

Munisettappa and Others Vs. Krishnappa and Anothers

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Court : Karnataka

Decided On : Jan-08-1992

Reported in : AIR1992Kant375; ILR1992KAR1174; 1992(2)KarLJ189

Judge : B.N. Krishnan, J.

Acts : [Specific Relief Act, 1963](#) - Sections 15, 23 and 27 ; [Code of Civil Procedure \(CPC\), 1908](#) - Order 22, Rules 1 and 3; [Indian Contract Act, 1872](#) - Sections 37; Specific Relief Act, 1877 - Sections 23; [Constitution of India](#) - Article 141; Pre-emption Act, 1913 - Sections 15

Appeal No. : R.F.A. 314/84

Appellant : Munisettappa and Others

Respondent : Krishnappa and Anothers

Advocate for Def. : S.K.V. Chalapathy and ;Mr. P. Subba Rao, Advs.

Advocate for Pet/Ap. : Mr. C.R.V. Swamy and ;Mr. C. Lakshminarayana Rao, Advs.

Judgement :

1. The appellants are the wife and sons of the deceased-plaintiff in O.S. 502/81 on the the of XII Addl. City Civil Judge, Bangalore, and being aggrieved by the dismissal of the application filed by them to be brought on record in the place of

the deceased-plaintiff and the further order that the suit stood abated, have preferred this appeal.

2. To understand the point in controversy only a few facts need be stated. The deceased-plaintiff filed the aforesaid suit for specific performance of the oral agreement dt. 16-5-1968 to reconvey the suit property for a sum of Rs. 5,000/-. The case put forward by him is that the suit property belonged to him absolutely, the same having come to his share in a partition between him and one Krishnappa and he got constructed a house on the said site and as he was in need of Rs. 5,000/- to complete the plastering, etc. in respect of the said construction, he raised loan of Rs. 5,000/- from the 1st defendant and on his insistence he executed a nominal sale deed dt. 16-5-1968 in respect of the suit property. It was stipulated between the parties that the plaintiff should pay interest on the loan amount at 2% per mensem. The 1st defendant orally agreed to reconvey the suit property in his favour within a period of 12 years from the date of the nominal sale deed and believing the assurances held out by the 1st defendant, the plaintiff was paying interest regularly and he continued in possession of the suit property. During the 3rd week of July, 1970, the plaintiff requested the 1st defendant to accept the principal amount of Rs.5,000/- and to reconvey the property and at that he stated that he could never dream of getting the property reconveyed and also told that he had already sold the property to somebody else. After verification he found that the 1st defendant had executed a sale deed in favour of the 2nd defendant in respect of the suit property on 17-3-1975 for a sum of Rs. 12,000/-. Therefore, the plaintiff has sought for specific performance of the oral agreement of reconveyance adverted to above.

3. During the pendency of the suit, the plaintiff died and the appellants filed an application under Order 22, Rule 3, C.P.C. for being brought on record in place of the deceased-plaintiff. This application was opposed by the 2nd defendant on the ground that the alleged right of getting the suit property reconveyed was purely personal to the original plaintiff and it did not create any proprietary right and, therefore, the L.R. application was not maintainable. The learned Civil Judge held that the right to sue did not survive after the death of the original plaintiff and that, therefore, the application of the appellants was not maintainable and dismissed

the same and further held that as the sole plaintiff had died and the right to sue did not survive, the suit abated.

4. The short point for consideration in this appeal is:

Whether the learned Civil Judge was right in holding that the right to sue did not survive to the present appellants and in further holding that the suit abated?

5. The learned Advocate for appellants contended that this view taken by the learned Civil Judge is directly opposed to Section 15(b) of the [Specific Relief Act, 1963](#) and also the law declared by the Supreme Court in the decision reported in the case of Ram Baran Prasad v. Ram Mohit Hazra : [1967]1SCR293 . On the other hand, it was contended by Sri. Subba Rao the learned advocate for R-2 that the learned Civil Judge was perfectly justified in coming to the aforesaid conclusion and he contended that the right under the alleged oral agreement was purely personal to the plaintiff and it is not the case of the plaintiff or the present appellants that there was any agreement between the original plaintiff and the 1st defendant that the representatives in the interest of the plaintiff were also entitled to seek for reconveyance of the property and in the absence of any such agreement between the parties, there was no scope for the learned Civil Judge to allow the L.R. application. He also invited my attention to the decision of this Court reported in the case of Thippaiah v. Mallamma ILR 1973 Kar 738. The relevant portion of S. 15 of the [Specific Relief Act, 1963](#), reads as hereunder :

'Except as otherwise provided by this Chapter, the specific performance of a contract may be obtained by-

(a) any party thereto;

(b) the representative in interest or the principal, of any party thereto :

Provided that where the learning, skill, solvency or any personal quality of such party is a material ingredient in the contract, or where the contract provides that his interest shall not be assigned, his representative in interest or his principal shall not be entitled to specific performance of the contract, unless such party has already performed his part of the contract, or the performance thereof by his

representative in interest, or his principal, has been accepted by the other party;'

Section 23 of the Specific Relief Act, 1877, had come up for consideration before the Supreme Court in the decision reported in Ram Baran Prasad's case (supra). With reference to the contention that the covenant between the contracting parties was not binding against successors-in-interest or the assignees of the original parties to the contract, this is what has been observed by the Supreme Court :

'(3) On behalf of the appellant learned counsel put forward the argument that the covenant for pre-emption was merely a personal covenant between the contracting parties was not binding against successors-in-interest or the assignees of the original parties to the contract. We are unable to accept this submission as correct. It is true that the preemption clause does not expressly state that it is binding upon the assignees or successors-in-interest, but, having regard to the context and the circumstances in which the award was made, it is manifest that the pre-emption clause must be construed as binding upon the assignees or successors-in-interest of the original contracting parties.

(4) Prim a facie rights of the parties to a contract are assignable. Section 23(b) of the Specific Relief Act states :

'23. Except as otherwise provided by this Chapter, the specific performance of a contract may be obtained by-

(a)

(b) the representative in interest, or the principal, of any party thereto; provided that, where the learning, skill, solvency or any personal quality of such party is a material ingredient in the contract, or where the contract provides that his interest shall not be assigned, his representative-in-interest or his principal shall not be entitled to specific performance of the contract, unless where his part thereof has already been performed;'

(5) Section 27(b) of the Act is to the following effect:

'27. Except as otherwise provided by this Chapter, specific performance of a contract may be enforced against-

(a)

(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;'

Reference should also be made to Ss. 37 and 40 of the Indian Contract Act which are to the following effect:

'37. The parties to a contract must either perform, or offer to perform, their respective promises, unless such performance is dispensed with or excused under the provisions of this Act, or of any other law.

Promises bind the representatives of the promisors in case of the death of such promisors before performance, unless a contrary intention appears from the contract.'

'40. If it appears from the nature of the case that it was the intention of the parties to any contract that any promise contained in it should be performed by the promisor himself, such promise must be performed by the promisor. In other cases, the promisor or his representatives may employ a competent person to perform it.'

In substance these statutory provisions lay down that, subject to certain exceptions which are not material in this case, a contract in the absence of a contrary intention, express or implied, will be enforceable by and against the parties and their legal heirs and legal representatives including assignees and transferees,'

It may be noticed that the language of S. 15 of the [Specific Relief Act, 1963](#) is practically identical with the language of S. 23 of the Specific Relief Act, 1877. Therefore, whatever has been observed by the Supreme Court with reference to the said section of the old Act would apply on all fours in relation to the interpretation of S. 15 of the new Act. If that be so, it is crystal clear that unless

there is a contract either express or implied, to the contrary that interest under the contract shall not be assigned or that his representative-in-interest shall not be entitled to specific performance of the contract, the general rule is that such a right of the parties to obtain specific performance is both assignable and heritable. Having regard to the clear exposition of law made by the Supreme Court in this decision, it is impossible to take a different view with reference to the same. It is no doubt true that in the decision of this Court reported in the case of Thippaiah v. Mallamma (supra) that in the absence of a recital in the document promisee would reconvey the suit property either in favour of the promisor or his representative or his assignees, the right to reconvey reserved under the document was a personal one. With due respect to the learned Judge who decided this case, it has to be stated that it runs completely contra to the law declared by the Supreme Court in the decision adverted to above. Further, it may be noticed that this decision of the Supreme Court has not been referred to in this decision of this Court. When this decision of this Court runs completely contra to the law declared by the Supreme Court, it is clear that there is no scope to follow this decision relied upon by the learned advocate for respondents, especially in view of Article 141 of the Constitution that the law declared by the Supreme Court shall be binding on all the Courts in the country. Therefore, with due respect of the learned Judge who decided the aforesaid case, that decision cannot be followed when it has declared a law which is completely contrary to the decision of the Supreme Court.

6. The learned Advocate for the respondent contended that the right of reconveyance is a purely personal right and, therefore, it is not assignable or heritable and support was sought to be drawn for the said proposition by a few observations in some decisions to which I shall refer to hereafter :

In the first instance it appears that it is wholly unnecessary to refer to any decision in this regard in view of the unambiguous and clear language employed in S. 15 of the [Specific Relief Act, 1963](#) and also exposition of law in this regard by the Supreme Court in the decision adverted to already. But as Mr. Subba Rao the learned Advocate for 2nd respondent cited these decisions and urged this contention which runs contra to the law declared by the Supreme Court, with some vehemence, I shall make a brief reference to the same. He invited my attention to

the observation made by the Supreme Court in the case of K. Simrathmull v. Nanjalingiah Gowder : AIR 1963 SC1182 , following the majority decision of the Federal Court in the case of Shanmugam Pillai v. Annalakshmi Animal AIR 1950 FC 38 (V 37), that the option given to the vendor for repurchasing the property is in the nature of a concession or a privilege and the observation made in yet another decision in the case of Bhoju Mandal v. Debnath Bhagat : AIR 1963 SC1906 , that the right reserved for the purchaser is a personal right of repurchase and, therefore, it was urged that the right if any, under the oral agreement should be deemed to be purely a personal right reserved in favour of the original plaintiff and that with his death that has also come to an end. It may be in the first instance noticed that in neither of these two decisions, the question whether a right of reconveyance reserved in favour of the vendor comes to an end with the death of the vendor and whether his successors cannot enforce such a right, had come up for consideration. In the first of these decisions, the question that was being considered was when the original vendor failed to act punctually according to the terms of the contract, whether the right to repurchase was lost and whether it could be specifically enforced and it is in that context the reservation of right of repurchase was held to be in the nature of a concession or privilege and that it should be exercised in strict fulfilment of the conditions of which it was made exercisable. It may also be remembered that it was pointed out that it was in the nature of a concession or privilege and not that it was only a pure and simple concession. Again in the second decision relied upon by Sri. Subba Rao, while trying to bring about the distinction between a mortgage by conditional sale and sale with condition of repurchase, it was pointed out that the right reserved for a vendor in such a case was a personal right of repurchase. It has not been stated that it is such a personal right as to attract application of the maxim *actio personalis moritur cum persona*. Therefore, these observations made by the Supreme Court cannot be taken out of context and applied to the present case where altogether a different facet of the said question is for consideration and more especially when this aspect of the case is directly covered by S. 15 of the Specific Relief Act and also the decision in Rani Baran Prasad's case (supra). My attention was also drawn by Sri. Subba Rao to the Full Bench decision of the Punjab and Haryana High Court in the case of Chandrup Singh v. Data Ram . The

said decision does not also help him in any way because what was for consideration in that decision was whether the purely statutory right of pre-emption conferred by S. 15 of Preemption Act, 1913, resting on blood relationship alone was a heritable right at all. The right of repurchase set up by the plaintiff herein is not one resting on any blood relationship and when this aspect of the case is directly covered by Ram Baran Prasad's case (supra) hardly can any support be had by this Full Bench decision of the Punjab and Haryana High Court for supporting the judgment of the learned City Civil Judge.

7. The decision in Ram Baran Prasad's case has been followed by the Madras High Court in the case of T. M. Doraiswami v. Kanniappa Reddi : AIR1972 Mad460 . In yet another later decision of the Calcutta High Court in the case of Ramanand Agarwalla v. Richardson Hooghly Holding Ltd. : AIR1979 Cal335 , after referring to S. 15 of the [Specific Relief Act, 1963](#), this is what has been observed at page 337 :

'It is clear from clauses (a) and (b) of S. 15 that specific performance of a contract may be obtained not only by any party thereto but also by the representative-in-interest or the principal of any party thereto unless any personal quality of such party is a material ingredient in the contract or the contract prohibits assignment of the same. It, therefore, follows that the right to obtain specific performance of contract is a heritable right and the legal representatives of any party to such a contract can avail themselves of that right. The right is, therefore, not a personal right and the suit for specific performance of contract is not actio personalis. On the death of the plaintiff in a suit for specific performance of contract his heirs and legal representatives can be substituted in his place inasmuch as the right to sue survives by virtue of S. 15 of the Specific Relief Act. Prima facie, therefore, the applicants are entitled to be substituted in place of the deceased sole appellant.'

I am in respectful agreement with these observations of the Calcutta High Court which are in consonance with the law declared by the Supreme Court in Ram Baran Prasad's case (supra). In the present case, it may be noticed that the defendant has just denied the oral agreement set up by the plaintiff and he has not set up any contract to the contrary that such a right of repurchase was not

assignable or heritable. In the absence of such an agreement being set up by the defendants, it is clear that the right, if any, available to the deceased-plaintiff under the oral agreement to reconvey, is heritable and the learned Civil Judge was not right in holding that the cause of action did not survive or that the present appellants had no right to be brought on record as the legal representatives of the deceased-plaintiff.

8. In the result, the order passed by the City Civil Judge dismissing the application of the appellant and the consequent order holding that the suit had abated are set aside and in their place it is directed that the said application shall stand allowed and the City Civil Judge is directed to permit amendment of the plaint by bringing the appellants on record and, thereafter, to proceed to dispose of the case according to law. The appeal is allowed only to the extent indicated above.

9. Appeal allowed.