IN THE HIGH COURT OF JUDICATURE AT PATNA
SECOND APPEAL No.717 of 1986

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1. Jonha Devi, Wife of Late Janki Rai
2. Awadh Bihari Rai, Minor Son of Late Janki Rai
3. Lalita Kumari, Minor Daughter of Late Janki Rai, under the guardianship of their mother Jonha Devi, both residents of village Barheya, P.O. & P.S. Barauli, District Gopalganj

... ...Defendants… …Appellants… ... Appellants

Versus

1. (a) Dinesh Singh, S/o Late Jamadar Rai
   (b) Harkesh Singh, S/o Late Jamadar Rai
   (c) Pintu Devi, D/o Late Jamadar Rai
   (d) Ragini Devi, D/o Late Jamadar Rai
   (e) Juli Devi, D/o Late Jamadar Rai, All are resident of village Barheya, P.O. & P.S. Barauli, District Gopalganj
2. (a) Bhola Mian, S/o Late Saidque Mian, R/o Village Barheya, P.O. & P.S. Barauli, District Gopalganj

Plaintiffs ... … Respondents … ... Respondents

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Appearance :

For the Appellant/s : Mr. Shashi Shekhar Dvivedi, Sr. Advocate
Mr. Parth Gaurav, Advocate
Mr. Ranjan Kumar Dubey, Advocate
Mr. Rakesh Chandra, Advocate
Mr. Anshu Raj Singh, Advocate
Ms. Shambhavi Shankar, Advocate

For the Respondent/s : Mr. Kumar Uday Singh, Advocate
Mr. Sudhir Kumar Singh, Advocate
Mr. Pankaj Kumar Dubey, Advocate

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Appeal against the judgment dated 08.08.1986 and decree dated 22.08.1986 passed by Sri Bishwadeo Narain Singh, learned 3rd Additional District Judge, Gopalganj in Title Appeal No. 10 of 1979 affirming the judgment dated 22.12.1978 and decree dated 06.01.1979 passed by Sri Dina Nath Prasad, learned 2nd Additional Subordinate Judge, Gopalganj in Title Suit No. 622 of 1974/189 of 1976.

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CORAM: HONOURABLE MR. JUSTICE BIRENDRA KUMAR

C.A.V. JUDGMENT

Date :07-03-2019

Heard learned counsel for the parties.

2. This appeal under Section 100 of the Code of Civil Procedure (in short the "C.P.C.) is against the concurrent finding of fact recorded by the learned courts below in a suit for specific performance of contract to execute and register sale deed in respect of immovable property.

3. On 26.11.1987, this Court admitted the appeal for hearing on following substantial questions of law:-

(i) Whether due to absence of plea of willingness in the plaint as well as evidence of plaintiff, the suit is bound to fail?

(ii) Whether the judgments of the Courts below are vitiated in law due to lack of recording a finding on the point of readiness and willingness of the plaintiff to perform his part of the contract?

(iii) Whether the judgment of the lower appellate court is vitiated in law due to absolute non-consideration of the oral evidence of the defendants-appellants, who are twelve in number and those evidences are vital for reaching at a correct conclusion?

During hearing of this appeal, one more question was raised.

(iv) Whether the courts below were consistent with the law that principle of lis pendens would apply against the claim of the appellant?

4. Original plaintiff Jamadar Rai brought Title Suit No. 622 of 1974 against sole defendant Sadique Mian pleading therein that the suit property mentioned in the plaint was owned and possessed by the sole defendant Sadique Mian. Sadique Mian agreed to sale the suit property measuring 17 Kathas and 4 Dhurs in favour of the plaintiff on total consideration money of Rs.6,500/- (six thousand five hundred). Out of the total consideration money, Rs.4,000/- (four thousand) of the plaintiff was already due with Sadique Mian in pursuance of a hand note of borrowing executed by Sadique Mian in favour of the plaintiff vide Ext. 3. Rs.700/- (seven hundred) was due against mortgage by Sadique Mian in respect of a portion of the suit land in favour of one Kailash Rai. The remaining amount of Rs.1,800/- (one thousand eight hundred) was to be paid at the time of execution and registration of the sale deed. The entire terms and conditions was incorporated in an agreement to sale between the parties dated 06.03.1973 at Ext. G. It is worth to mention that Ext. G is missing from the record and the parties agreed for hearing of this appeal in absence of Ext. G. According to the plaintiff, in pursuance of the agreement, a sale deed was drafted on stamp paper on 14.07.1973 at the Registry Office. One Murli Prasad had scribed the deed on the dictate of Sadique Mian. Thereafter, the deed was read over to Sadique Mian and Sadique Mian put his L.T.I in presence of witnesses Ramawatar Singh and Awadh Tiwary already examined in the suit. Before putting his L.T.I., Sadique Mian received Rs.1,500/- (one thousand five hundred) out of the dues of Rs.1,800/- (one thousand eight hundred) of the consideration money but it was too late, hence, the document could not be presented for registration before the Registrar. The remaining amount of Rs.300/- (three hundred) was to be paid at the time of return of the receipt of the sale deed by Sadique Mian to the plaintiff. However, Sadique Mian insisted for payment of the rest amount of Rs.300/- (three hundred) pressing his urgent need and the plaintiff paid the said amount to Sadique Mian and kept the original sale deed with himself. However, Sadique Mian did not turn up ever for admission of execution before the Registrar and registration of the document which led to the filing of the suit.

5. During pendency of the suit, the plaintiff came to know that Sadique Mian had sold away the suit land through registered sale deed to one Janak Rai on 26.09.1974 vide Ext. C.

Thereafter, Janak Rai was impleaded as defendant no. 2. The plaintiff amended the plaint and challenged the sale deed by Sadique Mian in favour of Janak Rai as collusive, forged and fabricated document and non-operative.

6. Sadique Mian filed written statement disputing claim of the plaintiff that Sadique Mian ever agreed to sale or executed sale deed to plaintiff. Rather asserted that he had sold the suit property to Janak Rai for adequate consideration. Thereafter, Sadique Mian did not contest the suit or the appeal before the court below.

7. Defendant no. 2 Janak Rai filed his separate written statement adopting the case and claim of Sadique Mian and asserting that, in fact, Sadique Mian had entered into an agreement to sale the suit property in favour of defendant no. 2 Janak Rai on 06.03.1973 vide Ext. E and thereafter Sadique Mian went to Kolkata and after his return, he executed the registered sale deed dated 26.09.1974. Moreover, defendant no. 2 is a bona fide purchaser for consideration without notice of any agreement with the plaintiff, hence, the contract cannot be enforced especially against defendant no. 2.

8. On consideration of evidence on the record, the learned trial court came to the conclusion that the plaintiff has proved that the hand note and the sale deed dated 14.07.1973 (Ext. 2) were executed by Sadique Mian. For coming to the aforesaid conclusion, the trial court considered the evidence of the witnesses on the documents. The evidence of scribe and the evidence of expert, who compared the admitted signature of Sadique Mian on Ext.2A, which was a sale deed executed by Sadique Mian in favour of one Shambhu Nath Kuer with his disputed signature on the hand note and the sale deed vide Ext. 2.

9. The learned trial court doubted the genuineness of the agreement to sale as well as sale deed in favour of defendant no. 2 said to be executed by defendant no. 1 on the ground that they were collusive and created documents. For the aforesaid reasoning, the trial court considered the case of defendant no. 2 that after agreement to sale in his favour Sadique Mian went to Kolkata and he returned only in the month of September to execute registered sale deed dated 26.09.1974 in favour of defendant no. 2. The Court doubted the correctness of the version for the reason that it is admitted case of Sadique Mian that he had gone along with brother of the plaintiff to the Registration Office on 14.07.1973 for getting a loan sanctioned, however, his L.T.I's on stamp papers and blank papers were used as so-called agreement to sale and sale deed. Therefore, according to the courts below Sadique Mian was present on 14.07.1973 as well as on 09.08.1974 while executing a registered sale deed in favour of Mukhtar Rai, the full-brother of the plaintiff vide Ext. 2B. Therefore, according to the trial court, on getting knowledge of the filing of the suit, defendants created and brought those documents into existence to defeat the claim of the plaintiff.

10. The learned lower appellate court formulated two points for consideration: (i) Whether Sadique Mian had really entered into agreement to sale the suit land to the plaintiff Jamadar Rai and whether the unregistered sale deed dated 14.07.1973 is valid genuine and for consideration? (ii) Whether defendant no. 2 is a bona fide purchaser of the suit land for value and without notice? The lower appellate court affirmed the judgment of the trial court on both the points aforesaid and held that defendant no. 2 is not a bona fide purchaser for consideration. Both the courts below have observed that the principle of lis pendens would be applicable against defendant no. 2.

11. During pendency of the appeal before the learned court below, the defendant no. 2 died and his legal heirs were substituted, who are appellants herein. Likewise, the original plaintiff has also died and legal heirs are contesting this appeal.

12. Before adverting to the rival contention of the parties, it would be apt to note that the High Court cannot interfere with the concurrent finding of fact recorded by the learned courts below unless the same is found to be perverse being based on no evidence or contrary to the evidence available on the record or that on the basis of evidence on record, no reasonable person could have come to the conclusion reached by the learned courts below.

13. This Court cannot substitute its own reason against the reasons of the learned courts below based on the same evidence on the record.

Question No. 1 and 2

14. Contention of the learned counsel for the appellant is that in a suit for specific performance of contract, the plaintiff is bound to specifically plead and prove by evidence his willingness and readiness to perform his part of the contract. In the present case, the plaintiff has failed to discharge the burden, hence, contrary view of the learned courts below is not sustainable in law.

15. The record reveals that in para 8 of the plaint, the plaintiff has specifically pleaded his readiness and willingness to perform his part. The plaintiff as P.W. 2 in para 4 has specifically stated that he is ready and willing to perform his part of the contract. Learned trial court has recorded finding of readiness and willingness in para 5 of the judgment.

16. To my view, in the facts and circumstances of this case, there is substantial compliance of the requirement of law for the reason that plaintiff has left nothing to be performed on his part in pursuance of agreement between the parties. The plaintiff has asserted that he has already paid entire consideration money to Sadique Mian. He has already taken possession of the land. The sale deed is already drafted and executed on adequate stamp and only thing left to be performed is on the part of Sadique Mian to admit the execution before the Registrar and registration of the document. Accordingly, this question is stand answered against the appeal.

<u>Question No. 3</u>

17. Contention of the learned counsel for the appellant is that the learned lower appellate court was final Court of fact, as such, was required to discuss all the oral and documentary evidences adduced on behalf of the parties.

In the present case, learned lower appellate court has not even referred the oral evidences adduced on behalf of the defendant-appellant, as such, the judgment of the learned lower appellate court is vitiated in law.

18. On the other hand, contention of the learned counsel for the respondent is that the learned trial court has referred those evidences and they were not required to be restated as the dispute between the parties was mainly based on documentary evidences which can not be excluded by oral witnesses.

19. Learned counsel has drawn attention of the Court that D.W. 1 Md. Usman is a photographer of L.T.I., D.W. 2 Syed Iqbal Taiyaba Hasan is expert who compared the admitted L.T.I. with disputed L.T.I., D.W. 3 Bijendra Kishore Prasad is a draftman who has drafted the deed in favour of the original defendant no. 2, D.W. 4 Brijnandan Sahay is also a draftman, D.W. 5 Janaki Rai is party-defendant no. 2 and his evidence has been discussed by the leaned lower appellate court, D.W. 6 Sri Bhagwan Singh has supported that Sadique Mian had executed a sale deed in favour of defendant no. 2 Janaki Rai. Same is the statement of D.W. 7 Indrasan Prasad, D.W. 8 Chandradeo Singh, D.W. 9 Amla Rai and D.W. 10 Yogendra Rai. D.W. 11 Achuta Nand Prasad and D.W. 12 Birendra Prasad are formal witnesses who have proved the documents.

20. Contention of the learned counsel for the respondent is that no failure of justice has been caused to the appellant by non-reference of the aforesaid oral evidences, in view of the finding of the learned lower appellate court in para 21 of the judgment as follows:

> "………………. According to the plaintiff, it appears that Sadique Mian left for Assam or Bengal shorty after the execution of the agreement to sale dated 06.03.1973 (wrongly typed as unregistered sale deed dated 14.07.1973) in favour of the plaintiff. The written statement of Sadique Mian categorically admits the fact that he was present here when came to Gopalganj on 13.07.1973 for obtaining bank loan. This clearly goes to show that Sadique Mian either did not go to Assam or Bengal from March, between 1973 to 13.07.1973 or even if he went to Assam on 06.03.1973 as stated by the appellant, he was available in his village, during the month of July, 1973 and more surely at least on 13.07.1973. There is no explanation from the appellant as to why he did not get his registered sale deed executed during July, 1973 when Sadique Mian was present in his village. Therefore, the contention of the appellant is that Sadique Mian left for Assam on 06.03.1973 itself after executing the Mahada and, hence, the registered sale deed Ext. C could be executed on 26.09.1974. On his return from Assam does not appear to be true. This amply shows that the Mahada Ext. C has been antedated by both the defendant no. 1 and 2. Ext. C registered sale deed dated 26.09.1974 might be for value without notice but it cannot obliterate or supersede or out way or override the valid and genuine unregisteed sale deed Ext. 2 executed in favour of the plaintiff by Sadique Mian on 14.07.1973. Secondly, this

> Ext. C has been executed during the pendency of the suit, hence, legally it is not enforceable. However, the appellant is at liberty to recover from Sadique Mian whatever consideration money was paid by him to Sadique Mian under Ext. C. Accordingly, this point is decided."

21. Thus, according to the learned lower appellate court even if it is assumed that the transaction between defendant no. 1 and defendant no. 2 was for value and without notice of the earlier transaction that is unenforceable as the principle of lis pendens comes in the way.

22. The law is settled that if the learned lower appellate court would have reversed the finding of the trial court it was bound to go through the evidence and reasoning of the trial court in details. When the finding of the learned trial court is affirmed the non-discussion of formal evidences by the learned lower appellate court does not make a case of substantial question of law because the reference of those evidences could not have led to a different finding recorded in the case by the learned lower appellate court. Accordingly, it is held that no failure of justice has been caused for non-discussion of above referred oral evidences by the lower appellate court. Therefore, this question is also answered against the appellant.

<u>Question No. 4</u>

23. Learned counsel for the appellant submits that the suit was filed on 26.08.1974 with incomplete court-fee and the deficit court-fee was paid on 11.10.1974 and on 14.10.1974 and admittedly the suit was admitted for hearing on 14.10.1974. Therefore, the sale deed executed by defendant no. 1 in favour of original defendant no. 2-appellant herein on 26.09.1974 vide Ext. C was prior to the institution of the suit, hence, the principle of lis pendens is not applicable.

24. Learned counsel has drawn attention of the Court on Section 6 of the Court-fees Act, 1970 which provides that no document of any of the kinds specified as chargeable in the First or Second Schedule to this Act annexed shall be filed, exhibited or recorded in any Court of Justice, or shall be received or furnished by any public officer, unless in respect of such document there be paid a fee of an amount not less than that indicated by either of the said schedules as the proper fee for such document. According to learned counsel, the plaint is chargeable with court-fee under Schedule-I of the Act and in absence of sufficient court-fee, the plaint should not have been received/accepted. If it was accepted ignoring the requirement of law, the acceptance was not valid acceptance till entire court-fee was paid and the plaint was admitted for hearing. Reliance has been placed on case of

Raghunath Ganesh Thakar v. **Vaman Vasudev Chitale** reported in **AIR (37) 1950 Bombay 234**.

25. On the other hand, learned counsel for the respondents submits that the institution of the suit is deemed from the date of presentation of the plaint. Reference has been made to the provisions of Section 26 of the Code of Civil Procedure and Section 52 of the Transfer of Property Act, 1882 which are being reproduced below:-

> "Section 26(1) of the C.P.C. I**nstitution of suits**.--- Every suit shall be instituted by the presentation of a plaint or in such other manner as may be prescribed.
> Section 26(2) of the C.P.C. In every plaint, facts shall be proved by affidavit."

26. Section 52 of the Transfer of Property Act, 1882 reads as follows:

> "Section 52. Transfer of property pending suit relating thereto. ---- During the pendency in any Court having authority within the limits of India excluding the State of Jammu and Kashmir or established beyond such limits by the Central Government of any suit or proceedings which is not collusive and in which any right to immovable property is directly and specifically in question, the

property cannot be transferred or otherwise dealt with by any party to the suit or proceeding so as to affect the rights of any other party thereto under any decree or order which may be made therein, except under the authority of the Court and on such terms as it may impose."

"Explanation.--- For the purposes of this section, the pendency of a suit or proceeding shall be deemed to commence from the date of the presentation of the plaint or the institution of the proceeding in a Court of competent jurisdiction, and to continue until the suit or proceeding has been disposed of by a final decree or order and complete satisfaction or discharge of such decree or order has been obtained, or has become unobtainable by reason of the expiration of any period of limitation prescribed for the execution thereof by any law for the time being in force."

27. The explanation to the aforesaid section as well as Section 26(1) of the C.P.C. clearly provides that pendency of a suit or proceeding shall be deemed to commence from the date of presentation of the plaint in a Court of competent jurisdiction.

28. In the present case, it is not disputed that the plaint was presented on 26.08.1974, hence, the suit between the parties was already instituted before a competent court, as such, the principle of lis pendens was applicable on fulfillment of other conditions. One of the parties to the suit i.e. defendant no. 1 transferred the suit property to a third party which was subsequently added as defendant no. 2 and the transaction affected the right of the plaintiff in the suit property, hence, on this ground also, the suit was hit by the principle of lis pendens.

29. Section 149 of the C.P.C. empowers the Court to accept deficit court-fee. The provision reads as follows:

> "Section 149 of the C.P.C. Power to make up deficiency of Court-fees. --- Where the whole or any part of any fee prescribed for any document by the law for the time being in force relating to Court-fees has not been paid, the Court may, in its discretion, at any stage, allow the person, by whom such fee is payable, to pay the whole or part, as the case may be, of such Court-fee; and upon such payment the document, in respect of which such fee is payable, shall have the same force and effect as if such fee had been paid in the first instance."

30. The provisions of Section 4 of the Court-fees Act, 1870 and Section 149 of the C.P.C. were subject matter of consideration before the Hon'ble Supreme Court in **Mannan Lal** Vs. **Mst. Chhotka Bibi (dead) by her legal representative and others** reported in **AIR 1971 SC 1374** observed as follows:

> "Apart from the decisions bearing on the point, there can in our opinion, be no doubt that Sec. 4 of the Court Fees Act is not the last word on the subject and the Court must consider the provisions of both the Act and the Code to harmonise the two sets of provision which can only be done by reading Section 149 as a proviso to Section 4 of the Court Fees Act by allowing the deficiency to be made good within a period of time fixed by it. If the deficiency is made good no possible objection can be raised on the ground of the bar of limitation: the memorandum of appeal must be treated as one filed within the period fixed by the Limitation Act subject to any express provision to the contrary in that Act and the appeal must be treated as pending from the date when the memorandum of appeal was presented in Court. In our view it must be treated as pending from the, date of presentation not only for the purpose of limitation but also

> for the purpose of sufficiency as to court-fee under Section 149 of the Code."

31. In **Baijnath Prasad Singh and others** v. **Umeshwar Singh and others** reported in **AIR 1937 Patna 550**, a Special Bench of Patna High Court observed as follows:

> "The Court has a double function: it has its judicial function to hear and decide cases; it also acts as a Collector of Revenue, and its duty is to collect the revenue for the Government in the shape of court-fees according to the statues provided, and in exercising that function it has a discretion granted it to allow time. In the exercise of both of these functions, Subordinate Courts are under the direction of the High Court."

32. From the aforesaid propositions, it is evident that institution of the suit starts on the date of presentation of the plaint before the competent court. The plaint can be rejected in different circumstances under Order 7, Rule 11 of the C.P.C. One of the circumstance is non-payment of deficit court-fee within time allowed by the Court. The Court is empowered to grant extension of time for payment of deficit court-fee. In this case, the court-fee was paid within time granted by the Court. The suit would be deemed to be presented on the date of its presentation. Therefore, it is held that defendant no. 1 transferred the suit property in favour of defendant no. 2 during pendency of the suit.

33. Learned counsel for the appellant next contends that right of the appellant being subsequent transferee from defendant Sadique Mian is protected under Section 19(b) and Section 27(2)(c) of the Specific Relief Act, 1963. Section 19(b) of the Specific Relief Act provides for enforcement of specific performance of contract against 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 earlier contract.

34. Sub-section 1 of Section 27 of the Specific Relief Act, 1963 provides for rescission of contract. Sub-section 2 thereof reads as follows:

> "Section 27(2) Notwithstanding anything contained in sub-section (1), the Court may refuse to rescind the contract---
> (a) xxxx
> (b) xxxx
> (c) where third parties have, during the subsistence of the contract, acquired rights in good faith without notice and for value."

35. The applicability of the aforesaid provisions was considered by the Allahabad High Court in **Ganga Charan** v. **Bans Bahadur Singh and another** reported in **AIR 1975 Allahabad 25**. While interpreting Section 52 of the Transfer of Property Act, the Court observed in para 10 of the judgment as follows:

> "10. The words "and in which any right to immovable property is directly and specifically in question" are broad enough to include a suit for specific performance inasmuch as in such suits right to immovable property is directly and specifically in question. There is a consensus of opinion on this point that Section 52 of the Transfer of Property Act would apply to suits for specific performance of the contract."

36. In para 14 of the judgment, the Hon'ble Allahabad High Court observed as follows:

> "14. In a Madras case Vedachari v. Narasimha Mudali, 76 Ind Cas 793 = (AIR 1924 Mad 307) the Bench clearly held that "the doctrine of lis pendens applies to suits for specific performance or agreements to sell

> immovable properties just as much as to suits for possession of the same."

37. The applicability of the principle of lis pendens vis a vis protection to the bona fide purchaser for value and without notice was subject matter of consideration in **Guruswamy Nadar** v. **P. Lakshmi Ammal (D) by L.Rs. & Ors.** reported in AIR 2008 SC 2560. Para 3 and 4 of the judgment is being reproduced below:

> "3. We have heard learned counsel for the parties and perused the record. It will be relevant to mention here that the second purchase by the appellant was on 5.5.1975 i.e. two days after the filing of the suit for specific performance on 3.5.1975. Though the applicability of Section 52 of the Transfer of Property Act, 1882 was not considered by the trial court, however, the first appellate court i.e. learned Single Judge while granting the decree for specific performance found that the subsequent purchase made by the appellant-defendant was also bona fide for value and without notice of the agreement to sell but the said sale was subordinate to the decree that could be made in the suit for specific performance which was instituted prior to the sale in favour of the second purchaser. The main argument which was advanced before learned Single Judge was that Section 19 of the Specific Relief Act, 1963 provides that a decree for specific performance against a subsequent purchaser for bona fide who has paid the money in good faith without notice of

the original contract can be enforced as the same is binding on the vendor as well as against the whole world. As against this, it was contended by the respondents that Section 52 of the Transfer of Property Act which lays down the principle of lis pendens that when a suit is pending during the pendency of such suit if a sale is made in favour of other person, then the principle of lis pendens would be attracted. In support of this proposition a Full Bench decision of the Allahabad High Court in Smt. Ram Peary and others v. Gauri and others [AIR 1978 All 318] as well as a Division Bench judgment of the Madras High Court was pressed into service. Therefore, the question before us in this case is what is the effect of the lis pendens on the subsequent sale of the same property by the owner to the second purchaser. Section 19 of the Specific Relief Act clearly says subsequent sale can be enforced for good and sufficient reason but in the present case, there is no difficulty because the suit was filed on 3.5.1975 for specific performance of the agreement and the second sale took place on 5.5.1975. Therefore, it is the admitted position that the second sale was definitely after the filing of the suit in question. Had that not been the position then we would have evaluated the effect of Section 19 of the Specific Relief Act read with Section 52 of the Transfer of Property Act. But in the present case it is more than apparent that the suit was filed before the second sale of the property. Therefore, the principle of lis pendens will govern the present case and the second sale cannot have the overriding effect on the first sale. The principle of lis pendens is still settled principle of law. In this connection, the Full Bench of the Allahabad High Court in Smt. Ram Peary (supra) has considered the scope of Section 52 of the Transfer of Property Act. The Full Bench has referred to a decision in Bellamy v. Sabine [(1857) 44 ER 842 at p. 843] wherein it was observed as under:

> "It is scarcely correct to speak of lis pendens as affecting a purchaser through the doctrine of notice, though undoubtedly the language of the Courts often so describes its operation. It affects him not because it amounts to notice, but because the law does not allow litigant parties to give to others, pending the litigation, rights to the property in dispute, so as to prejudice the opposite party.
>
> Where a litigation is pending between a plaintiff and a defendant as to the right to a particular estate, the necessities of mankind required that the decision of the Court in the suit shall be finding, not only on the litigant parties, but also on those who derive title under them by alienations made pending the suit, whether such alienees had or had not notice of the pending proceedings. If this were not so, there could be no certainty that the litigation would ever come to an end."

Similarly the Privy Council in Faiyaz Husain Khan v. Munshi Prag Narain [(1907) 34 Ind

App 102] where the Court lay stress on the necessity for final adjudication and observation that otherwise there would be no end to litigation and justice would be defeated. The Full Bench of Allahabad High Court further referred to the work of Story on Equity IIIrd Edition, (para 406) which expounded the doctrine of lis pendens in the terms as follows:

> "Ordinarily, it is true that the judgment of a court binds only the parties and their privies in representations or estate. But he who purchases during the pendency of an action, is held bound by the judgment that may be made against the person from whom he derives title. The litigating parties are exempted from taking any notice of the title so acquired; and such purchaser need not be made a party to the action. Where there is a real and fair purchase without any notice, the rule may operate very hardly. But it is a rule founded upon a great public policy; for otherwise, alienations made during an action might defeat its whole purpose, and there would be no end to litigation. And hence arises the maxim pendente lite, nihil innovetur; the effect of which is not to annul the conveyance but only to refer it subservient to the rights of the parties in the litigation. As to the rights of these parties, the conveyance is treated as if it never had any existence; and it does not vary them."

Normally, as a public policy once a suit has been filed pertaining to any subject matter of the property, in order to put an end to such kind of litigation, the principle of lis pendens has been evolved so that the litigation may finally terminate without intervention of a third party. This is because of public policy otherwise no litigation will come to an end. Therefore, in order to discourage that same subject-matter of property being subjected to subsequent sale to a third person, this kind of transaction is to be checked. Otherwise, litigation will never come to an end.

4. Our attention was invited to a decision of this Court in R. K. Mohammed Ubaidullah & Ors. v. Hajee C. Abdul Wahab (D) by L. Rs. & Ors. [AIR 2001 SC 1658]. In this case it was observed that a person who purchased the property should made necessary effort to find out with regard to that property, whether the title or interest of the person from whom he is making purchase was in actual possession of such property. In this case, the plaintiff filed the suit for specific performance of contract and during the pendency of the suit, rest of the defendants brought subsequent transaction of sale by the defendant in their favour claiming the title to the suit property on the ground that they were the bona fide purchasers for value without notice of prior agreements in favour of plaintiff and they were also aware that the plaintiff was in possession of the suit property as a tenant for last several years and that they did not make any inquiry if plaintiff had any further or other interest in the suit property on

> the date of execution of sale deed in their favour apart from that he was in possession of the property as a tenant. In that context their Lordships observed that subsequent purchaser cannot be said to be bona fide purchaser of the suit property for value without notice of suit agreement and plaintiff would be entitled to relief of specific performance. Their Lordships after considering the effect of Section 19 of the Specific Relief Act as well as Section 52 of the Transfer of Property Act held that subsequent purchaser has to be aware before he purchases the suit property. So far as the present case is concerned, it is apparent that the appellant who is a subsequent purchaser of the same property, he has purchased in good faith but the principle of lis pendens will certainly be applicable to the present case notwithstanding the fact that under Section 19(b) of the Specific Relief Act his rights could be protected."

38. Thus, the settled principle is that the principle of lis pendens would apply even in suit for specific performance of contract and in cases where the subject matter of the suit has been transferred by a party to the suit to a third party affecting right of another party to the suit property.

39. In the present case, the suit property was transferred as noticed above during pendency of the suit, hence, it was subject to the rule of lis pendens and provisions of the Specific Relief Act cited above protecting right of the purchaser for consideration and without notice of the earlier contract would not be applicable.

40. Learned counsel for the appellant has relied on the judgment of Hon'ble Bombay High Court in **Raghunath Ganesh Thakar** v. **Vaman Vasudev Chitale** reported in **AIR (37) 1950 Bombay 234**. In the referred case, the court-fee was sufficiently paid when the matter was pending before the High Court. The High Court by a judicial order transferred the case to the appropriate jurisdiction of Subordinate Judge, Civil Division. Before the Civil Judge, Senior Division, a separate case number was registered. The Court thereafter asked for payment of deficit court-fee. The plaintiff challenged the order before the High Court on the ground that when the matter was before the High Court, the court-fee was sufficiently paid. Considering the aforesaid fact of the case, the Hon'ble Bombay High Court upheld the order of the Civil Judge, Senior Division. The case of Thakar's **(supra)** is not applicable in the present facts and circumstances of this case.

41. Learned counsel for the appellant has next relied on the judgment of **Apparao Sheshrao Deshmukh** v. **Mt. Bhagubai and others** reported in **A.I.R. (36) 1949 Nagpur 263**. In that case, the plaint was not under-stamped on face of it. However, subsequently it was discovered that the plaint was not sufficiently stamped. In that circumstance, the Court held that the Court is bound to give time for making the deficit court-fee in exercise of power under Section 149 of the C.P.C. before making any order under Order 7, Rule 11 of the C.P.C.

42. Learned counsel for the appellant placed reliance on **B. V. Vasantha** v. **Sha Poonamchand and others.** reported in A.I.R. 1997 Karnataka 306. In this case, the decree passed was found to in nullity as due to inadvertence quite a different decree was drawn against the judgment. Before correction of the decree, the suit property was transferred. In the circumstance, the Court held that since the decree was a nullity on the date of transfer of the property which was subject matter of the decree, the lis pendens was not applicable.

43. All the aforesaid referred judgments were passed in their peculiar facts and circumstances of the case.

44. In view of the aforesaid conclusions, this appeal has got no merit. Accordingly, this second appeal stands dismissed, however, without cost in the facts and circumstances of this case.

(Birendra Kumar, J)

Kundan/Rajan

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