2022 LiveLaw (SC) 58

IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICTION

SANJAY KISHAN KAUL; M.M. SUNDRESH, JJ.

January 17, 2022

CIVIL APPEAL NOs. 5384-5385 OF 2014

SEETHAKATHI TRUST MADRAS *Versus* **KRISHNAVENI**

Specific Relief Act, 1963- Specific Performance Suit - A decree could not have been obtained behind the back of a bona fide purchaser, more so when the transaction had taken place prior to the institution of the suit for specific performance. *(Para 23)*

Civil Suit -If a party to a suit does not appear in the witness box to state their own case and does not offer themselves to be cross-examined by the other side, a presumption would arise that the case set up is not correct. *(Para 12)*

Specific Relief Act, 1963 - Specific Performance Suit - A plaintiff cannot examine his attorney holder in his place, who did not have personal knowledge either of the transaction or of his readiness and willingness in a suit for specific performance. Thus, a third party who had no personal knowledge cannot give evidence about such readiness and willingness, even if he is an attorney holder of the person concerned. *(Para 12)*

Code of Civil Procedure, 1908; Section 100 - Second appeal- Question of law ought to have been framed under Section 100 of the said Code. Even if the question of law had not been framed at the stage of admission, at least before the deciding the case the said question of law ought to have been framed. *(Para 22)*

For Appellant(s) Mr. Chander Uday Singh, Sr. Adv. Mr. M. Yogesh Kanna, AOR Mr. Raja Rajeshwaran S., Adv.

For Respondent(s) Mr. V. Ramasubramanian, AOR Mr. K. K. Mani, AOR Ms. T. Archana, Adv.

J U D G M E N T

SANJAY KISHAN KAUL, J.

Facts:

1. Land measuring 0.08 cents (100 cents = 1 acre) has seen a dispute spanning almost half a century.

2. One C.D. Veeraraghavan Mudaliar was the original owner of 120 acres of land comprising S.No.44 and 45 at No.18, Othivakkam Village, Chengalpattu Taluk. He entered into an agreement in October, 1959 to sell the Land in favour of Janab Sathak

Abdul Khadar Sahib who intended to purchase the same on behalf of the appellant Trust for a sale consideration of Rs.18,000. The appellant Trust was registered under the Societies Registration Act, 1860 originally and now regulated under the Tamil Nadu Societies Registration Act, 1975. The other story is what is set up by the Respondent who claimed that C.D. Veeraraghavan Mudaliar entered into an agreement of sale with her on 10.04.1961 for sale of 50 acres in patta No.61 and paimash No.987/1 of the Land.

3. It is the claim of the Appellant that C.D. Veeraraghavan Mudaliar had sold 50 acres out of 120 acres of land to one Niraja Devi on 16.11.1963 vide registered sale deed, who took possession of the said land and enjoyed the same. These 50 acres were bounded by a hillock in the east, land belonging to C.D. Veeraraghavan Mudaliar in the west, Government Reserve Forest in the north and Hasanapuram grazing ground and lake in the south. Niraja Devi sold the 50 acres of land to one Perumal Mudaliar vide registered sale deed dated 19.04.1964, who also took possession of the said land and enjoyed the same. As per the Appellant, Perumal Mudaliar sold the 50 acres of land to the Appellant Trust on 19.03.1968 vide a registered sale deed.

4. Insofar as the remaining 70 acres of land is concerned, C.D. Veeraraghavan Mudaliar and his son sold the same to the Appellant vide registered sale deed dated 19.3.1968. The said property is bounded by the land of Niraja Devi on the east, Kumuli Forest Line on the north, boundary line of Kannivakam Village on the west, and boundary line of Hasanapuram Village on the south. In respect of this 70 acres there is no dispute.

History of the land dispute:

5. The Respondent filed a suit as O.S. No.31 of 1964 before the Principal Sub-Court, Chengalpattu for specific performance of the agreement dated 10.04.1964 against C.D. Veeraraghavan Mudaliar and his son, which was dismissed on 13.08.1964. The Respondent preferred an appeal against the said order, as A.S. No.366/65 before the District Judge, Changalpattu and the said appeal was also dismissed on 08.03.1966. However, the fate of the Respondent brightened in the second appeal, being S.A. No.1673 of 1966, before the High Court of Judicature at Madras, when they succeeded in terms of the judgment dated 07.07.1970 whereby specific performance of the agreement dated 10.04.1961 was decreed. The High Court *inter alia* held that time was not the essence of the contract and the land could be identified. In pursuance of the decree so passed in the second appeal, the Respondent filed for execution, being E.P. No.17 of 1976, before the Sub Court, Chengalpattu. The Sub-Court appointed the Taluk head surveyor as Commissioner for demarcation of 50 acres of land, who subsequently filed his interim and final reports. The Sub-Court purportedly executed the sale deed on 09.04.1981 through the officer of the Court and a delivery receipt dated 26.09.1981 was issued to Respondent.

6. The controversy insofar as the present case is concerned arose from a suit filed by the Respondent, being O.S. No.14 of 1984 before the Court of District Munsif, Chengalpattu against the Appellant praying for declaration of title and delivery in her favour to the extent of 0.08 cents of the land and delivery of the same. The suit was predicated *inter alia* on a rationale that the Respondent had taken possession of 50 acres by way of the execution proceedings, and that the Appellant had trespassed over 0.08 cents of the same. The suit was, however, dismissed on 07.09.1988 as the trial court formed an opinion that the Respondent cannot be said to have taken possession of 50 acres of land as the delivery receipt read that the delivery was effected by the *Vetti*. The crucial aspect is that the Respondent, who was the best person to speak about the delivery of 50 acres of land chose not to appear in the witness box. This proved fatal to her case as the manager of the Respondent who did appear in the witness box deposed that he was not authorised by the respondent to conduct the case. Thus, the case fell on the evidence led by the Respondent themselves. The testimony of the manager also became material as he admitted to possessing knowledge of the sale deed effected by C.D. Veeraraghavan Mudaliar in favour of Niraja Devi. The manager acknowledged that he was aware of the same through the corresponding encumbrance certificate before the filing of the suit in 1964, and also knew that Niraja Devi had sold 50 acres of land to Perumal Mudaliar. The subsequent purchaser, to the knowledge of the Respondent, was never impleaded as party in the suit nor did she seek to get the sale deeds cancelled. It is in view thereof it was opined that the Respondent was estopped from questioning the appellant's purchase. The plea of sale being hit by *lis pendens* was rejected and the appellant was held to have adverse possession of the land as confirmed by the *Panchayat* Board President, who appeared as a witness and deposed that the Appellant had been enjoying the land for more than 30 years. The Appellant had no knowledge of the earlier proceedings in respect of the suit for specific performance filed by the Respondent.

7. The Respondent preferred an appeal, being A.S. No.101 of 1998, before the Principal Sub Court, Chengalpet, which was dismissed on 28.03.2002. The dismissal was predicated on a dual finding, i.e., that the appellant was in adverse possession of the land, and as per Section 114(3) of the Indian Evidence Act, 1872 (hereinafter referred to as the 'Evidence Act') the expression "may be presumed" showed that the court can infer the reality from available evidence and documents. The delivery receipt was found to be not a real document of delivery of possession, but of mere paper delivery.

8. The aggrieved Respondent filed a second appeal before the High Court of Judicature at Madras in S.A. No.1552 of 2003 claiming she was the absolute owner of land to the extent of 50 acres pursuant to the clear demarcation by the surveyor as well as the sale deed between her and C.D. Veeraraghava Mudaliar, which was

executed on 09.04.1981 through the court process. The grievance against the Appellant was of trespass upon 0.08 cents of land, as a barbed wire fence and a gate had been put up on the same. It was Respondent's case that possession of the land had been taken over on 26.09.1981, and that the Appellant could not contend that he had title over the land by adverse possession. She professed ignorance of the sale in favour of Niraja Devi and Perumal Mudaliar as rationale for not impleading the Appellant, even though her manager had deposed to the contrary while she had not entered the witness box during the trial.

9. The Appellant claimed title to 50 acres including 0.08 cents and pointed out that Respondent's grievance was made only with respect to 0.08 cents. The Appellant Trust, in fact, claimed the ownership of entire 120 acres of land. It was contended that no proper delivery had ever been made as admitted by the *amin* and the possession was only a paper delivery without actual physical possession. No question of law was left to be determined as urged by the Appellant.

10. The High Court vide impugned judgment dated 06.01.2012, however, allowed the second appeal and set aside the judgments passed by the courts below on the ground that they did not properly appreciate the evidence particularly with respect to the execution proceedings. The delivery of 50 acres of land by the *amin* in accordance with the surveyor's plans was found to be proof of possession by the Respondent. Further, as per the surveyor's report, persons belonging to the appellant trust did endeavour to obstruct the possession proceedings but did not challenge the vires of the delivery proceedings. The plea of adverse possession was also rejected.

Pleas of the Appellant before this Court:

11. Learned senior counsel for the appellant contended that no substantial question of law was framed by the High Court, which itself is a *sine qua non* of exercising jurisdiction under Section 100 of the Code of Civil Procedure, 1908 (hereinafter referred to as the 'said Code'). The manner in which the High Court proceeded, it was urged, amounted to re-appreciating the evidence and disturbing the concurrent findings of the courts below. The High Court had proceeded into a fact-finding exercise, which was not within its jurisdiction under Section 100 of the said Code.

12. An aspect emphasised by learned counsel for the Appellant was that the Respondent chose not to depose in support of her own case, and the manager who deposed admitted that he had no power or authority to do so. The Respondent alone had knowledge of the alleged facts as appeared from the deposition of the manager and, thus, an adverse inference must be drawn against the Respondent in view of the judicial pronouncements in ***Vidyadhar v. Manikrao and Anr.***[1] and ***Man Kaur (Dead) by LRs v. Hartar Singh Sangha***[2]. It has been held in these judicial pronouncements that if a party to a suit does not appear in the witness box to state their own case and does not offer themselves to be cross-examined by the other side, a presumption

would arise that the case set up is not correct. The latter of the two judgments has discussed the earlier judgments and catena of other judicial views to the same effect and opined that a plaintiff cannot examine his attorney holder in his place, who did not have personal knowledge either of the transaction or of his readiness and willingness in a suit for specific performance. Thus, a third party who had no personal knowledge cannot give evidence about such readiness and willingness, even if he is an attorney holder of the person concerned.

[1] (1999) 3 SCC 573

[2] (2010) 10 SCC 512

13. The admission of the manager of the Respondent who appeared in the witness box acknowledging that the sale to Niraja Devi by a registered conveyance deed dated 16.11.1963 prior to the filing of the suit shows that the Respondent was aware of the further sale by Niraja Devi to Perumal Mudaliar by another registered sale deed and thereafter in favour of the Appellant. In such an eventuality, it was urged that the purchasers were necessary parties to the suit and a decree for specific performance obtained behind their back would be a nullity. This proposition was sought to be supported by a judgment of this Court in ***Lachhman Dass v. Jagat Ram and Ors.***[3]. In para 16 of the judgment, it has been opined that a party's right to own and possess a suit land could not have been taken away without impleading the affected party therein and giving an opportunity of hearing in the matter, as the right to hold property is a constitutional right in terms of Article 300-A of the Constitution of India. Thus, if a superior right to hold a property is claimed, procedure therefore must be complied with. In this context, it was urged that as per Section 3 of the Transfer of Property Act, 1882, a registered transaction operates as a notice to all concerned. In the present case, the first sale deed was already registered prior to the institution of the suit by the Respondent for specific performance. Thus, that decree could not be binding on the Appellant.

[3] (2007) 10 SCC 448

14. In the alternative, it was pleaded that the decree of specific performance was vitiated by a fraud with the purchaser of the property being deliberately not impleaded in the suit. A reference was made to Section 19(b) of the Specific Relief Act, 1963 (hereinafter referred to as the 'Specific Relief Act'), which reads as under:

"**19. Relief against parties and persons claiming under them by subsequent title.**— Except as otherwise provided by this Chapter, specific performance of a contract may be enforced against—

xxxx xxxx xxxx xxxx

(b) 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 original contract;"

15. Since Niraja Devi was a *bona fide* purchaser long prior to the institution of the suit for specific performance by the Respondent, specific performance could not be enforced against her or her transferees as they would fall within the exception of transferee for value who had paid money in good faith and without notice of the original contract.

16. Lastly it was sought to be urged that Section 114 of the Evidence Act in the factual context has not been correctly appreciated. The provision reads as under:

"**114 Court may presume existence of certain facts.** —The Court may presume the existence of any fact which it thinks likely to have happened, regard being had to the common course of natural events, human conduct and public and private business, in their relation to the facts of the particular case."

17. The aforesaid was in the context that the delivery effected was only a paper delivery and any infraction in effecting the delivery was not curable. The *amin* had not followed the prescribed procedure in delivering possession and the appellant had continued in possession for over 30 years. Moreover, the suit was only filed for 0.08 cents of land.

Pleas of the Respondent before this Court:

18. On the other hand learned senior counsel for the respondent claimed that the Respondent and her daughter are quite old and do not have the wherewithal to pursue litigation. The litigation has been pending since 1961. It was urged that the appellant had title only to 70 acres of land and has trespassed into 0.08 cents of the land, which blocked the entrance to respondent's land. Thus, though the suit pertains only to a smaller extent of land it affected the enjoyment by the respondent of their possession over larger extent of the land.

19. Learned counsel urged that the trial court and the lower court had overlooked crucial and vital evidence and, thus, the High Court rightly exercised jurisdiction under Section 100 of the said Act. There was no question of impleading the appellant or the prior purchasers as parties as no issue had been framed in the suit in respect thereof. The presumption under Section 114(e) of the Evidence Act must arise and the appellant Trust was aware of the execution proceedings as some of the persons belonging to the appellant Trust are stated to have obstructed the Surveyor's entry when he went to demarcate the land as well as by the interim and final reports of the surveyor. The Trust never questioned the same at the time and cannot question it now.

Conclusion:

20. We have given our thought to the aforesaid aspect.

21. We find that there are more than one infirmities which make it impossible for us to uphold the view taken by the High Court upsetting the concurrent findings of the courts below.

22. The first aspect to be taken note of is that the question of law ought to have been framed under Section 100 of the said Code. Even if the question of law had not been framed at the stage of admission, at least before the deciding the case the said question of law ought to have been framed. We may refer usefully to the judicial view in this behalf in ***Surat Singh (Dead) v. Siri Bhagwan and Ors.***[4], wherein this Court has held that:

[4] (2018) 4 SCC 562

"29. The scheme of Section 100 is that once the High Court is satisfied that the appeal involves a substantial question of law, such question shall have to be framed under sub-section (4) of Section 100. It is the framing of the question which empowers the High Court to finally decide the appeal in accordance with the procedure prescribed under sub-section (5). Both the requirements prescribed in sub-sections (4) and (5) are, therefore, mandatory and have to be followed in the manner prescribed therein. Indeed, as mentioned supra, the jurisdiction to decide the second appeal finally arises only after the substantial question of law is framed under sub-section (4). There may be a case and indeed there are cases where even after framing a substantial question of law, the same can be answered against the appellant. It is, however, done only after hearing the respondents under sub-section (5)."

23. There is undoubtedly an element of dispute with respect to possession raised by the two parties *qua* their respective 50 acres. Insofar as 70 acres of land is concerned that undisputedly vests with the Appellant. The dispute sought to be raised by the Respondent does not pertain to 50 acres but only to 0.08 cents, a fraction of an acre (0.08 per cent of an acre). It may, however, be noticed that according to the Respondent the small area is important for the enjoyment purposes.

24. In our view, it is not necessary to go into the issue of adverse possession as both parties are claiming title. The crucial aspect is the decree obtained for specific performance by the Respondent and the manner of obtaining the decree. The Respondent was fully aware of the prior registered transaction in respect of the same property originally in favour of Niraja Devi. This is as per the deposition of her manager. In such a scenario it is not possible for us to accept that a decree could have been obtained behind the back of a *bona fide* purchaser, more so when the transaction had taken place prior to the institution of the suit for specific performance. Suffice to say that this view would find support from the judgments in ***Vidyadhar v. Manikrao***[5] and ***Man Kaur v. Hartar Singh Sangha***[6].

[5] (supra) [6] (supra)

25. The second vital aspect insofar as the case of the Respondent is concerned is that the Respondent did not even step into the witness box to depose to the facts. It

is the manager who stepped into the witness box that too without producing any proper authorisation. What he deposed in a way ran contrary to the interest of the Respondent as it was accepted that there was knowledge of the transaction with respect to the same land between third parties and yet the Respondent chose not to implead the purchasers as parties to the suit. Thus, the endeavour was to obtain a decree at the back of the real owners and that is the reason, at least, in the execution proceedings that the original vendor did not even come forward and the sale deed had to be executed through the process of the Court. The case of Niraja Devi and the subsequent purchasers including the Appellant would fall within the exception set out in Section 19(b) of the Specific Relief Act, being transferees who had paid money in good faith and without notice of the original contract. There are also some question marks over the manner in which the possession is alleged to have been transferred although we are not required to go into that aspect, as we are concerned with only 0.08 cents of land.

26. We are, thus, unequivocally of the view that for all the aforesaid reasons, the High Court ought not to have interfered with the concurrent findings of the trial court and the first appellate court.

27. The suit of the Respondent stands dismissed in terms of the judgment of the trial court and affirmed by the first appellate court and the impugned judgment of the High Court dated 06.01.2012 is consequently set aside.

28. The appeals are accordingly allowed leaving the parties to bear their own costs.