

C. Bala Subba Reddy

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Appellant

-versus-

Lakshmi Narasamma and others

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Respondents

O R D E R

One Venkatesam, alleged to be the adopted son of Narasamma, sold the property in dispute to one Bejawada Venkaiah through a registered sale deed. Subsequently, Bejawada Venkaiah by two separate sale deeds, transferred the said property in favour of defendant Nos. 1 and 2. Thereafter, defendant Nos. 1 and 2 entered into an agreement with the plaintiff-respondent for the sale of the said property. Since the sale deed was not executed by defendant Nos. 1 and 2, the plaintiff-respondent brought a suit for specific performance of the agreement for sale of the property dated 10th August, 1977. In this suit apart from defendant Nos. 1 and 2, defendant Nos. 3 and 4 were also impleaded. Defendant No. 3, the appellant herein, claims to have purchased the property in dispute from defendant No. 4. Before the trial court, defendant Nos. 1 and 2 did not contest the suit and the proceeding against them remained ex-parte. Defendant Nos. 3 and 4 filed a separate written statement, wherein one of the pleas raised was that the agreement for sale dated 10th August, 1977 is a forged document and, therefore, no right has passed on to the plaintiff-respondent. The trial court decreed the suit. Thereafter defendant Nos.3 and 4 filed an appeal before the first appellate court. The first appellate court held that the transaction of sale of the property in favour of Bejawada Venkaiah was illegal and, therefore, he could not have conveyed better title to defendant Nos. 1 and 2. Under such circumstances, the agreement for sale dated 10th August, 1977 is not enforceable in law. Consequently, the appeal was allowed and the decree was set aside. Aggrieved, the plaintiff-respondent preferred a second appeal before the High Court. The High Court allowed the second appeal holding that defendant No. 4 had no title to the land. It is against the said judgment defendant No. 3, the appellant herein, has filed this appeal.

Learned counsel appearing for the appellant, urged that defendant Nos. 1 and 2 having no title to the land, the suit for specific performance of the agreement for sale could not have been decreed by the High Court. The High Court committed an error in allowing the second appeal filed by the plaintiff-respondent.

We do not find any merit in this contention. The contention that defendant No. 4 had a title to the land was not raised before the trial court. No issue in respect thereof was framed. The parties to the suit went on trial of the suit only on the issue whether the relief for specific performance of the agreement for sale could be granted in the suit. In absence of such an issue, it is not open to appellant who claims to be the purchaser from defendant No. 4, to contend that defendant No. 4 has title to the land.

For the aforesaid reasons, the appeal has no merit. It is accordingly dismissed. There shall be no order as to costs.

.....J.
(V.N.Khare)

.....J.
(S.N.Phukan)

New Delhi;
March 13, 2001