Md. Noorul Hoda vs Bibi Raifunnisa And Ors on 1 December, 1995

Equivalent citations: AIRONLINE 1995 SC 608

Bench: K. Ramaswamy, B.N. Kirpal

CASE NO.:
Special Leave Petition (civil) 25847 of 1995

PETITIONER:
MD. NOORUL HODA

RESPONDENT:
BIBI RAIFUNNISA AND ORS.

DATE OF JUDGMENT: 01/12/1995

BENCH:
K. RAMASWAMY & B.N. KIRPAL

JUDGMENT:

JUDGEMENT 1995 SUPP. (6) SCR 110 The following Order of the Court war, delivered :

In a see-saw legal battle between S.K. Mahangu and S.K, Refique, the brother-in-law of the petitioner, the Court is called upon to decide whether the petitioner's title suit No. 148 of 1981 filed in the Court of Munsif, Arari in Bihar was filed within the limitation. Though the proceedings are numerous, the facts relevant to decide the question of limitation may be culled out in a short compass. In Khata No, 1593 which is part of Plot No. 4364 of an extent of 473 acres situated in Basantpur village, the names of Bibi Raifunnisa, Mahangu and Bibi Afta, heirs of Fidvi were recorded as owners thereof. Khatt No. 1593 admeasuring 7 bighas 6 kathas of the land is the subject matter of the dispute. The petitioner claimed that he had purchased the said land benami in the name of Rafique on December 1, 1959 and was in possession and enjoyment thereof. Bibi Raifunnissa filed Title Suit No. 220 of 1969 for partition and division by meets and bounds was decreed and a preliminary decree dated January 22, 1973 was passed. In furtherance thereof, final decree was passed on February 9, 1974. The suit land fell to the share of Bibi Raifunnisa. The petitioner obtained another sale deed from Rafique on September 6, 1980. He filed the suit in 1981 for a declaration that the preliminary and final decrees dated January 22, 1973 and February 9, 1974 respectively made in Title Suit No. 220 of 1969, were illegal, collusive and did not bind him and made a prayer to adjudicate and set aside the same as such and to grant perpetual injunction.

The trial court decreed the suit but on appeal, the District Court held that the petitioner being not a party to the preliminary or final decree, they could not bind the petitioner but nonetheless Refique, the benamidar had knowledge of the preliminary decree passed in 1973 and final decree passed in 1974, The lands were allotted to Bibi Reifunnisa, The petitioner had thereby constructive notice, The suit having been filed beyond three years, was barred by limitation applying Article 59 of the Schedule to the Limitation Act, 1963 for short, "the Act"). The High Court in A.A.D. No. 18/88 by Judgment and order dated August 7, 1995 confirmed the same, Thus this petition by the plaintiff.

The appellate court recorded the finding that "Moreover, PW 8. Refique himself admitted in his evidence that he had filed the said Kewala (sale deed) in Title Suit No. 220/69 and this fact has also been corroborated from the Exh. list of document filed in Title Suit No. 220/69, Exh, H/l and H/2 clearly indicate that Kewala dated 1.12.1959, alleged to have been executed in favour of Rafique was filed in Tide Suit No. 220/69", It was also found that the petitioner as P.W, 9 admitted "that he had not paid any amount to Rafique. He further admitted in para 32 that there is mention that Rafique was the benamidar and so the land is now transferred." On those findings it was held that in the preliminary and final decrees Exh, .J. & Jl, the lands were allotted to Raifunnisa. The petitioner had not filed the original sale deed dated September 6, 1980 and accordingly, it found that Rafique had full knowledge about the Title Suit No. 220/69. The petitioner, PW.9 came to know about the Title Suit through his benamidar, Article 59 of the Schedule to the Act is applicable to the facts. Therefore, the suit is barred by limitation. The High Court in the impugned judgment held that the knowledge of the benamidar tinder (he facts and circumstances of the case could be imported to be the knowledge of the real owner, namely, the petitioner. The petitioner, therefore, had full knowledge about the earlier proceedings of the preliminary and final decrees and concluded thus:".....from the very beginning the plaintiff had knowledge of the entire things inasmuch as he himself had purchased the suit property by the first sale deed dated 1.12.1959, but according to the plaintiff actually he was the owner and Refique was Benamidar and again he himself had purchased the suit property by the subsequent sale deed dated 6,9.1980. Thus the Benamidar had got all the knowledge about the earlier proceedings.....In my opinion, therefore, the plaintiff is presumed to have got full knowledge of the earlier proceeding in the suit relating to the litigation in respect of the preliminary and final decree of the Benamidar," Accordingly it was held that the suit governed by Art. 59 of the Schedule to the Act and the suit having been filed in 1981, is barred by limitation.

It is contended for the petitioner that he being not a party to the decree. Art 59 of the Schedule to the Act is inapplicable. The residual Art, 113 is the appropriate Article applicable to the facts in this case. The right to sue accrued to the petitioner when his possession was ought to be interdicted in execution. He became aware for the first time on June 17, 1981 when the possession was sought to be taken from him. Therefore, the suit was filed within three years. It is also sought to be contended that the original sale deed dated December 1, 1959 was not filed in the court. He had not knowledge of the proceeding in the partition suit. All the actions were collusive and fraudulent to deprive the petitioner, real owner of the property. We find no force in the contentions. The appellate court after exhaustive discussion of the evidence recorded the finding extracted hereinbefore. Admittedly Rafique, petitioner's brother-in-law is Benamidar and the petitioner derives title through him. The High Court also accepted the finding that the petitioner is presumed to have full knowledge of the earlier proceeding in the partition Title Suit No. 220/69 and the preliminary and final decrees

passed therein. The petitioner had not filed his sub-sequent sale deed dated September 6, 1980 got executed by Rafique.

Section 55(1) of the Transfer of Property Act, 1882 regulates rights and liabilities of the buyer and seller. The seller is bound to disclose to the buyer any material defect in the property or in he seller's title thereto of which the seller is, and the buyer is not, aware, and which the buyer could not with ordinary care discover, The seller is to answer, to the best of his information, all relevant questions put to him by the buyer in respect of the property or the title thereto. The seller shall be deemed to contract with the buyer that the interest which the seller professes to transfer to the buyer subsists and that he has power to transfer the same. Section 3 provides that 'a person is said to have a notice of a fact when he actually knows the fact, or when but for wilful abstention from an enquiry or search which he ought to have made, or gross negligence, he would have known it". Explanation II amplifies that "any person acquiring any immovable property or any share or interest in any such property shall be deemed to have notice of the title, if any, of any person who is for the time being in actual possession thereof. Constructive notice in equity treats a man who ought to have known a fact, as if he actually knows it. Generally speaking, constructive notice may not be inferred unless some specific circumstances can be shown as a starting point of enquiry which if pursued would have lead to the discovery of the fact. As a fad is found that Rafique filed the sale deed dated December 1, 1959 executed in his favour by Mahangu, in Title Suit No. 220/69 for which the petitioner claims to have derivative title through Rafique, Rafique had full knowledge that despite the purported sale, Bibi Raifunnisa got the preliminary decree, passed in 1973 and in 1974 Under the final decree the right, title and interest in the suit property passed on to her. Under Section 55 when second sale deed dated September 6, 1980 was got executed by the petitioner from Refique, it is imputable that Rafique had conveyed all the knowledge of the defects in title and he no longer had tile to the property. It is also a finding of fact recorded by the appellate court and affirmed by the High Court that the petitioner was in know of full facts of the preliminary decree and the final decree passed and execution thereof. In other words, the finding is that he had full knowledge, from the inception of Title Suit No, 220/69 from his Benamidar. Having had that knowledge, he got the second sale deed executed and registered on September 6, 1980, Obvious to these facts, he did not produce the second original sale deed nor is an attempt made to produce secondary evidence on proof of the loss of original sale deed.

The question, therefore, is as to whether Article 59 or Article 113 of the Schedule to the Act is applicable to the fads in this case. Article 59 of the Schedule to the Limitation Act, 1908 had provided inter alia for suits to set aside decree obtain by fraud. There was no specific article to set aside a decree on any other ground. In such a case, the residuary Article 120 in Schedule III was attracted. The present Article 59 of the Schedule to the Act will govern any suit to set aside a decree either on fraud or any other ground. Therefore, Article 59 would be applicable to any suit to set aside a decree either on fraud or any other ground, it is true that Art. 59 would be applicable if a person affected is a party to a decree or instrument :0r a contract. There is no dispute that Article 59 would apply to set aside the instrument, decree or contract between the inter se parties. The question is whether in case of person claiming title through the party to the decree or instrument or having knowledge of the instrument or decree or contract and seeking to avoid the decree by a specific declaration, whether Article 59 gets attracted? As stated earlier, Article 59 is a general provision. In

a suit to set aside or cancel an instrument, contract or a decree on the ground of fraud, Article 59 is attracted. The starting point of limitation is the date of knowledge of the alleged fraud. When the plaintiff seeks to establish his title to the property which cannot be established without avoiding the decree or an instrument that stands as an insurmountable obstacle in his way which otherwise binds him, though not a party, the plaintiff necessarily has to seek a declaration and have that decree, instrument or contract cancelled or set aside or rescinded. Section 31 of the Specific Relief Act, .1963 regulates suits for cancellation of an instrument which lays down that any person against whom a written instrument is void or voidable and who has a reasonable apprehension that such instrument, if left outstanding, may cause him serious injury, can sue to have it adjudged void or voidable and the court may in its discretion so adjudge it and order it to be delivered or cancelled. It would thus be clear that the word 'person' in Section 31 of the Specific Relief Act is wide enough to encompass person seeking derivative title from his seller. It would therefore, be clear that if he seeks avoidance of the instrument, decree or contract and seeks a declaration to have the decrees set aside or cancelled he is necessarily bound to lay the suit within three years from the date when the facts entitling the plaintiff to have the decree set aside, first become known to him.

The question, therefore, is as to when the facts of granting preliminary and final decrees touching upon the suit-land first became known to him. As seen when he claimed title to the property as owner and Rafique to be his benamidar, as admitted by Rafique, the title deed dated December 1, 1959 was filed in Title Suit No. 220/69. Thereby Rafique had first known about the passing of the preliminary decree in 1973 and final decree in 1974 as referred to earlier. Under AH these circumstances, Article 113 is inapplicable to the facts on hand. Since the petitioner claimed derivative title from him but for his wilful abstention from making enquiry or his omission to file the second sale deed dated September 6, 1980, an irresistible inference was rightly drawn by the courts below that the petitioner had full knowledge of the fact right from the beginning; in other words right from the date when title deed was filed in Title Suit No. 220/69 and preliminary decree was passed OH January 2, 1973 and final decree was passed on February 5, 1974. Admittedly, the suit was filed in 1981 beyond three years from the date of knowledge. Thereby, the suit is hopelessly barred by limitation. The decree of the appellate court and the order of the High Court, therefore, are not illegal warranting interference.

The special leave petition is accordingly dismissed.