Kehri Singh and Others Vs Km. Laxmi Devi and Another

None

Court: Allahabad High Court

Date of Decision: April 24, 2008

Acts Referred:
Civil Procedure Code, 1908 (CPC) â€" Section 47#Constitution of India, 1950 â€" Article 226#Specific Relief Act, 1963 â€" Section 19#Transfer of Property Act, 1882 â€" Section 3, 52

Citation: AIR 2009 All 9 : (2008) 6 AWC 5748 : (2008) 105 RD 344

Hon'ble Judges: Poonam Srivastav, J

Bench: Single Bench

Final Decision: Dismissed

Judgement

@JUDGMENTTAG-ORDER

Poonam Srivastav, J.
Heard Sri Rajesh Kumar Chauhan and Sri A. K. Gupta, learned Counsel for the defendant-appellants IInd set and

Sri M. K. Gupta Advocate for the plaintiff-respondents.

2. Learned Counsel for the parties state that the questions involved are legal questions and, therefore, the record of the lower Court is not required

to ascertain the facts of the case; consequently this appeal is heard and decided at the stage of admission itself.

3. The instant second appeal is preferred against the judgment and decree dated 28-1-2004 passed by the Additional District Judge, Court No. 4,

Aligarh allowing Civil Appeal No. 108 of 1997 arising out of Original Suit No. 546 of 1989. The trial Court dismissed the suit for specific

performance but allowed refund of the earnest money along with 12% interest. The judgment and decree passed by the trial Court was challenged

in appeal by the plaintiff. The suit was instituted for specific performance. Shiv Kumar defendant Ist set was the original owner of the disputed land.

He entered into an agreement to sell with the plaintiff Laxmi Devi on 11-9-1987 and subsequently another agreement was also executed in favour

of Munni Lal who executed a power of attorney in favour of his son Ramesh Chandra on 6-12-1989. A sale deed was executed in favour of the

appellants on 3-7-1990 for a consideration of Rs. 2,70,000/-. The suit was instituted on 27-7-1989 and the appellants were subsequently

impleaded as a defendant in the suit. The trial Court arrived at a conclusion that the defendant-appellants were entitled for the benefit u/s 19(b) of

the Specific Relief Act. The appeal was allowed by the lower appellate Court, which is under challenge in the instant second appeal. Counsel for

the appellants framed as many as three substantial questions of law which are as under:

(i) Whether the lower appellate Court was justify in ignoring the claim of the appellant on the ground that Section 19(b) is not applicable to their

case and in any case decree for refund of sale consideration be passed ?

(ii) Whether the plaintiff being bona fide purchaser for value without notice and hence their rights were protected and the transfer in their favour

was not barred ?

(iii) Whether the Lower Appellate Court has erred in decreeing the suit for specific performance without upsetting the findings of the trial Court on

the question of knowledge of the agreement dated 11-9-1987 in favour of plaintiff ?

4. The main thrust of the argument is that the appellants are bona fide purchasers. They are in actual physical possession of the land in question and

they will suffer irreparable injury in case they are dispossessed. It is also submitted that the trial Court compensated the plaintiff by refunding the

money along with 12% interest. The submission is that the appellants had sufficiently established their bona fide claim and their contention is that

they tried to make necessary inquiry and despite due diligence, they were not aware about the agreement to sell and, therefore, they are liable to

be accorded benefit of Section 19(b) of Specific Relief Act. It is not disputed that the sale deed in favour of the appellants was executed during the

pendency of original suit No. 546 of 1989. Counsel for the appellant has placed reliance on the decision of the Apex Court in the case of Ram

Prakash Vs. Baddal Husain,

5. Sri M. K. Gupta counsel appearing for the plaintiff-respondents has emphatically disputed each and every arguments advanced on behalf of the

defendant-appellants. The submission is that the appellants being subsequent purchaser during the pendency of the suit for specific performance

have no right or claim and the lower appellate Court was absolutely right in coming to a conclusion that they were not entitled to the benefit u/s

19(b) of the Specific Relief Act. Section 3 of Transfer of Property Act defines a person said to have notice;

A person is said to have notice ""of a fact when he actually knows that fact, or when, but for willful abstention from an enquiry or search which he

ought to have made, or gross negligence, he would have known it.

Explanation I- Where any transaction relating to immovable property is required by law to be and has been effected by a registered instrument, any

person acquiring such property or any part of, or share or interest in, such property shall be deemed to have notice of such instrument as from the

date of regisration or, where the property is not all situated in one sub-district, or where the registered instrument has been registered under Sub-

section (2) of Section 30 of the Indian Registration Act, 1908 (16 of 1908), from the earliest date on which any memorandum of such registered

instrument has been filed by any Sub-Registrar within whose sub-district any part of the property which is being acquired, or of the property

wherein a share or interest is being acquired, is situated.

6. The lower appellate Court has recorded a finding after persuing the statement of DW-2 where he has admitted that he had not examined any

Barahsala, though DW-1 states that the said document was shown to the appellants. Since no receipt thereof has been produced specially when

the DW-2 has made a contrary admission, a conclusion has been arrived at that no inquiry whatsoever was made by the defendant-appellant. Sri.

M. K. Gupta has place a Full Bench decision of this Court in the case of Smt. Ram Peary and Others Vs. Gauri and Others, it was held that even

in a given case where the subsequent transferee is altogether ignorant of any right and if a transfer is made during the pendency of the suit by

vendor after the institution of the suit, the effect of the doctrine of Us pendens is not to annul the conveyance but only to render it subservient to the

rights of the parties in the litigation. Thus the subsequent purchaser yields to the adjudication of the rights in the suit which was instituted prior to

execution of the sale deed.

7. The subsequent tranferee, even though he has obtained the transfer without notice of the original contract cannot set up against the plaintiff any

right to defeat the rule of lis pendens which is founded on public policy. Thus the Full Bench clearly held that Section 52 of the Transfer of Property

Act is not subject to Section 19 of the Specific Relief Act. While laying down this principle, the Full Bench placed reliance on the decision of the

Apex Court, Samarendra Nath Sinha and Another Vs. Krishna Kumar Nag, . This decision of the Full Bench was followed by this Court in the

case of Raja Ram (deceased) through Legal Representatives and Ors. v. Smt. Shanti Devi 1997 (2) AWC 1289. Paragraph 6 of the said

judgment is quoted below:

After hearing learned Counsel for the parties, I am of the view that the second appeal lacks force for the following reasonings. The sale-deed was

executed during the pendency of the appeal in collusion with original vendor who wanted to frustrate the right of respondent Smt. Shanti Devi. This

is not permissible under law when a concluded contract is existing between Smt. Shanti Devi and Sri. Raja Ram. I fail to understand how it would

help the appellant Nos. 2 and 3 in giving opportunity when they did not file suit for specific performance of contract, if there was any oral

agreement or understanding earlier. If there was none, then sale executed in favour of Smt. Shanti Devi is subject to the right u/s 52 of Transfer of

Property Act. The second sale, if any, would be subject to the rights of the parties in the suit. Ruling has been quoted by the learned Counsel for

the respondent Smt. Ram Peary and Others Vs. Gauri and Others, It was observed that it may be that the subsequent transferee is entirely ignorant

of any right on the part of the contractor and also of the pendency, of the suit filed against the vendor by such contractor, yet as the transfer is

made to him by the vendor after the institution of the suit of the contractor and, while it is pending, the subsequent purchaser cannot set up against

the contractor any right from which his vendor is excluded by the decree. The effect of the doctrine of lis pendens is not to annual the conveyance

but only to render it subservient to the rights of the parties in the litigaion. The conveyance in favour of the subsequent purchaser thus yields to the

adjudication of the rights obtained by the contractor, in the consequence of a decree obtained against the vendor in a suit for specific performance

of the contract. The subsequent transferee, even though he has obtained the transfer without notice of the original contract cannot set up against the

plaintiff-contractor any right; for it would defeat the rule of lis pendens which is founded upon public policy. Therefore, Section 52 is not subject to

Section 19(b) of the Samarendra Nath Sinha and Another Vs. Krishna Kumar Nag, and Dutt maharaj v. Sukur Mohommed relied on.

8. In another case Smt. Ram Dhani and Others Vs. Nek Ram Singh and Others, it was held that Section 52 of the Transfer of Property Act has

primacy over Section 19(b) of the Specific Relief Act. Similar view was taken in the case of Abdul Aziz and others Vs. District Judge, Rampur and

anothers, of the said judgment are quoted below:

3. The contesting respondent No. 3 obtained a decree for specific performance against Abdul Habib alias Abdul Ahmad, the pro forma

respondent No. 4, on 16th August, 1973. Before the decree could be executed the pro forma respondent No. 4 transferred the property, which

was the subject matter of the decree, in favour of Mohd. Sharif and Abdul Aziz on 7th February, 1974. The decree-holder Harish Chandra, the

contesting respondent No. 3, initiated proceedings for execution of the decree dated 6th August, 1973. The petitioners before this Court, who

were the transferees of the property in dispute, filed objection u/s 47 of the Code asserting that the decree was not binding on them inasmuch as

they were not parties to the suit and that the decree was not executable against them as they were the bona fide transferees for value. The

objection of the petitioners was turned down by the executing Court by means of its order and judgment dated 18th January, 1985. The petitioners

took up the matter before the District Judge, Rampur in revision. The revision was dismissed by means of the order and judgment dated 27th

April, 1985 and the order of the executing Court rejecting the objection of the petitioners was upheld.

4. Relying upon the doctrine of lis pendens the courts below have held that the petitioners were as much bound by the decree and judgment dated

16th August, 1973 as their transferor Abdul Habib, the judgment-debtor. The view taken by the courts below is sound. Lis comes into existence

from the point of the institution of the suit and continues to survive till the satisfaction of the decree. In view of this legal position, the impugned

orders and judgments do not warrant any interference by this Court in exercise of its special and extraordinary jurisdiction under Article 226 of the

Constitution of India.

9. In the case of (Smt.) Savitri Devi v. Civil Judge (S.D.), Gorakhpur and Ors. 2003 (51) ALR 369 : 2003 All LJ 2535, it was held that any sale

deed executed in disobedience of interim injunction restraining alienation of property render the sale deed during pendency of the suit is nonest and

can very well be ignored.

10. In the instant case, admittedly an injunction was operative and in spite of it sale deed was executed in violation of injunction order and,

therefore, the lower appellate Court was absolutely correct in denying the benefit of Section 19(1)(b) of the Specific Relief Act. The sale deed is

nullity and cannot be given effect to. The facts of the present case are absolutely different from the one cited by the learned Counsel for the

appellants and not applicable to the facts of the present case. The Full Bench decision as well as the decisions of the Apex Court clearly give

Section 52 of the Transfer of Property Act and overriding effect of Section 19(1)(b) of the Specific Relief Act. The facts of the present case are

undisputed. Only inquiry as stated by the DW-1 is that Barahsala was shown to the appellants whereas DW-2 has denied this fact and this has

been very well noted by the lower appellate Court while refusing to grant benefit to the appellants.

11. In the facts and circumstances, I am of the considered view that the appellants are not entitled to the benefit claimed and no illegality has been

committed by the lower appellate Court while setting aside the decree of the trial Court. The substantial questions of law raised in this appeal is

farfetched one and not worth consideration. The appeal lacks merit and is accordingly dismissed. There shall be no order as to costs.