2024:BHC-NAG:5234

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH

FIRST APPEAL NO. 1596 OF 2019

Shri Subhash s/o Uttamrao Brahmapurikar,
aged about 64 years, R/o Sahakar Nagar,
Near Gajanan Maharaj Mandir,
Nagpur – 25.

...**APPELLANT**

Versus

1. Jaihind Cooperative Housing Society,
bearing its Regd. No. NGP/HSG/1148.1942,
through its President Shri Mahesh s/o Shrawan Charde,
Aged – Major, Occ. - Nil, R/o Sitanagar,
Near Jaiprakash Nagar, Somalwada, Nagpur.

2. Shri Kisan Ramnath Nandanwar,
Aged about 72 years, Occ. - Service,
R/o Nagina Baugh, Chandrapur.

3. Shri Pravin Madhavrao Thute,
Aged about 41 years, Occ. - Business,
R/o Plot No. 49, Aadiwasi Society Layout,
Manish Nagar, Nagpur – 15.

4. Shriram Associates, through its Proprietor
Shri Narayan Pandhari Khachance,
Aged about 59 years, Occ. - Business,
R/o Swalambi Nagar, Nagpur – 400022,
having its office at 25, 'Saikrupa' 2nd Floor,
Central Excise Colony, Ring Road,
Beside Bharat Petrol Pump, Chhatrapati Square,
Nagpur.

...**RESPONDENTS**

Shri V.V. Bhangde, Counsel for the appellant.
None for respondent nos. 1 and 2.
Shri U.A. Gosavi, Counsel for respondent no.3.
Shri K.A. Patil, Counsel for respondent no.4.

CORAM : ANIL L. PANSARE, J.
ARGUMENTS WERE HEARD ON : FEBRUARY 22, 2024
JUDGMENT IS PRONOUNCED ON : MARCH 6, 2024

JUDGMENT :

The appellant – original plaintiff is aggrieved by the judgment and decree dated 31/8/2019 passed by the 3rd Joint Civil Judge (Senior Division), Nagpur in Special Civil Suit No. 573/2015, whereby the learned Judge has dismissed the suit, which was filed for declaration, possession, injunction and damages.

2] Upon hearing the learned Counsel for the parties, following points arise for my consideration :

Point Nos.	Particulars	Finding
1	Whether the appellant has proved that he is the owner of the suit property ?	**In the affirmative**
2	Whether the appellant has proved that the sale-deed bearing no. 1394/90 dated 5/10/1990 executed between respondent nos. 1 and 2 is illegal ?	**In the affirmative**
3	Whether the appellant has proved that the sale-deed bearing no. 1606/14 dated 15/5/2014 executed between respondent nos. 2 and 3 is illegal ?	**In the affirmative**

4	Whether the appellant has proved that the sale-deed bearing no. 4940/14 dated 25/9/2014 executed between respondent nos. 3 and 4 is illegal ?	**In the affirmative**
5	Whether the appellant is entitled to seek possession ?	**In the affirmative**
6	Whether interference is called for in the impugned judgment ?	**Yes**
7	What order ?	**As per final order**

3] The appellant claimed to be the owner of the suit property bearing plot No. 13, admeasuring 3000 square feet, out of Khasra No. 85, City Survey No. 558, Mouza – Somalwada, District – Nagpur. He had purchased the suit property on 22/4/1987 from respondent no.1 – Society through registered sale-deed. He was in service and had purchased the suit property to settle at Nagpur, post retirement. He was to retire in the month of March – 2015. He visited the suit property in January – 2015 where he found that some construction work was under progress over the suit property. Upon enquiry, he came to know that respondent no.4 is doing the said construction. He approached the office of respondent no.4 and showed him the sale-deed dated

22/4/1987. Respondent no.4 informed him that he has purchased the suit property from respondent no.3. Upon enquiry, the appellant came to know that respondent no.1 has, on 5/10/1990, again sold the suit property to respondent no.2, who in turn sold it to respondent no.3, who thereafter sold it to respondent no.4 on 25/9/2014. Accordingly, the appellant sought declaration that the subsequent sale-deeds are null and void.

4] The learned trial Court noted that there is no dispute that the suit property was earlier sold to the appellant by respondent no.1 and thereafter the same was sold to respondent no.2 by respondent no.1, which followed the subsequent sale-deeds. The learned trial Court blamed the appellant for not mutating his name in revenue entries, and by taking aid of Section 41 of the Transfer of Property Act, 1882, declined to grant him any relief.

5] This approach has been criticized by the learned Counsel for the appellant, and rightly so, for the reason that it is nobody's case that respondent nos. 1, 2 and/or 3 were the ostensible owners, and even if they were to be so treated, it is nobody's case that the appellant has given consent, either express or implied, to transfer the property. The learned trial Court has drawn implied consent on the basis of inaction on part of the appellant to mutate his name in the revenue entries.

6] The learned trial Court has held that the appellant did not mutate his name and, therefore, respondent no.2 had no reason to disbelieve respondent no.1 – Society to be the owner of the suit property. The learned trial Court held that had the appellant mutated his name, respondent no.2 could be said to have been not a *bona fide* purchaser, but in absence of mutation entry, despite title verification, respondent no.2 could not have gathered the knowledge of the sale-deed.

7] This finding is perverse. The title verification is not dependent only upon mutation entry. One has to visit the office of Sub-Registrar and verify the sale instances. Had that been done by respondent no.2, entry of sale-deed executed between the appellant and respondent no.1 would have been disclosed.

8] As such, the main culprit is respondent no.1 – Society. Nonetheless, benefit of absence of mutation entry cannot be extended to respondent nos. 1, 2 and/or 3 to describe them as ostensible owners. An ostensible owner of a property is a person whose name appears on record and is in possession of the property, but he/she never intended to own the property. In the present case, respondent no.1 was aware that it is not the owner of the property. There is, thus, no question of respondent no.1 owning or possessing all the rights of ownership in the suit property for and on behalf of the appellant. Therefore, the transaction between respondent nos. 1 and 2 is illegal. Once the said transaction is declared illegal, the subsequent transactions would automatically become *non est*.

9] The learned Counsel for respondent no.4 has invited my attention to the evidence of the appellant, wherein he admitted that respondent no.4 has purchased the suit property after seeing previous sale-deeds, City Survey Records, Municipal Records and Records of N.I.T. This evidence is taken aid of to contend that respondent no.4 is a *boda fide* purchaser. He (respondent no.4) has purchased the suit property from respondent no.3. He is in possession of the suit property. Accordingly, the learned Counsel supported the findings rendered by the learned trial Court.

10] I do not find any substance in the argument inasmuch as once the foundational transaction between respondent nos. 1 and 2 is found to be illegal, the subsequent transactions, on the basis of transaction which is declared illegal, will not hold the field. Most importantly, despite no one's case, the learned trial Court has taken aid of Section 41 of the Transfer of Property Act to decline the relief sought by the appellant.

Corrections are made in paragraph 11 and operative Clause (iii) as per Court's order dated 2/5/2024

11] The appellant has, through his evidence, placed on record original sale-deed dated 22/4/1987 executed between him and respondent no.1. He has filed receipts issued by respondent no.1 – Society (Exhs. 53 to 56). He has also filed demand notice issued by respondent no.1 (Exh. 57). Thus, he has proved that he is the lawful owner of the suit property. Considering the same and the reasons set out hereinabove, he has further proved that the sale-deed dated 5/10/1990 executed between respondent nos. 1 and 2 as also the sale-deed dated 15/5/2014 executed between respondent nos. 2 and 3 are liable to be set aside. The question of respondent nos. 3 and/or 4 being the *bona fide* purchaser/s will not arise, once the foundational sale-deed between respondent nos. 1 and 2 is held to be illegal. Once the sale-deeds are declared illegal, the possession of respondent no.4 over the suit property would become unauthorized. He should, therefore, hand over possession of the suit property to the appellant. Respondent nos. 2 to 4, however, shall be entitled to recover the amount of sale consideration with interest @ 6% per annum from their vendors. In addition, they may take appropriate action against respondent no.1.

12] Accordingly, point nos. 1 to 5 are answered in the affirmative.

13] Having answered various points in the manner hereinabove, the learned trial Court has rendered erroneous finding. The judgment and decree, therefore, is unsustainable in law. The appellant has made out a case in his favour resulting into following order :

ORDER

i] The appeal is partly allowed.

ii] The judgment and decree dated 31/8/2019 passed by the 3rd Joint Civil Judge (Senior Division), Nagpur in Special Civil Suit No. 573/2015, is hereby quashed and set aside.

iii] The suit is decreed in the following terms :

The appellant is declared as the owner of the suit property as described in paragraph 1 of the plaint. He is entitled for possession of the suit property, which respondent no.4 shall handover to him within a period of eight weeks from today. The sale-deed bearing no. 1394/90 dated 5/10/1990 executed between respondent nos. 1 and 2, the sale-deed bearing no. 1606/14 dated 15/5/2014 executed between respondent nos. 2 and 3 and the sale-deed bearing no. 4940/14 dated 25/9/2014 executed between respondent nos. 3 and 4, are quashed and set aside. Respondent nos. 2 to 4 are entitled to recover, from their vendors, the amount paid to them in respective sale-deeds along with interest @ 6% per annum from the date of execution of respective sale-deeds till its realization. Decree be drawn accordingly.

JUDGE

Sumit