

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

909 SECOND APPEAL NO. 246 OF 2016

SULTANA BEGUM MUMTAZKHAN PATHAN
VERSUS
ASLAM KHAN KARIM KHAN AND OTHER

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Advocate for Appellant : Mr. A. G. Dalal
Advocate for Respondent no.1 : Mr. V. M. Maney

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CORAM : V. K. JADHAV, J.
DATED : 21st MARCH, 2018

PER COURT:-

1. Heard finally with consent at admission state.
2. The present respondent no.1/plaintiff has instituted RCS No.228 of 2006 for specific performance of contract. Respondent no.2/Original defendant no.1 has executed an agreement of sale on 13.07.2005 and thereby agreed to sell 8 R of land situated in gut no.14 of village Narsi Namdeo, Taluka and District Hingoli to respondent no.1/plaintiff. At the time of execution of the agreement of sale, defendant no.1 has accepted the advance amount of consideration of Rs.25,000/- and it was agreed between the parties that after paying remaining

consideration, respondent no.2/ defendant no.1 will execute the sale deed in respect of aforesaid land. It is further case of the respondent no.1/plaintiff that defendant no.1 has avoided to execute the sale deed and thus, he was constrained to institute the suit for the aforesaid reliefs. During pendency of the suit, the present appellant/original defendant no.2 has purchased 3 R of land out of above mentioned 8R land from defendant no.1. Consequently, respondent no.1/plaintiff has amended the plaint by impleading the appellant/original defendant no.2 as party defendant and accordingly the suit was proceeded. The appellant/original defendant no.2 has also resisted the suit by filing the written statement. The trial court by judgment and decree dated 03.05.2010 decreed the suit and thereby directed defendant no.1 to execute the sale deed in respect of suit land bearing gat no.14, admeasuring 8 R land situated at village Narsi Namdeo in favour of the plaintiff within three months and further directed the plaintiff to deposit Rs.5,800/- towards balance consideration amount and also declared that the sale deed executed in favour of the present appellant/original defendant no.2 is null and void. Aggrieved by the same, appellant/original defendant no.2 preferred Regular Civil Appeal

no.24 of 2010 and the learned Adhoc District Judge-1, Hingoli by judgment and order dated 21.02.2014, dismissed the appeal and confirmed the judgment and decree passed by the trial court. Hence, this second appeal.

3. Learned counsel for the appellant/original defendant no.2 submits that the appellant was not having knowledge of the alleged agreement and she was the bonafide purchaser for the value without notice. Learned counsel submits that this is a collusive suit between original plaintiff /respondent no.1 and respondent no.2 /original defendant no.1 and both the courts below have committed an error in applying the principles of lis pendens. Learned counsel submits that the courts below ought to have been applied principles of equity.

4. Learned counsel for the respondent no.1/original plaintiff submits that the plaintiff and defendant no.1 are the real brother interse and the present appellant is their cousin. There is no question of instituting a collusive suit. The appellant/original defendant no.2 has examined the defendant no.1 as her witness and in cross-examination, the said witness has given a specific

admission to the effect that he had given information to the appellant / defendant no.2 that the suit is pending in the court in respect of the suit property. Learned counsel submits that courts below, therefore, rightly observed that the defence of the appellant/original defendant no.2 that she is a bonafide purchaser without notice cannot be accepted. Learned counsel submits that admittedly the appellant/defendant no.2 has purchased the land under the sale deed during the pendency of the suit and as such the present appellant/original defendant no.2 is bound by the decree. The said transaction in between the defendants interse hit by principle of lis-pendens.

5. On careful perusal of the impugned judgment and decree passed by the court below and the record and proceedings, I find that no substantial question of law is involved in the present appeal. Admittedly, appellant/defendant no.2 has purchased the suit land to the extent of 3 R from original defendant no.1 during the pendency of RCS No. 228 of 2006. According to the appellant/defendant no.2, she is the bonafide purchaser without notice and the transaction in question is not hit by the principle of lis-pendens for the reasons that the plaintiff and defendant

no.1 in collusion with each other instituted the suit. However, I do not find any substance in the submissions made on behalf appellant/original defendant no.2. The appellant/original defendant no.2 has examined the original defendant no.1 as her witness and the said witness has given admission in cross-examination that he had given information in advance to the appellant/defendant no.2 that the suit is pending in respect of the suit property. Thus, courts below have rightly observed that the theory of bonafide purchaser for the value without notice cannot be accepted. Further, transaction between defendants inter-se is hit by principle of lis-pendens. The courts below have, therefore, rightly granted the declaration as sought by respondent no.1/original plaintiff in respect of sale deed executed by respondent no.2/original defendant no.1 in favour of the present appellant/original defendant no.2. The appellant/defendant no.2 is bound by the decree passed against respondent no.2/original defendant no.1 and as such the sale deed executed in her favour by respondent no.2/defendant no.1 in respect of the suit property to the extent of 3 R is also not binding on respondent no.1/original plaintiff.

6. Section 52 of the Transfer of the Property Act, 1882 which provides for the rule of lis-pendens, overrides section 19(b) of the Specific Relief Act. Therefore, transfer of immovable property pending a suit relating to that property, does not affect the decree passed in that suit. A person, who has purchased the suit property pending suit, is bound by the decree passed in the suit. In view of the same, the first appellate court while recording to point no.4 held that the plaintiff is entitled for the relief of specific performance of contract along with the relief of possession. I find no fault in the same. Hence, I proceed to pass the following order.

ORDER

I) The second appeal is hereby dismissed. No costs.

(V. K. JADHAV, J.)

vsm/