

MHNG100010322021

Spl.C.S. No.39/2021

Sheelabai Vs. Nitin & anr.



ORDER BELOW EXH. 14
(Order passed as on 6th March, 2024)

1] Perused application, reply and record. Heard and considered the submissions of both sides.

2] The defendant no. 2 by moving this application and by filing written notes of arguments (Exh. 15) has contended this application to be under Order VII Rule 11 (a) and (d) r/w 151 of the Code of Civil Procedure. He has contended that the plaintiff despite having knowledge that the defendant is owner in possession of the suit property by virtue of sale deed date 24.12.2009, has fraudulently executed the sale deed in respect of suit property during pendency of the suit on 05.04.2022 in favour of third persons. Above sale deed was registered on 24.04.2022. He has contended that the plaintiff has not taken any permission from the Court for such execution. Plaintiff thus has played fraud upon the Court and therefore, this suit deserves to be dismissed.

3] The plaintiff by filing reply resisted this application contending that it is the defendants who have committed fraud which is clear from the evidence on record. They have played fraud upon the plaintiff by executing sale deed involved in the suit. Defendant no. 2 is not bonafide purchaser for consideration. He with intention to avoid final arguments has filed this baseless and illegal application. She has thus prayed for rejection of this application.

4] From the rival pleadings, following points arise for my determination and I have recorded my findings against each of them for the reasons recorded thereunder-

Sr. No.	Points		Findings
1	Is plaint/suit liable to be rejected/dismissed under the provisions of Order VII Rule 11 (a) and (d) r/w Sec. 151 of CPC as prayed for by the defendant ?	:	No.
2	What order ?	:	As per final order.

REASONS

AS TO POINT NOS. 1 AND 2.

5] The learned Advocate for the defendant no. 2 and plaintiff argued the matter. The learned Advocate for defendant no. 2 also filed written notes of arguments and relied upon following judgments in support of his contention.

- (i) Prem Singh and others Vs. Birbal and others, (2006) 5 SCC 353,
- (ii) Sanjay Verma Vs. Manik Roy and ors, AIR 2007 SC 1332,
- (iii) S.P. Chengalvaraya Naidu (dead) by L.Rs. Vs. Jagannath (dead) by L.R.s and others, AIR 1994 SC 853,
- (iv) A.V. Papayya Sastry & ors Vs. Government of A.P. & Ors., 2007 AIR (SC) 1546,
- (v) I.T.C. Limited Vs. Debts Recovery Appellate Tribunal, 1998 AIR (SC) 634,
- (vi) Sopan Sukhdeo Sable Vs. Assistant Charity Commissioner, 2004 AIR (SC) 1801,
- (vii) T. Arivandandam Vs. T.V. Satyapal, 1977 AIR (SC) 2421,

- (viii) **Raj Narayan Sarin (dead) through LRs. and others Vs. Laxmi Devi and others, 2002 (10) SCC 501,**
- (ix) **Lachhman Dass Vs. Jagat Ram and others, 2007(3) SC 410,**
- (x) **Shipping Corporation of India Ltd. Vs. Machado Brothers and others, 2004 (11) SCC 168,**
- (xi) **M/s Ram Chand and Sons Sugar Mills Private Ltd. Barabanki (U.P) Vs. Kanhayalal Bhargava and others, AIR 1966 SC 1899,**
- (xii) **Pasupuleti Venkateswarlu Vs. The Motor and General Traders, 1975 AIR (SC) 1409 and**
- (xiii) **J.M. Biswas Vs. N.K. Bhattacharjee, 2002 (4) SCC 68.**

6] Before proceeding further, it would be just and proper to note down the ratio laid down in above referred judgments :-

(i) In the supra case of Prem Singh, it was held that there is a presumption that a registered document is validly executed and therefore, such document prima facie would be valid in law and the onus of rebuttal of presumption would be on a person who leads the evidence to rebut such presumption.

(ii) In the supra case of Sanjay Verma, it was held as under -

“A transferee pendente lite is bound by the decree just as much as he was a party to the suit. The principle of lis pendens embodied in Section 52 of the T.P Act being a principle of public policy, no question of good faith or bona fide arises. The principle underlying Section 52 is that a litigating party is exempted from taking notice of a title acquired during the pendency of the litigation. The mere pendency of a suit does not prevent one of the parties from dealing with the property constituting the subject-matter of the suit. The section only postulates a condition that the alienation will in no manner affect the rights of the other party under any decree which

may be passed in the suit unless the property was alienated with permission of the Court”

(iii) In the supra case of S.P. Chengalvaraya and A.V. Papayya, it was held that a litigant is bound to produce all relevant documents to the litigation and if he withholds a vital document to gain advantage on other side, he would be guilty of playing fraud on the Court and opposite party.

(iv) In the supra case of ITC Ltd., it was held that mere allegation of fraud because of non-supply of goods will not amount to cause of action to get over an objection under Order VII Rule 11 of CPC and plaint held liable to be rejected under above provisions for non-disclosure of cause of action.

(v) In the supra case of Sopan Sable and Raj Narayan (D) Thr. LRs., it was held that for the purpose of deciding an application under Order VII Rule 11 (a) and (d) of CPC, the averments in the plaint are germane and pleas taken in the written statement would be wholly irrelevant at that stage and plaint should be taken as it is and such application should be considered on the basis of averments in the plaint.

(vi) In the supra case of T. Arivandandam, it was held that if on a meaningful - not formal - reading of the plaint it is manifestly vexatious and meritless, in the sense of non-disclosing a clear right to suit, the Court should exercise its power under Order VII Rule 11 of CPC.

(vii) In the supra case of Lachhman Dass, it was held that to hold property is a constitutional right in terms of Article 300A of the

Constitution of India and right to hold property cannot be taken away except in accordance with the provisions of the statute.

(viii) In the supra case of Shipping Corp. of India Ltd., it was held that an application for dismissal of suit as infructuous is maintainable under Sec. 151 of CPC where there is no other specific provision for the purpose neither any prohibition for exercise of power under Sec. 151, the Court can invoke the same.

(ix) In the supra case of M/s Ram Chand and Sons, it was held that the inherent power of the Court under Section 151 of CPC is in addition to and complementary to the powers expressly conferred under CPC but such powers cannot be exercised if its exercise is inconsistent with, or comes into conflict with, any of the powers expressly or by necessary implication conferred by the other provisions of the CPC.

(x) In the supra case of Pasupuleti, it was held that right to relief must be judged to exist on the date a suitor institute the legal proceedings and equity justifies bending the rules of procedure with a view to promote justice.

(xi) In the supra case of J.M. Biswas, it was held that the dispute raised in the case has lost its relevance due to passage of time and subsequent events which have taken place during the pendency of the litigation and therefore, continuing this litigation will be like flogging a dead horse.

7] As per above said provisions of Order VII Rule 11 (a) and (d) of CPC, the plaint shall have to be rejected - (a) where it does not disclose the cause of action and (d) where the suit appears from the statement in the plaint

to be barred by any law. Similarly, as per section 151 of CPC, Court has inherent power to make such orders as may be necessary for the ends of justice or to prevent abuse of process of the Court.

8] In the present case, the defendant no. 2 has filed this application at the stage of final arguments. He vide list Exh. 13 has also produced one sale deed of the year 2022 registered on 26.08.2022 contending that plaintiff during pendency of this suit, has executed sale deed in respect of suit property in favour of third persons. The plaintiff has not raised objection for production of the same and has not disputed the claim of execution of above sale deed by the plaintiff. It is thus clear from submissions of both sides that the plaintiff has executed sale deed in respect of suit property in favour of third persons during pendency of the suit.

9] The defendant on the basis of above sale deed contends that the plaintiff has executed sale deed without permission of the Court and has thereby played fraud upon the Court, due to which, now, plaintiff does not have any cause of action and suit is barred by law and therefore, it has to be dismissed. The plaintiff however contends that there is no question of any fraud and despite execution of sale deed, the plaintiff has cause of action to get the earlier fraudulent sale deed involved in the suit to be declared as not binding upon the plaintiff and has further cause of action to seek the other reliefs.

10] The plaintiff has filed this suit for declaring that the defendant no. 1 has right to execute the sale deed after fulfillment of requirements of the earnest note dated 03.06.2009, for declaring the power of attorney dated 29.08.2009 to be illegal, for declaring the sale deed executed by the defendant no.1 to the defendant no. 2 in respect of suit property on 24.12.2009 to be not binding on the plaintiff and for permanently restraining the defendants from

creating obstruction to the possession of the plaintiff.

11] The plaintiff in the plaint has contended that she is the owner of the suit property. She entered into an agreement to sale in respect of the suit property with defendant no. 1 and three other persons on 03.06.2009 for sale consideration of Rs. 31,00,000/- out of which, defendant no. 1 paid Rs. 7,75,000/- to her and it was agreed that sale deed will be executed till August - 2010. She has contended that as land was to be converted from Class-II to Class-I and she being illiterate, she for the said work and for collecting other documents required for sale deed, defendant no. 1 got executed one power of attorney from her in his favour. She has contended that defendant no.1 took undue advantage of her illiteracy and entered the averments regarding authority to sale in the said document and instead of paying the remaining sale consideration, executed sale deed in favour of the defendant no.2 on 24.12.2009 on the basis of above bogus power of attorney. She has contended that she lodged report to police regarding the same and also issued notices but to no avail. She has contended that therefore, she filed the suit for seeking above reliefs of declarations and permanent injunction.

12] The averments in the plaint show that the plaintiff despite execution of sale deed under challenge, claims herself to be the owner in possession of the suit property. She claims commission of fraud by the defendants in the form of execution of above bogus power of attorney and fraudulent sale deed. She has challenged above sale deed contending it to be fraudulent and not binding upon her. She claims herself to be the owner of the suit property. In such circumstances, execution of sale deed by her during pendency of the suit does not take away the cause of action accrued to her as mentioned in plaint for seeking reliefs against the defendants. The plaint averments show that she has cause of action to file the suit and the said cause

of action to continue the suit still exists. The plaint averments being showing existence of cause of action at the time of filing of suit and even at present after execution of the above said sale deed of the year 2022, the contention of the defendant that the plaintiff now does not have any cause of action to proceed with the suit cannot be accepted. The plaint averments and the record thus show the plaintiff to be having cause of action and therefore, the plaint cannot be rejected or the suit cannot be dismissed as contended by the defendant.

13] The defendant has contended that now this suit is barred by law due to execution of said sale deed by the plaintiff during pendency of the suit. As discussed earlier, the plaintiff being having cause of action to proceed with the suit and in view of averments in the plaint so also above developments, the question of any bar of law is a mixed question of facts and law requiring evidence for its adjudication. Hence, without such evidence, the above contention of the defendant cannot be accepted and therefore, the plaint cannot be rejected or suit cannot be dismissed as contended by the defendant at this stage.

14] The defendant is contending commission of fraud by the plaintiff by executing sale deed during pendency of the suit and despite existence of the earlier sale deed of the year 2009 which is under challenge in the suit. The defendant therefore, claims that due to fraud, this suit is not tenable and deserves to be dismissed. The plaintiff however in the plaint has contended commission of fraud by the defendant no.1 in executing bogus power of attorney and commission of fraud by the defendants by way of executing above fraudulent sale deed on the basis of above bogus power of attorney. The plaintiff therefore is seeking the reliefs referred above. The question of fraud raised by the parties is a mixed question of facts and law requiring evidence for its adjudication and therefore, on the basis of application without evidence,

contentions of the defendant about dismissal of suit cannot be accepted at this stage.

15] Admittedly, the plaintiff has not sought permission from the Court for execution of sale deed. However, the plaintiff claims that there is no order prohibiting the plaintiff from executing such sale deed in respect of suit property even during pendency of the suit. As laid down in the supra case of Sanjay Verma, the mere pendency of the suit does not prevent the plaintiff from dealing with the suit property, however, such alienation will not in any manner affect the rights of the other parties / defendants under any decree, if any, passed in the suit. Furthermore, as laid down in the supra case of Pasupulati, right to relief must be judged to exist on the date of filing of suit and here the plaintiff had right to institute the suit on the date of suit and furthermore such right has not been extinguished due to subsequent sale deed and such right to seek reliefs in original suit still exists to the plaintiff. The plaintiff has cause of action to institute and proceed with the suit. The question of fraud and bar of law to suit so also the question about legality of such sale deed requires evidence and therefore, at this stage, it cannot be said that the suit is barred by any law. Furthermore, the plaintiff still being having cause of action to seek the reliefs sought in the plaint, the suit cannot be held to have become infructuous as contended by the defendants. The legality or otherwise of the subsequent sale deed does not affect the averments in the suit and the reliefs sought by the plaintiff. On the contrary, the legality or otherwise of the subsequent sale deed may depend on the outcome of the suit. In above circumstances, the contentions of the defendant cannot be accepted and suit cannot be dismissed or plaint cannot be rejected at this stage as prayed for by him. Similarly, though the plaintiff has not brought the factum of the said subsequent sale deed before the Court however, she has not denied its execution and non-disclosure of said sale deed does not automatically result

into dismissal of the suit and the legality of the sale deed can be considered at appropriate stage. Considering above circumstances, it can be safely said that the plaintiff has cause of action to institute the suit and to proceed with the suit, it cannot be held to be barred by any law at this stage, it has not become infructuous and it cannot be dismissed or plaint cannot be rejected at this stage on the grounds mentioned by the defendant. The defendant has failed to make out any case in support of his contentions, hence his prayer for dismissal of the suit cannot be accepted at this stage. In view of the peculiar and different facts and circumstances of this case, above case laws, with respects, do not come to the rescue of the defendant at this stage. In above circumstances, the prayer of the defendant cannot be granted at this stage. No prejudice would be caused by it to the defendant/s as he/they shall have every opportunity to meet with the suit and above developments in accordance with law and further has every alternate remedy to meet the above claim and developments. The defendant no. 1 thus has failed to make out any case for rejection of plaint or dismissal of the suit under the provisions of Order VII Rule 11 (a) and (d) r/w Sec. 151 of CPC as prayed for by him. This application thus, is devoid of merits and therefore, it deserves to be rejected with costs. I therefore, record my findings as against point no. 1 in the negative and point no. 2 accordingly and proceed to pass following order-

ORDER

- 1] The application (Exh. 14) is hereby rejected with costs.
- 2] Parties to expedite this matter in accordance with law.
- 3] Dictated and pronounced in open Court.

Sd/-

[A.V. Mishra]

Civil Judge Senior Division
Umred, Dist. Nagpur.

Date : 06.03.2024

Certificate

"I affirm that the contents of this P.D.F. file order are word to word same as per original Order".

Name of Stenographer : **Mr. S.K. Awandkar**
Stenographer (Grade II)

Court Name : Civil Judge Senior Division, Umrer