

B. Vijaya Bharathi vs P. Savitri . on 10 August, 2017

Equivalent citations: AIR 2017 SUPREME COURT 3934, 2018 (11) SCC 761, (2017) 7 MAD LJ 81, (2018) 1 MAD LW 461, (2018) 1 RECCIVR 4, (2017) 4 PAT LJR 23, (2017) 177 ALLINDCAS 125 (SC), (2018) 1 CIVLJ 569, (2017) 137 REVDEC 676, (2017) 6 ANDHLD 5, (2017) 9 SCALE 411, (2017) 124 ALL LR 599, (2017) 3 ALL RENTCAS 26, (2017) 5 CAL HN 23, (2017) 4 ICC 549, (2017) 4 CIVILCOURTC 291, AIR 2017 SC (CIV) 2600, (2017) 4 JLJR 7, (2017) 2 CLR 685 (SC)

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Bench: Sanjay Kishan Kaul, Rohinton Fali Nariman

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IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO. 512 OF 2009

B. VIJAYA BHARATHI

App

VERSUS

P. SAVITRI & ORS.

Respon

J U D G M E N T

R.F. NARIMAN, J.

1) The present appeal arises out of a judgment dated 26.10.2005, delivered by a single Judge of the Andhra Pradesh High Court, by which an appeal filed by the original Defendant No.3 was allowed and a suit for specific performance was dismissed.

2) The brief facts necessary for deciding this case are as follows:

On 21.02.1992, an agreement to sell was entered into between one Smt. P. Savitri, Respondent No.1 before us, and B. Vijaya Bharati, by which the schedule property

was agreed to be sold for a consideration of Rs. 1,80,000/- . Rs. 1,30,000/- had already been paid in advance. The balance consideration of Rs. 50,000/- was to be paid later as and when the vendee gives notice that she is ready to get the property registered, and on intimation from the vendor to pay the balance consideration.

3) Para 3 & 5 of the Agreement provided for necessary permissions from the society for transfer of the membership in the name of the vendee, which was to be obtained by the vendor, and clearances required from the Income Tax, Urban Land Ceiling Authorities and other Authorities were also to be obtained by the vendor. The said Agreement, though it was an agreement to sell only, was registered by way of abundant caution.

4) On 13.03.1992, the first defendant appeared before the Registering Authority to execute a General Power of Attorney in favour of the husband of the plaintiff in order to obtain the permissions referred to above. It has been concurrently found that on this date, she resiled from such execution of General Power of Attorney in favour of the plaintiff's husband and left the Sub-Registrar's office without registering the General Power of Attorney.

5) Thereafter, the property was sold by Defendant No.1 on 12.05.1992 to Defendant No.2 for a sale consideration of Rs. 1,20,000/-. Defendant No.2, in turn, sold the property on 05.07.1993 to Defendant No.3 for a sum of Rs. 1,95,000/-. Both the sales were by registered conveyance.

6) The plaintiff issued the necessary notice stating that she was ready to pay the balance Rs.50,000/- on 18.02.1994. Since the reply to the said notice was that the agreement was no longer valid, the plaintiff filed a suit for specific performance on 13.04.1994.

7) The trial Court decreed the said suit for specific performance, finding that the agreement of 21.02.1992 was prior in point of time to both the registered sale deeds. It found, as a matter of fact, that the purchasers of the property could not be said to be bona fide purchasers given the fact that no encumbrance certificate was called for before any such purchase.

8) Defendant No.3 appealed to the High Court, and the High Court set aside the decree of the trial Court stating that the plaintiff was not ready and willing through out as was required by Section 16(c) of the Specific Relief Act, 1963 and held that the suit was filed long after, in fact, more than two years after the repudiation on 13.03.1992. A single Judge of the High Court held thus:

“Till Ex.A-2 notice was issued, the Plaintiff has not made any endeavour to pay the balance sale consideration, particularly, when the 1st Defendant having appeared before the registering authority to execute the GPA in favour of the husband of the Plaintiff on 13-3-1992 and resiled from execution of such GPA in favour of the Plaintiff and left the Sub-Registrar's Office without registering the GPA. Any prudent

person, who obtained the registered agreement of sale by paying 2/3rd of the sale consideration, will not keep quiet for a period of nearly one year eleven months after the vendor repudiated the contract and refused to register the GPA to complete the sale transaction, which clearly discloses that the total inaction is on the part of the plaintiff. Even after such refusal, she has not issued any notice to the 1st Defendant to execute the sale deed by offering balance sale consideration and expressing her readiness and willingness to complete the transaction. Thus, the plaintiff waived the right obtained under the agreement of sale and allowed the 1st Defendant to execute the sale deed in favour of the 2nd Defendant. Only on such execution of the sale deed in favour of the 2nd Defendant, the Plaintiff got issued the legal notice to the Defendants and the same was suitably replied by them under Exs. A-3 and A-4. She has nowhere stated about her readiness and willingness to perform her part of the contract all along from the date of the agreement till her deposition in the Court.”

9) Mr. M.N. Rao, learned Senior Counsel appearing on behalf of the appellant, has argued before us that an appeal at the behest of Defendant No.3 was allowed, Defendant No.1 having gone out of the picture altogether. He further argued before us that it is clear that Defendant Nos. 1 and 2 were in collusion with each other because the property which had been sold for Rs.1,80,000/- in February, 1992 could not possibly be sold in May, 1992 for a lesser amount of Rs.1,20,000/-.

The fact that no encumbrance certificate was also taken was an important pointer to the fact that there was no bona fides in either Defendant Nos. 1 and 2 or Defendant No.3 and that therefore, the High Court was in error in stating that this vital requirement is of secondary importance once the requirement of readiness and willingness is not proved. He also argued, citing *Madamsetty Satyanarayana vs. G. Yelloji Rao and two others*, AIR 1965 SC 1405 = (1965) (2) SCR 221 in which Subba Rao, J. held that the English practice of coming to the Court without any delay for the relief of specific performance cannot possibly apply to India when a period of limitation of three years is granted for approaching the Court. That decision, therefore, held that mere delay by itself cannot be a bar to specific performance, and this was also pressed with some force by Mr. Rao.

10) Mr. A. Subba Rao, on the other hand, supported the judgment of the High Court and argued that not only was there delay in the present case, but it was coupled with the fact that there was no readiness and willingness, as is correctly held by the High Court. Further, he also stated that the present suit in its present form would not be maintainable for the added reason that despite the fact that it came to the plaintiff's knowledge that there were two registered conveyances prior to the suit, the plaintiff did not amend the suit to ask for a decree of cancellation of the said sale deeds.

11) Having heard the learned counsel appearing for the parties, we are of the view that the High Court judgment is correct and does not require to be interfered with.

12) One crucial fact that stares us in the face is that on 13.03.1992 the first defendant ran away from the Registering Authority making it clear that she did not want to act in furtherance of the Agreement in executing a General Power of Attorney in favour of the plaintiff's husband. The High

Court was right in stating that no prudent person would stay quiet for a period of one year and eleven months after such an unequivocal repudiation of the agreement if they were really interested in going ahead with the sale transaction. The only inference, therefore, from this is that the plaintiff cannot possibly be said to be ready and willing throughout to perform their part of the agreement.

13) However, Mr. Rao has pressed into service a judgment of this Court in *M.M.S. Investments, Madurai and Others vs. V. Veerappan and Others*, (2007) 9 SCC 660. While stating the background facts, the learned Judges referred to a suit for specific performance which resulted in a decree passed by the trial Court. After the decree was passed, defendants through their Power of Attorney sold a large extent of properties, including the subject-matter of the suit, in favour of certain other persons, who happened to be the appellants before this Court. In that case, the High Court held that there would be no bar for the appellant to raise any issue on merits of the appeal on the facts of that case except the defence of readiness and willingness as provided under Section 16(c) of the Specific Relief Act.

14) This Court went on to distinguish a three-Judge Bench judgment in *Ram Awadh (dead) by Lrs. And Others vs. Achhaibar Dubey and Another*, (2000) 2 SCC 428 and held as follows:-

“6. Questioning the plea of readiness and willingness is a concept relatable to an agreement. After conveyance the question of readiness and willingness is really not relevant. Therefore, the provision of the Specific Relief Act, 1963 (in short “the Act”) is not applicable. It is to be noted that the decision in *Ram Awadh* case relates to a case where there was only an agreement. After the conveyance, the only question to be adjudicated is whether the purchaser was a bona fide purchaser for value without notice. In the present case the only issue that can be adjudicated is whether the appellants were bona fide purchasers for value without notice. The question whether the appellants were ready and willing is really of no consequence. In *Ram Awadh* case the question of the effect of a completed sale was not there. Therefore, that decision cannot have any application so far as the present case is concerned. Once there is a conveyance the concept would be different and the primary relief could be only cancellation.”

15) *Ram Awadh* (supra) is a judgment by three Judges of this Court overruling *Jugraj Singh vs. Labh Singh*, (1995) 2 SCC 31, in which it was held that the plea that the plaintiff is not ready and willing to perform the contract is personal only to the seller-defendant.

Subsequent purchasers cannot take this plea. This was stated to be an erroneous view of the law by the three Judge Bench, and the judgment in *Jugraj Singh* was set aside as follows:-

“6. The obligation imposed by Section 16 is upon the Court not to grant specific performance to a plaintiff who has not met the requirements of clauses (a),(b) and (c) thereof. A court may not, therefore, grant to a plaintiff who has failed to aver and to prove that he has performed or has always been ready and willing to perform his part

of the agreement the specific performance whereof he seeks. There is, therefore, no question of the plea being available to one defendant and not to another. It is open to any defendant to contend and establish that the mandatory requirement of Section 16(c) has not been complied with and it is for the Court to determine whether it has or has not been complied with and, depending upon its conclusion, decree or decline to decree the suit. We are of the view that the decision in Jugraj Singh Case is erroneous.”

16) In the facts of the M.M.S. Investments case, after the Trial Court decreed the suit, the property was conveyed to the plaintiff. It is only thereafter that the appellants in that case purchased the property. In the facts of the present case, the Defendants 2 and 3 purchased the property even before the suit for specific performance was filed. In the present case there is no conveyance in favour of the plaintiff after which the Defendants 2 and 3 purchased the property. The ratio of M.M.S. Investments would therefore be of no assistance to the appellant herein. On the other hand, the three Judge Bench decision in Ram Awadh would apply on all fours.

17) It must also be noted that though aware of two conveyances of the same property, the plaintiff did not ask for their cancellation. This again, would stand in the way of a decree of specific performance for unless the sale made by Defendant No. 1 to Defendant No.2, and thereafter by Defendant No.2 to Defendant No.3 are set aside, no decree for specific performance could possibly follow. While Mr. Rao may be right in stating that mere delay without more would not dis-entitle his client to the relief of specific performance, for the reasons stated above, we find that this is not such a case. The High Court was clearly right in finding that the bar of Section 16(c) was squarely attracted on the facts of the present case, and that therefore, the fact that Defendant Nos. 2 and 3 may not be bona fide purchasers would not come in the way of stating that such suit must be dismissed at the threshold because of lack of readiness and willingness, which is a basic condition for the grant of specific performance.

18) The appeal accordingly, stands dismissed.

..... J.

(ROHINTON FALI NARIMAN) J.

(SANJAY KISHAN KAUL) New Delhi;

August 10, 2017.