

Vasanthi vs Venugopal (D) Thr. Lrs on 21 March, 2017

Equivalent citations: AIR 2017 SC 1569, 2017 (4) SCC 723, 2017 (2) AJR 695, (2017) 123 CUT LT 1001, (2017) 5 MAH LJ 536, (2017) 4 ANDHLD 20, (2017) 2 CURCC 89, (2017) 4 MPLJ 49, (2017) 173 ALLINDCAS 121 (SC), (2017) 2 PAT LJR 242, (2017) 3 SCALE 674, (2017) 4 MAD LW 209, (2017) 122 ALL LR 538, (2017) 3 BOM CR 391, (2017) 1 WLC(SC)CVL 722, (2017) 1 ALL RENTCAS 875, (2017) 3 ALLMR 461 (SC), (2017) 4 CALLT 44, (2017) 1 CLR 923 (SC), (2017) 2 CAL LJ 65, (2017) 2 JLJR 123, AIR 2017 SUPREME COURT 1569, AIR 2017 SC (CIVIL) 1421, (2018) 2 CAL HN 48, (2018) 2 CIVLJ 258, (2017) 135 REVDEC 390

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Bench: Dipak Misra, Amitava Roy

REPORTABLE

IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NOS. 4311-4312 OF 2017
(ARISING OUT OF S.L.P (C) NOS.29405-29406 OF 2008)

VASANTHI

...APPELLANT

VERSUS

VENUGOPAL (D) THR. L.RS.

....RESPONDENT(S)

J U D G M E N T

AMITAVA ROY, J.

Leave granted.

2. The impugnmnt herein is both of the judgment and order dated 31.7.2006, rendered by the Single Judge of the High Court of Judicature at Madras in A.S. No. 124 of 1990, preferred by the appellant/plaintiff questioning the decision of the Subordinate Judge, Cuddalore dated 28.4.1989 in O.S. No. 172 of 1987 as well as the order dated 8.10.2007, passed by the Division Bench of the said High Court rejecting the Letters Patent Appeal SR. No.16958 of 2007 preferred by her against the dismissal of Appeal A.S. No.124 of 1990, as not maintainable in the face of Section 100-A of the Code of Civil Procedure, 1908 (as amended) (hereinafter referred to as "CPC/Code").

3. We have heard Mr. R. Basant, learned senior counsel for the appellant/plaintiff and Ms. Malini Poduval, learned counsel for the respondents.

4. As the rival assertions are integrated in the pleadings, a brief reference thereto, is indispensable. The appellant/plaintiff instituted O.S. No.172 of 1987 against the predecessor-in-interest of the present respondents i.e. Venugopal (deceased) praying for a declaration of her title in the suit property and also for recovery of possession thereof. She claimed to have purchased the same vide registered sale deed dated 26.6.1982 for the consideration price of Rs.35,000/- from the sons of Ramnathan Chettiar, the original owner, whereupon she was registered in the municipal records as the title-holder thereof. She averred that at the time of sale, the original defendant Venugopal was in possession of the property as a tenant of her vendors on payment rent of Rs.100 per month. As the defendant-Venugopal did neither accept her as his landlord nor agreed to pay the enhanced rent of Rs. 150/-, as demanded, after causing a notice to be served on him, the appellant/plaintiff filed an application before the Rent Controller, Cuddalore being R.C. O.P. No. 29 of 1986 for his eviction from the suit property.

5. In the said proceeding, the original defendant-Venugopal denied the title of appellant/plaintiff in the suit property and claimed to be in occupation thereof on the strength of an agreement of sale executed between him and the original owner Ramnathan Chettair. At this, the appellant/plaintiff instituted a suit claiming the reliefs, as aforementioned, by pleading that neither she was aware of any such agreement at the time of her purchase nor of any part performance thereof as claimed and that even if any such agreement did exist, the respondent/defendant was not entitled to remain in possession of the suit property without enforcing the same, as contemplated in law. She contended that she was a bona fide purchaser for value without notice of such agreement and maintained that the defendant was not entitled to avail the protection under Section 53A of the Transfer of Property Act, 1882 (for short, hereinafter to be referred to as "T.P. Act").

6. The original defendant-Venugopal in his written statement, while reiterating that Ramnathan Chettiar was the owner of the suit property, stoutly denied the transaction of sale by his sons in favour of the plaintiff vide registered sale deed dated 26.6.1982. He also asserted that the vendors of the appellant/plaintiff had no subsisting title in the suit property to convey to her. He denied that his possession of the suit property at the time of purported sale in favour of appellant/plaintiff was that of a tenant under her vendors and reiterated that pursuant to an agreement of sale dated 20.5.1975 with the original owner Ramnathan Chettiar, he had by installments, in all paid Rs. 26,000/- by 12.4.1976 which formed a major part of the consideration price. He stated further that at the time of execution of the agreement of sale dated 20.5.1975, one Purushothaman was in occupation of the suit property as a tenant under the original owner, who following the compromise between him (tenant) and the landlord vacated the suit premises, whereafter possession thereof was delivered by the original owner to him on 1.7.1976 and that since then, he paid as well the property tax therefor. However, though agreed upon and inspite of repeated insistences, the original owner did not execute the sale deed and after his death, his sons also avoided to do so. He claimed protection of his possession in terms of Section 53A of T.P. Act and also alleged that the plaintiff was not a bona fide purchaser without notice of the agreement for sale between him and the original owner. He pleaded as well that his right, secured under Section 53A of the T.P. Act, did not stand

effaced by any period of limitation, as time was not the essence of contract for enforcing the specific performance thereof. The parties though did exchange additional pleadings, it is inessential to dilate thereon.

7. The Trial Court, on the basis of the pleadings, framed issues and by its verdict dated 28.4.1989 dismissed the suit holding inter alia that the possession of the original defendant of the suit property was protected under Section 53A of the TP Act, as the ingredients thereof stood complied with by him and that the appellant/plaintiff was not entitled to the relief of declaration or possession, as sought for.

8. Being aggrieved, the appellant/plaintiff preferred appeal being A.S. No.124 of 1990 before the High Court of Judicature at Madras and as hereinbefore mentioned, the same also met the same fate. Her Letters Patent Appeal being L.P.A. SR No.16958 of 2007 was dismissed as not maintainable being in the teeth of Section 100-A of C.P.C..

9. Mr. Basant has assiduously urged that as Section 100-A of CPC is not attracted to the LPA filed by the appellant/plaintiff, dismissal thereof, by reference to that provision, is patently erroneous. Without prejudice to this plea, the learned senior counsel has urged that as the suit property had been purchased by the appellant/plaintiff by a registered sale deed dated 26.6.1982 from the owners thereof and as the transaction has remained unimpeached, the agreement for sale dated 20.5.1975 between the predecessor in-interest of the respondents and the original owner, even if valid, is of no consequence and, therefore, both the forums below, have grossly erred in law and on facts in dismissing her suit. He further contended that not only the appellant/plaintiff is a bona fide purchaser for value without any notice of the said agreement, in the face of the failure of the respondents to prove the readiness and willingness of their predecessor to perform his part of the contract at all relevant times and also his omission to file a suit for specific performance within the prescribed period of limitation, no protection under Section 53A of T.P. Act was available to him and presently to the respondents. Further as the respondents/defendants have declined to admit the appellant/plaintiff as their landlord, their occupation of the suit premises is that of rank trespassers and as such, are liable to be evicted. Mr. Basant placed reliance on the decision of this Court in Kamla Devi vs. Kushal Kanwar and another (2006) 13SCC 295 and Mohd. Saud and another vs. Dr. (Maj.) Shaikh Mahfooz and others (2010) 13 SCC 517.

10. Ms. Malini Poduval, learned counsel for the respondents, in repudiation, has argued that the vendors of the appellant/plaintiff, having categorically admitted the agreement for sale dated 20.5.1975 between their predecessor-in-interest Ramnathan Chettiar and the original defendant Venugopal and his possession of the suit property on the basis thereof, the finding that the benefit of Section 53A of the TP Act is extendable to them, is unexceptionable in the facts and circumstances of the case. Not only the original defendant had been ever ready and willing to perform his part of contract, the purported purchase by the appellant/plaintiff from the heirs of Ramnathan Chettiar, being with the full knowledge of said agreement and the possession of the original defendant, on the basis thereof, the transaction of sale did neither convey any title to her nor was it bona fide for all intents and purposes. According to the learned counsel, the suit has been rightly dismissed by both the forums and the dismissal of the LPA filed by the appellant/plaintiff is also unassailable.

11. The competing propositions have been duly addressed. The dispute pertaining to the maintainability of the LPA deserves attention at the threshold. Section 100-A of the CPC was inserted by the amendment Act 104 of 1976, which reads as under:

“100-A. No further appeal in certain cases – Notwithstanding anything contained in any Letters Patent for any High Court or in any other instrument having the force of law in any other law for the time being in force, where any appeal from an appellate decree or order is heard and decided by a Single Judge of a High Court, no further appeal shall lie from the judgment, decision or order of such Single Judge in such appeal or from any decree passed in such appeal.”

12. Though this Section was amended by the Amendment Act 46 of 1999, reference thereto is avoided as the said amendment was not given effect to.

13. This provision underwent another amendment by Amendment Act 22 of 2002, to be refashioned as hereinbelow.

“100-A: No further appeal in certain cases – Notwithstanding anything contained in any Letters Patent for any High Court or in any instrument having the force of law or in any other law for the time being in force, where any appeal from an original or appellate decree or order is heard and decided by a Single Judge of a High Court, no further appeal shall lie from the judgment and decree of such Single Judge.”

14. This amended provision enforced w.e.f. 1.7.2002 predicated that notwithstanding anything contained in any Letters Patent for any High Court or in any instrument having the force of law or in any other law for the time being in force, where any appeal from an original or appellate decree or order is heard and decided by a Single Judge of a High Court, no further appeal would lie from the judgment and decree of such Single Judge.

15. The purport and purview of this amended provision fell for the scrutiny of this Court, amongst others in Kamla Devi (supra) and Mohd. Saud (supra), wherein it was held in unambiguous terms that only Letters Patent Appeal, filed prior to the coming into force of the said amendment vide Act 22 of 2002 would be maintainable and as a corollary, by virtue of the bar contained therein, Letters Patent Appeal filed thereafter, would not be maintainable.

16. As the contextual facts in these decisions are inessential, having regard to the hyaline legal postulations as above, elaboration thereof is avoided. The dismissal of the LPA of the appellant/plaintiff, in the face of the above judicially adumbrated explication of Section 100-A of CPC by this Court, cannot thus be faulted with.

17. Reverting to the availability of the protection of Section 53A of TP Act to the original defendant and on his death, to the present respondents, to reiterate, the evidence on record does proclaim that the agreement for sale dated 20.5.1975 had indeed been executed between the predecessors-in-interest of the vendors of the appellant/plaintiff and the respondents herein, pursuant whereto, an

amount of Rs. 26,000/- in all had been paid by the proposed purchaser and the possession of the suit property had been handed over to him in consideration thereof. As a matter of fact, at the time of execution of said agreement, the suit property was in occupation of a tenant of the proposed seller i.e. the predecessor-in-interest of the vendors of the appellant/plaintiff and that following a compromise, the tenant delivered possession of the suit property to the predecessor-in-interest of the present respondents and since thereafter, they are in occupation thereof. The evidence on record, however, does not in very clear terms establish that the appellant/plaintiff had conscious notice or knowledge of this agreement for sale at the time of her purchase. Admittedly as well, neither the predecessor-in-interest of the respondents nor they had taken recourse to law for specific performance of the agreement. This assumes importance in view of the averment made in the written statement that even prior to the demise of the predecessor-in-interest of the vendors of the appellant/plaintiff, he did not comply with the requests of the original defendant to get the sale deed executed and his legal heirs, after his demise, also adopted the same non-cooperative stance.

18. Section 53A of T.P. Act and Section 16 of the Specific Relief Act, 1964 (for short, hereinafter to be referred to as “Act, 1963”), being of significant relevance are extracted hereunder:

“53A. Part performance.—Where any person contracts to transfer for consideration any immoveable property by writing signed by him or on his behalf from which the terms necessary to constitute the transfer can be ascertained with reasonable certainty, and the transferee has, in part performance of the contract taken possession of the property or any part thereof, or the transferee, being already in possession, continues in possession in part performance of the contract and has done some act in furtherance of the contract, and the transferee has performed or is willing to perform his part of the contract, then, notwithstanding that 2[***] where there is an instrument of transfer, that the transfer has not been completed in the manner prescribed therefor by the law for the time being in force, the transferor or any person claiming under him shall be debarred from enforcing against the transferee and persons claiming under him any right in respect of the property of which the transferee has taken or continued in possession, other than a right expressly provided by the terms of the contract:

Provided that nothing in this section shall affect the rights of a transferee for consideration who has no notice of the contract or of the part performance thereof.” (Emphasis supplied) “16. Personal bars to relief.—Specific performance of a contract cannot be enforced in favour of a person—

(a) who would not be entitled to recover compensation for its breach; or

(b) who has become incapable of performing, or violates any essential term of, the contract that on his part remains to be performed, or acts in fraud of the contract, or willfully acts at variance with, or in subversion of, the relation intended to be established by the contract; or

(c) who fails to aver and prove that he has performed or has always been ready and willing to perform the essential terms of the contract which are to be performed by him, other than terms the performance of which has been prevented or waived by the defendant. Explanation.—For the purposes of clause (c),—

(i) where a contract involves the payment of money, it is not essential for the plaintiff to actually tender to the defendant or to deposit in court any money except when so directed by the court;

(ii) the plaintiff must aver performance of, or readiness and willingness to perform, the contract according to its true construction.” (Emphasis supplied)

19. As would be patent from the above quotes, the protection of a prospective purchaser/transferee of his possession of the property involved, is available subject to the following prerequisites:

(a) There is a contract in writing by the transferor for transfer for consideration of any immovable property signed by him or on his behalf, from which the terms necessary to constitute the transfer can be ascertained with reasonable certainty;

(b) The transferee has, in part performance of the contract, taken possession of the property or any part thereof, or the transferee, being already in possession, continues in possession in part performance of the contract;

(c) The transferee has done some act in furtherance of the contract and has performed or is willing to perform his part of the contract.

20. In terms of this provision, if the above pre-conditions stand complied with, the transferor or any person claiming under him shall be debarred from enforcing against the transferee and person(s) claiming under him, any right in respect of the property of which the transferee has taken or continue in possession, other than a right expressly provided by the terms of the contract, notwithstanding the fact, that the transfer, as contemplated, had not been completed in the manner prescribed therefor by the law for the time being in force. Noticeably, an exception to this restraint is carved out qua a transferee for consideration, who has no notice of the contract or of the part performance thereof.

21. On a perusal of the evidence adduced, it transpires that the sale deed dated 26.6.1982 had been proved on behalf of the appellant/plaintiff. PW₁ Subramanian, the husband of the appellant/plaintiff in his testimony has stated that at the time of purchase, when he enquired about the possession of the original defendant, his vendors told him that he was in occupation of the premises as a tenant and that after the purchase, as he (original defendant) refused to pay the rent, the application before the Rent Controller, Cuddalore was filed for his eviction therefrom and it was in that proceeding, that the original defendant disclosed about the agreement for sale, whereafter the suit had to be filed seeking declaration of title and possession. This witness categorically denied about his knowledge of such agreement for sale at the time of purchase.

22. PW2 Deenadayalan, one of the sons of the original owner Ramnathan Chettiar on oath affirmed the execution of the sale deed dated 26.6.1982 in favour of the appellant/plaintiff for a consideration of Rs. 35,000/-. Though, this witness admitted the agreement for sale between the original defendant and his father, he mentioned that on enquiry, his father had told him that the agreement had lapsed as the purchase was not made within time. This witness also categorically stated that he did not disclose about the agreement for sale to the appellant/plaintiff and instead had disclosed to her husband that the original defendant was only a tenant in possession of the suit property.

23. As against this, the respondents, amongst others sought to rely on the testimony of DW1 to the effect that he had always been ready and willing to perform the contract and also in the reply to the notice sent by the vendors of the appellant/plaintiff conveying the cancellation of the agreement, he reiterated his readiness and willingness to get the sale deed, on the basis of the agreement for sale, executed.

24. The attendant facts and the evidence on record, though demonstrate that an agreement for sale of the suit property had been entered into on 20.5.1975 between the predecessor-in-interest of the vendors of the appellant/plaintiff and the original defendant and that an amount of Rs. 26,000/- had been paid by the latter for which the possession of the suit property had been delivered to him, to reiterate, adequate evidence is not forthcoming to convincingly authenticate that the proposed purchaser and thereafter his heirs i.e. the present respondents, had always been ready and willing to perform his/their part of the contract, which amongst others, is attested by his/their omission to enforce the contract in law. His/their readiness and willingness to perform his/their part of the contract is also not pleaded in the written statement in clear and specific term as required. Further the materials on record also do not testify in unequivocal terms that at the time of purchase, the appellant/plaintiff had the knowledge/information of such agreement for sale or the part performance as claimed, so as to repudiate her transaction to be neither bona fide nor one with notice of such contract or the part performance thereof, as comprehended in the proviso to Section 53A of the T.P. Act.

25. The fact that at the first instance, the appellant/plaintiff had filed an application before the Rent Controller, Cuddalore for eviction of the original defendant as a tenant, also attests her ignorance at that point of time of the agreement for sale and his occupation of the premises in part performance thereof.

26. This Court in *Shrimant Shamrao Suryavanshi and another vs. Pralhad Bhairoba Suryavanshi by Lrs. and others* (2002) 3 SCC 676, while tracing the incorporation of Section 53A in the TP Act, vide Act of 1929, acting on the recommendations of the Special Committee on the issue, had ruled that mere expiration of the period of limitation for bringing a suit for specific performance would not debar a person in possession of an immovable property by way of part performance from setting up a plea, as contemplated therein in defence to protect his possession of the property involved. It was however underlined that if the conditions precedent, as enumerated, in Section 53A of the Act, are complied with, the law of limitation would not come in the way of the said person to avail the benefit of the protection to his possession as extended thereby even though a suit for specific performance of a contract by him had gone barred by limitation. Explicitly therefore, though mere expiry of the

period of limitation for a suit for specific performance may not be a bar for a person in possession of an immovable property in part performance of a contract for transfer thereof for consideration to assert the shield of Section 53A of T.P. Act, it is nevertheless imperative that to avail the benefit of such protection, all the essential pre-requisites therefor would have to be obligatorily complied with.

27. In *A. Lewis and another vs. M.T. Ramamurthy and others* (2007) 14 SCC 87, it was propounded that the right to claim protection under Section 53A of T.P. Act would not be available, if the transferee remains passive without taking effective steps and abstains from performing his part of the contract or conveying his readiness and willingness to that effect.

28. Added to this, to reiterate, is the proviso to Section 53A of T.P. Act which excludes from the rigour of the said provision a transferee for consideration, who has no notice of the contract or of the part performance thereof.

29. In the contextual facts, as obtained herein, the materials on record do not unmistakably demonstrate that the original defendant during his lifetime and on his demise, his heirs i.e. the respondents had been always and ever ready and willing to perform his/their part of the contract and that the appellant/plaintiff had notice either of the agreement for sale or the fact that the original defendant had been in occupation of the suit premises by way of part performance of the contract.

30. Apropos, Section 16 of the Act, 1963, specific performance of a contract cannot be enforced in favour of a person who, inter alia, fails to aver and prove that he has performed or has always been ready and willing to perform the essential terms of the contract which are to be performed by him unless prevented or waived by the other party thereto. As mentioned hereinabove, though there is an averment in the written statement that before the death of the predecessor-in-interest of the vendors of the appellant/plaintiff, the original defendant had requested him to execute the sale deed and after his demise, he made similar demands with them, evidence is jejune to irrefutably establish the readiness and willingness of his, during his lifetime and after his death, of the respondents, to perform his/their part of the contract. It is also not the case of either the original defendant or the present respondents that his/their performance of the contract had been either prevented or waived by either the vendors of the appellant/plaintiff or their predecessor-in-interest at any point of time.

31. Noticeably, the sale deed executed in favour of the appellant/plaintiff and proved in evidence has not been annulled as on date and is thus valid and subsisting.

32. On an overall view of the matter, we are of the opinion that the conclusions recorded by the courts below are based on an erroneous understanding of the prescriptions of Sections 53A of T.P. Act. The determinations made thus cannot be sustained.

33. On an appraisal of the evidence on record, on the touchstone of the above legal propositions, we are thus of the considered view, that though the LPA preferred by the appellant/plaintiff is not maintainable in law, the respondents are not entitled to the benefit of the protection of Section 53A of the T.P. Act read with Section 16 of the Act, 1963.

34. In the result, civil appeal filed against the judgment and order dated 31.7.2006, rendered in A.S. No. 124 of 1990 affirming the judgment and order dated 28.4.1989 passed in O.S. No. 172 of 1987 is allowed and Civil Appeal preferred against the judgment and order dated 8.10.2007 passed in LPA SR No. 16958 of 2007 is dismissed. As a consequence, the suit filed by the appellant/plaintiff is decreed, as prayed for. No costs.

.....J. (DIPAK MISRA)J. (AMITAVA ROY) NEW
DELHI;

MARCH 21, 2017.