

(1999) 04 CAL CK 0061

Calcutta High Court

Case No: S.A. No. 479 of 1994

Chittaranjan Maity and Another

APPELLANT

Vs

Krishna Chandra Dalui and
Another

RESPONDENT

Date of Decision: April 16, 1999

Acts Referred:

- Specific Relief Act, 1963 - Section 16(c), 20, 20(2)
- Transfer of Property Act, 1882 - Section 52

Citation: 2 CWN 222

Hon'ble Judges: Bhaskar Bhattacharya, J

Bench: Single Bench

Advocate: S.P. Roy Chowdhury, Ram Prakash Banerjee, Debasis Guin and Jyotirmoy Bhattacharya, for the Appellant; T.M. Roy and Sushil Sikdar, for the Respondent

Final Decision: Dismissed

Judgement

Bhaskar Bhattacharya, J.

This second appeal is at the instance of subsequent purchasers pendente lite in a suit for specific performance of contract and is directed against the judgement and decree dated September 19, 1991 passed by the learned Additional District Judge, 5th Court, Midnapore in other Appeal No. 51 of 1990 thereby affirming those dated March 10, 1990 passed by the learned Assistant District Judge, 1st Court, Midnapore in Other Suit No. 138 of 1985 and granting a decree for specific performance of contract. The respondent Nos. 1 to 3 filed the aforesaid suit for specific performance of contract for sale against the respondent No. 4. The respondent No. 4 during the pendency of the aforesaid suit having transferred his interest in the suit property in favour of the appellants, they were added as defendants.

2. The suit was initially contested by the respondent No. 4 by filing written statement thereby taking specific plea that the time was the essence of the contract and that

since the plaintiffs were not ready and willing to perform their part of the contract, he subsequently sold the property to the present appellants.

3. The appellants after being added as defendants filed joint written statement thereby contending that they were bona fide purchasers for value without the notice of the previous agreement for sale.

4. The learned trial Judge overruled the defence taken by the defendants and thus decreed the suit for specific performance of contract.

5. Being dissatisfied, the subsequent purchasers preferred an appeal which has been dismissed by the learned Additional District Judge by the judgement and decree impugned in the present second appeal.

6. Mr. Roychowdhury, the learned senior advocate appearing on behalf of the appellants has at the very outset fairly conceded that his clients having purchased the suit property during the pendency of the suit, were not entitled to take the plea of bona fide purchase for value without notice of the previous agreement in view of clear bar imposed by Section 52 of the Transfer of Property Act.

7. Mr. Roychowdhury however seriously contended that in this case, the plaintiffs could not prove that they were at all material times ready and willing to perform their part of the contract and as such were not entitled to get a decree for specific performance of contract.

8. Mr. Roychowdhury pointed out that the decision given by this court in the case of Ashutosh Jana v. Ananta Kumar Jana and Ors. reported in 1998(2) CHN 393 has no application to present case and that his clients are entitled to take the plea that the Plaintiffs failed to prove the requirement of Section 16(c) of the Specific Relief Act, 1963.

9. I am at one with Mr. Roychowdhuri that the principles laid down in the case of Ashutosh Jana (Supra) or in the case of Jugraj Singh v. Labh Singh reported in AIR 1995 SC 945 apply only to the defence of a pre-suit subsequent purchasers who are made parties to a suit for specific performance of contract. But the principles laid down in those decisions cannot have any application to a case of post-suit transfer where such subsequent purchasers have been added as defendants. Those subsequent purchasers should be deemed to be the legal representatives of their transferor and are entitled to take all possible defences available to the original contrary party. These post-suit purchaser having no right to take the defence of bona fide purchaser for value without notice of agreement, the decision of Jugraj Singh v. Labh Singh (Supra) cannot have any application.

10. Therefore, I allowed Mr. Roychowdhury to urge the point taken by him.

11. Mr. Roychowdhury strenuously argued that in this case there is no evidence to show that the plaintiffs even sent any letter by registered post asking the defendant

No. 1 to execute the deed before the stipulated time. Under the aforesaid circumstances, Mr. Roychowdhury claimed, the learned courts below erred in law in holding that the plaintiffs were all along ready and willing to perform their part of the contract.

12. I am afraid, I cannot accept the aforesaid contention of Mr. Roychowdhury. Law does not require that it is for the plaintiff to express his intention of readiness and willingness by a registered letter. As pointed out by the learned first appellate court below the plaintiffs in this case by giving evidence proved that they purchased the stamp papers on November 25, 1985 and with the balance consideration of Rs. 15,000/ were waiting at the Kharagpur Sub-registration Office on that day but the defendant No. 1 did not turn up to execute the deed. The aforesaid findings of the courts below are based on consideration of both oral and documentary evidence on record. It is not the contention of Mr. Roychowdhury that such findings are based on evidence which are not admissible under law nor is it his contention that such findings are based on no evidence. At any rate, such findings cannot by any stretch of imagination be described as perverse; on the other hand, in my view, the approach of the courts below is quite reasonable and any prudent man within the meaning of Evidence Act will under such circumstance endorse the findings of the courts below. Therefore there is no scope of interference in this second appeal with such concurrent findings of fact.

13. Mr. Roychowdhury lastly contended that the learned courts below before granting a decree for specific performance of contract did not consider the effect of Section 20 of the Specific Relief Act. As the appellants could not focus any of the circumstances mentioned in the Section 20(2) of the aforesaid Act, in my view, the learned courts below rightly exercised discretion in favour of the plaintiffs. Therefore, I do not find any substance in the aforesaid contention of Mr. Roychowdhury. Therefore, there is no merit in this appeal and the same is dismissed. In the facts and circumstances, there will be however no order as to costs.