



IN THE SUPREME COURT OF INDIA

EXTRAORDINARY APPELLATE JURISDICTION

SPECIAL LEAVE PETITION (CIVIL) No.30804 of 2024[Diary No(s). 56304/2024]

GIRIYAPPA & ANR.

Petitioner(s)

VERSUS

KAMALAMMA & ORS.

Respondent(s)

O R D E R

1. Delay condoned.

2. This petition arises from the order passed by the High Court of Karnataka at Bengaluru dated 23-8-2024 in Regular Second Appeal No.1740/2008, by which the appeal filed by the petitioners - herein (original defendants) came to be dismissed, thereby affirming the judgment and order passed by the First Appellate Court and also the judgment and decree passed by the Trial Court.

3. We have heard Mr. Anand Sanjay M. Nuli, the learned Senior counsel appearing for the petitioners.

4. It appears from the materials on record that the respondents - herein (original plaintiffs) instituted Original Suit No.364/1988 for declaration of title and recovery of possession.

5. The suit came to be decreed in favour of the respondents (original plaintiffs). The Regular First Appeal filed by the petitioners - herein came to be dismissed and so also the Second Appeal by the High Court.

6. In the Second Appeal, the High Court formulated the following substantial questions of law:-

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VISHAL ANAND
Date: 2024.02.21
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Reason:

"(1) Whether the Courts below were justified in decreeing the suit of the plaintiff, despite the defendant seeking the protection under Section 53A of the Transfer of Property Act and also erred in not construing the law on this point as has been laid down by the Apex Court in the case reported in 2002 (3) SCC 676?"

7. It is the case of the petitioners - herein that the respondents (original plaintiffs) may be the lawful owners of the suit scheduled property but they executed a sale agreement dated 25-11-1968 in their favour agreeing to sale 2 guntas of land out of survey No.24/9 for total consideration of Rs.850/- and since then the petitioners - herein came to be in possession and enjoyment of the same.

8. The High Court while dismissing the Second Appeal observed in Paras 18 and 19 as under:-

"18. Perusal of the Judgment of the trial Court in as much as the first Appellate Court indicate that on detailed examination of the oral and documentary evidence placed on record, they have come to a conclusion that the defendant has failed to prove that plaintiff has executed the Sale Agreement dated 25.11.1968 and put the defendant in possession and enjoyment of the same. On the other hand, the plaintiff has proved that the shed in the suit scheduled property which is measuring one gunta was constructed by him during 1982-83 and during 1983-84, defendant illegally occupied the same. Before that he has also approached the Land Tribunal, Tumakuru in G LRM-67/83-84 claiming occupancy rights and it came to be dismissed on 15.05.1987 and it has attained finality. The findings returned by the trial Court as well as the first Appellate Court are consistent with the oral and documentary evidence placed on record and as such, this Court finds no perversity in the same.

19. When the defendant has failed to prove that plaintiff has executed the Sale Agreement dated 25.11.1968 agreeing to sell 2 gunta out of survey No.24/9 and he came in possession and occupation of suit schedule property by virtue of the same, question of providing protection under Section 53A of the T.P. Act does not arise. Consequently, the ratio in the decision of the Hon'ble Supreme Court in the case of Shrimant Shamrao Suryavanshi and Another vs. Pralhad Bhairoba Suryavanshi (dead) by Lrs and Others² is not applicable to the case on hand and accordingly, the substantial question of law is answered in the negative."

9. We are of the view that 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.

10. Section 53-A of the TP Act and Section 16 of the Specific Relief Act, 1964 (for short, hereinafter to be referred to as "the 1963 Act"), being of significant relevance are extracted hereunder:

"53-A. *Part-performance.*—Where any person contracts to transfer for consideration any immovable property by writing signed by him or on his behalf from which the terms necessary to constitute the transfer can be ascertained with reasonable certainty, and the transferee has, in part-performance of the contract, taken possession of the property or any part thereof, or the transferee, being already in possession, continues in possession in part-performance of the contract and has done some act in furtherance of the contract, *and the transferee has performed or is willing to perform his part of the contract*, then, notwithstanding that, where there is an instrument of transfer, that the transfer has not been completed in the manner prescribed therefor by the law for the time being in force, the transferor or any person claiming under him shall be debarred from enforcing against the transferee and persons claiming under him any right in respect of the property of which the transferee has taken or continued in possession, other than a right expressly provided by the terms of the contract:

Provided that nothing in this section shall affect the rights of a transferee for consideration who has no notice of the contract or of the part-performance thereof."

(emphasis supplied)

"16. *Personal bars to relief.*—Specific performance of a contract cannot be enforced in favour of a person—

(a) who would not be entitled to recover compensation for its breach; or

(b) who has become incapable of performing, or violates any essential term of, the contract that on his part remains to be performed, or acts in fraud of the contract, or wilfully acts at variance with, or in subversion of, the relation intended to be established by the contract; or

(c) who fails to aver and prove that he has performed or has always been ready and willing to perform the

essential terms of the contract which are to be performed by him, other than terms the performance of which has been prevented or waived by the defendant.

Explanation.—For the purposes of clause (c)—

(i) where a contract involves the payment of money, it is not essential for the plaintiff to actually tender to the defendant or to deposit in court any money except when so directed by the court;

(ii) *the plaintiff must aver performance of, or readiness and willingness to perform, the contract according to its true construction.*"
(emphasis supplied)

11. From the aforesaid, it is evident that the protection of a prospective purchaser/transferee of his possession of the property involved, is available subject to the following prerequisites:

(a) There is a contract in writing by the transferor for transfer for consideration of any immovable property signed by him or on his behalf, from which the terms necessary to constitute the transfer can be ascertained with reasonable certainty;

(b) The transferee has, in part-performance of the contract, taken possession of the property or any part thereof, or the transferee, being already in possession, continues in possession in part-performance of the contract;

(c) The transferee has done some act in furtherance of the contract and has performed or is willing to perform his part of the contract.

12. In terms of this provision, if the above preconditions stand complied with, the transferor or any person claiming under him shall be debarred from enforcing against the transferee and person(s) claiming under him, any right in respect of the property of which the transferee has taken or continue in possession, other than a right expressly provided by the terms of the contract, notwithstanding the fact, that the transfer, as contemplated, had not been completed in the manner prescribed therefor by the law for the time being in force. Noticeably, an exception to this restraint

is carved out qua a transferee for consideration, who has no notice of the contract or of the part-performance thereof.

13. Section 53-A of the Transfer of Property Act was inserted partly to set at rest the conflict of views in this country, but principally for the protection of ignorant transferees who take possession or spend money in improvements relying on documents which are ineffective as transfers or on contracts which cannot be proved for want of registration. The effect of this section, is to relax the strict provisions of the Transfer of Property Act and the Registration Act in favour of transferees in order to allow the defence of part performance to be established.

14. Section 53-A is an exception to the provisions which require a contract to be in writing and registered and which bar proof of such contract by any other evidence. Consequently, the exception must be strictly construed.

15. In view of the aforesaid, this Special Leave Petition fails and is hereby dismissed.

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

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

.....J
(R. MAHADEVAN)

NEW DELHI
20th DECEMBER, 2024.