

Smt. Prova Rani Adhikari Vs Smt. Lalit Mohini Mitra

Court: Calcutta High Court

Date of Decision: Dec. 17, 1959

Acts Referred: Transfer of Property Act, 1882 & Section 53A

Citation: AIR 1960 Cal 541 : (1961) 1 ILR (Cal) 30

Hon'ble Judges: P.N. Mookerjee, J; Niyogi, J

Bench: Division Bench

Advocate: Bijan Behari Dasgupta, Provash Chandra Mukherjee and Gour Chandra Biswas, for the Appellant; Apurbandhan Mukherjee and Kanan Kumar Ghosh, for the Respondent

Final Decision: Allowed

Judgement

P.N. Mookerjee, J.

This is the plaintiff's appeal, arising out of suit for declaration of title and recovery of possession and damages. The

suit was decreed by the trial court, but that decision was reversed by the learned lower appellate court and the plaintiff's suit was dismissed.

Aggrieved by that decision, the present appeal was filed by the plaintiff.

2. The relevant facts lie within a short compass and they may be stated as follows:

The property in suit originally belonged to one Arun Chandra Dutta. By a Koba, dated 4-10-1950, the plaintiff claims to have purchased the

property and, thereafter, on 4-5-1954, she brought the present suit for recovery of possession of the disputed property from the defendant, on the

allegations, inter alia, that the defendant was in occupation of the same without any title whatsoever and that the plaintiff was entitled to a

declaration of title and also to recovery of possession as against her. In the meantime, there were some proceedings between the parties, to which

reference will be made in due course in course of this judgment.

3. The principal defence was one u/s 53A of the Transfer of Property Act and the defendant contended that, long before the plaintiff's aforesaid

purchase on 16-12-1947, the plaintiff's vendor Arun entered into an agreement with the defendant, who was his aunt, for sale of the disputed

property to her for a consideration of Rs. 18,000/- and, on that agreement, on different dates, a total sum to the extent of roughly Rs. 4,000/- was

paid by the defendant to Arun in part payment of the said stipulated consideration money. It was also alleged by the defence that, at some later

stage, Arun agreed to receive a reduced consideration for the property, viz., Rs. 12,000/-. The defendant contended that she was, at the time of

her aforesaid agreement, already in possession of the disputed property as a licensee from Arun and that she continued her possession of the suit

property in part performance of the aforesaid agreement between herself and Arun and also did further acts in performance of the same by further

payments to Arun under the said agreement. The defendant also stated in her written statement that she was willing to perform her outstanding part

of the agreement with Arun. The defence further contended that the plaintiff in the present case was not a bona fide transferee for value without

notice of her (defendant's) aforesaid agreement, but was a transferee with notice of the same and so she (plaintiff) would not get the protection or

benefit of the proviso to Section 53A of the Transfer of Property Act. A further defence was taken in the written statement that, by reason of the

dismissal of a previous suit for ejectment of the defendant from the suit premises, which was brought by the plaintiff on the allegation that the

defendant was a tenant, which allegation was subsequently sought to be amended into one of a licensee, the present suit was barred by res judicata

- at least constructive. All these defences were overruled by the learned Subordinate Judge and the plaintiff's suit was decreed.

4. On appeal, as we have stated above, the decree of the learned Subordinate Judge was set aside and the plaintiff's suit was dismissed, upon

findings, inter alia, that Section 53A would be attracted to this case and would give the defendant the necessary protection, the plaintiff not being a

bona fide purchaser for value without notice of the defendant's agreement, so as to avail herself of the proviso thereto.

5. In arguing this appeal before us on behalf of the plaintiff-appellant, Mr. Dasgupta has particularly drawn our attention to the judgment of the

learned Addl. Dist. Judge, which judgment, according to him, is erroneous both in point of law and on facts, and, in any event, is not a proper

judgment of reversal. It appears from the judgment of the learned Additional District Judge that his mind was, to some extent, obsessed with the

idea that, when the agreement for sale is proved and the defendant claims protection u/s 53A of the Transfer of Property Act, the plaintiff, in order

to meet that defence, must establish that she was a bona fide purchaser for value without notice and was entitled to the benefit of the proviso to

that section and it is only when this is established that the defence u/s 53A on the agreement of the defendant would fail; otherwise, that defence

would at once succeed. We may at once state that this approach of the learned Additional District Judge is entirely wrong and wholly unwarranted

by the terms of the section. u/s 53A of the Transfer of Property Act, whenever a claim is raised for protection under that section, the claimant has

first to establish not only an agreement in writing, on which that claim is founded, but also the other elements, required on his part for attracting the

section, that is, its main part as distinguished from its proviso, viz., that either he has taken possession of the disputed property, in whole or in part,

in performance of the agreement, or, if he was already in such possession, he has continued in possession in part performance of the said

agreement and has done some act in furtherance of the contract and, further, that he has either performed his part of the said contract, or is willing

to perform the same, and it is only when these are established and the claimant thus, prima facie, establishes his claim under the said Section 53A

that the said claim may be defeated by his adversary by showing that he was a transferee for value without notice of the claimant's claim or

agreement or the part performance thereof and is, as such, entitled to the benefit of the proviso to the section. The purpose of the proviso merely is

to defeat a claim which would, otherwise, have succeeded under the main part of the section. The question of the proviso does not arise until and

unless the claimant has substantiated his claim under the main part of the section. It has, therefore, to be considered first whether the defendant, in

the present case, has complied with the requirements of Section 53A, viz., the main part of the section as distinct from its proviso. If the defendant

fails there, the proviso would not come into the picture at all and, whether the plaintiff has or has not notice of the defendant's agreement or the

part performance thereof, he will be entitled to succeed. Therefore, the approach of the learned Additional District Judge on this part of the case

was not strictly proper. We have not overlooked that the learned Additional District Judge, although he was primarily predominantly of the view,

as indicated above has also recorded his findings on the requirements under the main part of Section 53A and has arrived at contrary conclusions

on these points from the trial court. The point, however, is whether these findings are proper findings of reversal on the particular points, - or

proper findings in law, even though relating to facts, - so as to be immune from challenge in this second appeal. On this point, we are in agreement

with the argument of Mr. Dasgupta notwithstanding Mr. Mookerjee's strenuous attempt to support the view of the learned Additional District

Judge, that these aspects in all their relevant details have not been fully or properly considered by the learned Additional District Judge and they do

not appear to have received that consideration from the said learned Judge which will give his ultimate findings on them immunity from challenge in

this court.

6. The finding that there was an agreement for sale from Arun to the defendant in writing, as put forward by the defendant, has been made

concurrently by both the courts below and that finding will certainly stand. On the other points, however, viz., whether the defendant, who was

admittedly in possession of the disputed property as a licensee before her aforesaid agreement for sale, continued in possession of the same in part

performance of her aforesaid agreement, would have to be re-examined, as the finding of the learned Additional District Judge on this point, does

not seem to be a proper finding of reversal on a consideration of all the relevant aspects and materials. The same also is the position with regard to

the findings of the learned lower appellate court on the other two questions, essential under the main part of Section 53A, viz., whether the

defendant has done some act in furtherance of the contract and whether she is willing to perform her part of the same that still remains unperformed

and outstanding. On these aspects the discussion of the learned Additional District Judge seems to be somewhat scrappy and perfunctory and that

cannot certainly be accepted as a proper foundation for findings of reversal on these points. It is clear, then that the case will have to go back to

the learned lower appellate court for fresh and further consideration in the light of the observations, made in this judgment, and in accordance with

law and, as the case is thus to be remanded, we would not also express any final opinion on the other question, raised by the defence, viz., that the

present suit was barred by res judicata - at least constructive, - and although that plea was rejected by both the courts below, when the matter is

going back, that point will also be open to argument by the parties before the learned lower appellate court. The question of the proviso and of the

plaintiff's being a bona fide purchaser for value without notice of the defendant's agreement, will also if it arises for consideration in the light of our

observations, made above be reconsidered by the court below, on the evidence on record, in accordance with law. We would also ask the

learned lower appellate court to consider one further submission which has been made before us on behalf of the defendant respondent by Mr.

Mookerjee, viz., that, even if the plaintiff be ultimately found entitled to a decree in this suit and the defence u/s 53A on the part of his client

(defendant) fail, even then such a decree should not be given without directing the plaintiff to pay back to her the sum of roughly Rs. 4000/- which

has been found by the courts below to have been paid by her to Arun under her aforesaid agreement. We are, however, expressing no opinion on

the merits of this contention and it will be for the court of appeal below to consider the same on the merits in accordance with law and pass

appropriate orders in regard thereto.

7. In the premises, this appeal will be allowed, the judgment and decree of the learned Additional District Judge will be set aside and the case will

be sent back on remand to that court for a proper decision in accordance with law in the light of the observations, made in this judgment.

8. Costs of this appeal will abide the final result of the suit.

Niyogi, J.

9. I agree. Appeal allowed and case remanded.