proof of good faith is on the purchaser who take the plea that he is an innocent purchaser. Good faith is a question of fact to be considered and decided on the facts of each case.

28. Earlier, in **Mummidi Reddi Papannagari Yella Reddy v. Salla Subbi Reddy**⁷ this Court took similar view and held that an explanation was introduced to the Transfer of Property Act by the amending Act 21 of 1929. Even prior to this amendment, the law,

⁷ AIR 1954 AP 20

as declared in decided cases, was that, when a person purchased property from the owner knowing that it is in the possession of another, he is under a duty to inquire into the nature of that possession, and, in the absence of such inquiry, knowledge of title under which possession is held, should be attributed to the purchaser.

29. In view of the principles laid down in the above judgments, the onus of proof is on the subsequent purchaser and such question of good faith is a question of fact, which cannot be decided by this Court while exercising jurisdiction under Section 100 of CPC and as such, the question would not give rise to substantial question of law. The first appellant Court, on analyzing the entire evidence both oral and documentary, concluded that defendant No.5 is not a *bona fide* purchaser for valuable consideration in good faith and such fact finding cannot be disturbed by this Court while exercising jurisdiction under Section 100 of CPC.

30. In any view of the matter, defendant No.5, in the Written Statement as well as in the evidence, pleaded that he did not pay cash consideration under sale deed original of Ex.A.2 to defendants Nos.1 to 4 but, discharged debts of various persons including K. Nagamma, who filed IP No.4/1979 against defendant Nos.1 to 4 to adjudge them, as insolvents. Thus, the oral evidence and plea raised by the appellant in Written Statement of defendant No.5 regarding passing of consideration under Ex.A.2 creates any amount of suspicion about payment of consideration under Ex.A.2. When passing of consideration is not proved by satisfactory

evidence, such sale in favour of defendant No.5 by Defendant Nos. 1 to 4 cannot be accepted since no cash consideration was paid as recited in the original of Ex.A.2. When Sale deed was executed in respect of the property, which is the subject matter in a suit for specific performance, and when the sale is found to be sham and nominal and no cash consideration was paid under the sale deed, decree for specific performance, has to be confirmed by the Court.

31. A similar question came up for consideration before the Allahabad High Court in **Ramji and others Vs. Chokat and others**⁸, wherein it is held that when no consideration was passed under sale deed obtained by a 3rd party subsequent to the execution of the sale deed in favour of the plaintiff, such subsequent purchaser being a defendant in the suit for specific performance is not entitled to seek protection under Section 19 (b) of Specific Relief Act.

32. One of the contents raised by the learned counsel for appellant/defendant No.5 is that he is in continuous possession and enjoyment in the schedule property as a lessee, but the said lease was not referred in Ex.B.1, which is the basis for claiming right in the property by defendant No.5. In the absence of such recital, the contention of defendant No.5 regarding his continuous possession in the schedule property cannot be accepted.

33. The appellate Court clearly recorded its findings that defendant No.5 is not a *bona fide* purchaser and he did not pay any consideration as recited in original of Ex.A.2 and thereby, he is not entitled to protection under Section 19 (b) of Specific Relief Act.

⁸ AIR 2004 Allahabad 364

34. Even on consideration of entire material on record, the alleged good faith in payment of money by defendant No.5 is not a substantial question of law and it is a question of fact and the first appellate Court rightly concluded that defendant No.5 is not a *bona fide* purchaser for valuable consideration in good faith since good faith was not established and even after re-appraisal of entire material on record, hence, I find no ground to interfere with the decree passed by the first appellate Court, as the appellate Court rightly set aside findings in O.S.No.774 of 1978 recorded by Principal District Munsif, Chittor, directing defendant Nos. 1 to 4 to execute a registered sale deed in favour of plaintiff while directing defendant No.5 to join with them as one of the executants so as to divest the title which vested on him being a subsequent transferee. Accordingly, the point is answered in favour of plaintiff and against defendants.

35. In the result, this Second Appeal is dismissed confirming the decree and judgment in A.S.No.159 of 1986 on the file of Additional Senior Civil Judge, Chittoor. No costs.

As a sequel, miscellaneous petitions, if any, pending in this case, shall stand closed.

M. SATYANARAYANA MURTHY, J

Date: 16-09-2016.

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HON'BLE SRI JUSTICE M. SATYANARAYANA MURTHY



SA No. 994 of 2001

Dt. 16-09-2016

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