

V.N. Krishna Murthy vs Sri Ravikumar on 21 August, 2020

Author: Krishna Murari

Bench: S. Ravindra Bhat, Krishna Murari, L. Nageswara Rao

REPORTAB

IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NOS. 2701-2704 OF 2020

(ARISING OUT OF SPECIAL LEAVE PETITION (C) NOS. 6952-6955 OF 20

SRI V.N.KRISHNA MURTHY & ANR. APPELLANT(S)
ETC.ETC.

VERSUS

SRI RAVIKUMAR & ORS. ETC.ETC. RESPONDENT(S)

JUDGMENT

KRISHNA MURARI, J.

The instant appeals have been filed against the common judgment dated 21.02.2019 passed by the High Court of Karnataka, Principal Bench at Bengaluru in R.F.A. Nos. 1434 of 2017, 1435 of 2017, 1436 of 2017 and 1775 of 2017 declining to grant leave to file an appeal.

2. Necessary facts in brief for the adjudication of controversy can be summarized as under :-

Disputes relates to land comprised in Survey No. 105/3 measuring 37 guntas, Survey No. 105/9 measuring 34 guntas and Survey No. 105/4B measuring 20 guntas, situate at Village Jakkur, Bengaluru, North Taluk. Respondent Nos. 5 and 6 herein who were recorded owner of the land in dispute executed a registered agreement of sale of the land in dispute in favour of Respondent, Karnataka State Khadi and Village Industries Worker's House Building Co-operative Society Ltd. Besides executing registered agreement to sale dated 31.10.1989 and 05.08.1992 side by side they also executed a General Power of Attorney in favour of office bearers of the respondent

society authorizing them to enter into sale transaction of the suit property on their behalf. It is to be taken note of that General Power of Attorney was executed giving absolute rights to the Attorney to do all such acts which are necessary for sale of the property.

3. On the strength of General Power of Attorney, sale deeds in respect of land in dispute was executed by the Attorneys in favour of appellants on various dates.

4. Respondents–Plaintiffs filed four Original Suits being O.S. Nos. 1529 of 2014, 1532 of 2014, 1534 of 2014 and 7758 of 2016 seeking the following reliefs :-

a) To declare that the registered agreement to sell dated

05.08.1992, as barred by limitation in view of time being the essence of contract, and beyond the period of limitation, be declared as null and void, illegal unenforceable and inoperative and not binding on the plaintiffs.

b) To declare and cancel the registered further agreement for sell dated 31.10.1989 executed by Defendant Nos. 1 and 2 in favour of defendant society which is registered as document bearing no. 1194/92-93, in book no.I, stored in vol no. 27 at pages 86-88 in the office of the Sub Registrar Yelahanka Bangalore as well as unregistered agreement to sell dated 23.05.1988 as barred by time, alternatively in case of default by the 3rd defendant, this Hon'ble Court be pleased to execute cancellation agreement to sell through court commissioner.

c) The 3rd defendant be directed to execute a registered cancellation deed before the jurisdictional Sub Registrar.

d) To award and issue a judgment and decree of permanent injunction restraining the Defendant/s, their agents or anybody acting on their behalf from interfering with the possession suit schedule property.

e) Injunction restraining the defendants their agents, servants, officials, assigns or anyone acting or claiming on their behalf from demolishing or in any way entering upon or in any way interfering property.

f) The defendants be directed to pay the cost of the proceedings.

g) And further the Hon'ble Court be pleased to award pass

such other just and equitable relief/s as this Hon'ble Court deems fit in the circumstances of the suit and award costs in the interest of justice and equity.

5. Suits were filed on the allegations that suit property is ancestral property and the plaintiffs were co-owner and thus defendant had no right to execute the agreement of sale ignoring the interest of

the plaintiff. It was also pleaded that since the agreement of sale did not culminate into a sale transaction, the same are barred by law of limitation and are thus unenforceable. It may be relevant to mention at this stage that the sale deeds executed in favour of appellants by the attorneys of the recorded land holder were not questioned in the suit and were neither subject matter of dispute therein nor any relief was claimed in their respect.

6. The Trial Court vide its judgment dated 27.07.2016, decreed the suit by passing the following decree:-

“It is ordered and decreed that the suit of the plaintiffs is decreed.

It is further ordered and decreed that the registered agreement of sale dated 30.10.1989 and 05.08.1992 is barred by limitation and not binding on the plaintiffs.

It is further ordered and decreed that the defendant-society or anybody on their behalf permanently restrained from interfering with the plaintiff’s peacefully possession and enjoyment of the suit schedule property.

It is further ordered and decreed that the parties are directed to bear their own costs.”

7. During the pendency of the suit proceedings, the appellants made an application under Order 1 Rule 10 (2) CPC for impleadment which was dismissed by the Trial Court. The order was challenged by filing a Writ Petition before the High Court which came to be dismissed as infructuous as the suit itself came to be decided, in the meantime.

8. Aggrieved by the judgment and decree of the Trial Court, the appellants preferred R.F.A. Nos. 1434 of 2017, 1435 of 2017, 1436 of 2017 and 1775 of 2017. The appeals were duly accompanied by an application seeking leave to appeal against the judgment and decree.

9. High Court vide a common judgment and order impugned in these appeals while declining to grant leave to file an appeal rejected the application.

10. The High Court while dismissing the application made by the appellants seeking leave to appeal has observed that:-

“It is true that the Trial Court has granted a very peculiar declaratory relief which in my opinion the plaintiffs in the suit could have set up by way of defence, had they been sued by the Housing Society for specific performance. Be that as it may, all the applicants/appellants claim to be in possession of their respective sites on the strength of the sale deeds executed by the General Power of Attorney holders of the owners of the lands. What is stated is that the agreements of sale were executed in favour of the Housing Society and that Power of Attorney was executed in favour of some persons who are office bearers of the Housing Society. If this is the position, I

think that the applicants/appellants do have an independent right which they appear to have derived on the basis of the sale deeds executed by the owners of the land. It may be a fact that the sale deeds were executed by the Power of Attorney holders of the owner, but in reality those sale deeds were executed by the owners of the land and, therefore, it can be said that the nature of declaratory relief granted by the Trial Court in the suit does not affect the interest of the applicants/appellants.” The Trial Court further went on to observe that; “if they are in possession of the sites purchased by them, they have to protect their possession by filing independent suits. I do not think they have a remedy by filing an appeal challenging the judgment in the suit”.

11. Learned Counsel for the appellants argues before us that the interest of the appellants is directly involved in the subject matter of the suit. They have become absolute owners of the sites in question on the basis of sale deeds. The judgment of the Trial Court holding the sale agreements time barred and granting a decree of permanent injunction actually affects their interests as they are in possession of the suit property.

12. On the other hand, learned counsel for the respondents vehemently contended that the claim of the appellants herein is based on the sale deeds executed on the strength of the General Power of Attorney executed by the recorded owners of the suit property. There is neither any reference of the sale deeds in the suit nor the sale deeds refer to any agreement to sell. Therefore, the relief claimed, if any, by the appellants based on sale deeds in their favour is entirely different, and there is no locus to challenge the decree passed by the Trial Court and their application for leave to appeal has rightly been dismissed.

13. We have considered the rival submissions made by the learned counsel for the parties.

14. In the backdrop of above facts, the question which arises for our consideration is as to whether the appellants held the locus to question the judgment and decree passed by the Trial Court and whether the High Court was justified in rejecting their leave to appeal.

15. Section 96 and 100 of the Code of Civil Procedure provide for preferring an appeal from any original decree or from decree in appeal respectively. The aforesaid provisions do not enumerate the categories of persons who can file an appeal. However, it is a settled legal proposition that a stranger cannot be permitted to file an appeal in any proceedings unless he satisfies the Court that he falls with the category of aggrieved persons. It is only where a judgment and decree prejudicially affects a person who is not party to the proceedings, he can prefer an appeal with the leave of the Appellate Court. Reference be made to the observation of this Court in Smt. Jatan Kumar Golcha Vs. Golcha Properties Private Ltd.1:-

“It is well settled that a person who is not a party to the suit may prefer an appeal with the leave of the Appellate Court and such leave should be granted if he would be prejudicially affected by the Judgment.”

16. This Court in State of Punjab & Ors. Vs. Amar Singh & Anr.² while dealing with the maintainability of appeal by a person who is not party to a suit has observed thus :-

“Firstly, there is a catena of authorities which, following the dictum of Lindley, L.J., in re Securities Insurance Co., [(1894) 2 Ch 410] have laid down the rule that a person who is not a party to a decree or order may with the leave of the Court, prefer an appeal from such decree or order if he is either bound by the order or is aggrieved by it or is prejudicially affected by it.”

17. In Baldev Singh Vs. Surinder Mohan Sharma and Ors ³, this Court held that an appeal under Section 96 of the Civil Procedure Code, would be maintainable only at the instance of a person aggrieved by and dissatisfied with the judgment and decree. While dealing with the concept of person aggrieved, it was observed in paragraph 15 as under:-

1 (1970) 3 SCC 573 2 (1974) 2 SCC 70 3 (2003) 1 SCC 34 “A person aggrieved to file an appeal must be one whose right is affected by reason of the judgment and decree sought to be impugned.”

18. In A. Subash Babu Vs. State of A.P. and Anr.⁴, this Court held as under:-

“The expression ‘aggrieved person’ denotes an elastic and an elusive concept. It cannot be confined that the bounds of a rigid, exact and comprehensive definition. Its scope and meaning depends on diverse, variable factors such as the content and intent of the statute of which contravention is alleged, the specific circumstances of the case, the nature and extent of the complainant’s interest and the nature and extent of the prejudice or injuries suffered by him.”

19. The expression ‘person aggrieved’ does not include a person who suffers from a psychological or an imaginary injury; a person aggrieved must, therefore, necessarily be one, whose right or interest has been adversely affected or jeopardized (vide Shanti Kumar R. Canji Vs. Home Insurance Co. of New York ⁵ and State of Rajasthan & Ors. Vs. Union of India & Ors.⁶).

20. In Srimathi K. Ponnalagu Ammani Vs. The State Of Madras represented by the Secretary to the Revenue Department, Madras and Ors ⁷, this Court laid down the test to find out when it would be proper to grant leave to appeal to a person not a party to a proceeding against the decree or judgment passed in such proceedings in following words:-

4 (2011) 7 SCC 616 5 (1974) 2 SCC 387 6 (1977) 3 SCC 592 7 66 Law Weekly 136
“Now, what is the test to find out when it would be proper to grant leave to appeal to a person not a party to a proceeding against the decree or judgment in such proceedings? We think it would be improper to grant leave to appeal to every person who may in some remote or indirect way be prejudicially affected by a decree or judgment. We think that ordinarily leave to appeal should be granted to persons who, though not parties to the proceedings, would be bound by the decree or judgment in

that proceeding and who would be precluded from attacking its correctness in other proceedings.”

21. Applying the above tests, we are of the considered opinion that appellants can neither be said to be aggrieved persons nor bound by the judgment and decree of the Trial Court in any manner. The relief claimed in the suit was cancellation of agreement to sell. On the other hand, the sale deeds which were the basis of the claim of the appellants were executed on the basis of General Power of Attorney, and had nothing to do with the agreement to sell which was subject matter of suit. The judgment and decree of the Trial Court is in no sense a judgment in rem and it is binding only as between the plaintiffs and defendants of the suit, and not upon the appellants.

22. Though it has been vehemently contended before us and also pleaded before the High Court that the judgment and decree of the Trial Court affects the appellants adversely. The appellants have failed to place any material or demonstrate as to how the judgment and decree passed by the Trial Court adversely or prejudicially affects them. Mere saying that the appellants are prejudicially affected by the decree is not sufficient. It has to be demonstrated that the decree affects the legal rights of the appellants and would have adverse effect when carried out. Facts of the case clearly demonstrate that suit which has been decreed is confined only to a declaration sought in respect of an agreement to sell. Injunction was also sought only against the defendant- society or its officers or assigns. There is not even a whisper in the entire plaint or in suit proceedings about the sale deed executed in favour of the appellants by the General Power of Attorney holders or even for that matter in the judgment and decree of the Trial Court.

23. The appellants have thus failed to demonstrate that they are prejudicially or adversely affected by the decree in question or any of their legal rights stands jeopardized so as to bring them within the ambit of the expression ‘person aggrieved’ entitling them to maintain appeal against the decree.

24. In view of the facts and discussions, we find no infirmity in the judgment of the High Court dismissing the application filed by the appellants seeking leave to appeal against the decree. The appeals, accordingly, stand dismissed. However, we leave the parties to bear their own costs.

.....J. (L. NAGESWARA RAO)J. (KRISHNA MURARI)
.....J. (S. RAVINDRA BHAT) NEW DELHI;

21ST AUGUST, 2020