



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

SECOND APPEAL NO.575 OF 2021
WITH CA/4930/2023 IN SA/575/2021

Sow. Chayabai w/o Padamsingh Ghunawat

Age : 44 years, Occ : Agriculture,

R/o : Walujwadi, Tq. Gangapur,

Dist. Aurangabad.

...Appellant

Versus

1. Mohammad Sohail Siddiqui s/o Mohammad

Mulapur Siddiqui,

Age : 49 years, Occ : Business,

R/o : Juna Bazar, Aurangabad.

2. Nirmalabai w/o Mohansing Bilwal

Age : 49 years, Occ : Household,

R/o : Bharatnagar, Waluj (Bk),

Tq. Gangapur, Dist. Aurangabad.

...Respondents

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Advocate for Appellant : Mr. S.R. Deshpande

Advocate for Respondent No.1 : Mr. Shaikh Mujtaba Gulam Musafa

...

CORAM : S.G. MEHARE, J.

DATED : DECEMBER 05, 2023

PER COURT:-

1. Heard learned counsel for the appellant and learned counsel for the contesting respondent No.1 at length.

2. The appellant was the defendant no.2, the respondent no.1 was the plaintiff and the respondent no.2 was the defendant no.1 before the Court of First Instance. The parties would be referred to as they were before the Court of First Instance.

3. The plaintiff had filed a suit for specific performance of the contract. He had a case that the defendant no.1 agreed to sell the suit premises to him. However, she sold the suit premises to the defendant no.2/appellant. The defendant no. 2 had a case that she was a bonafide purchaser without notice. The CIDCO had granted permission in his favour for transfer of the suit premises. It was a condition precedent for the legal and valid transfer of the suit premises. The plaintiff did not have the permission. Hence, suit could not be considered. The vendor/defendant no.1 and defendant no.2 were the distant relatives. The defendant no.1/vendor proceeded ex-parte.

4. There are two concurrent judgments and decrees against the defendants. Both Courts rejected the defense of bona fide purchase. Against the said two judgments and decrees, the defendant no.2 is before the Court.

5. Learned counsel for the defendant no.2 submit that the burden to prove that the purchaser had knowledge shifts upon the plaintiff. Relying on the case of Rameshwar Singh Vs. Hari Narayan Singh and Others, AIR 1984 PATNA 277, he argued that it is well settled that very little evidence, and in certain circumstances a mere denial, regarding want of knowledge of the plaintiff's contract would discharge this onus and shift the onus upon the plaintiff. He has also relied on the case of Ranganatha Gounder Vs. Sahadeva Gounder and

others, AIR 2004 MADRAS 520, and argued that the ratio laid down in this case would squarely apply to prove that the appellant was the bonafide purchaser. However, the facts of the said case were that the vendee to the suit did not show readiness and willingness to perform his part of contract and the vendee was not in possession of the suit land. Hence, the said case does not apply to the case in hand. He, further relied on the case of Sir Chunilal V. Mehta and Sons Ltd Vs. Century Spinning and Manufacturing Co. Ltd, AIR 1962 SC 1314. In the said case, the ratio was that the construction of a document of title or of a document which was the foundation of the rights of parties necessarily raises a question of law. This ratio was laid in view of the fact that before the Court it was raised that the interpretation placed upon certain clauses of the managing agency agreement were the foundation of the claim in suit. The appellant had no case as such before the Court and the plaintiff did not deny the recitals in the sale deed. Hence, this case would not assist the defendant no.2. Lastly, he relied on the case of Kashmir Singh Vs. Harnam Singh and Anr, AIR 2008 SC 1749 and argued that ignoring the material evidence or acted on no evidence, drawing wrong inferences from proved facts by applying the law erroneously and casting wrong burden of proof are the grounds to consider under Section 100 of the Civil Procedure Code.

6. He also argued that unless the declaration of the cancellation of the sale deed is prayed for, bare prayer for not binding the sale transaction, no decree of specific performance of the contract could be passed. Therefore also, both judgments are legally incorrect. From his arguments, it appears that he proposed to frame the following substantial questions of law:

- (i) Was the permission of the CIDCO, a condition precedent for passing a decree for the specific performance of the contract?
- (ii) Was prayer for declaration of not binding the sale deed in question insufficient to pass the decree ?
- (iii) Whether the Court erred in not believing the defendant no.2 a bona fide purchaser ?

7. Per contra, learned counsel for the plaintiff submits that both Courts have correctly appreciated the evidence as regards the conduct of the parties, the way in which the sale deed was executed, the recitals of the documents were specific that the vendor and the vendee i.e. original defendants have accepted the liabilities, if any, legal impediment comes into their way. He also argued that the condition to seek the permission of the CIDCO was not essential to claim the specific relief. On the contrary, it was agreed that if the permission is required from CIDCO to complete the transaction, the vendor will seek the permission. Both Courts have recorded the

findings by correctly appreciating the facts. They have correctly applied the law laid down by the judicial pronouncements of the Bombay High Court and the Supreme Court and correctly held that the burden to prove bona fide purchaser is always on the subsequent purchaser. The Courts have also correctly appreciated how hastily the sale deed was executed and less consideration compare to consideration agreed to be paid by the plaintiff was paid. He would submit that the case laws relied upon by the appellant were on different facts and against the pronouncement of the Hon'ble Apex Court. He also argued that the ratio laid down by the Bombay High Court would bind the Court than the ratios laid down by the other High Courts. He also submits that declaration for the cancellation of the sale deed is not required in case of a third purchaser. To bolster his arguments, he relied on the case of *Khanderao s/o. Bhujangrao Babar Vs. Bharatbai w/o. Shrimant Gomsale and Ors, 2009 (3) ALL MR 568*. In this case, the Court has observed that in case of a suit for specific performance of contract against the vendee, subsequent transferee is required to be impleaded only for the purpose of issuing direction to him to join as vendor in executing registered document. It is not essential for the plaintiff to claim declaration in respect of subsequent transaction in a suit for specific performance of agreement.

8. He also relied on the case of Aloka Bose Vs. Parmatma Devi and Ors, 2009 (3) ALL MR 447. This case appears to be on different facts. He also argued that there is nothing on record to point out that the proposed additional ground for appeal as per separate application were never allowed to argue. Therefore, it cannot be said that the Court did not consider the additional grounds of seeking cancellation of the sale deed of the defendant no.2. He prayed to dismiss the appeal as no substantial questions of law have been involved in the appeal.

9. In reply, learned counsel for the defendant no.2 would submit that the less or high consideration is not the ground to doubt the bona fide of the purchaser. It is a practice prevailing in the society to show low consideration in the sale document for avoiding the exorbitant stamp duties. Therefore, the findings of the Courts below on the low consideration shown in the sale deed is not the ground to doubt the bona fide of the purchaser.

10. Perused both judgments and decrees. The entire case revolves around the bona fide purchase of the defendant no.2. Both Courts have considered the evidence led by respective parties. On appreciating the facts and considering the law laid down by this Court and the Supreme Court as regards the proof of bona fide purchase, they have recorded a finding that the defendant no.2 failed to prove that he was a bona fide purchaser.

11. As far as the burden to prove the bona fide purchaser is concerned, the First Appellate Court relied on the case of Jagan Nath Vs. Jagdish Rai (1998) AIR (SC) 2028, in which it has been held that it is well settled that the initial burden to purchase for value without notice of the suit agreement squarely rests on the shoulders of such subsequent transferee. Hence, the case law of Rameshwar Singh (cited supra) relied upon by the appellant does not assist him.

12. Perusal of the impugned judgments, it appears that the appellant never objected that there was an ambiguity in the construction of the document. Therefore, the case law of Sir Chunilal V. Mehta (cited supra) also does not assist him.

13. So far as the case law of Kashmir Singh (cited supra) is concerned, it appears that the Courts have discussed the evidence and not ignored what the evidence the parties produced before it. So far as the inferences from the proved facts is concerned, it is a matter of satisfaction of the parties. The party against whom the judgment goes always object that the inferences have been drawn erroneously. So far as the third ground of casting the burden to prove is concerned, the Hon'ble Supreme Court in the case of Jagan Nath (supra) has laid down the law that the burden to prove the bona fide purchase is on the subsequent transferee but that ground is also not available to the appellant to be a substantial question of law under Section 100 of the Civil Procedure Code.

14. After having gone through the evidence and considering the relation between the subsequent purchaser and the vendor, the Courts appears to have correctly held that it was a document executed hurriedly. The recitals of the sale deed were specific that the vendor and the subsequent purchaser had accepted the risk if any occurs in future. The Courts have correctly appreciated the evidence of the defendant's witness. Since the vendor/defendant proceeded ex-parte and distant relative of the defendant no.2, there was a wide scope to doubt the bona fide of the transaction. She appears to have deliberately kept away from appearing in the Court and contest the suit.

15. So far as the permission of the CIDCO is concerned, the Court is of the view that it was an agreement between the parties. The Court should not deny to entertain the suit for specific performance of contract only for non-complying with the condition to seek the permission of the CIDCO. The suit premises is a lease property. The CIDCO charges the transfer fees only. In a suit for specific performance of contract, the Court has to examine which party to the contract is at fault in not performing the contract. The conduct of the vendor if seen, she applied for the permission to sell in favour of the subsequent transferee is sufficient to infer that she had the knowledge that before the sell, the permission of the CIDCO was to be obtained. The failure to obtain the prior permission from CIDCO does

not affect the rights arising out of the contract. It's a formal procedure to pay the transfer fees and dues of the CIDCO. The defendant no. 2 did not produce any material before the Court that not seeking such permission vitiates the contract. The purpose and the object of the Specific Relief Act is to test who is at fault and not entitle to the decree for specific performance of the contract. The agreement to sell with the plaintiff was in force, when the sale deed in favour of the defendant no.2 was executed. The Court is of the view that the decree for specific performance of the contract could not be denied only for want of permission of the CIDCO and it was not an impediment for considering the suit.

16. As far as the prayer clause of the declaration of the sale deed is not binding, is bad in law is concerned, this Court in the case of Khanderao Bhujang (cited supra) has made the law clear that in such a suit, declaration about the sale transaction between the vendor and the subsequent transferee is not essential. Such transactions are between the vendee and the subsequent transferee. Therefore, the declaration of non-binding of such transactions was the appropriate relief in this case. Therefore, there appears no substance in the arguments of the learned counsel for the appellant that the judgments and decrees are bad only for not praying for the declaration of cancellation of the sale deed of the subsequent transferee.

17. Learned counsel for the appellant also argued that the plaintiff had claimed the alternate relief of refund of amount. The appellant was in possession since the date of execution of the sale deed. This fact ought to have been considered and instead of specific performance of contract, the decree for refund of earnest money ought to have been passed.

18. The relief under the specific act is a discretionary. The discretionary power are to be exercised judiciously. Barely claiming the relief of refund in alternate, does not mean that the relief of specific performance of contract shall be denied. The Court has to consider the rights of the parties, find out the defaulting party, consider the circumstances in which the subsequent transfer is made. On considering the cumulative effect of the conduct of the parties, the Court has to arrive at appropriate decision to believe whether the transaction is bona fide or not. For denying the specific performance of the contract, the Court has to see the comparative hardship. The relief can be refused if it would be inequitable to enforce specific performance. Nothing like were the facts of the case. In this case, after having gone through the way in which both Courts have appreciated the evidence, the Court is of the view that none of the Courts erred in drawing the inferences of the collusion between the appellant and the vendor.

19. Discussing the law above, the Court is of the view that no substantial question of law is involved in this appeal. Hence, the appeal stands dismissed at admission stage.

20. Civil Application No.4930 of 2023 stands disposed of.

(S.G. MEHARE, J.)