

Sampat Ram And Ors. vs Baboo Lal on 16 July, 1954

Equivalent citations: AIR1955ALL24, AIR 1955 ALLAHABAD 24

JUDGMENT

Malik, C.J.

1. One Abdul Majid was the owner of certain properties described in the plaint. On 25-6-1942, he entered into an agreement to sell these properties to defendant 2, Lala Sampat Ram alias Champa Ram and his adopted son, Lala Ram Gopal, defendant 3. On 17-7-1942 Abdul Majid entered into another agreement with the plaintiff Babu Lal to sell the same properties to him for Rs. 37,000/-. Though in the first agreement the price stipulated is Rs. 36,000/-, there is really not much difference between the sale prices fixed under the two agreements as in the agreement dated 25-6-1942, the vendees agreed to incur the entire expenses of execution, completion and registration of the sale-deed, while under the document dated 17-7-1942, the entire costs of execution, completion and registration of the document and brokerage, etc., had to be paid by the vendor and by way of stamp duty alone, on the sale-deed, roughly about Rs. 542/8/-had to be paid.

On 25-9-1942, Abdul Majid executed a sale-deed in favour of Sampat Ram and Ram Gopal and had it registered on the 26th of September. On 26-9-1942, the plaintiff filed the suit for specific performance on the agreement in his favour, dated 17-7-1942.

2. The suit was decreed by the trial Court. Two appeals were filed in this Court. First Appeal No. 203 of 1944 was filed by Sampat Ram and Ram Gopal, while First Appeal No. 393 of 1944 was filed by Abdul Majid. The appeal filed by Abdul Majid was dismissed for want of prosecution.

3. Learned counsel for the appellants, Sampat Ram and Ram Gopal, has urged that the plaintiff cannot claim specific performance of the contract as the agreement in his favour was of a later date, namely, 17-7-1942, and that the appellants had no knowledge of that agreement.

4. Learned counsel for the plaintiff-respondent has attempted to support the judgment on two grounds: firstly, that the agreement dated 25-6-1942, was executed subsequent to 17-7-1942, and the document had been purposely ante-dated to defeat the plaintiff's claim. The other ground is that even though the agreement may have been entered into on 25-6-1942, it must be deemed to have come into existence on 25-9-1942, when Sampat Ram and Ram Gopal had the right to enforce that contract.

5. As regards the first ground, there is no mention made in the plaint that the defendants were fraudulently setting up a prior agreement of 25-6-1942, that there was in fact no such agreement entered into between the parties on that date and the document had been ante-dated to defeat the plaintiff's claim. Learned counsel has relied on paragraph 3(a) which was introduced by way of

amendment on 1-10-1942. But that paragraph does not raise the point. It is as follows: "After institution of this suit, the defendant executed a fictitious and ostensible sale-deed in respect of the property in dispute, in favour of defendants 2 and 3 and defendants 2 and 3 with full knowledge of all the facts obtained in their favour the fictitious, ostensible and improper sale-deed which has no effect on the rights of the plaintiff. As a safeguard against a future dispute, they are, however, impleaded." The defendants specifically relied on the agreement of the 25th June and yet at the time when the issues were framed, the plaintiff did not challenge the date of the agreement entered into between defendant 1 and defendants 2 and 3. The learned Civil Judge framed five issues and then two issues were subsequently added, but this matter was not put in issue at all. The law on the point is Well-settled that no party is allowed to prove fraud, unless it has pleaded fraud. From the judgment of the learned Civil Judge it appears that no arguments were advanced before, him that this agreement of 25-6-1942 was not executed on that day, but had been later manufactured for the purpose of defeating the plaintiff's claim.

Abdul Majid and Ram Gopal, both the parties to the agreement, went into the witness-box and no question was put to them that the document of 25-6-1942 was not executed on that day and it had been executed later and a wrong date had been given to it. Kunj Behari Lal broker came into the witness-box and he said in cross-examination that he could not deny "if Sampat Ram got an agreement through some other broker with Abdul Majid. Exhibit G-2 dated 25-6-1942 bears the signature of Abdul Majid."

Babu Lal plaintiff was examined as his own witness. He too does not say that there was in fact no agreement between defendant 1 and defendants 2 and 3 on 25-6-1942. There was, therefore, not only no pleading on the point but even in the witness-box there was no assertion by anybody that there was no agreement entered between the defendants on 25-6-1942 and the document was a fabricated document.

Though there was no pleading and no assertion in the lower Court, the learned counsel wanted to place before us a register, Exhibit JJ-2, which was maintained by the stamp vendor. Before we stopped arguments on the point on the ground that the matter was not put in issue and it could not be raised before us, we looked at the document and we did not find anything suspicious in the entry of the 25th of June as to the sale of stamp of twelve annas to Abdul Majid. A number of sale-deeds were filed to show that Imam Uddin the stamp vendor was not a man who had an exemplary character, but those judgments (sic; sale-deeds?) can hardly be considered to be relevant. It must, therefore, be held that there was an agreement on 25-6-1942 between Abdul Majid and Sampat Ram and Ram Gopal as has been proved by Ram Bharosey, Ram Gopal and Abdul Majid.

6. The agreement in favour of Sampat Ram and Ram Gopal being of a prior date, namely, 25-6-1942, the plaintiff can claim no equities against Sampat Ram or Ram Gopal and cannot, therefore, enforce his agreement of a subsequent date 17-7-1942 as against them.

7. Two points have, however, been raised, firstly, that the plaintiff had no knowledge of this prior agreement. So far as we can see, that would hardly make any difference, but we agree with the learned Civil Judge that there was sufficient evidence on the record to indicate that the plaintiff

knew of the agreement dated 25-6-1942 when he agreed to purchase the properties for Rs. 37,000/- on 17-7-1942. The plaintiff and the defendants 2 and 3 are residents of the same Mohalla in the city of Agra, Haveli Kanha Patail, Loha Mandi, Agra. They are related to each other, Sampat Ram being nephew of the plaintiff. Sampat Ram being very old could not come into the witness-box. Ram Gopal was examined as a witness and he stated in his examination-in-chief that Babu Lal knew of the agreement in his favour. Though Ram Gopal was cross-examined on various other points, not a single question was asked challenging this part of his statement.

There is on the record the evidence of Kunj Behari Lal, plaintiff's witness, the broker who negotiated the contract between defendant 1 and the plaintiff, His evidence indicates that it was known to him that there was this prior agreement between Abdul Majid and Sampat Ram and Ram Gopal. Kunj Behari Lal said in his examination-in-chief that Abdul Majid asked him first to approach Sampat Ram and Ram Gopal and find out from them whether they would like to purchase the properties and on the 17th of July, after the plaintiff had agreed to purchase the properties for Rs. 37,000/-, Kunj Behari Lal went to Sampat Ram and Ram Gopal and wanted to know from them whether they would like to have the properties for that price as Abdul Majid would like to sell the properties first to them and that it was on their refusal to pay Rs. 37,000/- that he brought Babu Lal to the house of Abdul Majid and the agreement in favour of the plaintiff was entered into.

Babu Lal also said in cross-examination that Sampat Ram had told him 10 or 15 days before the agreement that he would not purchase the properties of Abdul Majid. Sampat Ram and the plaintiff Babu Lal had, therefore, some talk about the sale of these properties by Abdul Majid and there does not appear to be any reason why Sampat Ram should have kept back from him the information about the agreement dated 25-6-1942. Further the conduct of the plaintiff after the middle of September indicates the great anxiety to have the sale deed executed early and this can be explained only with reference to the terms of the agreement of 25-6-1942. Upto 31-8-1942, the plaintiff does not seem to have taken any steps to have the sale deed executed in his favour.

No doubt the agreement dated 17-7-1942, provided that the sale-deed would have to be executed and completed within 60 days but for the first 40 or 45 days of that period the plaintiff does not seem to have done anything and even on 31-8-1942, all that he did was to send a letter blaming Abdul Majid for not having executed the document. Abdul Majid sent a reply on 8-9-1942, that the plaintiff should get a draft prepared and sent to him and then the plaintiff got a draft prepared and had it sent to Abdul Majid. The sixty days provided for the execution of the sale-deed, calculated from 17-7-1942, the date of the agreement, expired on 15-9-1942.

The contract could be specifically enforced with-in three years if time was not of the essence. The anxiety to have the sale-deed executed before 24-9-1942, is some indication of the fact that the plaintiff knew that some importance attached to that date. On the 24th September, the plaintiff sent a letter to Ram Gopal, though this letter did not reach Ram Gopal because his parentage and address were wrong, yet there was no necessity to send that letter unless the plaintiff wanted to fasten defendants 2 and 3 with notice of the agreement in his own favour and he would have anxiety to do that only if he knew that there was an agreement with them. We, therefore, agree with the finding of the lower Court that the plaintiff had knowledge of the agreement in favour of defendants

2 and 3 dated 25-6-1942.

8. We shall now deal with the argument advanced by learned counsel that though there was an agreement in favour of Sampat Ram and Ram Gopal dated 25-6-1942, it must be deemed to have come into operation on 25-9-1942.

9. Before we come to this point, we may dispose of the point, on which the lower Court decided in plaintiff's favour, a point, however, which has not been attempted to be supported by learned counsel. It was argued before the lower Court that the date of the agreement did not matter and if an agreement can be enforced on an earlier date that agreement must be deemed to have priority though it may be of a later date and that person would have a preferential right to buy the property. In other words, if an agreement is executed in favour of A on the 1st of July and two months' time is given for the execution of the sale-deed and another agreement is executed in favour of B on the 15th of July and the time fixed for execution of the sale-deed is one month, then since B's right to claim specific performance would arise on the 16th of August, he would be deemed to have a preferential right to buy the property as against A, the contract in whose favour would become enforceable on the 1st of September. This proposition is only to be stated to be rejected.

One agreement was entered on the 1st of July and the other on the 15th July and the rights, therefore, in favour of A accrued on the 1st of July, while the rights in favour of B accrued on the 15th July. Though one may have the right to claim performance of his contract on a later date, there is no provision of law which would make the contract of the 1st July a subsequent contract to the contract of the 10th July and the equities in favour of B, therefore, cannot be said to have come into existence before the equities in favour of A.

10. Taking up now the proposition advanced by learned counsel that is based on an interpretation of the agreement dated 25-6-1942, in this agreement, after having set out how the property came to Abdul Majid and what debts he had to pay which made it necessary for him to transfer it, the terms agreed upon between the parties were set out and the first of these was as follows:

"I shall execute a sale-deed in respect of the property bounded as given below and get it registered within a period of 3 months from this day i.e., by 25-9-1942"

Paragraph 2 of it runs as under:

"I have received this day in cash a sum of Rs. 1,000/- as earnest money from the vendee out of the total amount of consideration,"

Paragraph 5 then provided:

"An important condition between me and the vendee that has been agreed upon is that I, the vendor shall also have a right to sell the property that has been sold to any other person, if I so desire, within the stipulated period of 3 months that is upto 24-9-1942 and to pay to the vendee aforesaid the amount due under the ruqqas and

hypothecation bond aforesaid and the amount of earnest money with interest at the rate of Rs. 1-8-0 per cent per mensem but after 24-9-1942 this agreement shall become final and I the vendor shall have no right either to make a sale or gift of the property to any one. If I do not complete the sale-deed, the vendee shall have power to file a suit against me for performance of the contract and have registration formally made,"

Reading these three paragraphs and reading the document as a whole it is clear that the agreement was entered into on 25-6-1942, and it was binding on the parties from that date. Neither party could claim after 25-6-1942, that there was anything in the document which provided that the agreement would not bind the parties from the date of its execution. Abdul Majid undertook to sell the property to Sampat Ram and Ram Gopal and Sampat Ram and Ram Gopal undertook to buy it. Sampat Ram and Ram Gopal, after 25-6-1942, could not say that they were not bound to purchase these properties. It was not open to them to say that upto 24-9-1942, there was no contract between them and, therefore, they could resile from it. If Abdul Majid did not want to avail himself of the concession of three months to try to get a better offer and had insisted on selling the property to Sampat Ram and Ram Gopal for Rs. 36,000/-, as agreed to on 25-6-1942, Sampat Ram and Ram Gopal could not refuse to purchase the property by reason of the concession given in paragraph 5.

The contract must, therefore, be deemed to be of the date that it bears, i.e., 25-6-1942. The only proper way, therefore, of interpreting the document would be that it was a binding document from the date that it was entered into but an option was given to Abdul Majid that he could sell the property to any one else within three months and pay up the debts due to Sampat Ram or Ram Gopal within that period. The deed provided that if he failed to avail himself of the concession he would have no right to transfer the properties to any one else after 24-9-1942.

Admittedly, the property was not sold to any one else within the period of three months and on the expiry of that period in accordance with the terms of the contract, the properties were sold to Sampat Ram and Ram Gopal on 25-9-1942. In these circumstances we fail to see what equities could arise in favour of the plaintiff as against Sampat Ram and Ram Gopal to entitle him to enforce his contract as against them. The reason why an agreement is specifically enforceable against a subsequent transferee with notice is that having had notice of the prior agreement he buys the property subject to all the equities against the vendor. In the case before us there being a prior agreement in favour of Sampat Ram and Ram Gopal, it cannot be said that there were any equities which affected the title of the vendees. In our view, the suit was wrongly decreed for specific performance against Sampat Ram and Ram Gopal.

11. As against Abdul Majid, the lower Court held that he was guilty of breach of the contract.

Abdul Majid filed an appeal here but learned counsel appearing for him made a statement that he had no instructions and the appeal No. 393 of 1944 was dismissed by a Bench of this Court on 4-8-1953. Abdul Majid was represented by counsel who has also not appeared before us probably because he has no instructions. We have been in-formed by learned counsel that Abdul Majid has left for Pakistan and his estate, whatever it is, has vested in the Custodian. Notice of this appeal was

sent to the Custodian who has, however, not chosen to enter appearance. We have carefully gone through the various correspondence and have not been able to find out the reason why Babu Lal and Abdul Majid fell out. Babu Lal had paid to Abdul Majid a sum of Rs. 5,000/- as earnest money on 17-7-1942. The agreement provided that the sale deed would be executed within sixty days.

No party seems to have done anything for about a month and a half and on 1-8-1942, Babu Lal sent the first letter to Abdul Majid and though under the terms of the agreement the draft had to be prepared by Babu Lal, he asked Abdul Majid to send him a draft. On 8-9-1942, Abdul Majid sent a reply through counsel that the draft should be sent by Babu Lal, that Babu Lal had probably not the funds to make the purchase and was, therefore, causing delay and that Abdul Majid was ready and willing to execute the sale-deed. The agreement provided that out of the sum of Rs. 5,000/- paid as earnest money, Abdul Majid would pay off the mortgage. Abdul Majid had not paid up the mortgage and in this notice he said that either he would clear up the encumbrance before the date of sale or would leave sufficient money in the hands of the vendee to pay up the mortgage. On 10-9-1942, Babu Lal sent a reply through a lawyer.

It is not usual for parties to send letters through lawyers at such an early stage of the correspondence, but in this case the parties seem to have desired almost from the very beginning to be at arms length. It is also surprising that though the lawyers were all practising in the same Court and probably meeting in the court-rooms and the barrooms, letters were sent by post and telegrams were exchanged while a talk in the bar-room could have made them settle the matter within a few minutes. However, on the 10th of September, Abdul Majid was sent a draft and was asked to come to the registration office along with the plan and Municipal tax receipts. Again the usual thing, when a person purchases property, is to find out from the Municipal office whether there are any arrears of taxes due and further to find out from the registration office whether there are any encumbrances. But that does not appear to have been done.

In this notice, it was mentioned that Babu Lal had plenty of funds and would be found ready with the balance of the purchase money in cash at the registration office at the time of the execution of the sale-deed. We may, however, mention that from the bank accounts filed by the plaintiff, it does not appear that he had in his bank Rs. 32,000/- before the 14th of September which amount he quickly withdrew by October. However, from the fact that the money was not in deposit with the bank, it cannot be said that the plaintiff was not in a position, if need had arisen, to buy the properties on an earlier date. After the letter of the 10th September, Babu Lal sent another letter through a lawyer on the 14th of September and this time he mentioned that the sum of Rs. 32,000/- was in the Allahabad Bank, Agra and we find from the bank account that the money was to his credit on that date in the Allahabad Bank.

After that we have two letters and two telegrams from Abdul Majid raising various objections to the draft asking for a copy of the agreement and also mentioning that on the 14th of September, Abdul Majid had purchased the necessary stamp for the execution of the sale-deed. Nothing, however, happened and though the objections to the draft were sent and it was mentioned that on the 16th September Abdul Majid would be present in Court the whole day, the sale-deed was not executed. On the 16th, Babu Lal through his learned Advocate sent two letters, Exhibits 11 and 12. Each party

was protesting that he was ready to perform his part of the contract and it was the other party who was not doing anything. Abdul Majid, in his turn, sent two telegrams on the same date, Exhibits 13 and QQ1, each claiming that he was present in the court-building the whole day and blaming the other for his absence. After the 16th of September, Abdul Majid repudiated his liability and Babu Lal threatened to file a suit.

12. As we have said, it is difficult from these letters or telegrams to find out the exact reason why the sale-deed was not executed. There is just a sentence in the statement of the plaintiff which might give some indication. The plaintiff said in his cross-examination in answer to a question put to him on behalf of Abdul Majid that if Abdul Majid had failed to procure rent notes from tenants, Babu Lal would have had to consider whether or not he would have the sale-deed completed. It appears that this house is in the occupation of a number of tenants to whom it had been let out by one Mohammad Hafiz. Abdul Majid mostly lived in Aligarh and there was a lease in favour of Hafiz Ullah or Mohammad Hafiz dated 31-10-1927 giving him the property on lease for a period of three years, he being liable to pay to Hafiz Abdul Aziz, the then owner, Rs. 65/- a month.

After Hafiz Abdul Aziz, the property came to Abdul Majid and though there does not appear to have been any fresh agreement executed, Hafiz Ullah continued to let out the house to tenants and to realise rents from them and to pay the same to Abdul Majid. The amount that Abdul Majid was getting at the time that the agreement was entered into was Rs. 100/- a month. In the agreement dated 25-6-1942 in favour of Sampat Ram and Ram Gopal, there was a mention that the vendor will either get a lease executed by the lessee or get rent-notes from the tenants who were in possession of the property in favour of the vendees. In the agreement in favour of Babu Lal dated 17-7-1942, however, Abdul Majid undertook to get rent-notes from the tenants and no mention was made of Mohammad Hafiz.

When Sampat Ram and Ram Gopal purchased the properties, on the date of the purchase a lease was executed by Mohammad Hafiz in favour of the vendees for a period of three years and Mohammad Hafiz undertook to pay them Rs. 110/- per month and collect the amount due from the tenants. Evidently Babu Lal was not agreeable to this arrangement that Mohammad Hafiz should continue to realise the rents and pay a lesser amount to the owner of the property.

13. Be that as it may, the lower Court has held that Abdul Majid was guilty of breach of contract and the burden of proving that that decision is wrong is now on Abdul Majid. As we have already said, no one has appeared on his behalf nor is it clear that it was Babu Lal who was to blame for the non-execution of the sale-deed in accordance with the terms of the agreement of 7-7-1942. In the circumstances, we think that Abdul Majid should be made to refund the sum of Rs. 5,000/- which he received as earnest money. This amount will carry simple interest at the rate of 3 1/2 per cent from the date of the suit to the date of realisation.

14. The appellants Sampat Ram and Ram Gopal will be entitled to their costs from Babu Lal of both the Courts. Babu Lal will bear his own costs.