(1923) 07 BOM CK 0018

Bombay High Court

Case No: Second Appeal No. 476 of 1922

Laxnan Mankar Kasar		APPELLANT
	Vs	
Ravji Dhansing Patil		RESPONDENT

Date of Decision: July 25, 1923

Acts Referred:

- Transfer of Property Act, 1882 - Section 54

Citation: AIR 1924 Bom 150 : (1923) 25 BOMLR 1027

Hon'ble Judges: Lallubhai Shah, J; Crump, J

Bench: Division Bench

Judgement

Lallubhai Shah, Kt. Ag. C.J.

1. The few facts which have given rise to this appeal are these. The original owner of the property orally sold the land in suit to defendant No. 1 on July 4, 1911 for Rs. 150. The defendant No. 1 was put in possession and the consideration was paid, but there was no registered conveyance to complete the sale as required by Section 54 of the Transfer of Property Act. On January 19, 1920, the owner, who is defendant No. 2, sold this very land to the present plaintiff for Rs. 1,000. In that sale-deed there is the following recital:

In all Rs. 1,000 I have received as consideration. By this document I permanently sell to you for the above amount the below-mentioned Immovable property consisting of one field called "Sonare" (being) Jirayit land belonging to me by right of ownership which has now been given under oral sale to Ravji Dhansing Patil has been in his possession and enjoyment.

2. It also appears that in 1911 when there was this oral sale without the necessary conveyance, there was mutation of names in favour of defendant No. 1.

3. The present suit was filed by the plaintiff on June 1, 1920. He based his claim on the sale-deed in his favour by defendant No. 2, and he was prepared to pay to defendant No.

1 Rs. 150 in pursuance of the conditions in his sale-deed, admitted to have been received by defendant No. 2 from defendant No. 1.

4. The trial Court came to the conclusion that the title of defendant No. 1 was not proved, as there was no registered conveyance in his favour, and as the oral transaction between defendant No. 1 and defendant No. 2 was a mortgage. Accordingly a decree was passed in favour of the plaintiff for possession of property on his paying Rs. 150 to defendant No. 1.

5. The defendant No. 1 appealed to the District Court, and the learned First Class Subordinate Judge, with appellate powers, who heard the appeal, reversed that decree and dismissed the plaintiff''s suit. He came to the conclusion that the transaction between defendants Nos. 1 and 2 was a sale, though it was not completed by a registered conveyance. He definitely found against the theory of that transaction being a mortgage. The learned Judge also found that the plaintiff was not entitled to possession under the circumstances, as defendant No. 1 was entitled to rely upon his possession and the payment of consideration.

6. The plaintiff has appealed to this Court, and two points have been urged on his behalf : first, that the transaction of 1911 between defendants Nos. 1 and 2 was really a mortgage and not a sale, It is also urged that the Purshis given by the plaintiff''s pleader, Exhibit 29 in the case, has been misconstrued by the lower appellate Court. Secondly, it is urged that even if it be a sale, the claim for specific performance of the agreement for sale being barred at the date of the suit, the defendant cannot resist the plaintiff''s claim for possession based upon a completed title. In support of this contention reliance is placed upon the decision in Lalchand v. Lakshman ILR (1904) 28 Bom. 466 : 6 Bom. L.R. 510; and it is urged that the subsequent Full Bench decision in the case of Bapu Apaji v. Kashinath Sadoba ILR (1916) 41 Bom. 438 : 19 Bom. L.R. 100 F.B, does not apply to the facts of this case, and that the subsequent interpretation of that decision in Venkatesh Damodar v. Mallappa Bhimappa ILR (1921) 46 Bom. 722 : 24 Bom. L.R. 242 should not be accepted as it is inconsistent with the decision in Lalchand v. Lakshman. As regards the first point, we think that the finding of the lower appellate Court should be accepted as a finding of fact. It is quite true that the learned Judge has referred to the Purshis in his judgment, but the finding on this point is not based upon the Purshis. Even taking the Purshis to mean what the learned pleader for the appellant contends it means, the finding of the lower appellate Court cannot be disturbed. It is really a finding of fact based upon the circumstances and the evidence in the case. Having regard to the expression used in the sale-deed of January 1920 it was open to the lower appellate Court to come to the conclusion that the transaction was intended to be a sale, and not a mortgage. The very fact that the parties did nothing for nearly eight years shows that it was in. tended to be a sale. It is quite true that it was not completed by a registered conveyance, as it should have been, according to law.

7. This gives rise to the second point in the case to which I have referred. We think, however, that the decision in Venkatesh v. Mallappa would clearly apply to the case. The fact that at the date of the suit the claim for specific performance was barrad, even assuming it to have been barred, would not be a sufficient answer to the defendant''s plea that he is entitled to rely upon his possession which he got in pursuance of the agreement for sale. The only difference between the case of Venkatesh v. Mallappa and the present case is that in the former case the suit was filed by the original vendor and in the present case the suit is filed by the purchaser from the original vendor. But on principle the position is exactly the same, and if defendant No. 2 could not have successfully sued defendant No. 1 in 1920, I do not see how the plaintiff could do soon the sale-deed from defendant No. 2. The decision in Lalchand v. Lakshman has been distinguished on the special facts of that case. I am unable to accept the contention that there is necessarily a conflict between that case and the decision in Venkatesh v. Mallappa. When the claim for specific performance is definitely negatived by the Court the position of the defendant in possession without a registered conveyance may be different. The authority of Lalchand v. Lakshman is much shaken by the subsequent decisions : and its scope must be limited to the facts of that case. Whether in a case, which on facts would be indistinguishable from that case, it should be followed or not must be considered when the question arises. The decision of the lower appellate Court is right. I would confirm the decree of that Court and dismiss the appeal with costs.

Coyajee, J.

8. I agree.