

Subbarayadu Vs. Ramanna

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Court : Karnataka

Decided On : Jun-23-1995

Reported in : ILR1996KAR747; 1996(2)KarLJ281

Judge : A.B. Murgod, J.

Acts : [Specific Relief Act, 1963](#) - Sections 16(1)

Appeal No. : R.S.A. No. 319 of 1984

Appellant : Subbarayadu

Respondent : Ramanna

Advocate for Def. : M.S. Gopal, Adv. R-1 and ;K.V. Sundar Raj, Adv. for R-5

Advocate for Pet/Ap. : K.K. Srinivasa Murthy and ;M.R. Lakshmikanta Raj, Urs.,
Adv.

Disposition : Appeal allowed

Judgement :

Murgod, J.

1. This Second Appeal under Section 100 CPC is directed against the Judgment and decree dated 15.10.1981 passed by the learned Civil Judge in R.A.No. 50 of 1980 confirming the judgment and decree dated 30.6.1980 in O.S.No. 95 of 1977

on the file of the Munsiff, Pavagada.

2. Facts giving rise to this Second Appeal are that defendants 3 to 5 original owners of the property in dispute agreed to sell the same in favour of the plaintiff under an Agreement dated 28.2.1977. On their refusal to perform the Agreement, notice was got issued by the plaintiff to defendants 3 to 5 and also to defendant-2 on 11.6.1977. This was replied by the defendants 2 to 5 contending that defendant-2 had sold the same in favour of defendant-1 on 15.6.1977. Therefore the plaintiff filed the suit for enforcement of the Agreement against defendants 1 to 5. The suit was for specific performance of the Agreement and also for injunction against defendants 3 to 5 who put the plaintiff in possession of the property under the Agreement of Sale dated 28.2.1977 and after the payment of second instalment of the consideration.

3. The suit was resisted by all the defendants. Defendants 3 to 5 denied the Agreement, consideration and delivery of possession pleaded by the plaintiff. In addition to these contentions, defendants 1 and 2 contended that they were bonafide purchasers for value without notice.

4. The Trial Court after appreciating the evidence, rejected the contentions of the defendants and decreed the suit in favour of the plaintiff for specific performance and injunction. The appeal taken to the lower appellate Court by the defendants 1 and 2 was dismissed. The cross-objections filed by defendants 3 to 5 were also rejected. Hence, the Second Appeal by defendant-1.

5. While admitting the Appeal, this Court has framed the following two substantial Questions of Law:-

1. Have the Courts-below erred in holding that the plaintiff was ready and willing to perform his part of the contract even though there was no issue on that question?

2. Have the Courts-below also erred in holding that the first defendant was not a bonafide purchaser of the suit property having had notice of the earlier agreement in favour of the plaintiff?

6. Question No. 1:- After having heard the Counsel on both sides, it is to be answered that this Question does not survive for consideration in view of the latest Decision of the Supreme Court in ASHOK BALU MALI v. STATE OF MAHARASHTRA, AIR 1995 SC 941. In para 5 of the Judgment on page 946, the Supreme Court observed as under:-

'This Court in Gomathinayagam Pillai v. Palaniswami Nadar, : [1967]1SCR227 , quoting with approval Ardeshir's case (AIR 1928 PC 208) (supra) had held as follows:- (para 6)

'But the respondent has claimed a decree for specific performance and it is for him to establish that he was, since the date of the contract, continuously ready and willing to perform his part of the contract. If he fails to do so, his claim for specific performance must fail.'That plea is specifically available to the vendor/defendant. It is personal to him. The subsequent purchasers have got only the right to defend their purchase on the premise that they have no prior knowledge of the agreement of sale with the plaintiff. They are bona fide purchasers for valuable consideration. Though they are necessary parties to the suit, since any decree obtained by the plaintiff would be binding on the subsequent purchasers, the plea that the plaintiff must always be ready and willing to perform his part of the contract must be available only to the vendor or his legal representatives, but not to the subsequent purchasers. The High Court, therefore, was right in rejecting the petitioners' contention and rightly did not accept the plea. We do not find any ground warranting interference.'

In the light of law laid down by the Supreme Court to the above effect, it is no more open to defendant-1 appellant the contesting party before the Court to call on the respondent plaintiff to prove that he was ready and willing to perform his part of the agreement as contended in the Courts-below. His defence in respect of plaintiff's readiness and willingness to perform the contract coming under Section 16(1)(c) of the Specific Relief Act is impermissible. Therefore the question does not survive for consideration.

7. Question No. 2:- The second Question pertains to the findings recorded by both the Courts-below with regard to defendant-1 not being a bonafide purchaser for

value. Relying on Section 100(5) CPC it is submitted by the respondents that both the Courts-below after referring to the evidence in detail, have held as a fact that the appellant-defendant-1 is not a bonafide purchaser for value without notice and no substantial question of law is involved for consideration. Having regard to the material on record this submission is accepted and the Question of Law framed at the time of the admission of the Appeal does not survive for consideration. The two Questions are accordingly answered and the Appeal is dismissed. Parties to bear their own costs.

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