Pallavi

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

SECOND APPEAL NO.189 OF 2018

Shri. Sunil Nagnath Jadhav and Ors. ...Appellants
Versus
Shri. Uddhav Shrirang Jadhav and Ors. ...Respondents

WITH
CIVIL APPLICATION NO.238 OF 2018
IN
SECOND APPEAL NO.189 OF 2018

Shri. Sunil Nagnath Jadhav and Ors. ...Applicants
Versus
Shri. Uddhav Shrirang Jadhav and Ors. ...Respondents

- Mr. A.S. Rao a/w Vignesh Ashokan i/b. Sachin Deokar, for the Appellants.
- Mr. Rahul S. Kadam, for the Respondent Nos.1 and 2.

CORAM : MADHAV J. JAMDAR, J.
DATE : 10th AUGUST 2023

P.C:

1. Heard Mr. Rao, learned counsel appearing for the Appellants and Mr. Rahul S. Kadam, learned counsel appearing for the Respondent Nos.1 and 2.

2. The Appellants were not parties to the suit. The Appellants were impleaded as parties before the learned First Appellate Court as they have purchased the suit property by three separate registered sale deeds dated 14th August 2013, 28th March 2013 and 28th March 2013 during the pendency of Civil Appeal No.131 of 2011 (Old Civil Appeal No.131 of 2006). Mr. Rao, learned counsel submitted that the Appellants are bonafide purchasers without notice of suit transaction. Therefore, it is his contention that fair opportunity should have been given to the Appellants by allowing the Appeal and the learned First Appellate Court ought to have remanded the matter to the learned Trial Court.

3. Before considering the said contention raised by Mr. Rao, learned counsel appearing for the Appellants, it is necessary to set out certain factual aspects. The Respondent Nos.1 and 2 are the original Plaintiffs and Respondent Nos.3 and 4 are the original Defendant Nos.1 and 2. The original Defendant Nos.1 and 2 are the owners of the suit property. They entered into registered agreement for sale dated 14th September 2001. By said registered agreement of sale (Exh.33), Defendant Nos.1 and 2 agreed to sell the suit property in favour of the original plaintiffs for total consideration of Rs.1,51,000/- The said registered agreement of sale specifically records that the entire sale consideration of Rs.1,51,000/- was paid. On the very day i.e. on 14th September 2001, separate possession receipt was executed and the possession of the suit property was handed over to the plaintiffs. As the original Defendant Nos.1 and 2 were not executing the sale deed, the suit notice seeking specific performance of the agreement of sale was issued by the plaintiffs on 30th July 2005. Thereafter, on 29th August 2005, Reg. Civil Suit No.177 of 2005 was filed for specific performance as the Defendant Nos.1 and 2 failed to comply with the suit notice.

4. Learned Trial Court by judgment and decree dated 1st August 2006 partly decreed the suit by directing the Defendant Nos.1 and 2 to jointly and severally pay Rs.1,51,000/- to the plaintiffs within two months from the date of the order. Aggrieved by the said judgment and decree of the learned Trial Court, the plaintiffs filed Reg. Civil Appeal No.131 of 2011 (old Civil Appeal No.131 of 2006). During the pendency of the said Appeal, the present Appellants purchased the suit property by three registered sale deeds dated 14th August 2013, 28th March 2013 and 28th March 2013.

5. Learned First Appellate Court after considering the entire evidence on record held that the plaintiffs are entitled for specific performance of the suit agreement. Learned Trial Court has *inter alia*, rejected the relief of specific performance on the ground that the suit property was sold for consideration of Rs.1,51,000/- and the loan amount availed by the Defendant Nos.1 and 2 by mortgaging the suit property was Rs.2,55,000/- and therefore, held that it is impossible for the Defendant Nos.1 and 2 to sell the suit property at the price of Rs.1,51,000/-. However, learned First Appellate Court by giving cogent reasons has set aside the said finding of the learned Trial Court. The said discussion of the learned First Appellate Court is to be found in paragraph 11 which reads as under :-

> "11. The finding of **the Ld. Trial Court that the suit properties consideration was Rs.1,51,000/- and the loan amount was Rs.2,55,000/-, so it was impossible for the defendants to sale it for Rs.1,51,000/- and the transaction is a loan transaction, this finding is not correct**. Because the **defendants have stated that, they have obtained loan of Rs.1,60,000/- on the entire suit property i.e. Gat no.74/1 adm. 2H. 26R. land and the plaintiffs have only agreed to purchase 1H. 13R. land and that too the west side**. So, the finding of the Ld. Trial Court that, the loan was only on the suit property is not correct. The loan was on the entire Gat no.74/1. The defendants have failed to show any document that as on the date of agreement of sale the outstanding loan amount was Rs.2,55,000/-. Even, if it is assumed that, the entire loan outstanding was Rs.2,55,000/- on 2H. 26R. land, then, the loan amount on 1H. 13R. land i.e.

> the suit property is Rs.1,27,500/- and so the agreement for sale at (Exh.33) was for Rs.1,51,000/- and it is certainly more than the suit property. **So, definitely, it was an agreement for sale and not money-lending transaction.**"
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> (Emphasis added)

6. In this background of the case, it is the contention of Mr. Rao, learned counsel appearing for the Appellants that the Appellants who are not parties to the suit have purchased the suit property by registered sale deeds dated 14th August 2013, 28th March 2013 and 28th March 2013. It is his contention that the Appellants are the *bona fide* purchasers of the suit property without notice of the suit transaction. As far as the said contention is concerned, it is to be noted that the agreement of sale dated 14th September 2001 in favour of the plaintiffs executed by the Defendant Nos.1 and 2 is registered agreement of sale. The said registered agreement specifically states that the entire consideration has been paid by the plaintiffs to the Defendant Nos.1 and 2. As the said agreement is registered agreement of sale, it cannot be said that the present Appellants are the *bona fide* purchasers without notice of suit transaction.

7. Apart from that, the transaction between the Appellants and the original Defendant Nos.1 and 2 is hit by Section 52 of the Transfer of Property Act, 1882. It is settled legal position that a transfer which is made *lis pendens* is not a void document. It does create rights as between the parties to the sale. The right of the party to the suit who conveys his right by a sale is extinguished. All that Section 52 of the Transfer of Property Act, 1882 provides is that the transfer which is made during the pendency of the proceeding is subjected to the final result of the litigation **[G.T. Girish v. Y. Subba Raju**[1]**]**. It is settled legal position that Appeal is continuation of the suit. The present suit was filed on 29th August 2005 and the transaction in favour of the Appellants is dated 14th August 2013 and 28th March 2013. Therefore, Section 52 will apply to the said transaction. In any case, the factual position on record clearly shows that the Appellants are not *bona fide* purchasers without notice of the suit transaction.

8. Therefore, there is no substance in the contentions raised by the learned counsel appearing for the Appellants. Second Appeal is dismissed. In view of dismissal of the Second Appeal, nothing survives in the Civil Application and the same is also dismissed.

[MADHAV J. JAMDAR, J.]

1. (2022) 12 SCC 321