

(2012) 08 PAT CK 0096

Patna High Court

Case No: First Appeal No. 693 of 1995

Ram Brat Singh and Others

APPELLANT

Vs

Mithilesh Kumar Mishra

RESPONDENT

Date of Decision: Aug. 3, 2012

Acts Referred:

- Civil Procedure Code, 1908 (CPC) - Order 6 Rule 18
- Specific Relief Act, 1963 - Section 16(c), 19(b), 20

Citation: (2013) 1 PLJR 773

Hon'ble Judges: V. Nath, J

Bench: Single Bench

Advocate: K.N. Choubey, Ishwari Singh, Ram Krishna Singh, Manish Kumar Singh and Ms. Punita Kumari Singh, for the Appellant; Siddharth Harsh, Sanjay Kumar Pandey and Gopal Swaroop Dubey, for the Respondent

Final Decision: Dismissed

Judgement

V. Nath, J.

This appeal has been filed by the defendant 2nd set-appellants against the judgment and decree dated 18.7.1995 passed by Subordinate Judge-III, Buxar in Title Suit No. 58 of 1983 by which the suit for specific performance of contract for purchase of the suit property by the plaintiff has been decreed. The facts, as unfolded in this appeal, are that the suit land admittedly belonged to defendant no. 1, Ram Raj Mishra. The plaintiff has claimed that Ram Raj Mishra, agreed to sell his land with the plaintiff for a total amount of Rs. 75,000/- and had also executed an agreement for sale on 21.5.1982. It is the plaintiff's case that the total consideration money had been agreed at Rs. 75,000/- out of which Rs. 35,000/- had been paid and Rs. 25,000/- had been adjusted to the previous dues and the remaining Rs. 15,000/- was to be paid after execution of the sale deed. The sale deed was to be executed within six months. It is the further case of the plaintiff that defendant no. 1 ignored the request of the plaintiff to execute the sale deed after the permission from the

consolidation authorities, and ultimately the plaintiff got issued registered legal notice also but to no effect. On the aforesaid premises the plaintiff has prayed for a decree for specific performance of contract against the defendant no. 1 directing the defendant no. 1 to accept the remaining consideration money of Rs. 15,000/- and to execute the sale deed.

2. The defendant no. 1, Ram Raj Mishra, has filed his written statement and denied the execution of the agreement for sale dated 21.5.1982. He has also denied to have received any amount, as alleged by the plaintiff. The receipt of legal notice by registered post has also been denied. It is the specific case of the defendant no. 1 that the plaintiff on 16.8.1982 in the morning at 8 A.M. intercepted defendant no. 1 in the way while he was returning after taking bath in the Ganges and after threatening the plaintiff on the force of rifle, obtained his thumb impressions on three blank papers. It has been stated that the defendant no. 1 had filed the Complaint Case No. 268C/82 before the Court of Additional Chief Judicial Magistrate, Buxar and after cognizance the matter had been sent to the S.D.J.M. Buxar for trial. The defendant no. 1 has also alleged that the said three plain papers containing his thumb impressions had been obtained for fabricating the agreement for sale (Mahadanama). It has been further stated by the defendant no. 1 that he had transferred the suit property by registered sale deeds dated 7.3.1983 and 16.8.1982 to Ram Brat Singh, Narendra Singh and Shree Ram Singh after receiving appropriate consideration and also put the purchasers in possession over the suit property. The defendant no. 1 has denied the possession of the plaintiff over the suit property.

3. The purchasers from the defendant no. 1 were subsequently added as defendant 2nd set in the suit on the prayer of the plaintiff and they have filed their separate written statements. It is the case of the defendant 2nd set that they are purchasers of the suit property from defendant no. 1 for valuable consideration and they had no knowledge of the agreement for sale of the plaintiff. Reiterating the stand of the defendant no. 1, it has been further stated by the defendant 2nd set that no agreement for sale had been executed by defendant no. 1 in favour of the plaintiff and the agreement for sale which has been propounded by the plaintiff is a forged, fabricated and manufactured document.

4. On the basis of the pleadings of the parties, the learned court below framed the following issues in the suit:--

1. Is the suit as framed maintainable?
2. Has the plaintiff any valid cause of action or right to sue?
3. Is the suit barred by law of limitation, estoppel, waiver, acquiescence and res judicata?
4. Is the Mahadanama deed genuine, valid and enforceable in the eye of law?

5. Are the defendants 2 to 4 purchasers for value and for consideration without notice to the contract?

6. Is the plaintiff entitled to a decree?

7. To what relief or reliefs the plaintiff is entitled to?

5. Issue Nos. 4 and 5 were the material issues relating to the validity of the Mahadanama (agreement for sale) and the status of the defendant 2nd set as purchasers for value and without notice of the contract. After considering the pleadings and evidence of the parties, the learned court below has come to the finding that the agreement for sale is genuine and legally enforceable. It has been further found that the defendant 2nd set had the knowledge of the agreement for sale and as such they are not bona fide purchasers. On the basis of these findings the learned court below has come to the conclusion that the defendant 2nd set are entitled to the money to be deposited by the plaintiff in the suit but not entitled to the land purchased by them. The suit has thus been decreed holding the sale deeds of the defendant 2nd set to be inoperative and unenforceable in the eye of law and further directing the plaintiff to deposit Rs. 15,000/- which was the balance consideration money with further direction for execution of the sale deed for the suit land in favour of the plaintiff by the court for the suit land.

6. Mr. K.N. Choubey, the learned Senior Counsel appearing on behalf of the defendant 2nd set-appellants has firstly submitted that the appellants are bona fide purchasers of the suit land without the knowledge of the agreement for sale in favour of the plaintiff and there is no averment in the plaint that the defendant 2nd set had purchased the suit property even after the knowledge of the agreement for sale of the plaintiff and they are not bona fide purchasers. Criticising the impugned judgment, the learned Senior Counsel has submitted that the evidence on record clearly establish that the appellants had no knowledge of the agreement for sale as there are only oral evidence on behalf of the plaintiff and even that too do not inspire confidence. The depositions of the witnesses have been placed at length by the learned counsel to bolster his stand. Questioning the legal pregnability of the impugned judgment, in view of the provision of Section 16(c) of the Specific Relief Act, it has been next submitted that no issue in this regard has been framed by the learned court below and no finding has been recorded. It has been urged that the provision of Section 16(c) of the Specific Relief Act is mandatory and in all cases where the relief for specific performance of contract has been sought for, the plaintiff is required to plead his continuous readiness and willingness to perform his part of the contract and to prove it by cogent evidence. It has been thus canvassed by the learned counsel that in absence of such a finding regarding readiness and willingness of the plaintiff, the decree for specific performance of contract under appeal cannot be legally sustained. The learned Senior Counsel has further placed the evidence of the plaintiff to show that the same are not worth reliance to come to the conclusion regarding continuous readiness and willingness of the plaintiff.

7. The learned counsel appearing on behalf of the plaintiff-respondent, however, has submitted that the learned court below has reached to a correct conclusion that the defendant 2nd set had the knowledge of the agreement for sale of the plaintiff prior to the purchase. Elaborating the submission it has been canvassed that the witnesses examined on behalf of the plaintiff have consistently stated that the defendant 2nd set had the prior knowledge of the agreement for sale of the plaintiff. It has been urged that there are ample evidence on record to show that besides pleading his readiness and willingness to perform his part of the contract, the plaintiff has also succeeded in proving the said fact. It has been contended that the defendant 2nd set being subsequent purchasers have no right to question the readiness and willingness of the plaintiff and make prayer in terms of Section 16(c) of the Specific Relief Act. The learned counsel has thus supported the impugned judgment of the learned court below and prayed for dismissal of this appeal.

8. In view of the rival contentions of the parties, the following points emerge for determination in this appeal:--

(i) Whether the bar of Section 16(c) of the Specific Relief Act is attracted in the facts and circumstances of this case and the plaintiff can be non-suited on this score?

(ii) Whether the defendant 2nd set are bona fide purchasers for value and without notice of the agreement for sale of the plaintiff?

(iii) Whether the findings and conclusions of the learned court below in the impugned judgment are sustainable in law and on facts?

9. There is no dispute that the suit land belonged to defendant no. 1, Ram Raj Mishra. It is also not in dispute that Ram Raj Mishra died after filing of his written statement in the suit but before his examination as a witness in the suit. It is also not in dispute that defendant no. 1 had executed the two sale deeds dated 16.8.1982, marked Ext.-A and 7.1.1983, marked Ext.-A/1 in the suit for the suit land in favour of the defendant 2nd set. However, the plaintiff has filed the suit praying for decree of specific performance of contract on the basis of an unregistered agreement for sale dated 21.5.1982 marked as Ext.-4 in the suit asserting the same to have been executed by the defendant no. 1 for the suit land in his favour prior to the sale deeds in favour of the defendant 2nd set.

10. It will be worthwhile to notice here that the defendant 2nd set have been impleaded as party defendants in the suit later on, after the filing of the written statement by defendant no. 1 wherein he disclosed the fact regarding the transfer of the suit land to them. In the written statement the defendant 2nd set have denied to have prior knowledge of the agreement for sale (Ext.-4).

11. Point No. 1: In the plaint in paragraph no. 10, the plaintiff has stated that he has been ever ready and willing to perform his part of the contract. The defendant 1st set as well as the defendant 2nd set besides challenging the genuineness of the

agreement for sale have further denied the averment made in paragraph no. 10 of the plaint. However, no issue in the suit has been framed in this regard and no finding has been recorded by the learned court below on this aspect.

12. Section 16(c) of the Specific Relief Act provides as follows:--

16. Personal bars to relief.--Specific performance of a contract cannot be enforced in favour of a person--

(a) xx xx

(b) xx xx

(c) who fails to aver and prove that he has performed or has always been ready and willing to perform the essential terms of the contract which are to be performed by him, other than terms the performance of which has been prevented or waived by the defendant.

13. On a bare reading of the aforesaid provision, it is vivid that it has been couched in negative and puts a bar on the plaintiff in getting the decree for specific performance of contract in absence of the pleading and proof regarding his continuous readiness and willingness to perform his part of contract. The defendant no. 1 from whom the plaintiff has claimed to have obtained agreement for sale died during the pendency of the suit. He had also not been examined in the suit. The defendant 2nd set, who are appellants here, have claimed to have acquired title over the suit land from the defendant no. 1 on the basis of two sale deeds dated 16.8.1982 and 7.1.1983 which are clearly after the date of the disputed agreement for sale dated 21.5.1982. The learned counsel for the respondent is correct in his submission that in this background the defence of readiness and willingness as provided in Section 16(c) of the Specific Relief Act is not available to a subsequent purchaser. The law in this regard is also no longer res Integra. The Apex Court in the case of [M.M.S. Investments, Madurai and Others Vs. V. Veerappan and Others](#) , after taking into notice the earlier decision in [Ram Awadh \(Dead\) by Lrs. and Others Vs. Achhaibar Dubey and Another](#), has held that after the conveyance, the only question in a suit for specific performance of contract, which remains to be adjudicated, is as to whether the purchaser was a bona fide purchaser for value without notice and the question of readiness and willingness becomes immaterial. As such, it is held that the appellants are not entitled to raise the defence of bar as provided in Section 16(c) of the Specific Relief Act and the plaintiff cannot be non-suited on this score. This issue is, thus, accordingly decided.

14. Point No. 2: After the filing of the written statement by the defendant no. 1 disclosing the conveyance of the suit property, the plaintiff had sought for addition of the purchasers as parties in the suit and also sought further amendment in the plaint to add averments assailing the sale deeds of the defendant 2nd set on the ground that they had the prior knowledge of the agreement for sale and they are

therefore not bona fide purchasers. The prayer for addition of the purchasers as defendant 2nd set in the suit was allowed by order dated 16.1.1985. The petition for amendment in the plaint for addition of the averment regarding defendant 2nd set being not bona fide purchasers and having the knowledge of the agreement for sale was also allowed by order dated 29.1.1985 and the plaint was directed to be amended accordingly after payment of cost of Rs. 50/- to the defendant no. 1. However, the said amendment regarding addition of the averment in the plaint was not carried out by the plaintiff and no amendment was made in the plaint by inserting those averments. It is worth noting that the plaint has also been made an exhibit in the suit at the instance of the plaintiff and has been marked as Ext.-2. The perusal of the plaint discloses that although the defendant 2nd set have been impleaded as party-defendants in the suit, but no amendment was made in the plaint by incorporating the paragraphs which have been allowed to be incorporated by order dated 29.1.1985.

15. The consequence of the failure to amend the pleading after the order has been envisaged by Order 6 Rule 18 C.P.C. which reads as follows:--

Failure to amend after order.--If a party who has obtained an order for leave to amend does not amend accordingly within the time limited for the purpose by the order, or if no time is thereby limited then within fourteen days from the date of the order, he shall not be permitted to amend after the expiration of such limited time as aforesaid or of such fourteen days, as the case may be, unless the time is extended by the Court.

16. The aforesaid provision has been considered by this Court in the case of [Mostt. Kanti Devi and Another Vs. Surendra Prasad Singh and Others](#) wherein it has been held that the provision of Order 6 Rule 18 C.P.C. is mandatory and if the party fails to carry out the amendment in its pleading after the amendment, he would not be subsequently allowed to incorporate the same. It is not in dispute that no prayer had been made even subsequently to incorporate the amendment in the plaint. It also further appears from the plaint that no relief, at all, has also been sought with regard to the sale deeds of the defendant 2nd set.

17. In view of the aforesaid position of law and the fact that the plaintiff has failed to carry out the amendment in the plaint by incorporating the statement allowed by the order dated 29.1.1985 and also failed to seek any relief against the sale deeds, the plaint will have to be read as it is without those averments or without the said relief. However, since a specific issue has been framed with regard to knowledge of the defendant 2nd set of the agreement for sale of the plaintiff by the learned court below and decided against the defendant 2nd set, it will be desirable to scrutinize the contentions of the parties and their evidence in this regard.

18. The defendant 2nd set in their pleading have specifically said, that they had no prior knowledge of the agreement for sale in question and the said fact has been

supported by their witnesses also. Thus, by asserting the absence of knowledge, the defendants have discharged the limited burden in that regard as very little evidence or even denial is sufficient. Thereafter the onus has shifted to the plaintiff to establish the fact of prior knowledge to the defendant 2nd set of the agreement for sale.

19. The learned counsel for the plaintiff-respondent has placed reliance upon the depositions of three witnesses, namely, P.Ws. 17, 18 and 20 in support of the contention that the defendant 2nd set had the prior knowledge of the agreement for sale. P.W. 17 has claimed that he was the middle man in the negotiation for sale between the plaintiff and the defendant no. 1 and has stated that the entire villagers were knowing the fact of sale. He has further stated that the defendant 2nd set had also knowledge of the sale but in cross-examination he denied to have knowledge of the purchase by the defendant 2nd set of the suit land. As such, this witness is not competent on the point of knowledge of the defendant 2nd set of the agreement for sale prior to their purchase. P.W. 19 has stated that he has only hearsay knowledge of the agreement of sale of the plaintiff but has made the statement that entire villagers had the knowledge of the agreement for sale of the plaintiff. Besides making this general statement, he has not disclosed the basis of his information that the defendant 2nd set had the prior knowledge. P.W. 20 has also deposed that the agreement for sale of the plaintiff became known to entire villagers and in that manner it also came to the knowledge of the defendant 2nd set. He has further stated that at the time of execution of the agreement for sale, Sriram Singh (one of the defendant 2nd set) was present. But this fact has not been corroborated by the plaintiff or any of his witnesses. Thus, the deposition of these three witnesses do not inspire confidence. No other evidence has been relied on behalf of the plaintiff-respondent.

20. In view of Section 19(b) of the Specific Relief Act, the specific performance of contract cannot be enforced against a subsequent purchaser for value and without notice of the original contract. As noticed earlier, there is no pleading that the defendant 2nd set had the prior knowledge of the agreement for sale and they are not bona fide purchasers. Further, no relief has been prayed against the sale deeds of the defendant 2nd set. But even then, the plaintiff has also failed to adduce reliable evidence to establish the knowledge of the agreement for sale to the defendant 2nd set prior to their purchase and lack of their bona fide in purchasing the suit land.

21. The learned court below has not properly appreciated the pleadings of the parties and has also not scrutinized the evidence of the parties with correct perspective. The imputation of prior knowledge of the agreement of sale to the defendant 2nd set in order to defeat their right could not have been based upon stray evidence and that too in the facts when there is absence of pleading in that regard.

22. Section 20 of the Specific Relief Act provides that the jurisdiction to decree specific performance is discretionary and the Court is not bound to grant such relief merely because it is lawful to do so. In view of the aforesaid reasons and discussions, it is held that the plaintiff-respondent is not entitled to the decree of specific performance as prayed. In the result, the appeal is allowed and the judgment and decree passed by the court below is set aside. The suit filed by the plaintiff is dismissed. However, there shall be no order as to cost.