

Mool Chand Vs. Ram Phool and anr.

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Court : Allahabad

Decided On : Jan-10-1979

Reported in : AIR1979All189

Judge : R.R. Rastogi, J.

Acts : [Specific Relief Act, 1963](#) - Sections 15

Appeal No. : Second Appeal No. 2542 of 1968

Appellant : Mool Chand

Respondent : Ram Phool and anr.

Advocate for Def. : K.B.L. Gaur, Adv.

Advocate for Pet/Ap. : Gyan Prakash, Adv.

Disposition : Appeal allowed

Judgement :

R.R. Rastogi, J.

1. This is defendants second appeal from a decree dated 20-11-67 passed by the 1st Additional Civil Judge Bulandshahr confirming the judgment and decree passed by the 1st Munsif, Buland-shahr, decreeing the suit for specific performance in favour of plaintiff-respondent No. 1.

2. The facts giving rise to this appeal briefly stated are: that the suit was originally filed by Jagdish Prasad respondent No. 2 on the allegations that the defendant-appellant Mool Chand had executed an agreement to sell his land in his favour for a sum of Rs. 4,200/- and had received Rs. 900/- as advance. An agreement was duly executed on 1-10-1965. The sale deed was to be executed by 2-12-1965. Since the defendant-appellant failed to execute the sale deed, Jagdish Prasad filed a suit for specific performance on 6-12-1965. By means of an amendment application moved on 30-4-1966 it was alleged by Jagdish Prasad that he was Benamidar of Ram Phool who is now plaintiff-respondent No. 1 and that it was Ram Phool who was the real purchaser of the, disputed property. For that there was an agreement executed between Jagdish Prasad and Ram Phool on 15-4-1966. The relief for specific performance was hence prayed for in favour of plaintiffs or either of them found entitled thereto, Necessary amendments were made in the plaint.

3. The defendant-appellant contested the suit and pleaded that plaintiff Jagdish Prasad was his relation and had obtained the disputed agreement by exercise of fraud. He also disputed that Jagdish Prasad was Benamidar of Phool Chand.

4. The trial court held that the agreement to sell had been duly executed and was not tainted by fraud and that Jagdish Prasad was Benamidar of Ram Phool. It accordingly decreed the suit in favour of plaintiff No. 2. Ram Phool for specific performance of the contract on his depositing Rs. 3,300/- within a particular period. He was awarded costs of the suit.

5. The defendant-appellant Mool Chand preferred an appeal against that judgment and decree and disputed the aforesaid findings recorded by the trial court. The learned 1st Additional Civil Judge, agreed with those findings and dismissed the appeal. Being aggrieved, this further appeal has been filed by Mool Chand defendant before this Court.

6. On behalf of the appellant two submissions were made before me : firstly that on the basis of the disputed contract no decree could be granted in favour of Ram Phool, plaintiff-respondent No. 1 since there was no privity of contract between the appellant and Ram Phool and, secondly that assuming for the time being that this

contract could be enforced by Phool Chand, it was yet to be proved as to who had paid the consideration. Jagdish Prasad had of course come forward with the case that he was Benamidar of Phool Chand and an agreement dated 15-4-1966 was set up in that behalf. At the time of recording of the evidence, however, he disowned that contract and his statement on oath was that he was not Benamidar of Phool Chand. That stand of Jagdish Prasad was not accepted by the trial court. In other words, the trial court dismissed the suit in so far as Jagdish Prasad was concerned. Against that judgment Jagdish Prasad did not prefer any appeal and hence his right to claim specific performance on the basis of the disputed contract was lost. Therefore, if it is found that the disputed contract cannot be enforced by Ram Phool no decree whatsoever can be passed and the entire suit is liable to be dismissed.

7. On a careful consideration of the submissions made on behalf of the appellant I find that there is considerable force in the same. Section 15 of the Specific Relief Act provides for persons who may obtain specific performance. Clauses (a) and (b) which are material for the purposes of instant appeal provide that the specific performance of a contract may be obtained by (a) any party thereof, or (p) the representative in interest or the principal of any party thereof. There is proviso to Clause (b) but that is not relevant for the present purpose. It would appear, therefore that specific performance may be obtained inter alia, by a party to the contract or by any representative in interest or the principal of any party thereto. Representatives in interest would be an alienee, transferee or legal representatives after death, (executor or administrator) or an assignee in insolvency. The undisclosed principal of the agent in whose favour contract is made may also obtain specific performance of a contract In the instant case Ram Phool cannot be regarded a representative in interest of Jagdish Prasad. By means of the agreement dated 15-4-1966 Jagdish Prasad did not purport to transfer or as sign his rights in the disputed contract. On the other hand what it says is that Jagdish Prasad was Benamidar of Ram. Phool and he had filed suit for specific performance as his Benamidar and that it was Ram Phool who had paid the earnest money of Rs. 900/-. Therefore, Ram Phool was not a party to the contract nor was he a representative in interest of Jagdish Prasad. He was not an undisclosed principal also and as such he cannot claim specific performance of

this contract.

8. In *Prem Sukh Gulgulia v. Habibullah* : AIR1945 Cal355 a Division Bench held that the necessary parties in a suit for specific performance to a contract for sale are the parties to contract or if they are dead, their legal representatives, as also a person who had purchased the property from the vendor after the contract. In that case A contracted to sell to B certain property which A intended to purchase at a court sale. A suit by B for the specific performance of a sale against C on the ground that he was the Benamidar of his vendor at the court sale was held to be barred under Section 66(1) of the Code of Civil Procedure because B must be regarded as claiming through its vendor A, the beneficial owner. The view taken was; where the property stands in the name of a person other than the vendor and the suit for specific performance is brought by the purchaser, that person may be joined as defendant as a proper party on an allegation that he is the Benamidar of the vendor but if he appears and contends that he is not the Benamidar of the vendor the proper procedure would be to discharge him from the suit leaving it to the plaintiff in the suit for specific performance to institute a suit against him after he had got the conveyance in the execution of the decree for specific performance against his vendor. This is on the principle that the scope of a suit for specific performance of a contract for sale ought not to be enlarged and the suit turned also into a title suit between one or either of the parties to the contract and a stranger to the contract.'

9. Exactly, same is the position in the instant case. The suit was brought by a party to the contract for its performance. Subsequently, he impleaded another person on the ground that he was his Benamidar. During the course of evidence he denied that he was Benamidar. At this stage Ram Phool should have been discharged from the suit leaving it to Jagdish Prasad alone to claim specific performance and Ram Phool to get his right established against Jagdish Prasad, after the latter had got a conveyance in execution of his decree for specific performance. The scope of the instant suit could not be enlarged and the suit turned into a title suit between the two plaintiffs inter se. Now, Jagdish Prasad did not prefer any appeal against the trial court's findings against him and hence his right to claim specific performance to the disputed contract was lost. Ram Phool could not have been

granted a decree 'because he was not a party to the contract and was not a person who could claim its specific performance within the meaning of Section 15 of the Specific Relief Act.

10. There is a decision of the Supreme Court as well which is relevant for the controversy at hand. In *M. C. Chacko v. State Bank of Travancore* : [1970]1SCR658 bank A of which the appellant was the manager had an overdraft account with bank B. The appellant's father had executed from time to time letters of guarantee in favour of Bank B agreeing to pay amounts due by bank A under the overdraft arrangement. Bank B filed a suit against bank A, the appellant and his father. It was held on an interpretation of the letter of guarantee, that it was not intended to create a charge on properties to which the letters of guarantee related in favour of the Bank A for the amount which may fall due under the letter of guarantee. The letter of guarantee created merely a personal obligation and the father had no intention to create a charge or to encumber any of the properties for debt which may become due to the bank. It may be noted that during the pendency of that suit the father had died and the suit was prosecuted against his widow, daughter and sons and one of the questions that arose was whether the charge, assuming that a charge arises is enforceable by the bank when it was not a party to the deed. It was held that Bank B not being a party to the deed was not bound by the covenants. It was laid down (at p. 507):--

'It is settled law that a person not a party to a contract cannot subject to certain well recognised exceptions enforce the terms of the contract: the recognised exceptions are that beneficiaries under the terms of contract or where the contract is a part of the family arrangement may enforce the covenant.'

11. It is well established that no right can be enforced by a person who is not a party to the contract except in the case of a beneficiary in a trust created by a Contract or in the case of a family arrangement. No such exception was applicable in the case of Ram Phool and hence he could not enforce the contract in suit.

12. To conclude, therefore, the suit could not be decreed in favour of Ram Phool because he was not a party to the contract and now a decree cannot be granted in favour of Jagdish Prasad because he has lost his right to enforce the contract

when he did not prefer an appeal or cross-objection against the findings recorded against him that he was Benamidar of Ram Phool. The suit is hence liable to be dismissed.

13. The appeal is hence allowed and the judgment and decree passed by the courts below are set aside and the suit is dismissed: but in the circumstances of the case, the parties will bear their own costs throughout.

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