

Gujarat High Court

Jayantibhai Samalbhai Patel And 3 ... vs Bhupendrabhai Shantilal Shah And ... on 6 February, 2008

Author: K Puj

Bench: K Puj

JUDGMENT K.A. Puj, J.

1. The appellants original defendant Nos. 4 to 7 have filed this Appeal from order under Order 43 Rule 1 (r) of the Code of Civil Procedure challenging the order dated 08.10.2007 passed by the learned 6th Additional Senior Civil Judge, Vadodara below an application Exh. 5 in Special Civil Suit No. 101 of 2007 whereby application Exh. 5 was allowed to the extent that the original defendants which, inter alia, includes the present appellants were directed to maintain status-quo position of the suit disputed property.

2. Heard Mr. N. K. Pahwa, learned advocate appearing for the appellants and Mr. N. D. Nanavaty, learned Senior Counsel appearing with Mr. Manoj Joshi for respondent No. 1 original plaintiff and Mr. Amrish K. Pandya, learned advocate appearing for the respondent No. 2/1.

3. It is the case of the appellants that the appellants are the owners and persons in possession of the subject parcels of land covered by Final Plot No. 865 and 876 and Revenue Survey No. 537 of T.P. Scheme No. 3 admeasuring about 7903 Sq. Mts. Situated at village Danteshwar, Tal. & Dist. Baroda. The appellants purchased the subject land by two registered sale documents executed on 04.07.2001 and 08.05.2001. The revenue entries have been mutated in the record of rights bearing No. 3980 and 4041 respectively in respect of the above mentioned two transactions. The names of the appellants were also recorded in abstracts of 7/12 as persons in possession of the subject land. The appellants are also paying land revenue and have produced receipts evidencing payment of land revenue vide Exh. 15/4 and 15/5.

4. It is also the case of the appellants that before purchasing the subject land, the appellants obtained search report from the office of Sub-Registrar upon payment of the requisite fees. The appellants also published public notice in 'Sandesh' and 'Gujarat Samachar' on 13.04.2001 while obtaining title clearance certificate. No objection was received pursuant to the said public notices and, therefore, the appellants purchased the subject land by two registered sale documents on 04.07.2001 and 05.10.2001. It is also the say of the appellants that after about six years from the date of execution of the registered sale documents, the original plaintiff filed Special Civil Suit No. 101 of 2007 for specific performance of the agreements dated 16.04.1993 and 09.04.1993 and also prayed for setting aside the said registered sale documents dated 04.07.2001 and 05.10.2001 executed in favour of the present appellants. The appellants have filed detailed written statement pointing out the various facts and pleaded that the suit filed by the original plaintiff is not maintainable and no interim relief can be granted. One of the land owners has also filed written statement wherein it was denied that they have received any consideration from the original plaintiff present respondent No. 1. Certain discrepancies in the facts as well as averments in Banakhat and possession receipts were also pointed out. It is, therefore, the case of the appellants that the learned Trial Judge has not considered all these aspects of the matter and granted the interim relief directing the present appellants to maintain status-quo qua the suit property.

5. It is this order of the Learned Trial Judge which is under challenge in the present Appeal from order.

6. Mr. N. K. Pahwa, learned advocate appearing for the appellants has submitted that the suit itself is barred by limitation and, therefore, the Learned Trial Judge ought not to have granted the injunction in favour of the original plaintiff. He has further submitted that the banakhats are executed in the year 1993 whereas the suit was filed in the year 2007. He has further submitted that even otherwise, the suit suffers from delay and laches. The law governing the injunction is that in a suit for specific performance, the Court will not grant injunction in favour of a person who files the suit which suffers from delay and laches. In the instant case, the original plaintiff was put to notice through public notice of 13.04.2001 and the suit was filed in 2007. He has, therefore, submitted that there was delay of about six years. He has further submitted that the alleged documents on which reliance was placed for the purpose of claiming specific performance of contract were false and concocted and hence, no interim relief could have been granted by the Learned Trial Judge.

7. In support of his submissions, Mr. Pahwa relied on the decision of the Hon'ble Supreme Court in the case of H.P. Pyarejan v. Dasappa (Dead) by Lrs and Ors. for the proposition that the specific averments are required to be made as to continuous readiness and willingness from the date of the contract at the time of hearing of the suit that they are ready and willing to perform the contract. No such averments are made in the plaint.

8. He also relied on the decision of the Hon'ble Supreme Court in the case of Pukhraj D. Jain and Ors. v. G. Gopalakrishna which says that where no period is prescribed in the banakhat, suit is to be filed within reasonable time.

9. Mr. Pahwa also placed reliance on the decision of the Hon'ble Supreme Court in the case of Veerayee Ammal v. Seeni Ammal which says that time is the essence of contract. Even with regard to delay, reliance is placed on the decision of the Hon'ble Supreme Court in the case of Manjunath Anandappa v. Tammanasa and Ors. which says that when party approaches the Court late, the Court may not grant discretionary relief having regard to Section 20 of the Act. He has further submitted that the appellants being the lawful owners and even the original owners having supported the case of the appellants, no injunction be granted against the lawful owners. For this purpose, he relied on the decision of the Hon'ble Supreme Court in the case of Hanumanthappa v. Muni Narayanappa .

10. Based on the aforesaid factual position as well as the settled legal position, Mr. Pahwa has strongly urged that the injunction granted by the Trial Court deserves to be vacated and the appeal be allowed accordingly.

11. Mr. N.D. Nanavaty, learned Senior Counsel appearing with Mr. Manoj S. Joshi for respondent No. 1 original plaintiff, on the other hand, has submitted that the trial Court has merely directed the present appellants to maintain status-quo and it is a settled position that if the dispute is with regard to the immovable property, status-quo as a matter of course is required to be granted. He has further submitted that the agreements to sell were executed in favour of respondent No. 1 way back in 1993 and his application was pending before the Collector. He has, therefore, submitted that till

the application is decided, the respondent No. 1 was of the bonafide view that no sale deed would be executed by the original land owners in favour of anybody else. He has further submitted that the public notice which was issued in 2001 was only with regard to getting title clearance certificate. Hence, from that notice, it cannot be presumed that the original land owners were intending to sell the land. He has further submitted that possession receipt clearly indicates that possession was handed over to the respondent No. 1 in 1993 and hence, the original land owners could not have disposed of or sold the said land to the present appellants.

12. In support of his submissions, Mr. Nanavaty relied on the decision of this Court in the case of Manojbhai Ravjibhai Radadiya and Anr. v. Keshavlal Dayaram Dhanani and Ors. 2004 (4) GLR 3090. The Learned Trial Judge has also relied on this judgment and granted interim injunction. Mr. Nanavaty has invited the Court's attention to the observations made in paragraph 39 of the said judgment. According to him, the facts are more or less similar to the present case. It was observed therein that it is true that normally Court would not interfere or grant any interim relief in a suit filed after the period of about more than 15 years. However, Court's indulgence may sometimes be shown looking to the peculiar facts of the case on hand. The peculiar facts in that case were that the suit was filed in the year 1999 for specific performance of the agreement executed on 28.04.1984. The fact, however, remains that the Collector has granted permission in 1999, and soon thereafter, the suit was filed by the plaintiff on 22.06.1999. The original defendant Nos. 1 to 3 have executed the sale deed in favour of the defendant Nos. 4 & 5 on 10.09.1999 and the sale deed was registered on 09.06.2000. The Court further observed that it is equally important to note that the appellant No. 1 has acted as Power of Attorney of the defendant Nos. 1 to 3. It was difficult to believe that the Power of Attorney Holder was not aware about the earlier agreement of sale executed by the original owners of the land in favour of the plaintiff. Even otherwise, the original owners should not have allowed the Power of Attorney to execute the sale deed in his own favour especially when the original owners were aware about the execution of the agreement of sale. The Court also found from the record that no public notice was given prior to the execution of the sale deed. The execution of the sale deed on 10.09.1999, therefore, raised some doubts and suspicions. Accordingly, the Court has issued certain directions in that matter.

13. Based on the said judgment, Mr. Nanavaty has submitted that here also, the status-quo order passed by the trial Court may be continued till the final disposal of the suit and appropriate direction may be issued to the trial Court for early disposal of the suit.

14. Mr. Amrish K. Pandya, learned advocate appearing for respondent No. 2/1 has supported the case of the appellant and reiterated that he has not received any amount from the original plaintiff.

15. Despite service of notice, nobody appears on behalf of respondent Nos. 3/1, 3/2, 3/4, 4/1, 4/2 & 4/3. The board endorsement shows that respondent No. 3/3 has expired and hence, he could not be served. Mr. Nanavaty has raised an objection that unless and until legal heirs of respondent No. 3/3 are brought on record, the matter could not be proceeded with further. Mr. N.K. Pahwa, learned advocate appearing for the appellant has, therefore, prayed for deletion of respondent No. 3/3. Accordingly, on his request, the Court has deleted respondent No. 3/3.

16. Having heard learned advocates appearing for the respective parties and having gone through the impugned order of the Learned Trial Judge and having considered the documents which are produced before the Court, the Court is of the view that the Learned Trial Judge has not properly appreciated the facts of the case and contentions raised before him. The Learned Trial Judge has also wrongly applied the principles laid down by this Court in the case of Manojbhai Ravjibhai Radadiya (Supra). Here the suit is based on the two agreements to sell which are said to have been executed in 1993. The plaintiff has produced agreement to sale as well as possession receipt. There appears to be some contradictions between these two documents which are produced on record. In the agreement to sell, it is mentioned that the possession would be handed over only after full payment and at the time of execution of sale deed. However, in the possession receipt which is also executed on the same day, it is stated that the possession is handed over on that very day despite the fact that sale consideration was agreed to be paid of more than Rs. 24 Lacs whereas earnest money was paid only to the extent of Rs. 1 Lac. Even in the agreement to sell, there was reference with regard to the final T.P. Scheme. It is the say of Mr. N. K. Pahwa that in the year 1993, the T.P. Scheme was not finalized and hence, the said reference could not have been there. It raises a doubt as to whether the agreement to sell was in fact executed in 1993. It is true that during the course of trial, this issue can be thrashed out. Even one more fact which is required to be noted that the advertisement was issued in 2001 whereas the suit was filed in 2007. There was no reason for the original plaintiff present respondent No. 1 to wait upto 2007 when the fact regarding claiming of title clearance certificate by the original land owner has come to light in 2001 itself. It is also required to be noted that the original owners have come forward and stated that they have never executed the said document nor any amount has been received. Reliance placed by Mr. Nanavaty and also by the Learned Trial Judge on the decision of this Court is also not relevant in view of the fact that in the said decision, what was weighed with the Court was that the Power of Attorney has himself executed the sale deed in his favour. Moreover, on receipt of the permission in 1999, the suit was filed in 1999. The facts are totally distinguishable and hence, the said decision is not applicable. As against this, the decisions relied on by Mr. Pahwa in support of his submissions with regard to delay, granting of injunction etc. are relevant and the said decisions render much assistance to the case of the present appellants.

17. Having regard to the facts and circumstances of the case and considering the entire matter, the Court is of the prima facie view that all the three ingredients, namely, prima facie case, balance of convenience and irreparable injuries are in favour of the appellants and not in favour of the respondent No. 1. The injunction has, therefore, been wrongly granted by the Learned Trial Judge which is required to be vacated and hence, it is accordingly vacated. This Appeal From order is accordingly allowed.

18. Since the dispute with regard to immovable property is involved, the trial Court is hereby directed to decide and dispose of the suit as expeditiously as possible, preferably within a period of one year from the date of receipt of writ or from the date of receipt of certified copy of this order, whichever is earlier. At this stage, Mr. N.D. Nanavaty has submitted that since this Court has vacated the interim reilef, at least it may be observed that any further action with regard to the suit property is subject to the outcome of the suit. The position is well settled in law and no such observation is necessary.

19. Since Appeal from order is allowed, Civil Application does not survive and it is accordingly disposed of.

20. At this stage, Mr. Nanavaty, learned Senior Counsel appearing for the original plaintiff has prayed for stay against implementation of this order on the ground that the respondent No. 1 wants to challenge this order in Apex Court. Mr. N. K. Pahwa, learned advocate appearing for the appellants has strongly objected. This Court is of the view that since the Learned Trial Judge has wrongly granted the order of status-quo, the original plaintiff is not entitled to the said relief and after discussing at length all these issues, the Court has vacated the order of status-quo. Hence, the request for staying this order is not acceded to.