

S U P R E M E C O U R T O F I N D I A  
RECORD OF PROCEEDINGS

CIVIL APPEAL NO(s). 6624 OF 1999

SAHADEVA GRAMANI (DEAD) BY LRS.  
s)

Appellant (

VERSUS

PERUMAL GRAMANI & ORS.  
s)

Respondent (

(With office report)

Date: 03/03/2005 This Appeal was called on for hearing today.

CORAM :

HON'BLE MR. JUSTICE ASHOK BHAN  
HON'BLE MR. JUSTICE A.K. MATHUR

For Appellant(s) Mr. V. Krishna Murthy, Adv.

For Respondent(s) Mr. R. Anand Padmanabhan, Adv.  
Ms. Amritha Sarayoo J., Adv.  
Mr. Pramod Dayal, Adv.  
Mr. Boby Augustine, Adv.

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

Arguments heard.

The appeal is dismissed in terms of the signed order. No costs.

(J.S. Rawat)  
gh)  
Court Master  
Master

(Kanwal Sin  
Court

(Signed order is placed on the file)  
IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO. 6624 OF 1999

Sahadeva Gramani (Dead) By LRS.

Appellant (s)

Versus

Perumal Gramani & Ors.

Respondent (s)

O R D E R

This appeal by grant of special leave is directed against the judgment and decree dated 4th of December, 1998 passed by a Single Judge of the High Court of Madras in S.A. No.192/87, wherein and whereby the High Court, reversing the judgments and decree passed by the courts below, has dismissed the suit filed by the plaintiff-appellant (hereinafter referred to as "the appellant") for specific performance of the agreement dated 24th September, 1974 executed between him and Masilamani Gramani since deceased and now represented by respondent nos. 2 to 9 (hereinafter referred to as " vendor" ) .

The appellant was a mortgagee under deceased Masilamani Gramani. Masilamani Gramani executed an agreement to sell the suit property to the appellant as and when he decides to do so at the market rate prevailing at the time of the sale. In spite of the said agreement, vendor sold the suit property to his cousin (hereinafter referred to as "the vendee") on 3rd of January, 1979 for a sum of Rs.3,000/-.

The appellant on coming to know of the execution of the sale deed in favour of the vendee, on 27th of February, 1979 issued a notice both to the vendor and the vendee. On 6th of April, 1979 the appellant

filed a suit seeking specific performance of the agreement dated 24th September, 1974. It was pleaded by him that he was always ready and willing to purchase the suit property; that the vendee was aware of the aforesaid agreement between the appellant and the vendor and, therefore, the vendee was not a bona fide purchaser for valuable consideration without notice. The vendor did not contest the suit. The vendee in his written statement pleaded, inter alia, that the agreement relied upon by the appellant was not enforceable in law; that the vendor had never agreed to sell the suit property to the appellant and the appellant was not in possession of the suit property pursuant to the agreement executed between the appellant and the vendor; that the terms of the agreement were vague and indefinite and therefore even if the agreement was duly executed, the same was unenforceable in law. It was pleaded by him that he was a bona fide purchaser of the suit property for value without notice of the alleged agreement executed between the appellant and the vendor. Accordingly, it was prayed by him that the suit be dismissed with costs.

After framing the relevant issues, parties were permitted to lead their evidence. Trial Court, on consideration of the facts and circumstances of the case, decreed the suit. It was held that the agreement was valid and the vendor and his legal representatives were bound by the terms of the agreement executed with the appellant. It was held by the trial Court that since the vendee was closely related to the vendor, the vendee must have been aware of the agreement and therefore, could not be termed as a bona

bona fide purchaser with consideration.

Aggrieved by the judgment of the trial Court the vendee preferred an appeal which was dismissed by the first Appellate Court.

Being aggrieved against the judgments and decree passed by the courts below, the vendee filed a Second Appeal in the High Court which has been disposed of by the impugned order. Apart from the questions of law which had been framed at the time of the admission of the appeal, the following additional question of law was framed by the High Court.

"Whether the plaintiff has valid enforceable sale agreement in his favour and whether the agreement could be specifically enforced in a Court of law?"

The learned Single Judge of the High Court before whom the Second Appeal came up for hearing, came to the conclusion that the agreement dated 24th September, 1974 was inchoate and vague. There was no mutuality in the agreement inasmuch as there were no rights with corresponding duties between the parties and, therefore, the same was unenforceable in law; that the agreement was inequitable and gave undue advantage to the appellant. The learned Single Judge set aside the findings recorded by the trial Court that the vendee was not a bona fide purchaser with consideration without notice. It was held that the vendee was a bona fide purchaser for valuable consideration without notice. That the sale agreement Exhibit A-3 was an unregistered document and no material had been placed before the courts to show that the vendee was aware of the earlier agreement entered into between the appellant and the vendor.

Counsel for the parties have been heard at length.

Counsel for the appellant has not been able to point out any piece of evidence on record to either suggest or show that the vendee was made aware of the prior agreement executed between the appellant and the vendor. We are in agreement with the finding recorded by the High Court that the vendee was a bona fide purchaser with valuable consideration without notice of the previous agreement of sale executed between the appellant and the vendor. Section 20 of the Specific Relief Act provides that the jurisdiction of the Court to decree specific performance of agreement is discretionary and the Court is not bound to grant such relief merely because it is lawful to do so. The High Court has rightly exercised its discretionary jurisdiction in not granting the relief of specific performance of the agreement Exhibit A-3.

Since we have affirmed the findings recorded by the High Court that the vendee was a bona fide purchaser with consideration without notice and it would be inequitable to grant the relief of specific performance of the agreement, we need not go into the other grounds raised before us, vis-a-vis, the question of validity and enforceability of the Agreement Ex.A-3.

For the foregoing reasons, we do not find any infirmity with the impugned order of the High Court warranting interference by this Court. The appeal is dismissed accordingly with no order as to costs.

.....J.  
(ASHOK BHAN)

New Delhi;  
March 03, 2005.

.....J.  
(A.K. MATHUR)