V. Lakshmanan vs B.R. Mangalagiri & Ors on 13 December, 1994

Bench: K. Ramaswamy, N. Venkatachala

PETITIONER:
V. LAKSHMANAN

Vs.

RESPONDENT:
B.R. MANGALAGIRI & ORS.

DATE OF JUDGMENT13/01/1995

BENCH:
K. RAMASWAMY & N. VENKATACHALA, JJ.

ACT:

HEADNOTE:

JUDGMENT:

ORDER 1 This appeal by special leave arises from the judgment of the Division Bench of the High Court of Madras dated No- vember 3, 1983 made in Appeal No. 911 / 77. The appellant- plaintiff had entered into an agreement with respondents on August 23, 1972 to purchase their 6 acres 76 cents of the land situated in Bhavani Village for a consideration of Rs.2,75,000/- and paid Rs.50,000/- as earnest money (stated as advance in the agreement). He undertook to have the sale deed registered within six months i.e. on/or before February 23, 1973.Time is, thereby, the essence of the agreement. The appellant had taken possession of the land and levelled the land and applied for permission for sanction of layout. The Gram Panchayat, Bhavani, refused to grant sanction. Thereafter, the appellant got issued a notice on February 20, 1973, calling upon the respondents to return the earnest money of Rs.50,000/and also Rs. 15,000/- said to be the expenditure incurred by them towards development which liability was denied by the respondents in their reply notice wherein they also claimed to have forfeited the earnest money for default committed by the appellant in the performance of their part of the agreement. The appellant laid O.S. No. 108/73 on the file of the Addl. Subordinate Judge, Erode, on March 13, 1973 which the trial court decreed on April 30, 1977. On appeal, as stated earlier, the High Court reversed the decree and dismissed the suit.

2. It is contended by Shri Balakrishnan, learned counsel for the appellant, that, admittedly, respondent No.3 B.R. Srinivasan was a minor on the date of the agreement of sale. When the appellant orally had asked the 4th respondent guardian to obtain permission from the Court for effectuating the sale deed, the mother as natural guardian of the 3rd respondent had refused to obtain permission on the ground that it was not necessary to obtain the permission of the Court. When the title was defective, no one would be prepared to purchase the land covered by the agreement of sale and, therefore, the High Court was not right in dismissing the suit of the appellant. It is also contended that the amount of Rs.50,000/- being an advance and not an earnest money, the whole amount cannot be forfeited unless the respondents proved that they had suf- fered damages which is a necessary condition to forfeit the advance amount. That amount only could be forfeited. No evidence was adduced to prove that the respondents had suffered damages. Subsequent sale made by the respondents pending the appeal was only a device adopted to deny the refund of the advance money paid by the appellant. The High Court had committed grievous error of law in allowing the appeal. We find no force in both contentions.

3. The facts of the case and the conduct of the appellant lead us to conclude that the appellant is not justified in seeking to nor is he entitled to recover from the appellants Rs.50,000/- paid by him. No doubt in the agreement it was stated that the amount was advance and not earnest money. Earnest money is a part of the purchase price. The nomenclature or label given in the agreement as advance is not either decisive or immutable. The appellant, after he had entered into the agreement, admittedly, had taken possession of the land and levelled the land for the purpose of making it into plots for sale to the third parties, in terms of the agreement. Admittedly, the appellant failed to obtain the sanction of the lay out plan as the Gram Panchayat refused to sanction it. Thereaf- ter,.the appellant having found it difficult to effectuate the sales to third parties, he invented an excuse to get over the agreement and pitched upon the plea of oral request said to have been made to the respondents to obtain sanction of the court to alienate the share of the minor and of their refusal. Thereby, they were not willing to perform their part of the agreement and had refused to execute the sale deed. There is no truth in it. The agreement of sale fell through due to the default committed by the appellant. It is not the case that the appellant had issued notice to the guardian to obtain sanction of the court and that the mother had refused to get it nor is she willing to execute the sale deed. The amount paid is only by way of earnest money as part of the sale transaction and that the appellant failed to perform his part of the contract.

4. It is true that in the written statement filed by the defendants, defendant Nos. 1,2, brothers and 4 being the mother representing defendant No.3 minor, as a natural guardian, had pleaded in paragraph 12 that the agreement to the extent of the share of the minor, is void. Under s.8(3) of the Hindu Minority and Guardianship Act, 1956, Act 32 of 1956 (for short, 'the Act'), it is only voidable at the instance of the minor or any person claiming under him. The guardian has to obtain permission from the court under s.8. In this case, admittedly, during the pendency of the suit, the third respondent-minor after becoming the major on July 31, 1975, was duly declared as major and the mother was dis- charged from guardianship. Thereafter he filed a memo adopting the written statement filed by the defendants 1 and 2, his brothers. In their written statement and also in the reply notice got issued by them, respondents No. 1, 2 and 4 expressly averred and was testified in the evidence of the first defendant that they are "ready and willing to perform their part of the contract".

When the minor became major, he had adopted their written statement, it would certainly mean, as rightly pointed out by the High Court, that the minor was also willing to perform his part of the contract along with his brothers. He thereby elected to abide by the terms of the contract. It is not the case that the appellant had called upon the respondents in writing to obtain permission from the court as required under sub-s.(2) of s.8 of the Act and that they refused to obtain such a sanction. In the suit notice also he did not call upon them to get the sanction of the court. On the other hand, he asked them to return the advance amount. When the minor had attained majority pending the suit and had elected to abide by the terms of the agreement of sale, the need to obtain sanction from the court became unnecessary. Under these circumstances, the necessity to obtain permission from the court under sub-s/(2) of s.8 of the Act became redundant. It is seen, from the conduct of the appellant, that he is not willing to perform his part of the contract and he wants to wriggle out of the contract. It is also seen that time is the essence of the contract. Sale deed was required to be executed on or before February 23, 1973, the appellant is the defaulting party and he has not come to the court with clean hands.

5. The question then is whether the respondents are entitled to forfeit the entire amount. It is seen that a specific covenant under the contract was that the re- spondents are entitled to forfeit the money paid under the contract. So when the contract fell through by the default committed by the appellant, as part of the contract, they are entitled to forfeit the entire amount. In this case even otherwise, we find that the respondents had suffered damages firstly for one year they were prevented from enjoying the property and the appellant had cut off 150 fruit bearing coconut trees and sugarcane crop was destroyed for levelling the land apart from cutting down other trees. Pending the appeal, the respondents sought for and were granted permission by the court for sale of the property, Pursuant thereto, they sold the land for which they could not secure even the amount under contract and the loss they suffered would be around Rs.70,000/-. Under those circumstances, their forfeiting the sum of Rs.50,000/- can- not be said to be unjustified. The appeal is accordingly dismissed with costs.