

Deenanath Vs. Chunnilal

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Court : Rajasthan

Decided On : Jul-31-1974

Reported in : AIR1975Raj69; 1974(7)WLN769

Judge : S.N. Modi, J.

Acts : [Specific Relief Act, 1963](#) - Sections 13 and 20

Appeal No. : S.B. Civil Regular 1st Appeal No. 56 of 1973

Appellant : Deenanath

Respondent : Chunnilal

Advocate for Def. : L.R. Mehta, Adv.

Advocate for Pet/Ap. : H.M. Parikh, Adv.

Disposition : Appeal allowed

Judgement :

S.N. Modi, J.

1. This is an appeal by plaintiff Deenanath against the judgment and decree of the Civil Judge, Udaipur, dated 30-11-1972 dismissing the plaintiff's suit for specific performance of an agreement to sell certain agricultural land.

2. On 22-2-1964 defendant-respondent Chunnilal entered into an agreement with the plaintiff to sell his khatedari rights in 11 bighas 6 biswas of land of Khata No. 223 situated at village Avad, tehsil Girwa, district Udaipur for Rupees 13,000. In pursuance of the said agreement, the defendant-respondent received Rs. 1,000 from the plaintiff as part payment of the sale-price and executed the agreement Ex. A/1 in, favour of the plaintiff. It was agreed between the parties that the plaintiff shall pay the balance of the sale-price at the time of the registration of the sale-deed. The plaintiff averred in the plaint that he was ready and willing to perform his part of the contract but the defendant on some pretext or other avoided to execute the sale-deed. The plaintiff therefore served a notice on 29-12-1965 calling upon the defendant to receive the balance of the sale-price and execute the sale-deed and Set it registered in his favour. The defendant gave a false reply to the notice on 14-1-1966 and declined to execute the sale-deed in accordance with the terms of the agreement Ex. A/1. The plaintiff thereupon instituted the present suit against the defendant on 5-12-1967 for specific performance of the agreement to sell dated 22-2-1964 and, in the alternative, claimed Rs. 12,000 as damages for breach of the contract.

3. In his written statement, the defendant admitted having executed the agreement Ex. A/1 dated 22-2-1964 for sale of the land. He also admitted receipt of Rs. 1,000 against the sale-price from the plaintiff in pursuance of the said agreement. He, however, pleaded that at the time of entering into the agreement it was orally agreed between the parties that no sale-deed will be executed in favour of the plaintiff if his (defendant's) two adult sons and his wife who had shares in the property did not give their consent to sell the land. Since his two sons and wife refused to agree to sell the land, the agreement to sell could not be enforced against him. It was also pleaded that the land in dispute was ancestral property and the defendant's share in it was one-fourth only and the remaining 3/4ths belonged to his sons and his wife. The defendant also pointed out that a suit for partition had been instituted by one of his sons and a decree for partition was also passed therein declaring his share in the land to be one-fourth only. The defendant also took the plea that the suit was barred by time and in any case the plaintiff was not entitled to the relief of specific performance as he filed the suit after a great delay. On the pleadings of the parties, the learned Civil Judge framed the following

issues:

- '1. Whether the defendant had only 1/4th share in the suit property?
2. (a) Whether at the time of the agreement, the defendant informed the plaintiff that along with the defendant his two sons and wife had also share in the property and if they do not agree to the transaction, he would not be liable to perform the agreement and if so, what is its effect ?

(b) Whether such oral evidence is barred by Section 92 of the Evidence Act?
3. Whether the defendant informed in March/April 1964 to the plaintiff that he would not be in a position to perform the agreement? If so, what is its effect and is the suit time barred ?
4. What is the effect of suit for partition in revenue court and the alleged decree against defendant on the present suit ?
5. Whether there is delay in the filing of the suit? If so, what is its effect?
6. Relief.'

The learned Civil Judge on consideration of the evidence led by the parties found that the suit land was ancestral property and the defendant was holding it on behalf of the joint family consisting of himself, his two sons and his wife. He further held that the defendant's interest in the property was one-fourth and the remaining 3/4ths belonged to his sons and his wife. He accordingly decided issue No. 1 in favour of the defendant. Both parts of issue No. 2 were however, decided against the defendant and that finding has not been challenged before me. While dealing with issues Nos. 3 and 4, the learned Civil Judge held that the suit was instituted within limitation and the decree for partition granted by the revenue court being collusive has no effect on the merits of the present suit. The learned Civil Judge, however, pointed out that because the partition-decree was granted by a competent court, it was likely to create difficulties in execution of the decree for specific performance. He however decided issues Nos. 4 and 5 against the defendant. While dealing with the issue relating to relief, the learned Civil Judge

relying upon *Juturi Nagiah v. Aripalara Vencatrama Sastrulu*, AIR 1914 Mad 456 and *Govinda Naicken*, AIR 1915 Mad 305 observed as follows:--'It is really inequitable to allow the defendant to take the plea of want of title once he has agreed to part with the property as an owner of it. But while exercising the discretion under Section 12 of the Specific Relief Act, the Court has to consider the factual aspect of the matter as to which remedy will cause more mischief. In this particular case, the agreement between the parties took place in the year 1964 and after that there is evidence before the Court that the property was found to be joint family property and a decree for partition has also been ordered. In case an order is passed in favour of the plaintiff by ordering the specific performance, then there will be a hurdle in the execution of the order due to the existence of a decree by the competent revenue court. This will unnecessarily create difficulty in the execution of the order that will be passed. The property certainly is an ancestral property and the defendant has got limited share in it. In these circumstances, if the decree is passed it will give no substantial relief to the plaintiff except the multiplicity of the suits and increased litigation between the parties. Looking to these circumstances, I do not think it will be just and convenient for the parties to set an order of specific performance of the agreement which forms the basis of the suit. The proper course in such cases will be to allow damages to the plaintiff. My attention has been drawn to the fact that in case of immovable property, specific performance should be ordered. It is no doubt a provision of law but when the contract cannot be enforced in toto, or in substantive part then in such case, specific performance cannot be ordered even if the property involved is an immovable property. Looking to these circumstances, the proper course will be to allow the plaintiff a decree for the amount advanced by him with interest as damages for the money detained by the defendant.' In the result, the learned Civil Judge dismissed the plaintiff's suit for specific performance but granted a decree for Rupees 1,000 with interest @ 6% per annum from 22-2-1964 till realisation. Dissatisfied with the aforesaid decree, the plaintiff has preferred this appeal. No appeal has been filed on behalf of the defendant.

4. Arguing the appeal. Mr. H. M. Parikh, the learned advocate for the plaintiff-appellant contended that the trial Court was in error in holding that the suit land was ancestral property in the hands of the defendant and the defendant had one-

fourth share only in it. He submitted that there was no reliable evidence on the record to prove that the suit land' was ancestral property. He further submitted that Exs. A/2 and A/3 which were relied upon by the trial Court in arriving at the conclusion that the suit land was ancestral property are wholly irrelevant and none of these documents has been proved to be in respect of the suit land.

5. On the other hand. Mr. L. R. Mehta the learned counsel for the respondent, supported the judgment of the trial Court,

6. I have heard learned counsel for the parties, and, in my opinion, the enquiry by the trial Court on the question whether the suit land was ancestral in the hands of the defendant or whether the defendant was entitled to sell the suit land was wholly irrelevant in the present case. The plaintiff in his plaint has nowhere asserted that Ex. A/1 though executed by the defendant was also binding on his adult sons and his wife. In the absence of such assertion in the plaint, it was not open to the trial Court to go into the question that the defendant had defective title as the suit land was ancestral and the defendant was owner of one-fourth share only. In my opinion, the vendor cannot be permitted to set up a defence in a suit for specific performance brought by the purchaser that he had no title or had defective title to the property which he had agreed to sell. In support of my view I place reliance on *Mir Abdul Hakeem Khan v. Abdul Mannan Khadri*, AIR 1972 Andh Pra 178; *Baluswami Aiyar v. Lakshmana Aiyar*. AIR 1921 Mad 172 (FB) and *Muni Samapoa v. Gurunaniappa*. AIR 1950 Mad 90. It was observed by the Full Bench of the Madras High Court in *Baluswami Aiyar's* case (supra):

'Where a person sues for specific performance of an agreement to convey and simply impleads the party bound to carry out the agreement there is no necessity to determine the question of the vendor's title, and the fact that the title which the purchaser may acquire might be defeasible by a third party is no ground for refusing specific performance if the purchaser is willing to take such title as the vendor has. But where a party seeking specific performance seeks to bind the interests of persons not parties to the contract alleging grounds which under Hindu Law would bind their interests and enable the vendor to give a good title as against them and make them parties, it is difficult to see how the question as to the

right of contracting parties to convey any interest except his own can be avoided and a decree passed the effect of which will merely be to create a multiplicity of suits.'

In the present case, there is no question of the plaintiff's attempting to bind the interests of his two adult son or his wife as there was neither any such allegation made in the plaint nor they were impleaded parties to the suit. The only party to the agreement and the suit being the defendant, it is unnecessary to determine the rights of the persons who are not parties before the Court. In Muni Samappa's case. AIR 1950 Mad 90 (supra) the suit for specific performance was brought by the purchaser against the executants of the agreement to sell a house, It was held that there was no necessity to determine the question of the vendor's title, and the fact that the title which the purchaser may acquire, might be defeasible by sons of defendants was no ground for refusing specific performance if the purchaser was willing to take such title as the vendors had. The same principle was followed by the Andhra Pradesh High Court in Mir Abdul Hakeem Khan's case, AIR 1972 Andh Pra 178 (supra).

7. I am, therefore, of the view that the question whether the suit land was ancestral property and the defendant had only one-fourth share in it ought not to have been gone into by the trial Court and the trial Court was wrong in refusing to decree the specific performance of the contract on the ground that the vendor's title was defective.

8. The learned Civil Judge has placed reliance on Govinda Naicken's case (supra). In that case though the agreement to sell was executed by the defendant alone, it was stated in the agreement itself that the lands agreed to be sold belonged to the defendant and his divided elder brother and further that the lands had been purchased out of the money belonging to them severally. The defendant also agreed to have the proposed sale-deed executed by himself and by his brother on his own account and as guardian of his minor sons. It was in these circumstances that the learned Judges observed that a Court cannot ask a party to do an act the effect of which would be to compel the third party to bring a suit. The learned Judges however approved two earlier cases, namely. Kosuri Ramaraiu v. Mury

Ramalingam, (1903) ILR 26 Mad 74 and Srinivasa Reddy v. Sivarama Reddy, (1909) ILR 32 Mad 320. In both these cases, the managing member of an undivided family had contracted to sell the undivided property without the concurrence of the other members. It was held that the plaintiff was entitled to a decree for specific performance and it was not necessary to determine whether the sale by the manager would bind the other members or not.

9. In the present case, on the date of the agreement, namely. 22-2-1964 the family which consisted of the defendant, his two sons and his wife was undoubtedly undivided and the defendant being the father was the managing member of the family. The partition suit filed by one of the sons of the defendant was admittedly filed subsequent to the institution of the present suit. It is settled law that a manager of the Joint Hindu Family has power to alienate for value the Joint Hindu Family property so as to bind the interests of both minor and adult coparceners in the property provided the alienation is made for legal necessity or for the benefit of the estate. It is also well settled that the alienation by a manager of the Joint Hindu Family even if without legal necessity is not void but voidable at the option of the other coparceners who may affirm it or repudiate it. See *Raehubanchmani Prasad Narainsingh v. Ambicaprasadsingh*, AIR 1971 SC 776. That being a settled legal position, the trial Court ought not to have declined to grant a decree for specific performance of the agreement in favour of the plaintiff.

10. Another case relied on by the learned Civil Judge is *Juturi Nagiah's case* AIR 1914 Mad 456 (supra). In that case the contract of sale was entered into by defendant No. 1 who was the managing member of the family but in that suit, his major sons were impleaded as defendants Nos. 2 to 4 and his minor sons as defendants Nos. 5 to 8 and the plaintiff sought the relief of specific performance not only against the executant but also against his sons. This case is thus clearly distinguishable from the facts of the present case.

11. The learned counsel for the respondent argued that specific performance should not be granted in the present case as there were laches and delay on the part of the plaintiff. It was submitted that the agreement Ex. A/1 was entered into on 22-2-1964 and the suit was instituted on 5-12-1967 although the defendant

declined to execute the sale-deed by his notice dated 14-1-1966. It was argued that since the plaintiff did not take any steps to enforce his right for about two years, he was not entitled to the discretionary relief of specific performance. In my opinion, there is no substance in the above contention. Article 54 of the Limitation Act, 1963, prescribes a period of three years from the date fixed for the specific performance of the contract and if no such date is fixed when the plaintiff has notice that the performance is refused by the defendant. In the present case, no date was fixed for the performance of the contract. The plaintiff came to know about refusal on the part of the defendant to perform the contract on January 14, 1966. The suit was therefore brought within the prescribed period of limitation on 5-12-1967. The learned counsel was not able to point out any circumstance which may attract any of the three clauses mentioned in Sub-section (2) of Section 20 of the Specific Relief Act of 1963. Mere delay extending upto the period of limitation cannot possibly be a reason for the Court to exercise its discretion against giving a relief of specific performance. I am fortified in my view by the decision of their Lordships of the , Supreme Court in Mademsetty Satyanarayana v. G. Yelloji Rao, AIR 1965 SC 1'405.

12. No other point has been argued.

13. For the reasons stated above, the appeal is allowed, the judgment and decree of the Court below are set aside and the, suit for the specific performance of the agreement to sell dated 22-2-1964 is decreed on the condition that the plaintiff shall deposit the balance of the sale-price amounting to Rs. 12,000 within two months in the trial Court from today. On such deposit, the defendant shall be directed to execute the sale-deed and Set it registerd within a period of two months at the expense of the plaintiff. The defendant shall then be entitled to the amount of Rs. 12,000 deposited by the plaintiff and he shall also deliver possession of the suit land described in para. 1 of the plaint. In case of failure of the defendant to execute the sale-deed, the Court shall take such steps as are necessary in accordance with law. The plaintiff shall get costs of the suit as also of this appeal from the defendant.