

IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION
CIVIL APPEAL NO. 981 OF 2013

MUKTABAI ... Appellant

VERSUS

DASHRATH ABA GUNGE (DEAD) THR. LRS. & ORS. ... Respondents

WITH

CONTEMPT PETITION (CIVIL) NO. 438 OF 2011
IN
CIVIL APPEAL NO. 981 OF 2013

O R D E R

We have heard learned counsel for the parties at length.

In the suit filed by respondent No. 1 (hereinafter referred to as plaintiff) seeking enforcement of agreement to sell that was entered into between the plaintiff and respondent Nos. 2 and 3 herein (hereinafter referred to as defendant Nos. 1 and 2), decree for specific performance has been passed by the first appellate Court (though the Trial Court had dismissed the Suit). It is a matter of record that defendant Nos. 1 and 2, who had agreed to sell the property in question in favour of the plaintiff, did not file any appeal against the said decree and, therefore, the decree became final insofar as defendant Nos. 1 and 2 are concerned.

The appellant herein was also impleaded as defendant No. 3 in the Suit. She is the daughter of defendant No.1. The case put up by her was that the said property and part

thereof was sold to her by registered sale deed dated 12.03.1979. It is the appellant/defendant No. 3 who challenged the decree passed by the first appellate Court by filing Regular Second Appeal under Section 100 of the Code of Civil Procedure (CPC). The High Court dismissed the said appeal vide the impugned judgment with the observations that such an appeal at the instance of defendant No. 3 was not maintainable when the decree is passed against defendant Nos. 1 and 2 and defendant Nos. 1 and 2 had not challenged the said decree. The High Court also observed that when the agreement in question was entered into between the plaintiff and defendant Nos. 1 and 2 in the year 1969, it could not be imagined that defendant No. 3, who is the daughter of defendant No. 1 and sister of defendant No. 2, would not know about the said agreement and, therefore, defendant No. 3 could not be treated as *bona fide* purchaser of the property in question which was sold to her by means of sale deed executed in the year 1979 as mentioned above.

After arriving at this finding, the High Court has made the following observation with regard to the interest of Defendant No. 3 insofar as her rights of inheritance are concerned:

"Therefore, the challenge to the decree at the instance of the Appellant has no substance as the Appellant is not a bonafide purchaser. However, I must make it very clear that the observations regarding independent right, title or interest of the Appellant are made in the Judgment only for the purposes of deciding this Appeal. The suit agreement is only in respect of one half share in the land and

therefore, if the Appellant has any share on the basis of inheritances from her father, it is for her to establish the same in the appropriate proceedings."

We are of the opinion that the High Court has rightly held that the appellant/defendant No. 3 could not challenge the decree passed against defendant Nos. 1 and 2 and it could not be said that she was a *bona fide* purchaser of the property in question. As mentioned above, share, if any, of defendant No.3-appellant on the basis of inheritance from her father has already been safeguarded. We protect the interest of the appellant/defendant No. 3 also in respect of sale deed executed between the appellant on the one hand and defendant Nos. 1 and 2 on the other hand only *qua* defendant Nos. 1 and 2 making it clear that it would not be binding on respondent No. 1 herein and insofar as the decree passed in favour of respondent No. 1 is concerned, the said sale deed would not come in his way as far as execution of this decree is concerned.

With these observations, this appeal is dismissed.

Contempt Petition also stands dismissed.

....., J.
[A.K. SIKRI]

....., J.
[ASHOK BHUSHAN]

New Delhi;
July 13, 2017.

ITEM NO.120

COURT NO.7

SECTION III

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

Civil Appeal No. 981/2013

MUKTABAI

Appellant(s)

VERSUS

DASHRATH ABA GUNGE (DEAD) THR. LRS. & ORS.

Respondent(s)

WITH

CONMT.PET.(C) No. 438/2011 in C.A. No. 981/2013

Date : 13-07-2017 These matters were called on for hearing today.

CORAM :

HON'BLE MR. JUSTICE A.K. SIKRI
HON'BLE MR. JUSTICE ASHOK BHUSHAN

For Appellant(s)

Mr. Ramesh P. Bhatt, Sr. Adv.
Mr. Kailash Pandey, Adv.
Mr. Ranjeet Singh, Adv.
Mr. Sridhar Potaraju, AOR

For Respondent(s)

Mr. Shree Pal Singh, AOR

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

The appeal and the contempt petition are dismissed in
terms of the signed order.

(NIDHI AHUJA)
COURT MASTER

(MALA KUMARI SHARMA)
COURT MASTER

[Signed order is placed on the file.]