



2024 INSC 895

IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO.13066/2024
(@Petition for Special Leave to Appeal (C) No.18899/2019)

MANJIT SINGH & ANR.

Appellant(s)

VERSUS

DARSHANA DEVI & ORS.

Respondent(s)

O R D E R

1. Leave granted.

2. This appeal arises from the judgment and order passed by the High Court of Punjab and Haryana at Chandigarh dated 22-1-2019 in Regular Second Appeal No.1145/1992 by which the High Court allowed the Second Appeal filed by the original plaintiff and thereby decreed the suit of the plaintiff granting specific performance of oral agreement of sale of the year 1986.

3. The facts giving rise to this appeal may be summarized as under.

4. The Respondent No.1 - herein (original plaintiff) instituted suit for specific performance of contract based on an unregistered sale deed dated 12-02-1986 with respect to the suit property.

5. It appears from the materials on record that the original defendant No.1, i.e., the owner of the suit property after entering into an agreement with the plaintiff transferred the suit property in favour of the defendants Nos.2 and 3 respectively i.e., the appellants before us by way of a sale deed dated 29-8-1986.

6. In such circumstances, the Respondent No.1 - herein (original plaintiff) had to institute the Civil Suit No.27/1987 praying for

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specific performance.

7. The Trial Court allowed the suit in favour of the plaintiff. The subsequent purchasers, i.e., the petitioners - herein (original defendant Nos.2 & 3) preferred first appeal before the District Court. The first appeal came to be allowed and the decree passed by the Trial Court was quashed and set aside.

8. In such circumstances, the plaintiff went before the High Court by way of Second Appeal under Section 100 of the Civil Procedure Code, 1908.

9. The High Court framed the following substantial question of law for its consideration:-

"Whether the judgment passed by the First Appellate Court is the result of misreading and non-reading of evidence while returning a finding that the defendant Nos.2 and 3 are bona fide purchasers as per Section 19(b) of the Specific Relief Act, 1963."

10. The High Court after due consideration of all the relevant aspects of the matter recorded a categorical finding that the subsequent purchasers, i.e., the appellants - herein could not be said to be *bona fide* purchasers in accordance with Section 19 (b) of the Act, 1963 for the reasons assigned as under.

"1. Manjit Singh-defendant No.2 in his oral evidence admitted that defendant No.1 i.e. owner-Bishan Singh is his uncle. It is father and the father of Manjit Singh are co-sharers in one Khata/Khewat of land.

2. It is undisputed that husband of the plaintiff Kishan Singh was mortgagee in possession of the property. Defendant Nos.2 and 3 made no inquiry from Kishan Singh with regard to title of the property which

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was normal unless there was collusion between defendant No.1 on the one hand and defendants No.2 and 3 on the other hand.

3. From plain reading of sale deed dated 29.08.1986 in favour of defendant Nos.2 and 3 respectively, it is apparent that out of total sale consideration of Rs.25,000/-, Rs.10,000/- is alleged to have already been paid at home whereas Rs.5,000/- was paid in cash before the Sub-Registrar and the balance amount of Rs.10,000/- was kept as a mortgage amount for redemption. No evidence has come on record that there was any prior agreement to sell in favour of the defendant Nos.2 and 3.

4. As per defendant Nos.2 and 3, they paid the amount of Rs.10,000/- at home and Rs.5,000/- at the time of registration. However, no evidence has been adduced to establish that this amount was withdrawn from any bank or from any other source."

11. Section 19 of the Specific Relief Act upon which strong reliance is sought to be placed has been interpreted by this Court in "R.K. Mohammed Ubaidullah v. Hajee C. Abdul Wahab 2000 (6) SCC 402 wherein this Court held as follows:-

"14. Section 19 of the Specific Relief Act, 1963, to the extent it is relevant, reads:

"19. Relief against parties and persons claiming under them by subsequent title. - Except as otherwise provided by this Chapter, specific performance of a contract may be enforced against-

- (a) either party thereto;
- (b) any other person claiming under him by a title arising subsequently to the contract, except a transferee for value who has paid his money in good faith and without notice of the original contract;

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(c) - (e)

As can be seen from Sections 19(a) and (b) extracted above specific performance of a contract can be enforced against (a) either party thereto; and (b) any person claiming under him by a title arising subsequent to the contract, except a transferee for value who has paid his money in good faith and without notice of the original contract. Section 19(b) protects the bona fide purchaser in good faith for value without notice of the original contract. This protection is in the nature of exception to the general rule. Hence, the onus of proof of good faith is on the purchaser who takes the plea that he is an innocent purchaser. Good faith is a question of fact to be considered and decided on the facts of each case. Section 52 of the Penal Code emphasises due care and attention in relation to good faith. In the General Clauses Act emphasis is laid on honesty.

15. Notice is defined in Section 3 of the Transfer of Property Act. It may be actual where the party has actual knowledge of the fact or constructive. "A person is said not have notice" of a fact when he actually knows that fact, or when, but for wilful abstention from an inquiry or search which he ought to have made, or gross negligence, he would have known it.

Explanation II of said Section 3 reads:

"Explanation II-Any person acquiring any immovable property or any share or interest in any such property shall be deemed to have notice of the title if any, of any person who is for the time being in actual possession thereof."

Section 3 was amended by the Amendment Act of 1929 in relation to the definition of "notice". The definition has been amended and supplemented by three explanations, which settle the law in several matters

of great importance. For the immediate purpose Explanation II is relevant. It states that actual possession is notice of the title of the person in possession. Prior to the amendment there had been some uncertainty because of divergent views expressed by various High Courts in relation to the actual possession as notice of title. A person may enter the property in one capacity and having a kind of interest. But subsequently while continuing in possession of the property his capacity or interest may change. A person entering the property as Tenant later may become usufructuary mortgagee or may be agreement holder to purchase the same property or may be some other interest is created in his favour subsequently. Hence, with reference to subsequent purchaser it is essential that he should make an inquiry as to the title or interest of the person in actual possession as on the date when the sale transaction was made in his favour. The actual possession of a person itself is deemed or constructive notice of the title if any, of a person who is for the time being in actual possession thereof. A subsequent purchaser has to make inquiry as to further interest, nature of possession and title under which the person was continuing in possession on the date of purchase of the property."

12. The aforesaid decision of this Court makes it clear that Section 19 (b) of the Act, 1963 is an exception from the general rule and the onus is on the subsequent purchaser to prove that he purchased the property in good faith and also *bona fide* purchaser for value.

13. Section 3(2) of the General Clauses Act defines 'good faith' as follows:-

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"3(22). A thing shall be deemed to be done in good faith where it is in fact done honestly whether it is done negligently or not."

14. Section 2(11) of the Bhartiya Nyaya Sanhita, 2023 defines "good faith", as follows:-

"2(11). "Good faith- Nothing is said to be done or believed in "good faith" which is done or believed without due care and attention;"

15. The abovesaid definitions and the meaning of the term 'good faith' indicate that in order to come to a conclusion that an act was done in good faith it must have been done with due care and attention and there should not be any negligence or dishonesty. Each aspect is a complement to the other and not an exclusion of the other. The definition of the Penal Code, 1860 emphasises due care and attention whereas General Clauses Act emphasises honesty.

16. The effect of abstention on the part of a subsequent purchaser, to make enquiries with regard to the possession of a tenant, was considered in *Ram Niwas v. Bano*, 2000 (6) SCC 685. It was held in paragraphs 16 and 18 therein as follows:

"16. The purchasers have acquired a legal right under Sale Deed (Ext.4). The right of the tenant under Ext.1, if it is true and valid, though earlier in time, is only an equitable right and it does not affect the purchasers if they are bona fide purchasers for valuable consideration without notice of that equitable right."

18. ...If the purchasers have relied upon the assertion of the vendor or on their own knowledge and abstained from making inquiry into the real nature of the

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possession of the tenant, they cannot escape from the consequences of the deemed notice under Explanation II to Section 3 of the Transfer of Property Act."

The wilful abstention of the Defendants 4 and 5 to make an enquiry or search, is writ large on the fact of the records due to –

(i) their failure to demand the production of the original title deeds before going ahead with the registration,

(ii) the knowledge that they admittedly had at least about the other encumbrances existing in the property, and

(iii) their retention of an amount of Rs. 2.5 crores from out of the total sale consideration of Rs. 4,11,08,000/=, specially for the purpose of settling the claim of the Plaintiffs. Since all the payments under Exx.A-29 to 34 to the tune of Rs. 55 lakhs, Rs. 35 lakhs, Rs. 60 lakhs, Rs. 130 lakhs, Rs. 130 lakhs and Rs. 1.08 lakhs (totalling to Rs. 4,11,08,000/-) were admittedly only cash payments and also since DW-1 categorically admitted that a sum of Rs. 2.5 crores, out of the above amount was retained by the Defendants 4 and 5 for settling the claim of the second Plaintiff, the Defendants 4 and 5 had a duty cast upon them to make a search or enquiry about the nature of such a claim. Their failure to do so, amounted to wilful abstention leading to constructive notice."

(Emphasis supplied)

17. In the case reported in *Kailas Etc., Works v. Munlity, B. & N.*, reported in 1968 Bombay Law Reporter 554, the Bombay High Court

observed as follows: –

"A person cannot be said to act honestly unless he acts with fairness and uprightness. A person who acts in a particular manner in the discharge of his duties in spite of the knowledge and consciousness that injury to someone or group of persons is likely to result from his act or omission or acts with wanton or wilful negligence in spite of such knowledge or consciousness cannot be said to act with fairness or uprightness and, therefore, he cannot be said to act with honesty or in good faith. Whether in a particular case a person acted with honesty or not will depend on the facts of each case.

Good faith implies upright mental attitude and clear conscience. It contemplates an honest effort to ascertain the facts upon which the exercise of the power must rest. It is an honest determination from ascertained facts. Good faith precludes pretence, deceit or lack of fairness and uprightness and also precludes wanton or wilful negligence."

(Emphasis supplied)

18. The decision of the Bombay High Court referred to above was taken on Appeal to this Court in *The Municipality of Bhiwandi and Nizampur v. Kailash Sizing Works*, 1974 (2) SCC 596. While approving the decision of the Bombay High Court, this Court held as follows:

"15. In *Jones v. Gordon*, Lord Blackburn pointed out the distinction between the case of a person who was honestly blundering and careless, and the case of a person who has acted not honestly. An authority is not acting honestly where an authority has a suspicion that

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there is something wrong and does not make further enquiries. Being aware of possible harm to others, and acting in spite thereof, is acting with reckless disregard of consequences. It is worse than negligence, for negligent action is that, the consequences of which, the law presumes to be present in the mind of the negligent person, whether actually it was there or not. This legal presumption is drawn through the well-known hypothetical reasonable man. Reckless disregard of consequences and mala fides stand equal, where the actual state of mind of the actor is relevant. This is so in the eye of law, even if there might be variations in the degree of moral reproach deserved by recklessness and mala fides.

16. The Bombay, as also, the Central, General Clauses Acts, help only in so far as they lay down that negligence does not necessarily mean mala fides. Something more than negligence is necessary. But these Acts say "honestly" and so, for the interpretation of that word, we have explained the legal meanings above."

(Emphasis supplied)

19. The leading case on the subject, relied on in a number of Indian decisions is – ‘Daniels v. Davison’ [(1809) 16 Ves Jun 249: 33 ER 978]. The Lord Chancellor held that:

"where there is a tenant in possession under a lease, or an agreement, a person purchasing part of the estate must be bound to inquire on what terms that person is in possession ... that a tenant being in possession under a lease, with an agreement in his pocket to become the purchaser, those circumstances altogether give him an equity repelling the claim of a subsequent purchaser

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who made no inquiry as to the nature of his possession."

(Emphasis supplied)

20. In our opinion, no error not to speak of any error of law could be said to have been committed by the High Court in passing the impugned Judgment and order.

21. In the result, this appeal fails and is hereby dismissed.

22. The plaintiff may now go for the execution of the decree passed by the Civil Court.

23. Pending applications, if any, also stand disposed of.

.....J
(J.B. PARDIWALA)

.....J
(R. MAHADEVAN)

NEW DELHI
21ST NOVEMBER, 2024.

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ITEM NO.1

COURT NO.15

SECTION IV-B

S U P R E M E C O U R T O F I N D I A
R E C O R D O F P R O C E E D I N G S

Petition for Special Leave to Appeal (C) No.18899/2019

[Arising out of impugned final judgment and order dated 22-01-2019 in RSA No. 1145/1992 passed by the High Court of Punjab & Haryana at Chandigarh]

MANJIT SINGH & ANR.

Petitioner(s)

VERSUS

DARSHANA DEVI & ORS.

Respondent(s)

(IA No. 111032/2019 - EXEMPTION FROM FILING O.T.)

Date : 21-11-2024 This matter wsd called on for hearing today.

CORAM :

HON'BLE MR. JUSTICE J.B. PARDIWALA

HON'BLE MR. JUSTICE R. MAHADEVAN

For Petitioner(s)

Mr. Vishal Mahajan, Adv.
Mr. Anil Kumar, Adv.
Ms. Reena Devi, Adv.
Mr. Vinod Sharma, AOR

For Respondent(s)

Mr. M.L. Saggar, Sr. Adv.
Mrs. Tanuj Bagga Sharma, AOR
Ms. Armaan Saggar, Adv.
Dr. M.K. Ravi, Adv.

Mr. Sudarshan Singh Rawat, AOR
Mr. Sskhaira, Adv.
Mr. Sunny Sachin Rawat, Adv.

UPON hearing the counsel the Court made the following
O R D E R

1. Leave granted.
2. The appeal is dismissed, in terms of the signed Reportable order.
3. Pending applications, if any, also stand disposed of

(VISHAL ANAND)
ASTT. REGISTRAR-cum-PS

(POOJA SHARMA)
COURT MASTER (NSH)

(Signed Reportable Order is placed on the file)