

P. Ramasubbamma vs V. Vijayalakshmi on 11 April, 2022

Author: M. R. Shah

Bench: B.V. Nagarathna, M. R. Shah

REPORTABLE

IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO. 2095 OF 2022

P. Ramasubbamma

..Appellant (S)

Versus

V. Vijayalakshmi & Ors.

..Respondent (S)

JUDGMENT

M. R. Shah, J.

1. Feeling aggrieved and dissatisfied with impugned judgment and order dated 20.07.2021 passed by the High Court of Karnataka in Regular First Appeal No. 100200/2015, by which the High Court has allowed the said appeal preferred by respondent Nos. 3 and 4 herein – original defendant Nos. 3 and 4 (hereinafter referred to as defendant Nos. 3 and 4) and has set aside the judgment and decree passed by the learned Trial Court granting decree for specific performance of agreement to sell dated 12.04.2005, the appellant herein □original plaintiff has preferred the present appeal.

2. The facts leading to the present appeal in a nutshell are as under: □2.1 That the appellant herein – original plaintiff filed the suit for specific performance of agreement to sell dated 12.04.2005. It was the case on behalf of the plaintiff that she had entered into an agreement with respondent No. 1 herein □original defendant No. 1 to purchase the suit schedule property for a sale consideration of Rs. 29 lakhs. An advance amount of Rs. 20 lakhs was paid under the said agreement. Defendant No. 1 had earlier executed a general power of attorney in favour of respondent No. 2 herein □original defendant No. 2. However, defendant No. 2 was present when the plaintiff entered into an agreement to sell with defendant No. 1. It was the case on behalf of the plaintiff that thereafter, on 25.03.2008, defendant Nos. 1 and 2 approached the plaintiff and her husband and sought payment of Rs. 6 lakhs. On 25.03.2008, the plaintiff made further payment of Rs. 6 lakhs towards sale consideration and an endorsement was made by defendant No. 1 on the agreement, acknowledging the receipt of Rs. 6 lakhs. According to the plaintiff, thereafter, despite repeated requests and demands, defendant No. 1 did not execute the sale deed in favour of the plaintiff. They learnt that

defendant No. 2 by misusing the power of attorney executed by defendant No. 1 in favour of defendant No. 2, clandestinely executed two sale deeds in favour of defendant Nos. 3 and 4 only to defraud the plaintiff. The plaintiff got served a legal notice to the defendants on 17.06.2010 calling upon defendant No. 1 to execute the sale deed in her favour by receiving balance sale consideration of Rs. 3 lakhs. Further, thereafter defendant No. 1 did not execute the sale deed, the plaintiff filed the present suit for specific performance of the contract/agreement to sell dated 12.04.2005. 2.2 That original defendant No. 1 filed written statement and admitted the execution of agreement to sell and specifically stated that she is ready and willing to perform her part of contract. However, defendant Nos. 2 to 4 filed separate written statements and took a common defence that agreement to sell dated 12.04.2005 is a created document. It was contended that power of attorney executed by defendant No. 1 in favour of defendant No. 2 is a registered document and without cancelling the registered power of attorney and without the knowledge of defendant No. 2, defendant No. 1 in collusion with the plaintiff had created the agreement to sell. It was also contended by defendant Nos. 2 to 4 that agreement to sell dated 12.04.2005 is a bogus document and no sale consideration is paid by the plaintiff.

2.3 The learned Trial Court framed the following issues: □“i) Whether the plaintiff proves that on 12.4.2005 defendant No. 1 has executed an agreement of sale agreeing to sell the suit property for a total consideration of Rs. 29 lakhs?

ii) Whether the plaintiff proves that part sale consideration of Rs. 26 lakhs has been paid to the defendant No. 1?

iii) Whether the plaintiff proves that she was always ready and willing to perform her part of duty towards the contract?

iv) Whether the plaintiff further proves that with malafide intention and to defeat her right accrued through the sale agreement dated 12.4.2005 defendant No. 2 had executed sale deeds dated 3.5.2010 in favour of defendant No. 3 and 4 and those sale deeds are nominal sale deeds?

v) Whether the defendant No. 2 to 4 prove that sale agreement dated 12.4.2005 is a created document and by virtue of the same no consideration had been passed?

vi) Whether the plaintiff is entitled for a decree of specific performance of contract?

vii) What order or decree?” 2.4 On behalf of the plaintiff, her husband was examined as PW1 and two more witnesses were examined on behalf of the plaintiff. The plaintiff produced nine documents as documentary evidence as exhibit P1 to P9. Defendant No. 1 was examined as DW1 and defendant No. 2 was examined as DW 2.

2.5 On appreciation of evidence on record, the learned Trial Court decreed the suit and passed a decree of specific performance. The learned Trial Court found that defendant No. 1 being the absolute owner of the suit schedule property has admitted the execution of agreement to sell in favour of the plaintiff and has also admitted receipt of substantial amount as part of the sale

consideration. The learned Trial Court also proceeded to hold that the sale deed executed by defendant No. 2 in favour of defendant Nos. 3 and 4 are not binding on defendant No. 1 as well as the plaintiff and therefore, the plaintiff was entitled to the relief of specific performance of contract and to get the vacant possession of the suit schedule property.

2.6 Feeling aggrieved and dissatisfied with the judgment and decree passed by the learned Trial Court, the original defendant Nos. 3 and 4 only preferred an appeal before the High Court. By the impugned judgment and order, the High Court has allowed the said appeal and has quashed and set aside the decree passed by the learned Trial Court mainly relying upon and considering Section 20 of the Specific Relief Act. The High Court has also observed that as there was no prayer or a particular relief to declare that the sale deed in favour of defendant Nos. 3 and 4 is null and void and not binding on the plaintiff and defendant No. 1, such a relief could not have been granted by the learned Trial Court.

2.7 Feeling aggrieved and dissatisfied with the impugned judgment and order passed by the High Court, the plaintiff preferred the present appeal.

3. Shri S.N. Bhat, learned Senior Advocate appearing on behalf of the original plaintiff has vehemently submitted that in the facts and circumstances of the case, the High Court has committed a grave error in quashing and setting aside the decree passed by the learned Trial Court for specific performance of agreement to sell dated 12.04.2005.

3.1 It is further submitted that when the original defendant No. 1 – original owner admitted the execution of the agreement and even admitted the payment of substantial amount under the agreement, the learned Trial Court rightly passed the decree of the specific performance of the said agreement.

3.2 It is further submitted that even the High Court ought to have appreciated that apart from the fact that original defendant No. 1 admitted the execution of the agreement and receipt of payment of substantial advance amount, original defendant Nos. 3 and 4 did not even enter into the witness box. It is further submitted that the High Court has not properly appreciated and considered the fact that the original of power of attorney dated 28.01.1997 executed by defendant No. 1 in favour of defendant No. 2, was handed over to the plaintiff at the time of execution of agreement to sell, which was produced by the plaintiff in the present suit as exhibit P6. 3.3 It is further submitted that the High Court has also erred in holding that it was necessary for the plaintiff to seek cancellation of sale deeds dated 03.05.2010 executed by defendant No. 2 in favour of defendant Nos. 3 and 4, respectively. It is submitted that in a suit for specific performance it is not necessary for the agreement holder to seek cancellation of sale deed executed in favour of a subsequent purchaser and it is sufficient to implead the subsequent purchaser in the suit and seek relief of specific performance against original owner and also seek direction to the subsequent purchaser to join in the execution of the sale deed in order to completely convey title to the agreement holder. Reliance is placed upon the decisions of this Court in the cases of Lala Durga Parsad and Anr. Vs. Lala Deep Chand and Ors., 1954 SCR 360: AIR 1954 SC 75, Soni Lalji Jetha & Ors. Vs. Soni Kalidas Devchand & Ors., (1967) 1 SCR 873: AIR 1967 SC 978, R.C. Chandiook & Anr. Vs. Chuni Lal Sabharwal & Ors.

(1970) 3 SCC 140: AIR 1971 SC 1238, Dwarka Prasad Singh & Ors. Vs. Harikant Prasad Singh & Ors., (1973) 1 SCC 179 and Rathnavathi & Anr. Vs. Kavitha Ganashamdas, (2015) 5 SCC 223.

3.4 It is further submitted that the High Court has also not properly appreciated the fact that the transactions between defendant No.2 and defendant Nos. 3 to 4 were sham transactions, which were by defendant No. 2 in favour of his own sisters in law. It is submitted that even the sale consideration in the transaction between defendant No. 2 and defendant Nos. 3 to 4 was alleged to have been paid by cash and that too, a huge sum of Rs.

26 lakhs was alleged to have been paid by cash. It is submitted that in any case defendant Nos. 3 and 4 never stepped into the witness box.

3.5 It is submitted that therefore when the sale deed executed in favour of defendant Nos. 3 and 4 by defendant No. 2 was sham in order to defeat the right of the plaintiff pursuant to agreement to sell dated 12.04.2005 and the same was executed after the agreement to sell in favour of the plaintiff and the plaintiff had paid a substantial advance amount, the High Court has erred in applying Section 20 of the Specific Relief Act. 3.6 Making the above submissions and also relying upon the decisions of this Court in the case of Vasantha Viswanathan Vs. V.K. Elayalwar, (2001) 8 SCC 133 (para 13) and in the case of Rathnavathi (supra), it is prayed to allow the present appeal and quash and set aside the impugned judgment and order passed by the High Court and consequently to restore the decree passed by the learned Trial Court.

4. Though served nobody has entered appearance on behalf of defendant Nos. 2 to 4. Even respondent No. 3 – defendant No. 3 is served by substituted service, namely, by way of publication in two daily newspapers. In that view of the matter, this Court has no other alternative but to proceed further with the appeal ex parte.

5. We have gone through the judgment and decree and the findings recorded by the learned Trial Court as well as the judgment and order passed by the High Court. 5.1 The learned Trial Court framed the following issues: □“i) Whether the plaintiff proves that on 12.4.2005 defendant No. 1 has executed an agreement of sale agreeing to sell the suit property for a total consideration of Rs. 29 lakhs?

ii) Whether the plaintiff proves that part sale consideration of Rs. 26 lakhs has been paid to the defendant No. 1?

iii) Whether the plaintiff proves that she was always ready and willing to perform her part of duty towards the contract?

iv) Whether the plaintiff further proves that with malafide intention and to defeat her right accrued through the sale agreement dated 12.4.2005 defendant No. 2 had executed sale deeds dated 3.5.2010 in favour of defendant No. 3 and 4 and those sale deeds are nominal sale deeds?

v) Whether the defendant No. 2 to 4 prove that sale agreement dated 12.4.2005 is a created document and by virtue of the same no consideration had been passed?

vi) Whether the plaintiff is entitled for a decree of specific performance of contract?

vii) What order or decree?” 5.2 Considering the fact that original defendant No. 1 – vendor – original owner admitted the execution of agreement to sell dated 12.04.2005 and even admitted the receipt of substantial advance sale consideration, the learned Trial Court decreed the suit for specific performance of agreement to sell dated 12.04.2005. Once the execution of agreement to sell and the payment/receipt of advance substantial sale consideration was admitted by the vendor, thereafter nothing further was required to be proved by the plaintiff – vendee. Therefore, as such the learned Trial Court rightly decreed the suit for specific performance of agreement to sell. The High Court, was not required to go into the aspect of the execution of the agreement to sell and the payment/receipt of substantial advance sale consideration, once the vendor had specifically admitted the execution of the agreement to sell and receipt of the advance sale consideration; thereafter no further evidence and/or proof was required.

5.3 Now, so far as the sale deeds executed by original defendant No. 2 in favour of defendant Nos. 3 and 4 and the decree passed by the learned Trial Court that the sale deeds executed by original defendant No. 2 in favour of defendant Nos. 3 and 4 are not binding on defendant No. 1 as well as on the plaintiff is concerned, at the outset, it is required to be noted that issue Nos. 4 and 5, reproduced hereinabove, were in respect of the sale deeds executed by original defendant No. 2 in favour of defendant Nos. 3 and 4 dated 03.05.2010. Therefore, specific issues were framed on sale deeds dated 03.05.2010 executed by original defendant No. 2 in favour of defendant Nos. 3 and 4. In that view of the matter, the High Court has erred in setting aside the decree passed by the learned Trial Court by observing that as there was no specific relief/prayer of cancellation of sale deeds dated 03.05.2010 executed by original defendant No. 2 in favour of defendant Nos. 3 and 4, therefore, the learned Trial Court could not have passed the decree that the said sale deeds are not binding on defendant No. 1 and the plaintiff. The High Court has not noted the specific issue Nos. 4 and 5 framed by the learned Trial Court, which were with respect to sale deeds dated 03.05.2010. Therefore, as such, there was a lis between the parties in respect to sale deeds dated 03.05.2005 executed by original defendant No. 2 in favour of defendant Nos. 3 and 4 and even specific issues were framed, which on appreciation of evidence were held against defendant Nos. 2 to 4. Therefore, the High Court is not justified in quashing and setting aside the judgment and decree passed by the learned Trial Court declaring that sale deeds dated 03.05.2010 are not binding on defendant No. 1 and the plaintiff. 5.4 It is also required to be noted that on appreciation of evidence, the learned Trial Court has specifically given the finding that the alleged sale consideration paid by defendant Nos. 3 and 4 to original defendant No. 2 for executing sale deeds dated 03.05.2010 have not been established and proved by defendant Nos. 2 to 4. Therefore, there was a specific finding given by the learned Trial Court on appreciation of evidence that sale deeds dated 03.05.2010 were nominal sale deeds. The High Court has brushed aside the same on the ground that even in agreement to sell dated 12.04.2005, the amount was alleged to have been paid by cash. However, it is required to be noted that so far as receipt of substantial advance sale consideration mentioned in the agreement to sell dated 12.04.2005 has been specifically admitted by defendant No. 1. Therefore, when it was

specifically alleged that defendant No. 2 executed sale deeds in favour of defendant Nos. 3 and 4, who are his sisters in law, with a view to defeat the rights of the plaintiff and defendant No. 1 and when it was alleged that they were nominal sale deeds, thereafter, defendant No. 2 was required to prove the receipt of sale consideration mentioned in the sale deeds dated 03.05.2010, which defendant Nos. 2 to 4 have failed to do so.

5.5 It is also required to be noted that on appreciation of evidence, learned Trial Court has specifically found that the stamp papers of agreement to sell dated 12.04.2005 was purchased in the name of defendant No. 2 and therefore defendant No. 2 was aware and in the knowledge of agreement to sell dated 12.04.2005. It is also required to be noted that even defendants did not reply to the legal notice served by the plaintiff, which was issued before filing the suit.

5.6 In light of the aforesaid factual aspects and the findings recorded by the learned Trial Court, the decision of this Court in the case of Lala Durga Prasad & Ors. (supra) is required to be referred to. In paragraph 42, it is observed and held as under: “42. In our opinion, the proper form of decree is to direct specific performance of the contract between the vendor and the plaintiff and direct the subsequent transferee to join in the conveyance so as to pass on the title which resides in him to the plaintiff. He does not join in any special covenants made between the plaintiff and his vendor; all he does is to pass on his title to the plaintiff. This was the course followed by the Calcutta High Court in Kafiladdin v. Samiraddin [AIR 1931 Cal 67] and appears to be the English practice. See Fry on Specific Performance, 6th Edn., p. 90, para 207; also Potter v. Sanders [67 ER 1057]. We direct accordingly.” The aforesaid decision has been subsequently referred to and followed by this Court in the subsequent decision in the case of Rathnavathi & Anr. (supra). 5.7 From the impugned judgment and order passed by the High Court, it appears that the High Court has heavily relied upon Section 34 of the Specific Relief Act. However, considering the fact that specific issues were framed with respect to sale deeds dated 03.05.2010 executed by original defendant No. 2 in favour of defendant Nos. 3 and 4 and the parties led the evidence also on the aforesaid issues and thereafter, when the learned Trial Court had given findings on the said issues and thereafter, had granted the declaration that the sale deeds executed by original defendant No. 2 in favour of defendant Nos. 3 and 4 are not binding on defendant No. 1 and the plaintiff and those sale deeds are nominal sale deeds and that defendant Nos. 2 to 4 have failed to prove that agreement to sell dated 12.04.2005 is a created document and by virtue of the same no consideration has been paid, Section 34 of the Specific Relief Act, upon which the reliance has been placed by the High Court will have no application.

5.8 The High Court has set aside the judgment and decree passed by the learned Trial Court on the ground that the relief under Section 20 of the Specific Relief Act, is a discretionary relief and therefore, in view of the fact that original defendant No. 2 had executed sale deeds in favour of defendant Nos. 3 and 4, the learned Trial Court ought not to have exercised discretion in favour of the plaintiff for passing the decree for specific performance. However, in the facts and circumstances of the case narrated hereinabove and when the learned Trial Court specifically gave the findings that defendant No. 1 – vendor specifically admitted the execution of agreement to sell dated 12.04.2005 in favour of the plaintiff by accepting a substantial advance consideration and that defendant No. 2 was in the knowledge of the agreement to sell and despite the same, he sold the same in favour of defendant Nos. 3 and 4, who are his sisters in law and that too the sale deeds

found to be nominal sale deeds, the learned Trial Court as such rightly decreed the suit for specific performance and also rightly declared that sale deeds dated 03.05.2010 executed by original defendant No. 2 in favour of defendants No. 3 and 4 are not binding upon the plaintiff and defendant No. 1. The High Court has committed a grave error in reversing the judgment and decree passed by the learned Trial Court by ignoring the vital facts of the case which are either admitted or proved in the instant case.

6. In view of the above and for the reasons stated above, the present appeal succeeds. The impugned judgment and order passed by the High Court is hereby quashed and set aside and the judgment and decree passed by the learned Trial Court is restored. In the facts and circumstances of the case, there shall be no order as to costs.

.....J. (M. R. SHAH)J. (B.V. NAGARATHNA) New
Delhi, April, 11 2022.