A T.M. BALAKRISHNA MUDALIAR

v.

M. SATYANARAYANA RAO AND OTHERS

MARCH 31, 1993

B [KULDIP SINGH AND N.M. KASLIWAL, JJ.]

Specific Relief Act, 1963—Section 15(b)—Representative in interest—Whether plaintiff falls in—Plaintiff's suits for specific performance of the agreements of reconveyance—Legality of.

C

Documents—Agreements giving a right of repurchase (Exhibits A.3 and A.4) and registered deeds of agreement of sale (Exhibits A.10 and A.11)—Construction—Plaintiff's suits for specific performance of the agreement for sale—Legality of.

D **On 17.4.1962, 'A' and his mother 'B' sold their agricultural lands measuring 3 acres and 25 acres respectively by executing two sale deeds in favour of Respondent No.1 and his father for Rs.10,000 and Rs.75,000 respectively. On the same day, the respondents - vendees, taking Rs.500 back, executed two separate agreements in favour of 'A' and 'B' giving**

E **them the right of repurchase at any time after 17.4.1969 but before 16.4.1972.**

On 4.1.1963, 'A' and 'B' executed agreements of sale in favour of the appellant for a consideration of Rs.1,30,000 in all. The appellant paid Rs. 30,000 till April, 1963 to 'A' and 'B'. The appellant latter paid Rs. 12,500

F **to 'A' and Rs.87,500 to 'B' and the registered deeds of agreement of sale were executed by 'A' and 'B'. Again a sum of Rs.1,000 was paid to 'A' and Rs. 4,000 was paid to 'B' by the appellant. 'A' and 'B' handed over the agreements executed by the respondent No.1 and his father in favour of 'A' and 'B', to the appellant.**

G

Respondent No.1's father died leaving behind his widow and son, respondent No.1. They refused to execute the reconveyance deed.

The appellant in the Court of Subordinate Judge filed two suits for specific performance of the agreements of re-conveyance, delivery of pos-

H **session and mesne profits one suit against the respondent No.1, his**

mother and 'A' and the other one against the respondent No.1, his mother and 'B'. A

In the first suit the appellant deposited the amount of Rs.9,900 in the Court for payment to respondent No.1 and his mother and Rs.1,600 for payment to 'A' and in the other suit he deposited Rs.74,500 for payment to respondent No.1 and his mother and Rs.9,000 to 'B'. B

The suits were decreed ex-parte. As 'A' and 'B' did not file any application for setting aside the ex-parte decree, the decree passed against them became final.

C

Respondent No.1 and his mother filed an application to set aside the ex-parte decree and the Court set aside the decree and allowed them to contest the suits.

The suits were decreed against the respondent No.1 and his mother against which they filed appeals in the High Court. D

The High Court setting aside the decree and judgments of the trial Court allowed the appeals filed by the respondent No.1 and his mother.

The plaintiff aggreived against the judgments of the High Court preferred the present appeals by special leave before this Court. E

Allowing the appeals, this Court,

HELD: 1.01. A combined reading of the documents Exhibits A.3, A.4, A.10 and A.11, leaves no manner of doubt that 'A' and 'B' had made an F agreement to sell the properties in favour of the plaintiff and had also given a right to make the payment of such amount to respondent No.1 and his father which they were entitled under the terms and conditions of Exhibits A.3 and A.4, the agreements of resale made in favour of 'A' and 'B' respectively. The plaintiff had filed a suit for specific performance of the agreement for sale impleading 'B' and respondent No.1 and his father G as defendants in one case and 'A' and respondent No.1 and his father in another case and had also deposited the amount of consideration in the Court which clearly proved that the plaintiff was always ready and willing to perform his part of the contract. There was no ground or justification for the High Court to dismiss the suits filed by the plaintiff. [894 E-G] H

A **1.02. The High Court was wrong, in taking the view that it was only 'A' and 'B' who were entitled to get reconveyance from respondent No.1 and his father and the plaintiff was not entitled to enforce such right by a suit for specific performance against respondent No.1 and his father. [894-H]**

1.03. The High Court further erred in holding that the restriction of
B **the period during which the plaintiff could have got the sale deeds executed in his favour was two years while 'A' and 'B' under Exhibits A.3 and A.4 could have exercised such rights within a period of three years and such difference in the period deprived the plaintiff of his right to enforce the agreement of specific performance. [895-B]**

C

1.04. The plaintiff was exercising the right of specific performance of agreement of sale within the stipulated period of two years and it is unable to accept the reasoning of the High Court as to how the period of three years granted in favour of 'A' and 'B' in any manner affected or took away the right of the plaintiff to bring a suit for specific performance. [895-C]

D

1.05. Under the terms and conditions laid down in Exhibits A.3 and A.4 the right of repurchase was not given as personal to 'A' and 'B' and they were entitled to assign such right and the plaintiff having got such right under Exhibits A.10 and A.11 was entitled to enforce such contract
E **by filing a suit for specific performance. The plaintiff in the present case also falls within the meaning of representative in interest as contemplated under Clause (b) of Section 15 of the Specific Relief Act, 1963. On such assignment, the plaintiff-appellant acquired a valid title to claim specific performance. [896-C]**

F *Sakalaguna* **v.** *Munnuswami,* **AIR 1928 PC 174;** *Vishweshwar* **v.** *Durgappa,* **AIR 1940 Bombay 339 and** *Sinnakaruppa* **v.** *Karuppuswami,* **AIR 1965 Madras 506, approved. [895-F]**

CIVIL APPELLATE JURISDICTION : Civil Appeal Nos.1840 and
G 1841 of 1979.

From the Judgment and Order dated 24.1.1979 of the Madras High Court in Appeal Nos 67 and 68 of 1975.

J. Ramamurthy, K. Ram Kumar, N. Sridhar and Ms. Anjani for the
H Appellant.

A.T.M. Sampath, Ms. Pushpa Rajan, S. Balakrishnan, Srinivasan and Ms. Revathy Raghavan for the Respondents. A

The Judgment of the Court was delivered by

KASLIWAL, J. These appeals by grant of special leave are directed against the judgment of the Madras High Court dated 24.1.1979. B

Abdul Salam and his mother Razia Begum sold their agricultural lands measuring 3 acres and 25 acres respectively by executing two sale deeds Exhibits A.2 and A.1 dated 17.4.1962 in favour of Satyanarayana Rao and his father Mahadeva Rao. The consideration of the respective sale deeds was Rs.10,000 and Rs.75,000. On the same day, both the vendees took Rs.500 back and executed two separate agreements in favour of the respective vendors under Exhibits A.3 and A.4 giving a right of repurchase to the vendors at any time after 17.4.1969 but before 16.4.1972. C

Thereafter, Razia Begum and Abdul Salam executed agreements of sale in favour of the appellant T.M. Balakrishna Mudaliar on 4.1.1963, for a consideration of Rs.1,30,000 in all. The appellant also paid an amount of Rs.30,000 from time to time till April 1963 to Razia Begum and Abdul Salam towards the said agreements. For the balance of Rs.1,00,000 which was to be apportioned between Razia Begum and Abdul Salam, Exhibits A.10 dated 15.4.1963 and A.11 dated 15.3.1963 registered deeds of agreement of sale were executed by Razia Begum and Abdul Salam respectively for Rs.87,500 and Rs.12,500. The appellant paid further sums of Rs.4,000 under Exhibit A.10 to Razia Begum and Rs.1,000 under Exhibit A.11 to Abdul Salam and Exhibits A.3 And A.4 were handed over to the appellant. Mahadeva Rao died leaving behind his widow Pushpavathi Ammal and Satyanarayana Rao his son as his legal representatives. In view of the fact that Satyanarayana Rao and his mother Pushpavathi Ammal refused to execute the reconveyance deed, the appellant T.M Balakrishna Mudaliar filed two suits for specific performance of the agreements of reconveyance, delivery of possession and mesne profits in the Court of Subordinate Judge, Tirupattur. O.S. No.67 of 1969 was filed against Satyanarayana Rao, Pushpavathi Ammal and Abdul Salam and O.S.No.73 of 1969 was filed against Satyanarayana Rao, Pushpavathi Ammal and Razia Begum. In O.S. No.67 of 1969, the appellant deposited the amount of Rs.9,900 in the Court for payment to Satyanarayana Rao and Pushpavathi Ammal and Rs. 1600 for payment to Abdul Salam. In O.S. No.73 of 1969, the appellant deposited D E F G H

A Rs.74,500 for payment to Satyanarayana Rao and Pushpavathi Ammal and Rs.9,000 to Razia Begum.

Both the above suits were decreed ex-parte on 7.1.1974. Razia Begum and Abdul Salam did not file any application for setting aside the ex-parte decree and as such the decrees passed against them became final. B On an application filed by Satyanarayana Rao and Pushpavathi Ammal, the ex- parte decrees passed against them were set aside and they were allowed to contest the suit. The trial court after recording the evidence decreed the suit against Satyanarayana Rao and Pushpavathi Ammal also. Satyanarayana Rao and Pushpavathi Ammal aggrieved against the judgment of C the trial court filed appeal Nos.67 and 68 of 1975 in the High Court. The High Court by its judgment dated 24.1.1979 allowed the appeals and set aside the judgments of the trial court and dismissed both the suits. T.M. Balakrishna Mudaliar, the plaintiff aggrieved against the judgments of the High Court has filed the aforesaid two appeals.

D

The facts are almost admitted and there is no controversy as regards the execution of Exhibits A.4 and A.3 - the deeds of reconveyance by Satyanarayana Rao and Mahadeva Rao in favour of Razia Begum and Abdul Salam respectively and Exhibits A.10 and A.11, registered deeds of agreement of sale by Razia Begum and Abdul Salam in favour of the E appellant. The High Court however, took the view that under the terms and conditions set out in Exhibit A.10 and A.11 Razia Begum and Abdul Salam had not assigned the rights of reconveyance of the properties which they had got under Exhibits A.4 and A.3. According to the High Court, Exhibits A.10 and A.11 contemplated the performance of agreements of F sale within a period of two years namely, 17.4.1969 to 16.4.1971, while under the terms and conditions of Exhibits A.3 and A.4 such period for reconveyance in favour of Abdul Salam and Razia Begum was three years i.e. from 17.4.1969 to 16.4.1972. According to the High Court this difference relating to the period was important from the point of view of considering the question whether the plaintiff could stand in the shoes of G Razia Begum and Abdul Salam to enforce the agreement entered into between Razia Begum and Abdul Salam on the one hand and Satyanarayana Rao and Mahadeva Rao on the other. The High Court took the view that on account of such curtailment of the period in Exhibits A.10 and A.11 it was reasonable to infer that if the plaintiff did not enforce his H rights under Exhibits A.10 and A.11 within the period of two years me-

tioned therein, still Razia Begum and Abdul Salam in their own right would be in a position to enforce their right under Exhibits A.3 and A.4 because there was still one more year available to them to enforce the obligations undertaken by Satyanarayana Rao and Mahadeva Rao under Exhibits A.3 and A.4. The High Court further took the view that from the terms of the documents Exhibits A.10 and A.11, it was clear that no privity was intended between the plaintiff on the one hand and Satyanarayana Rao and Mahadeva Rao directly and it was only Razia Begum and Abdul Salam who could have enforced the terms of the contract of reconveyance under Exhibits A.4 and A.3. The High Court also took the view that the plaintiff did not fall within the expression 'representative in interest' as contemplated under Section 15 clause (b) of the Specific Relief Act, 1963 (hereinafter referred to as 'the Act') and as such was not entitled to bring a suit for specific performance of the contract on the basis of the deeds of reconveyance Exhibits A.3 and A.4. It was also held that having regard to the language of Exhibits A.10 and A.11, no question of assignment of any right in favour of the plaintiff can arise.

We have heard learned counsel for the parties and have thoroughly perused the record as well as the contents of Exhibits A.3, A.4 and A.10 and A.11 on which the entire case hinges. Exhibits A.3 and A.4 are agreements of resale executed on 17.4.1962 by Mahadeva Rao and Satyanarayana Rao in favour of Abdul Salam and Razia Begum respectively. Both the documents contained the terms of the resale at any time after 7 years, but within 10 years of the date of execution of the documents. It was clearly stipulated that after 17.4.1969 but before 17.4.1972, Mahadeva Rao and Satyanarayana Rao shall sign the sale deed on receiving the sum of Rs.74,500 in favour of Razia Begum and on receiving Rs.9,900 in favour of Abdul Salam. Both these documents Exhibits A.3 and A.4 do not contain any condition that such right was personal and was in favour of Abdul Salam and Razia Begum and such right could not be exercised by a stranger. The documents also do not contain any condition that such right could be exercised by the heirs of such persons or any other named persons and that such right could not be assigned by Abdul Salam and Razia Begum in favour of any other person. The High Court was wrong in taking the view that the plaintiff Balakrishna Mudaliar was not a representative in interest of Abdul Salam and Razia Begum even after such right being assigned in his favour by agreements Exhibits A.10 and A.11. Exhibits A.10 is a sale agreement for Rs.87,500 executed on 15.4.1963 by Razia Begum

A in favour of the plaintiff Balakrishna Mudaliar. It has been clearly stated in the aforesaid deed that in order to raise funds for expenses required for the family and also for repayment of the amount of Rs.75,000 and recover back the properties from M/s Mahadeva Rao and Satyanarayana Rao and that Razia Begum (party No.1) had a right to have it reconveyed as per
B reconveyance agreement she agreed to assign such right in favour of Balakrishna Mudaliar (the second party). It further provided that Razia Begum had received Rs.4,000 and out of the balance amount of Rs.83,500, an amount of Rs.74,500 shall be paid to Mahadeva Rao and Satyanarayana Rao and the balance amount of Rs.9,000 shall be paid to Razia Begum. It was also mentioned that in case Mahadeva Rao and Satyanarayana Rao
C who had already executed the agreement of resale refuse to receive the sum of Rs.74,500 as per the said resale agreement, Razia Begum at her own expense shall get the sale deed executed by the said Mahadeva Rao and Satyanarayana Rao in her favour and then shall execute the sale deed in favour of the plaintiff. At the time of executing Exhibit A.10, a copy of
D the sale deed made in favour of Mahadeva Rao and Satyanarayana Rao and the agreement for resale executed by them in favour of Razia Begum was also handed over to the plaintiff. Exhibit A.11 has been executed by Abdul Salam in favour of the plaintiff and contains identical terms and conditions as in Exhibit A.10 except the difference of amount. Thus, a combined reading of the documents Exhibits A.3, A.4, A.10 and A.11, there
E remains no manner of doubt that Razia Begum and Abdul Salam had made an agreement to sell the properties in favour of the plaintiff and had also given a right to make the payment of such amount to Mahadeva Rao and Satyanarayana Rao which they were entitled under the terms and conditions of Exhibits A.3 and A.4, the agreements of resale made in favour of
F Abdul Salam and Razia Begum respectively. The plaintiff had filed a suit for specific performance of the agreement for sale impleading Razia Begum and Mahadeva Rao and Satyanarayana Rao as defendants in the one case and Abdul Salam and Mahadeva Rao and Satyanarayana Rao in another case and had also deposited the amount of consideration in Court which clearly proved that the plaintiff was always ready and willing to
G perform his part of the contract. In our view, there was no ground or justification for the High Court to dismiss the suits filed by the plaintiff.

The High Court was wrong in taking the view that it was only Razia Begum and Abdul Salam who were entitled to get reconveyance from
H Mahadeva Rao and Satyanarayana Rao and the plaintiff was not entitled

to enforce such right by a suit for specific performance against Mahadeva Rao and Satyanarayana Rao. The High Court further erred in holding that the restriction of the period during which the plaintiff could have got the sale deeds executed in his favour was two years while Razia Begum and Abdul Salam under Exhibits A.3 and A.4 could have exercised such rights within a period of three years and such difference in the period deprived the plaintiff of his right to enforce the agreement of specific performance. Admittedly the plaintiff was exercising the right of specific performance of agreement of sale within the stipulated period of two years and we are unable to accept the reasoning of the High Court as to how the period of three years granted in favour of Razia Begum and Abdul Salam in any manner affected of took away the right of the plaintiff to bring a suit for specific performance.

It may also be noted that an ex-parte decree for specific performance of sale had become final against Razia Begum and Abdul Salam and so far as Mahadeva Rao and Satyanarayana Rao are concerned, they were bound to make a resale or reconveyance of the property in favour of Abdul Salam and Razia Begum as well as their assignee under Exhibits A.3 and A.4. So far as Mahadeva Rao and Satyanarayana Rao are concerned, they have not pleaded that they had not executed Exhibit A.3 and Exhibit A.4 or that Razia Begum and Abdul Salam had lost the right of repurchase or reconveyance of the property in question in their favour.

The Privy Council in *Sakalaguna* v. *Munnuswami,* AIR 1928 PC 174 has held that the benefit of a contract of repurchase which did not show that it was intended only for the benefit of the parties contracting, could be assigned and such contract is enforceable. Beaumount C.J. in *Vishweshwar* v. *Durgappa,* AIR 1940 Bombay 339 held that the both under the common law as well as under Section 23 (b) of the Specific Relief Act, 1877, an option given to repurchase the property sold would *prima facie* be assignable, though it might also be so worded as to show that it was to be personal to the grantee and not assignable. On the particular facts of that case, it was held that the contract was assignable. In *Sinnakaruppa* v. *Karuppuswami,* AIR 1965 Madras 506 it was held:

> "In our view, generally speaking, the benefits of a contract of repurchase must be assignable, unless the terms of the contract are such as to show that the right of repurchase

A is personal to the vendor. In the latter case it will be for the person who pleads that the contract is not enforceable, to show that the intention of the parties thereto was that it was to be enforced only by the persons named therein and not by the assignee."

B In our view, the above statement of law appears to be correct. We have already held above that under the terms and conditions laid down in Exhibits A.3 and A.4, the right of repurchase was not given as personal to Razia Begum and Abdul Salam and they were entitled to assign such right and the plaintiff having got such right under Exhibits A.10 and A.11 was C entitled to enforce such contract by filing a suit for specific performance. The plaintiff in the present case also falls within the meaning of representative in interest as contemplated under Clause (b) of Section 15 of the Act. On such assignment, the plaintiff-appellant acquired a valid titled to claim specific performance.

D In the result, we allow these appeals with costs and set aside the Judgment of the High Court and restore and Judgments and decrees passed by the trial court.

V.P.R. Appeal allowed.