

Sharma Vs. Puttegowda

Sharma Vs. Puttegowda

SooperKanoon Citation : sooperkanoon.com/379681

Court : Karnataka

Decided On : Jul-03-1985

Reported in : ILR1986KAR171

Judge : Kulkarni, J.

Acts : [Transfer of Property Act, 1882](#) - Sections 53A

Appeal No. : MFA No. 1032 of 1985

Appellant : Sharma

Respondent : Puttegowda

Advocate for Def. : Puttaswamy, Adv.

Advocate for Pet/Ap. : P.R. Srinivasan, Adv.

Disposition : Application dismissed

Judgement :

KULKARNI, J.

1. This is a plaintiff's appeal against the order dated 26-3-1985 passed by the Civil Judge, Ramanagaram, in O.S. No. 63/82 dismissing I.A.V. filed by the plaintiff under Order 39 Rules 1 and 2 of C.P.C.

2. According to the plaintiff, the defendants 1 and 2, who are the owners of the suit lands, agreed to sell the suit lands to him for Rs. 21,000/- and received Rs. 15,000/- on 1-7-1982 and executed the agreement of sale. According to the plaintiff, defendants-1 and 2 put the plaintiff in possession of the lands on 1-7-1982 itself. He claims that he has been in possession of the lands ever since he has been put in possession of the property on 1-7-1982. According to him, defendants 1 and 2 started interfering with his possession. Hence, he filed O.S.No. 63/82, for a permanent injunction. Along with the suit, he filed I.A.I. under Order 39 Rules-1 and 2 of C.P.C. praying to restrain defendants-1 and 2 from interfering with his peaceful possession of the property pending disposal of the suit. He filed LA. II requesting the Court to restrain the defendants from alienating the property. The Court below issued a temporary injunction restraining defendants 1 and 2 from alienating the property. So far as I.A I is concerned, it issued notice to defendants 1 and 2.

3. Defendants 1 and 2 appeared and filed their objections and written statements also denying the execution of the agreement of sale and denying the receipt of the consideration. They set up that the said agreement of sale had been fabricated by their uncle Marigowda in connivance with the plaintiff.

4. The ruling in Krishnamoorthy Koundar v. Paramasiva Koundar : AIR1981 Mad310 was placed before the Trial Court by the defendants Counsel. It appears that in view of the said Madras decision, the plaintiff's Counsel did not press I.A.I and it was dismissed. Thereafter, the plaintiff filed I.A.V again under Order 39 Rules 1 and 2 on 2011-1984 requesting the Court to issue temporary injunction restraining defendants 1 and 2 from interfering with his possession of the property pending the suit. Defendants 1 and 2 raised serious objections to the same. The Trial Court dismissed I.A.V. Hence, the present appeal.

5. The plaintiff relies on the agreement of sale dated 1-7-1982. He has no other documents except the agreement of sale to show that he was put in possession of the property. He has not even filed the Affidavits of any neighbouring land owners or of anyone else in support of his application I.A.V. It may be that he has produced now the affidavits of two neighbouring land owners and two affidavits of

the persons, who are said to have attested the agreement of sale. Filing of Affidavits of such persons in this Court will not be of any help to the appellant-plaintiff. The plaintiff has not even produced pahani copies to show that he has been in cultivation of the lands in question ever since the date of agreement. Even defendants did not produce any documents in support of their contention. Thus, the plaintiff has not placed before the Court any satisfactory evidence, oral or documentary, to show that he has been, prima facie, in possession of the suit property. Therefore, on facts also, the Trial Court was justified in dismissing I.A.V.

6. It can be seen with advantage that I.A.I filed by the plaintiff along with the suit itself was not pressed by him and it was dismissed two or two and a half years back and thereafter, he filed I.A.V. again with the same request when he did not press I.A.I. at the initial stage itself, it may not be proper and legal for him to file I.A.V. The previous order dismissing I.A.I will come in the way of considering I.A.V. which again contains the same request.

7. Learned Counsel Sri. P. R. Srinivasan for the appellant plaintiff contended that the agreement of sale contained the recital that the possession of the property had been delivered to the plaintiff and therefore, it should be taken that the plaintiff is in possession of the properties. A naked recital in the agreement of sale by itself is not sufficient to show that the plaintiff has been in possession of the property because defendants 1 and 2 have denied the execution of the agreement of sale and denied the receipt of consideration and have gone to the extent of contending that the agreement of sale has been concocted by their uncle Marigowda in connivance with the plaintiff. The question of execution of agreement of sale will have to be gone into in the course of the full fledged trial and it is still to be proved. The plaintiff's contention that defendants delivered possession of the suit properties has also been denied by the defendants.

8. Learned Counsel Srinivasan submitted that the Court is not barred from granting temporary injunction under Order 39 Rules 1 and 2 C.P.C. even in a suit filed for specific performance on the strength of the agreement of sale. He relied on *Yenkanna v. Yellanna*, 1975(1) KLJ S.N. Item 35 page 8 R.S.A 230/1973 disposed of on 11-7-1974, 1975(1) KLJ S.N. Item 35 page 8. It is observed :

'If plaintiffs acquire substantial rights under an agreement of sale, they are entitled to be protected against the transferor who is trying to deprive the plaintiffs of their possession contrary to the terms of Section 53A T.P. Act. Plaintiffs must be held to be defending their rights under Section 53A and the suit for injunction cannot be construed as one to enforce rights conferred by Section 53A. : AIR1939 All611 rel on : [1968]2SCR720 ref. to.'If the plaintiffs prove that the commencement of their possession is lawful under the agreement they are entitled to an injunction. The commencement of possession being under the agreement of sale, continuance of possession by the plaintiffs cannot be deemed to be adverse, unless there has been denial of defendant's title and assertion of hostile title, ILR (1965) 1 Mad. 254 rel. on.'

The said decision came to be rendered after the matter was disposed of after full fledged trial and after the evidence was adduced by both the parties. It has not considered the case falling under Order 39 Rules 1 and 2. Therefore, the considerations that will have to be taken into consideration by the Court while disposing of the suit for permanent injunction are entirely different from the consideration, that will have to be considered while disposing of the application under Order 39 Rules 1 and 2. Further Section 53A is meant to protect the possession of a transferee. Therefore, the said decision will not help the Learned Counsel. He then relied on Eramma v. Parwatamma, 1971(2) Mys. L.J. 179. The facts of the said case were :

'The suit was filed for possession of lands, S. Nos. 150, 151 and 156 of Modalapur, Manvi Taluk, and for consequential reliefs. The plaintiff's case was that she was dispossessed by defendant and her husband in the year 1954 and the revenue records were manipulated in their favour. The defendant pleaded that there was an agreement of sale dated 27-6-51 between the plaintiff and the defendant, that the plaintiff had thereunder agreed to sell the suit properties and two other properties for a sum of Rs. 6,000/- that a sum of Rs. 5,000 was paid to the plaintiff that the defendant got possession of the properties in pursuance to the said agreement and continues in possession as owner. The defendant relies on Section 53A of the Transfer of Property Act to defeat the claim of the plaintiff in the suit.'

Therefore, the said ruling, in my opinion, will not come to the rescue of the Learned Counsel Sri. Srinivasan. The facts in the said case also show that the suit for permanent injunction was disposed of on taking into consideration the evidence produced by the parties. As already stated by me, the considerations which will have to be taken into consideration by the Court for grant of a permanent injunction at the final disposal, are different from the ones which the Court will have to take into consideration while disposing of the application filed under Order 39. Rules 1 and 2. Therefore, the said ruling will not be of any help to him. He then relied on *M. Kallappa Setty v. Lakshminarayana Rao*, : AIR 1972 SC2299 . It was a case where the plaintiff claims to have purchased the property from B and whereas the defendant claims to have purchased the property from C. Therefore, it was a case between two rival purchasers and between two different persons. The question of agreement to sell did not arise at all in the Supreme Court's case. Therefore, the Trial Court rightly held that the principle laid down in the Supreme Court's case will not be of any help to dispose of the controversy in dispute between the parties.

The principle underlying Section 53A is that, notwithstanding that the contract, though required to be registered, has not been registered, or, where there is an instrument of transfer, that the transfer has not been completed in the manner prescribed therefor by the law for the time being in force, the transferor or any person claiming under him shall be debarred from enforcing against the transferee and persons claiming under him any right in respect of the property of which the transferee has taken or continued in possession, other than a right expressly provided by the terms of the contract. Therefore, Section 53A applies as a bar against the transferor. It debars the transferor from enforcing against the transferee any right in respect of the property of which the transferee has continued in possession. In the present case, the transferor has not been claiming any right in respect of the property ; on the other band, the transferee is claiming right against the transferor. Therefore, the plaintiff cannot rely on Section 53A of the Act in the present case.

9. The Learned Author Sri Mulla, in *Transfer of Property Act*, Sixth Edition, at page 288. has observed :

'The Section has been described by the Privy Council (Main Pir Bux v. Sardar Mahomed Tabor (1934) 61 Indian Appeals-388) and the Supreme Court (Maneklal Mansukhabai v. Hormusji Jamshedji (1950) SCR 75), as a partial importation of the English equitable doctrine of part performance. By virtue of this section, part performance does not give rise to an equity, as in England, but to a statutory right (Amrao v. Baburao (1950) Nag. 25). This right is more restricted than the English equity in two respects, (1) there must be a written contract, and (2) it is only available as a defence.'

Therefore, the plaintiff, who has filed the suit mostly basing his claim on Section 53A of the T.P. Act will not be entitled either in law or in equity to claim a relief especially when his claim itself appears to be based on Section 53A of the Act.

10. Learned Counsel placed before me the decision in Krishnamoorthy Koundar v. Paramasiva Koundar, : AIR1981 Mad310 . It was a suit for specific performance of an agreement of sale by prospective vendee. In the said case also, the transferee claiming that he 'was put in possession of the property under an agreement of sale, has sought for injunction under Order 39 Rules 1 and 2 C.P.C. It was a case where the defendants denied the execution of the agreement, denied the receipt of consideration and denied the handing over of the possession. The Madras High Court held :

'The plaintiff's assertion that the possession of the suit properties was given on the date of the agreement was also denied by the first defendant. According to him, the plaintiff had trespassed into the possession of the properties and with a view to sustain the possession of the trespassed properties he has come forward with a false claim for specific performance. The Trial Court having held that the truth and genuineness of the alleged agreement of sale has to be established in the suit at the stage of the Trial chose to grant an injunction/in favour of the plaintiff pending disposal of the suit. The said order has been questioned by the first defendant in this appeal. The Court below having posed the question as to whether the plaintiff took possession of the suit properties on the date of the agreement, viz., 16-8-1977 held that the plaintiff took possession in pursuance of the agreement mainly relying on the recital in the agreement. We are of the view that in the

circumstances of this case unless the plaintiff establishes the actual delivery of possession of the properties on the date of agreement of sale, he cannot merely rely on the terms of the agreement which is denied by the first defendant and the truth of which the plaintiff has to establish at the stage of the trial.'

In this view of the matter, the Trial Court is not justified in granting injunction as prayed for by the plaintiff.

The Madras High Court further in para-3 held :

"Even assuming that the plaintiff was given possession of the suit properties on the date of the agreement of sale by the first defendant the question still is whether the plaintiff could claim the relief of injunction based on Section 53A of the Transfer of Property Act. Admittedly, in this case, the plaintiff has not yet got title to the properties. He can get title to the properties only if he succeeds in the suit and obtains sale deed in respect of the properties. It is well established that an agreement of sale does not create any interest in the property which is subject matter of the agreement. Therefore, the plaintiff if at all can claim only an equitable right based on Section 53A of the Transfer of Property Act. Therefore, the relief of temporary injunction claimed by the plaintiff pending the suit can be taken to have been claimed by the plaintiff only on the basis of Section 53A of the Transfer of Property Act as mere possession of the plaintiff of the suit properties on the date of the suit cannot be taken to enable him to obtain injunction from the Court. If that will be the case even a trespasser in possession can approach the Court and ask for an injunction pending the suit as an application for claiming equitable relief under Section 53A of the Transfer of Property Act. If the application for injunction is so treated then the plaintiff cannot be granted the relief for the reason that Section 53A can be used to resist the defendant when he seeks to dispossess the plaintiff. It is well established that Section 53A of the Transfer of Property Act provides for a passive equity and not for an active equity. Therefore, the plaintiff cannot seek his relief of injunction in a Court of law based on Section 53A of the Transfer of Property Act though he can use Section 53A to debar the transferor who has agreed to sell the property from claiming any right in respect of that property. It is well established that the right conferred by Section 53A is a right

available to the defendant only to protect his possession and on the basis of that section the defendant cannot claim any title and it merely operates as a bar to the plaintiff to ascertain his title.'

Therefore, the facts in the said Madras case appears to be on all fours with the present case. Further, I am of the opinion that the plaintiff, who appears to have filed the suit basing his relief under Section 53A of the Act, is not entitled to the relief of a temporary injunction under Order 39 Rules 1 and 2 C.P.C. Therefore, under these circumstances, the Court below, in my opinion, both on facts and in law was justified in dismissing I.A.V. Accordingly, the appeal is dismissed. No costs. I.A.I filed by the plaintiff-appellant in this appeal is dismissed. It is not necessary to pass any orders on I.A. III filed by the defendants-respondents in this appeal.

SooperKanoon - India's Premier Online Legal Search - sooperkanoon.com