

**HON'BLE JUSTICE MOUSHUMI BHATTACHARYA
AND
THE HON'BLE SRI JUSTICE NAGESH BHEEMAPAKA**

A.S.No.32 of 2016

Sri A.Venkatesh, learned Senior Counsel representing Pillix Law Firm,
learned counsel for the appellant

Sri V.Ravinder Rao, learned Senior Counsel representing Sri P.Madhusudhan
Reddy, learned counsel for respondent Nos.1 and 2.

Judgment: *(Per Justice Moushumi Bhattacharya)*

The Appeal Suit arises out of a judgment dated 18.09.2015 passed by the Principal District Judge, Ranga Reddy District at L.B. Nagar in a Suit filed by the respondent Nos.1 and 2/plaintiffs for specific performance.

2. The respondent Nos.1 and 2/plaintiffs sought for a direction on the defendant Nos.1 and 2 (respondent No.3 and the appellant herein respectively) to execute a registered Sale Deed in respect of the suit schedule property in favour of the plaintiffs/respondent Nos.1 and 2 after receiving the balance sale consideration from the plaintiffs in terms of an Agreement of Sale dated 22.03.2006.

3. The Trial Court decreed the Suit by the impugned judgment and directed the plaintiffs to deposit the balance sale consideration within 45 days from the date of the judgment and

the defendant Nos.1 and 2 to execute and register the Sale Deed in favour of the plaintiffs. The defendants were given the liberty to withdraw the amount of the balance sale consideration deposited before the Court. The impugned judgment further provided that the plaintiff would be entitled to execute the Sale Deed through the process of the Court and be put in vacant possession of the suit schedule property if the defendants failed to execute and register the Sale Deed after deposit of the balance sale consideration by the plaintiffs within the time specified.

4. The respondent Nos.1 and 2/plaintiffs have raised a point of maintainability of the Appeal on two grounds; namely that the appellant/defendant No.2 is a purchaser *pendente lite* in violation of an order of injunction passed by the Trial Court on 23.12.2008 and that the appellant consented to a decree being passed on condition of the respondent Nos.1 and 2/plaintiffs depositing the balance sale consideration which was recorded by the Trial Court in the order dated 18.09.2015 in I.A.No.2059 of 2015.

5. We have heard learned Senior Counsel appearing for the appellant/defendant No.2 as well as the respondent Nos.1 and

2/plaintiffs in support of and against the maintainability of the present Appeal.

6. We feel it necessary to put the dates relevant to the adjudication in context before we come to the grounds raised on the maintainability of the Appeal Suit.

7. The respondent Nos.1 and 2 filed the Suit in the Trial Court for specific performance of an Agreement of Sale dated 22.03.2006 in respect of the suit schedule property. Pending the Suit, the Trial Court granted *ad interim* injunction on 23.12.2008 restraining the defendant No.1 from alienating or creating any interest in the suit schedule property in favour of any third party. The interim order subsisted till the impugned judgment which was delivered on 18.09.2015.

8. The defendant No.1 alienated the suit schedule property in favour of the defendant No.2 (appellant) by executing 2 registered Sale Deeds on 10.01.2011 and 19.08.2011. The defendant No.2 purchased the property from the defendant No.1 and filed I.A.No.377 of 2011 on 05.02.2013 seeking permission to represent the defendant No.1 which was dismissed by the Trial Court.

9. On coming to know that the defendant No.2 had purchased the suit schedule property, the plaintiffs filed I.A.No.140 of 2014 on 07.07.2014 for impleading the defendant No.2/appellant which was allowed. The defendant No.2 thereafter filed his Written Statement in September, 2014 stating that the defendant No.2/appellant does not have any objection in executing the Sale Deeds in favour of the plaintiffs and prayed for a direction on the plaintiffs to deposit the balance sale consideration in the Court.

10. The defendant No.1 filed I.A.No.1321 of 2013 for a direction on the plaintiffs to deposit the balance sale consideration to show their readiness and willingness and the defendant No.2 expressed his consent to the relief sought for by the defendant No.1. The plaintiffs filed two I.As. on 20.04.2015 requesting the Trial Court to pass an executable decree in view of the admission made by the defendants and also to extend the time for depositing the balance sale consideration in the Court. Both the Applications were dismissed.

11. The plaintiffs filed two Civil Revision Petitions (CRPs) on 17.08.2015 against the order of dismissal. On 18.09.2015, the defendant No.2 filed I.A.No.2059 of 2015 for dismissal of the

Suit as the plaintiffs were not ready and willing to perform the contract. During the course of hearing of the said I.A., the Trial Court recorded the consent of both the parties for decreeing the Suit if the plaintiff deposits the balance sale consideration within a period of 45 days.

12. The Suit was decreed by the impugned judgment on 18.09.2015 on the basis of the consent order. The plaintiffs deposited the balance sale consideration thereafter. The defendant No.2 sought for stay of the impugned judgment and decree by filing the present Appeal in 2016 and a Co-ordinate Bench, by order dated 22.01.2016, directed the defendant Nos.1 and 2 to execute a proper Conveyance Deed in favour of the plaintiffs and to deliver vacant possession of the immovable property to the plaintiffs. The defendant No.2 was held to be entitled to withdraw a sum of Rs.2,70,55,000/- leaving the balance sale consideration of Rs.2.00 Crores to be kept in an interest-bearing fixed deposit with any of the branches of State Bank of India, if it has not already been deposited with any of the Nationalised Banks.

13. The Special Leave Petition filed by the defendant No.2 against the aforesaid order was dismissed on 29.08.2016.

14. On 03.09.2016, the Executing Court registered a Sale Deed in favour of the plaintiffs. The defendant No.1 filed A.S.No.2089 of 2018 with a delay of 1078 days. A.S.No.2089 of 2018 filed by the defendant No.1 was dismissed for non-prosecution by an order of this Court on 25.07.2024. The fact of dismissal was reiterated in the order dated 23.09.2024.

15. As would be clear from the above factual narration, the respondents/plaintiffs have deposited the balance sale consideration and the order passed by the Co-ordinate Bench dated 22.01.2016 revived after dismissal of the S.L.P. filed by the defendant No.2.

16. It is also clear that the impugned judgment and decree is based on consent given by the parties and that the respondent Nos.1 and 2/plaintiffs are ready to obtain the registered Sale Deed in respect of the schedule property from the defendant Nos.1 and 2. The Suit was decreed on the condition of the plaintiffs paying the balance sale consideration and the defendants executing and registering the Sale Deed in favour of the plaintiffs.

17. Although, learned Senior Counsel appearing for the appellant/defendant No.2 argues that the impugned judgment passed by the Trial Court dated 18.09.2015 is not a consent order, we are unable to accept such contention since paragraph 7 of the said order clearly records the consent given by both the plaintiffs as well as the defendants. The relevant part of the paragraph is set out below:

“While hearing the arguments in the present petition, the court enquired with the Counsel for the plaintiffs whether still they are ready to obtain the registered sale deed in respect of the schedule property from defendants 1 & 2, though a suit in O.S.No.866/2008 is pending and in the said suit the sale deed of the vendor of 1st defendant is being challenged, the learned counsel for the plaintiffs responded that they are still ready to obtain the sale deed and will workout the remedies in O.S.No.866/2008. By taking into consideration of this aspect and the willingness of the defendants even at this stage to execute and register the sale deed, if the plaintiff pays the balance sale consideration, this Court finds that instead of disposing the petition, the suit itself can be decreed on these terms.”

18. Therefore, we find that the legal point raised by learned Senior Counsel appearing for the respondent Nos.1 and 2/plaintiffs on the illegality of re-opening of a consent decree to be of substance.

19. Section 96 (3) of The Code of Civil Procedure Code, 1908, which relates to Appeal from original decree, contains an

embargo on filing an Appeal from a decree passed by a Court with the consent of the parties.

20. The relevant part of section 96 of the C.P.C is set out below:

“(3) No appeal shall lie from a decree passed by the Court with the consent of parties.”

21. The specific recording in the order mentions both parties and not only the respondent Nos.1 and 2/plaintiffs. We accordingly hold that the order dated 18.09.2015 was a consent order recording the consent of both the plaintiffs as well as the defendants and that the appellant/defendant No.2 cannot contend otherwise. The appellant would therefore fall under the embargo of reopening the consent order or challenging the same under section 96(3) of the C.P.C: *Pushpa Devi Bhagat (Dead) Through LR. Smt. Sadhna Rai v. Rajinder Singh*¹.

22. Moreover, the appellant/defendant No.2 has not questioned the correctness of the consent recorded by the Trial Court in the Grounds of Appeal.

23. Even otherwise, the statement made by a counsel before a Court as recorded in a judgment/order cannot be challenged

¹ (2006) 5 SCC 566

before a different forum. Judicial decorum does not permit enquiry into what transpired between counsel in proceedings before another Court. Statements of facts as to what transpired at the hearing recorded in the judgment of the Court are conclusive of the facts so stated and cannot subsequently be contradicted by affidavit or other evidence: *State of Maharashtra v. Ramdas Shrinivas Nayak*² and *Vimalleshwar Nagappa Shet v. Noor Ahmed Shariff*³. Echoing the words of Justice O.Chinnappa Reddy in *Ramdas Shrinivas Nayak (supra)*, the only course available to a party who seeks to challenge the recordings in a judgment is to bring the matter before the very same Court which had passed the order while the matter is fresh in the minds of the judges.

24. Second, admittedly, the appellant/defendant No.2, is a purchaser *pendente lite* which entered into a transaction with the defendant No.1 for purchase of the suit schedule property in the teeth of the order of injunction passed by the Trial Court on 23.12.2008.

25. To repeat, on 23.12.2008, the defendants were restrained from alienating the schedule property by way of sale, gift, lease

² AIR 1982 SC 1249

³ (2011) 12 SCC 658

or creating any third party interest over the suit property until further orders. There was no challenge to this order during pendency of the Suit or even thereafter. The Sale Deeds executed by the defendant No.1 in favour of the defendant No.2/appellant on 10.01.2011 and 19.08.2011 are on record.

26. The Supreme Court dealt with a similar issue in *Surjit Singh v. Harbans Singh*⁴ and in *Vidur Impex and Traders Private Limited v. Tosh Apartments Private Limited*⁵. In the latter case, the Supreme Court held that the Court will be fully justified in declining the prayer for impleadment of an applicant who is guilty of contumacious conduct or is a beneficiary of a clandestine transaction or a transaction in violation of the restraint order.

27. There is no dispute that the appellant/defendant No.2 purchased the suit schedule property from the defendant No.1 in 2011 i.e., while the order of injunction of 23.12.2008 was in place. It is also not the defendants' case that they were unaware of the order of injunction which case also cannot withstand scrutiny in the face of a petition filed by the defendant No.2 in 2011 for representing the defendant No.1.

⁴ (1995) 6 SCC 50

⁵ (2012) 8 SCC 384

The defendant No.2 was subsequently impleaded in 2014 on an application made by the plaintiffs. In the Written Statement, the defendant No.2 also stated that he had no objection in executing the Sale Deed in favour of the plaintiffs.

28. The Chancery Division in *Clarke v. Chadburn*⁶ earlier came to the same conclusion; that an act done in wilful disobedience of an injunction or Court order is an illegal and invalid act which could not effect any change in the rights and liabilities of others.

29. In *Balwantbhai Somabai Bhandari v. Hiralal Somabhai Contractor (deceased) rep. By L.Rs.*⁷, the Supreme Court specifically considered whether the contemptuous transactions are void and relied on *Delhi Development Authority v. Skipper Construction Co. (P) Ltd.*,⁸ which held that the legal consequence of an act done in breach of or in violation of an order of injunction should be undone and the parties should be put back to the same position as they were in immediately prior to the order of injunction.

⁶ [1985] 1 All ER 211

⁷ 2023 SCC OnLine SC 1139

⁸ (1996) 4 SCC 622

30. *Balwantbhai Somabhai Bhandari* (supra) considered *Vidur Impex* (supra) (cited by the respondent Nos.1 and 2/plaintiffs) and held that although section 52 of The Transfer of Property Act, 1882 does not render a transfer *pendente lite* void, the Court in exercise of contempt jurisdiction may be justified in passing directions for reversal of the transactions in question by declaring the transactions to be void for the overall objective of ensuring that the contemnor does not continue to get any advantage from the contumacious act. *Vidur Impex* (supra) was also considered in *Jehal Tanti v. Nageshwar Singh (dead) through L.Rs.*⁹ which held that the Sale Deed, executed in the teeth of an order of injunction, was unlawful.

31. This Court also finds substance in the contentions made on behalf of the respondent Nos.1 and 2/plaintiffs that after dismissal of the Appeal filed by the defendant No.1 (A.S.No.2089 of 2018 by the order dated 25.07.2024), the defendant No.2 cannot continue with an independent Appeal on the very same dispute and on the same cause of action between the same parties. This is particularly so where the defendant No.2 is the purchaser *pendente lite* during the pendency of the Suit filed by the respondent Nos.1 and 2 for specific performance of the

⁹ (2013) 14 SCC 689

Agreement of sale between the defendants and the plaintiffs:

*T. Ravi v. B. Chinna Narasimha*¹⁰.

32. The cases relied on behalf of the respondent No.3/defendant No.1 namely *Thomson Press India Ltd. v. Nanak Builder*¹¹, *Robin Ramjibhai Patel v. Anandibai Rama*¹² and *Gurmit Singh Bhatia v. Kiran Kanth Robinson*¹³ were decided on a different proposition altogether i.e., whether the purchaser *pendente lite* had been correctly impleaded as a party to the Suit. The Supreme Court held that impleadment of the purchaser *pendente lite* should be allowed. There cannot be any divergent view on this proposition. In any event, the appellant/defendant No.2 were impleaded on an application filed by the plaintiffs.

33. The relevant issue is whether a transaction in violation of any injunction order can have any legal sanctity. This issue was considered in *Vidur Impex (supra)* and reiterated in *Jehal Tanti v. Nageshwar Singh (Dead) through L.Rs*¹⁴, *Balwantbhai Sombhai Bhandari (supra)* and *Chander Bhan v. Mukhtiar Singh*¹⁵. Although *Vidur Impex (supra)* was considered in

¹⁰ (2017) 7 SCC 342

¹¹ (2013) 5 SCC 397

¹² (2018) 15 SCC 614

¹³ (2020) 13 SCC 773

¹⁴ (2013) 14 SCC 689

¹⁵ 2024 SCC OnLine SC 761

Thomson Press (supra), the Supreme Court had no occasion to consider the legal effect of a transaction in violation of an injunction order in *Thomson Press India (supra)*.

34. To put the decisions cited by the appellant in context, the issue is not whether the appellant/defendant No.2 should be impleaded as a third party purchaser but whether the transaction between the defendant No.1 and the defendant No.2 should be reversed for want of equity and defiance of the order of injunction.

35. The issue of maintainability of A.S.No.32 of 2016 is grounded on whether the transactions in favour of the defendant No.2/appellant, being in violation of the order of injunction dated 23.12.2008, could have legal sanctity. We are of the view that the defendant No.2/appellant purchased the property in the teeth of the injunction order and hence is disentitled from pursuing further remedies against the impugned judgment.

36. The present Appeal would also fall within the bar contained in section 96(3) of the C.P.C which has been elaborated in the paragraphs above. There is little doubt that the impugned order is a consent order recording the consent not

only of the plaintiffs but also of the defendants. The appellant/defendant No.2 falls foul of all the legal propositions as also the law pronounced by the Supreme Court.

37. The above reasons persuade us to agree with the contentions made on behalf of the respondent Nos.1 and 2/plaintiffs and to hold that the present Appeal is not maintainable.

38. A.S.No.32 of 2016 is accordingly dismissed on the ground of maintainability. All connected Interlocutory Applications are disposed of. Interim orders, if any, are vacated.

There shall be no order as to costs.

MOUSHUMI BHATTACHARYA, J

NAGESH BHEEMAPAKA, J

Date: 01.10.2024

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Note: LR copy to be marked