Supreme Court of India
Pemmada Prabhakar & Ors vs Youngmen'S Vysya Association & ... on 20 August, 1947
Author: V Gowda
Bench: Dipak Misra, V. Gopala Gowda

REPORTABLE

IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO. 7835 OF 2014
(Arising out of SLP(C) NO. 24653 OF 2012)

PEMMADA PRABHAKAR & ORS. …APPELLANTS

Vs.

YOUNGMEN'S VYSYA ASSOCIATION & ORS. …RESPONDENTS

J U D G M E N T

V.GOPALA GOWDA, J.

Leave granted.

2. This appeal has been filed against the judgment and final order dated 04.11.2011 passed in the Second Appeal No. 815 of 2011 by the High Court of Judicature of Andhra Pradesh at Hyderabad, whereby the High Court has dismissed the Second Appeal.

3. Certain relevant facts are stated for the purpose of appreciating the rival legal contentions urged on behalf of the parties with a view to examine the correctness of the findings and reasons recorded by the High Court in the impugned judgment.

For the sake of brevity and convenience, the parties are referred to in this judgment as per the rank assigned to them in the original suit proceedings.

4. The property bearing Door No. 20/42-1-9 with land measuring about 657- 1/3rd sq. yards situated to the west of Vallabhai Street, Cinema Road, Kakinada (hereinafter, referred to as the 'suit schedule property') was the self acquired property of one Pemmada Venkateswara Rao. He died intestate and survived by wife Syama Sundari, three sons and three daughters (the defendant Nos. 1 to 6).

5. The plaintiffs-the Youngmen's Vyasa Association (who are the respondents herein), instituted O.S.No.267 of 1995 for the specific performance of Agreement of Sale dated 03.05.1993 against the

defendants (the appellants herein). The plaintiffs alleged that the defendant Nos. 1 and 2, who are managing the suit schedule property, agreed to sell the same to plaintiff No. 1.

6. According to the plaintiffs, the defendant Nos. 1 and 2 executed the Agreement of Sale dated 03.05.1993 in favour of plaintiff No. 1 agreeing to sell the suit schedule property at the rate of Rs.575/- per sq. yard, the total consideration of which was to be fixed later after taking the actual measurement. Later on, the total land value was fixed at Rs.3,77,967/- for 657-1/3 sq. yards. The defendant Nos. 1 and 2 received advance amount of Rs.5000/- and Rs.10,000/- also. Under the Agreement the plaintiff No. 1 agreed to pay Rs.1,70,000/- to the defendants within 10 days from the day of vacating the tenants from the suit schedule property. Rs.50,000/- was to be paid on 30.11.1993 and that the balance amount of Rs.1,50,000/- was to be paid by 30.3.1994. The defendant Nos. 1 and 2 agreed that they would obtain the signatures of their 3rd brother-the defendant No. 3 by 9.05.1993. Defendant Nos. 7 and 8 are the tenants in the sheds situated in the suit schedule property. The defendant Nos.1 & 2 stated that their sisters were married long ago therefore, they had no interest in the suit schedule property, and that they would also get the sisters' signatures on the agreement.

7. The 2nd Addl. Senior Civil Judge, Kakinada (the Trial Court) by his judgment dated 12.7.2006 dismissed O.S. No 267/95, in so far as the main relief for the specific performance of sale is concerned. The Trial Court has directed the defendants to refund Rs.5000/- with interest at the rate of 12% p.a. from 5.03.1993 till the date of realization and Rs.10,000/- with the interest rate at 12% p.a. from 6.08.1993 till the date of realization.

8. The Trial Court after considering the oral and documentary evidence on record, observed that as the suit schedule property is adjacent to the plaintiff's property, taking advantage of the financial difficulties of defendant Nos. 1 and 2, the plaintiffs attempted to grab the suit schedule property and dragged the defendants to the court of law.

9. The Trial Court further held that the Agreement of Sale was not valid as the defendant Nos.3 to 6 and their mother did not give consent to sell the suit schedule property to the plaintiffs. Accordingly, the main relief for specific performance was rejected and the defendants were directed to refund the amount of advance sale consideration to the plaintiffs with interest at the rate of 12% p.a.

10. Being aggrieved by the judgment and decree dated 12.7.2006 of the Trial Court, the plaintiffs filed an appeal being A.S. No. 269 of 2006 before the Court of 3rd Additional District Judge, Kakinada, the First Appellate Court.

11. On 28.04.2010 the First Appellate Court allowed the appeal partly, directing the defendant Nos. 1, 2, 4 and 5 to execute the registered sale deed in favour of the plaintiff's Association in respect of their 1/6th share each i.e. 4/6th share by receiving their respective shares of the balance sale consideration from the plaintiffs and modified the decree for specific performance of Agreement of Sale.

12. The First Appellate Court vide its order dated 28.4.2010 held that the transaction between the parties is real sale transaction and not mere money transaction and the sale agreement is valid and binding between the parties and the plaintiffs are entitled for the first main relief of specific performance and directed defendant Nos. 1, 2, 4 and 5 to execute sale deed in respect of their 4 shares of the suit schedule property after receiving proportionate sale price.

13. Being aggrieved by the judgment and decree dated 28.04.2010 of the First Appellate Court, the defendants preferred Second Appeal being S.A. No. 815 of 2011 before the High Court of Judicature of Andhra Pradesh at Hyderabad whereby the High Court vide order dated 4.11.2011 dismissed the Second Appeal which is impugned in this appeal.

14. The High Court held that the approach of the First Appellate Court in granting the relief of specific performance directing defendants 1, 2, 4 and 5 to execute sale deed in respect of their shares, i.e. 4/6th share of the suit schedule property in favour of the plaintiffs on receipt of their respective balance consideration which stood deposited in the court, cannot be faulted with.

15. It was further held by the High Court that the mother of the defendants was alive when the suit was instituted in 1995 and she died on 29.09.2005. She had one share and after her death, the property would be divided into 6 shares and the agreement was held as binding on the defendants 1, 2, 4 and 5. Therefore, the High Court upheld the decision of the First Appellate Court and moulded the relief in the above terms while granting decree of specific performance of the Agreement of Sale by executing the sale deed of their share in the property in favour of the plaintiffs.

16. The following submissions were made by the learned counsel for both the parties in support of their claim and counter claim.

17. On behalf of the defendant Nos.1 & 2, it is contended that their father Pemmada Venkateswara Rao was engaged in lathe works which incurred heavy loss and he was allegedly indebted to various creditors. They approached one Murali Krishna (who had acquaintance with them) who was the Secretary of the plaintiff Association to borrow some money. Taking advantage of their situation, the Secretary and the President of the Plaintiff Association obtained the signatures of defendant Nos. 1 and 2 on a blank sheet of paper and gave Rs.5000/- on 3.5.1993 and Rs.10,000/- on 6.8.1993 to them.

18. It was further contended by the learned counsel that the defendants never intended to sell the suit schedule property and the transaction with the plaintiffs Association was only money transaction and was not a sale transaction with it. A separate written statement was filed by the 4th defendant to the same effect.

19. It was further contended by defendant Nos. 1 to 6 that even on the date of execution of Agreement of Sale their mother was very much alive and, therefore in the absence of execution of Agreement of Sale by all the seven co-sharers of the suit schedule property the suit for specific performance does not lie. The learned counsel for the defendants placed reliance on the decisions of Andhra Pradesh High Court and this Court in the cases of Kommisetti Venkatasubbayya v.

Karamestti Venkateswarlu[1] and Lourdu Mari David & Ors. v. Louis Chinnaya Arogiaswamy & Ors.[2] in support of their claim.

20. Further, they placed reliance upon the case of this Court in Rameshwar & Ors. v. Jot Ram & Anr.[3]. In the said authority it has been held as follows:

"9...First, its bearing on the right of action, second, on the nature of the relief and third, on its impotence to create or destroy substantive rights. Where the nature of the relief, as originally sought, has become obsolete or unserviceable or a new form of relief will be more efficacious on account of developments subsequent to the suit or even during the appellate stage, it is but fair that the relief is moulded, varied or reshaped in the light of updated facts. Patterson illustrates this position. It is important that the party claiming the relief or change of relief must have the same right from which either the first or the modified remedy may flow. Subsequent events in the course of the case cannot be constitutive of substantive rights enforceable in that very litigation except in a narrow category (later spelt out) but may influence the equitable jurisdiction to mould reliefs. Conversely, where rights have already vested in a party, they cannot be nullified or negated by subsequent events save where there is a change in the law and it is made applicable at any stage. Lachmeshwar Prasad Shukul v. Keshwar Lal Chaudhuri falls in this category. Courts of justice may, when the compelling equities of a case oblige them, shape reliefs — cannot deny rights — to make them justly relevant in the updated circumstances. Where the relief is discretionary, courts may exercise this jurisdiction to avoid injustice. Likewise, where the right to the remedy depends, under the statute itself, on the presence or absence of certain basic facts at the time the relief is to be ultimately granted, the Court, even in appeal, can take note of such supervening facts with fundamental impact..." (Emphasis supplied)

21. The High court held that defendants pleaded falsehood at the time of execution of the Agreement of Sale by stating that their mother had predeceased their father. The agreement and the endorsement thereon made by defendant Nos.1 and 2 had swayed discretion of the High Court in favour of the plaintiffs which is an Association engaged in the welfare of the community.

22. The High Court further held that the suit schedule property was not purchased for unlawful gain of an individual and that the First Appellate Court considered the entire evidence on record and exercised its sound jurisdiction and modified the judgment of the Trial Court by granting a decree of specific performance as per the terms stipulated therein.

23. The High Court dismissed the second appeal without adverting to the substantial questions of law that were framed in the second appeal at the admission stage itself stating that there is no substantial question of law for its adjudication. The First Appellate Court and the Second Appellate Court committed serious error in law in not noticing the relevant important findings of fact recorded by the Trial Court on the contentious issues on proper appreciation of pleadings and evidence on record with reference to the legal submission made on behalf of the parties. The Trial Court after proper appreciation of evidence on record, particularly, Ex.- A1, the Agreement of Sale, has held that it is not a valid agreement and no rights can flow from it in favour of the plaintiffs in the light of the fact that the signatures of defendant Nos. 1 and 2 were obtained on different dates on blank papers

as they were in financial crisis and that fact is proved by producing Exs.-B1 to B-8 to show that the entire family (defendant Nos. 1 to 6) were in financial crisis and they were forced to pay the debts to their creditors. Therefore, they were in urgent need of money and they approached the PW-1 for financial help, who obtained the signatures of defendant Nos. 1 and 2 on blank paper and the same was fabricated as a receipt. The said receipt was not signed by defendant Nos. 3 to 6. The mother of the defendant Nos. 1 and 2 is one of the co-sharers of the suit schedule property as a class-I legal heir to succeed to the intestate property of her deceased husband, which was his self acquired property left by him, as he had purchased the same vide Sale-Deed document No. 5174/1970 dated 24.11.1970 from his vendors. In fact, there is a reference made in this regard in the Agreement of Sale executed by defendant Nos. 1 and 2 to the effect that after demise of Pemmada Venkateswara Rao, the father of defendant Nos. 1 to 6, the property devolved upon them jointly and they are enjoying with absolute rights. As per Section 8 of the Hindu Succession Act, 1956 the general rules of succession would be applicable in the case of a male Hindu dying intestate, relevant portion of which reads as under :-

"8. General rules of succession in the case of males.- The property of a male Hindu dying intestate shall devolve according to the provisions of this Chapter-

Firstly, upon the heirs, being the relatives specified in class I of the Schedule;

XXX XXX XXX" In the Schedule of the said Act, class I heirs are son, daughter, widow, mother and others. In view of the enumeration of the class I heirs in the Schedule, the mother and sisters of the defendant Nos. 1 and 2 are also co- sharers of the property left intestate by the deceased Pemmada Venkateswara Rao. As could be seen from the Agreement of Sale-Ex.-A1 undisputedly, the third brother and 3 sisters, (defendant Nos. 3 to 6) and their mother have not executed the Agreement of Sale in favour of the plaintiffs. Therefore, the same is not enforceable under Section 17 of the Specific Relief Act, 1963. The mother lived upto September, 2005, the aforesaid legal heirs of deceased Pemmada Venkateswara Rao got equal shares in the suit schedule property.

24. It is further contended on behalf of the defendants that the First Appellate Court and the High Court have failed in not applying the legal principle laid down by this Court in the case of Lourdu Mari David & Ors. (supra), wherein this Court held that the party who seeks to avail of the equitable jurisdiction of a court and specific performance decree being equitable relief must come to the court with clean hands. In other words, the party who makes false allegations against the defendants does not come with clean hands and therefore, it is not entitled to the equitable relief of specific performance decree from the court.

25. Another legal contention urged on behalf of the defendants is that the High Court has erroneously come to the conclusion on facts and evidence on record and it has affirmed the divergent findings of fact recorded by the First Appellate Court without examining and answering the substantial questions of law framed in the Second Appeal and it has erroneously dismissed the appeal holding that the suit schedule property was not purchased by the plaintiffs for unlawful gain of an individual. The said property is probably purchased by the plaintiffs to put it to use for the purpose of the community. The High Court without considering the legal submissions urged on

behalf of the defendants adjudicated the rights of the parties ignoring certain facts, evidence on record and legal contentions urged. It has erroneously held that the plaintiffs are entitled for the relief of specific performance while the Agreement of Sale is not enforceable under Section 17 of the Specific Relief Act, 1963, in view of the fact that all the legal heirs of the deceased Pemmada Venkateswara Rao are not parties to the Agreement of Sale and the defendant Nos. 1 and 2 do not have absolute title and right upon the entire suit schedule property. Even assuming for the sake of argument that the Agreement of Sale is valid, the same could not have been enforced against the defendants as the plaintiffs have committed breach of the contract as agreed upon by them as per clause 2 of the penultimate paragraph Nos. 2 and 3 of the Agreement of Sale. The plaintiffs gave a sum of Rs.5,000/- & Rs. 10,000/- as an advance amount towards sale consideration and the remaining sale consideration, i.e.(i)an amount of Rs.1,70,000/- which was to be paid within 10 days from the day of vacating the tenants in the property, (ii) Rs.50,000/- to be paid on 30.11.1993 and the remaining sale consideration of Rs.1,50,000/- to be paid on or before 30.3.1994 was not paid to the defendant Nos. 1 and 2.

26. It is also contended by the learned counsel that the First Appellate Court and the Second Appellate Court have not exercised their discretionary powers as required under Section 20(2) of the Specific Relief Act for decreeing the specific performance in favour of the plaintiffs, even though, the defendants have made out a case before the Trial Court that the plaintiffs are not entitled for the decree for specific performance. Therefore, the First Appellate Court and the Second Appellate Court have gravely erred in not exercising their discretionary power under Section 20(2) of the Specific Relief Act at the time of passing decree for specific performance in favour of the plaintiffs, which is not only erroneous in law but also vitiated in law and therefore, the same is liable to be set aside.

27. On the contrary, the learned counsel for the plaintiffs has sought to justify the impugned judgment contending that the Second Appellate Court in exercise of its appellate jurisdiction after examining the facts and evidence on record has held that the substantial questions of law framed by the defendants in the second appeal, on the divergent findings of fact recorded by the First Appellate Court would not arise. Decreeing the suit by the First Appellate Court as prayed by the plaintiffs is correct as it has set aside the decree of the Trial Court. It is further urged that the High Court is right in dismissing the second appeal and therefore, the same does not call for interference by this Court as there is no substantial question of law which would arise for consideration. Therefore, the learned counsel for the respondent-plaintiffs prayed for dismissal of this civil appeal as the same is devoid of merit.

28. With reference to the above said rival contentions, the following points would arise for our consideration :-

Whether the plaintiffs are entitled for the decree for specific performance of the Agreement of Sale (Ex.-A1) when Agreement of Sale entered between the plaintiffs and defendant Nos. 1 and 2 who do not have absolute title to the property?

Whether in the absence of execution of the Agreement of Sale-Ex.-A1 by the other defendants/co-sharers is it valid, even assuming that Agreement of Sale is valid, there is breach of terms and conditions of the Contract on the part of the plaintiffs in not paying the sale consideration amount of Rs. 1,70,000/- within 10 days from the day of vacating the tenants, Rs.50,000/- on 30.11.1993 and an amount of Rs.1,50,000/- on or before 30.3.1994 to the defendants and plaintiffs are entitled for decree of specific performance of the Agreement of Sale?

Whether the plaintiffs are entitled for discretionary relief of specific performance under Section 20(2) of the Specific Relief Act when it has not approached the court with clean hands?

What relief?

29. It is an undisputed fact that the suit schedule property is self acquired property by late Pemmada Venkateswara Rao as he had purchased the said property vide Sale-Deed Document No.5174 of 1970 dated 24.11.1970 from his vendors. It is also an undisputed fact that the said property is intestate property. He is survived by his wife, 3 sons and 3 daughters. The said property devolved upon them in view of Section 8 of Chapter 2 of the Hindu Succession Act as the defendants are class I legal heirs in the suit schedule property. Undisputedly, the Agreement of Sale- Ex.-A1 is executed only by defendant Nos. 1 and 2. The 3rd son, mother and 3 sisters who have got equal shares in the property have not executed the Agreement of Sale. In view of the matter, the Agreement of Sale executed by defendant Nos. 1 and 2 who have no absolute right to property in question cannot confer any right whatsoever upon the plaintiffs for grant of decree of specific performance of Agreement of Sale in their favour. The said agreement is not enforceable in law in view of Section 17 of the Specific Relief Act in view of right accrued in favour of defendant Nos. 3 to 6 under Section 8 of the Hindu Succession Act. The provisions of Section 17 of the Specific Relief Act in categorical term expressly state that a Contract to sell or let any immovable property cannot be specifically enforced in favour of a vendor or lessor who does not have absolute title and right upon the party. It is worthwhile to extract Section 17 of the Specific Relief Act,1963 here :-

“17.-Contract to sell or let property by one who has no title, not specifically enforceable.- A contract to sell or let any immovable property cannot be specifically enforced in favour of a vendor or lessor;

(a) who, knowing not to have any title to the property, has contracted to sell or let the property

(b) who, though he entered into the contract believing that he had a good title to the property, cannot at the time fixed by the parties or by the court for the completion of the sale or letting, give the purchaser or lessee a title free from reasonable doubt.” In view of the aforesaid provisions of the Specific Relief Act, the Agreement of Sale entered between the plaintiffs and some of the co-sharers who do not have the absolute title to the suit schedule property is not enforceable in law. This aspect of the matter has not been properly appreciated and considered by both the First Appellate Court and the Second Appellate Court. Therefore, the impugned judgment is vitiated in law.

30. Even assuming for the sake of argument that the agreement is valid, the names of three sons are mentioned in Agreement of Sale, out of whom the agreement is executed by defendant Nos. 1 and 2

and they assured that they would get the signatures of the 3rd brother namely, Srinivasa Rao and also the remaining 3 sisters. At the time of execution of this agreement signatures were not obtained. Therefore, the agreement is not executed by all the co-sharers of the property which fact is evident from the recitals of the document itself. Hence, the plaintiffs are not entitled for specific performance decree. This vital factual and legal aspect has been ignored by both the First Appellate Court and the Second Appellate Court. Therefore, the impugned judgment is vitiated both on facts and law. Accordingly, the point No. 1 is answered in favour of the defendants.

31. The second point is also required to be answered against the plaintiffs for the following reasons:-

As could be seen from the Agreement of Sale document marked as Ex.-A1 and the pleadings of the parties payment of sale consideration was agreed to be paid to the defendant Nos. 1 and 2 as per following terms of the agreement :-

"... (i) an amount of Rs.1,70,000/- shall be paid by Vendee to Vendors within 10 days from the day of vacating the tenants in the property, (ii) Rs. 50,000/- shall be paid on 30.11.1993., (iii) the remaining sale consideration of Rs.1,50,000/- shall be paid on or before 30.3.1994."

32. It is an undisputed fact that except payment of Rs.5,000/- and Rs.10,000/- paid by the purchaser-plaintiff No.1 to the defendant Nos. 1 and 2 according to the Agreement of Sale, the remaining installment i.e. an amount of Rs.1,70,000/- which was to be paid to the Vendors within 10 days from the day of vacating the tenants in the property was not paid. Even assuming that the amount could have been paid had the tenants vacated the schedule property then the remaining part of the sale consideration agreed to be paid as notified under clauses (ii) and (iii) as per aforesaid paragraph of the Agreement of Sale undisputedly not paid to the defendant Nos. 1 and 2. Therefore, there is breach of contract on the part of the plaintiffs as could be seen from the agreement of sale regarding the payment of part sale consideration amount. For this reason itself plaintiffs are not entitled for a decree of specific performance.

33. Point No. 3 is also answered in favour of the defendants for the following reasons:-

It is an undisputed fact that the plaintiffs have not approached the Trial Court with clean hands. It is evident from the pleadings of the Agreement of Sale which is produced for the decree for specific performance of Agreement of Sale as the plaintiffs did not obtain the signatures of all the co-sharers of the property namely, the mother of the defendants, the third brother and 3 sisters. Therefore, the agreement is not enforceable in law as the persons who have executed the sale deed, did not have the absolute title of the property. Apart from the said legal lacuna, the terms and conditions of the Agreement of Sale for payment of sale consideration agreed to be paid by the first plaintiff in installments within the period stipulated as indicated above were not paid. The First Appellate Court and the High Court have not exercised their power under Section 20(2) of the Specific Relief Act which by itself is the substantial question of law which fell for consideration before the High Court as the First Appellate Court failed to consider this important aspect of the matter and exercised its power while determining the rights of the party, particularly, in the light of the unenforceable contract between the plaintiffs against the defendants as all of them are not parties to

the Agreement of Sale document (Ex.-A1) and the executants viz. defendant Nos. 1 and 2 have not acquired absolute title to the property in question. Therefore, the impugned judgment is vitiated and liable to be set aside.

34. Though we have answered the questions of law framed in this appeal in favour of the defendants, the learned counsel for the defendants during the course of arguments, has offered some monetary compensation in favour of the plaintiffs if this Court set aside the impugned judgment and decree of specific performance granted in their favour. Though, the defendants on merits have succeeded in this case for the reasons recorded by us on the substantial questions of law that have been framed by us on appreciation of facts and legal evidence on record, having regard to the peculiar facts and circumstances of the case particularly, the execution of Agreement of Sale, Ex. A-1 by defendant Nos. 1 and 2 on 3.5.1993, after receiving part consideration of Rs.15,000/-, and the submission made by the learned counsel for the defendants, it would be just and proper for this Court to award a sum of Rs.6,00,000/- by lump-sum amount of compensation to the plaintiffs within 3 months from the date of receipt of a copy of this judgment as provided under Section 22 of the Specific Relief Act.

35. Since, we have answered point Nos. 1 to 4 in favour of the defendants and against the plaintiffs, the appeal of the defendants must succeed. Accordingly, the impugned judgment and decree passed by the High Court in affirming the judgment and decree of the First Appellate Court, is set aside. The judgment and decree of the Trial Court is restored with modification that the defendants shall pay a sum of Rs.6,00,000/- to the plaintiffs as lump-sum compensation within 3 months from the date of receipt of copy of this order. The appeal is allowed in the above said terms. No costs.

.....J.

[DIPAK MISRA] .....J.

[V. GOPALA GOWDA] New Delhi, August 20,2014

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[1] A.I.R. 197?