



Ananthamurthy (dead) by LRs. .. Appellant (s)

-vs-

Yellappa and others .. Respondent (s)

O R D E R

The appellant herein is the purchaser of the property during the pendency of the suit filed by respondent No. 2 against respondent No. 1 for specific performance of the agreement for sale. The suit filed by respondent No. 2 was decreed by the trial court. The appellant and respondent No. 1 jointly preferred an appeal before the first appellate court. The appellant herein sought permission of the court to file appeal against the decree of the trial court. It appears that during pendency of the said appeal, the vendor respondent No. 1 entered into some sort of compromise with plaintiff-respondent No. 2, as a result of which he did not prosecute the appeal. The application of the appellant for permission to prosecute the appeal was rejected on the ground that the decree passed by the trial court was not a collusive decree and, therefore, no permission can be granted to appellant to prosecute the appeal. The appellant thereafter preferred a miscellaneous appeal before the High Court, which was dismissed. It is against the said judgment, the appellant has filed this appeal.

We have heard counsel for the parties. The appellate court while considering the application of the appellant has not gone into the question whether the appellant is a bona fide purchaser. In case it is found that the appellant is a bona fide purchaser and vendor has colluded with the decree holder it was a good ground to accord permission to the appellant to prosecute the appeal. The fact that the vendor has compromised the matter with the decree holder and the vendor has not prosecuted the appeal it is sufficient to permit the appellant to prosecute the appeal.

For the aforesaid reasons, we set aside the judgment under appeal, with the direction that the appellant is granted leave to file an appeal against the judgment of the trial court. However, any finding recorded in this appeal shall not come in the way of respondent No. 2.

The appeal is allowed. There shall be no order as to costs.

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

& & & & & & & & & & ..J.  
(S. N. Variava)

New Delhi;  
May 02, 2001