

Nahar Singh Vs. Ramdutt and Others

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Court : Allahabad

Decided On : Apr-29-1998

Reported in : 1998(2)AWC1544

Judge : R.N. Ray, J.

Acts : [Transfer of Property Act, 1882](#) - Sections 52; [Code of Criminal Procedure \(CrPC\) , 1973](#) - Sections 145; Code of Civil Procedure, 1908 - Order 39, Rule 2; Contempt of Courts Act

Appeal No. : Second Appeal No. 19 of 1994

Appellant : Nahar Singh

Respondent : Ramdutt and Others

Advocate for Def. : G.N. Verma, Adv.

Advocate for Pet/Ap. : Sankatha Rai and ;M.P. Rai, Advs.

Judgement :

R.N. Ray, J.

1. Plaintiff filed a suit for specific performance of contract which was numbered as Suit No. 49 of 1978, Nahar Singh v. Moola and others. That suit was contested by the defendants and upon considering the materials on record, the learned trial

court decreed the suit. The contesting defendants preferred an appeal which was numbered as Civil Appeal No. 423 of 1981. That appeal was partly allowed by the IInd Additional District Judge, Ghaziabad.

2. Being aggrieved by the Judgment and decree passed by the Additional District Judge, Ghaziabad in Civil Appeal No, 423 of 1981, plaintiff as appellant has preferred this appeal.

3. Plaintiff-defendant No. 1 executed a registered agreement to sell on accepting of consideration money on 29.12.1977. Plaintiff was also willing to perform his part of the contract but the defendants did not execute any document on acceptance of balance sum, so the plaintiff sent a registered notice on 15.2.1978 to the defendants. The said notice was refused by Moola on 16.2.78. The plaintiff filed the present suit on 17.2.78 against Moola for relief in the nature for decree of specific performance to execute the sale deed in plaintiffs favour in respect of the disputed land. On 17.2.1978 the prayer of the plaintiff, the learned Additional Civil Judge, Ghaziabad passed injunction order restraining Moola-defendant No. 1 from transferring the disputed property to any other person till the disposal of the suit. On 18.2.78, the aforesaid injunction order and the notice was served upon the defendant No. 1 in presence of the witnesses. The plaintiff also sent the registered notice to Ram Sahai, Gopi Chand and Bahoru to other defendants according to the aforesaid injunction order granted by the trial court but they refused to accept the notice on 24.2.78. They have also knowledge of the registered agreement for sale dated 29.12.1977, executed by defendant No. 1 in favour of the plaintiff. They also knew about the pendency of the present suit filed by the plaintiff for specific performance of contract on the basis of the agreement for sale dated 29.12.1977. In spite of the aforesaid injunction order dated 17.2.1978, which was subsisting, the defendant No. 1 sold the disputed property to defendant Nos. 2 to 12. On 1.3.1978, the learned trial court directed the plaintiff to implead the defendant No. 1 who was transferee of the disputed land during the pendency of the suit and he was made a party. In proceedings under Section 145, Cr. P.C, a preliminary order was passed by the S.D.M. on 27.6.78 and vide his order dated 21,2.79 he declared that defendant Nos. 2 to 12 were in possession on the basis of the registered agreement to sell dated 1.3.78. During the pendency of the case,

defendant No. 1 died leaving behind Ramphal and others, respondent Nos. 1 to 5 as heirs. On 29.10.1981, the trial court decreed the suit. The heirs of the defendant No. 1. i.e., defendant Nos. 1/1 to 1/5 did not prefer any appeal. Earlier an appeal was preferred by the defendants wherein the Hon'ble Court sent back to the District Courts as the valuation was less than Rs. one lac. On 15.9.93, the Additional District Judge on wrong conception of facts and law, allowed the appeal and, set aside the Judgment and decree passed by the learned trial court.

4. Now the main question for consideration is whether defendant Nos. 2 to 12 who were purchasers for value and whether the sale deed executed by Moola in favour of defendant Nos. 2 to 12 was hit under Section 52 of the Transfer of Property Act. The learned counsel for the appellant submitted that there was a registered agreement to sell and the suit was filed. Both the facts be deemed to be valid notice apart from the registered notice which was given by the plaintiff to defendant No. 1 and defendant Nos. 2 to 12. It has been submitted that though not required but under the direction of the Court, thesecond purchaser, i.e., the defendant Nos. 2 to 12 were made parties in that suit. The learned trial court after considering the evidences of both oral and documentary, decreed the suit.

5. The learned appellate court erred in law because he was confused and committed errors and the aforesaid sale deed was hit by the principle of its pendens, as contemplated under Section 52 of the Transfer of Property Act. In this connection, he referred a Judgment, as reported in : AIR1978 All318 . The learned counsel for the respondents submitted that the Judgment of the lower appellate court was perfectly correct and he supported the Judgment more of less on the same reasonings, as were assigned by the learned appellate court in allowing the appeal. It has been submitted that the application for injunction was filed against Moola but the injunction order was never served on Moola. The sale deed was executed by Moola in favour of the defendant Nos. 2, 3 and 7, for consideration as such are valid because at the time of transfer, there had been notice of the injunction order. The learned appellate court has recorded a finding to the effect that due execution of agreement to sell in favour of the contesting respondents has been established. In this connection, he referred to para 10 of the lower appellate court's judgment. It has been submitted that the plaintiff could not prove

that earlier agreement to sell in favour of the defendant Nos. 2 to 12 was actually ante-dated and collusive. Since defendant Nos. 2 to 12 were the bona fide purchaser for value without notice, the interest of the purchaser must be protected. In this connection, the learned counsel for the respondents prays that appeal should be dismissed. In this connection, he referred a decision as reported in : [1959]1SCR878 and another decision as reported in AIR 1927 All 64. He also referred another decision as reported in AIR 1990 All 20.

6. Duly considered the submissions of both the sides. The agreement to sell in favour of the plaintiff was a registered document. As such, in the eye of law, any intending purchaser is deemed to have notice of that agreement. Moreover, the suit was filed before execution of the sale deed in favour of the defendant Nos. 2 to 12. The suit itself is a notice in the eye of law. There are several decisions on the point and that is more or less established proposition of law. Moreover, the plaintiff sent a notice to Moola and also to the defendant Nos. 2 to 12 but the notice was refused to be accepted. The injunction order of the Court was granted prior to the execution of the sale deed in favour of the defendant Nos. 2 to 12 by said Moola. If Moola or defendant Nos. 2 to 12 were not aware of any injunction order, that may be good ground of exonerating them from the contempt proceedings under Order XXXIX, Rule 2 (a), or under the Contempt of Courts Act but the fact remained that the suit was filed prior to the alleged transaction made by Moola in favour of defendant Nos. 2 to 12. There is no mention of earlier agreement to sell in favour of the defendant Nos. 2 to 12 in the sale deed executed by Moola in favour of defendant Nos. 2 to 12 and that alleged agreement to sell was an unregistered document and can be created any point of time in collusion with each other. The findings of the criminal court are not binding upon the civil court whereas the findings of the civil court are binding on the criminal court. In this connection, I rely upon the decision of the Hon'ble Apex Court, as reported in : 1971 CriLJ1072 and also as reported in : [1955]2SCR270 . However, in view of the fact that the suit was filed prior to the execution of the documents in favour of defendant Nos. 2 to 12, Section 52 of the Transfer of Property Act is applicable and that transaction is hit by doctrine of its pendens.

7. In the circumstances, the appeal succeeds, the Judgment and decree as passed by the learned appellate court are set aside and the judgment and decree passed by the learned trial court are hereby affirmed.

8. Appeal stands allowed on contest with costs.

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