

Hardayal Gir

Vs

Sohna Ram

Civil Appeal No. 1130 of 1966

(C.A. Vaidialingam, I.D. Dua JJ)

25.09.1969

JUDGMENT

VAIDIALINGAM, J. -

1. This appeal, by special leave, by the defendant, is directed against the judgment and decree of the High Court or Rajasthan, dated September 24, 1965, in Second Appeal No. 73 of 1964.

2. The respondent plaintiff instituted Civil Original Case No. 284 of 1961 out of which this appeal arises, for a declaration that he is the slow owner and is in possession of three-and-a-half Murabbas of land measuring 84 Bighas out of cultivable land of Murabbas 10/23-15, 9/24-10, 6/25 and 5/23-5 of the total extent of 96 Bighas 10 Biswas at Chak 9 B. B. Tehshil Padampur and also for a permanent injunction restraining the defendant from interfering with the proprietary possession of the land of the plaintiff and from transferring the land by way of sale, mortgage or in any other manner. The plaintiff's case, in brief, was as follows. The defendant, Hardayal Gir, is a displaced person and he has filed claims to the tune of more than rupees ten lakhs. The Government had decided to dispose of by auction sale certain evacuee properties and the displaced persons were given the benefit of getting the amounts due on their claims adjusted towards the sale price of properties that may be purchased by them. But the purchasers were required to make an advance payment in cash 1/10th of the sale price the moment the bid is knocked down in their favour. The suit properties were so put up for sale by auction on November 13, 1956 and the defendant was anxious to bid in the auction and purchase those properties, but he did not have sufficient money even to make the advance payment of 1/10th the price, if his bid was accepted. Therefore he entered into an agreement with the plaintiff on November 13, 1956. According to the terms of the agreement, the plaintiff was to make the advance deposit and also to incur the necessary expenses for the defendant pursuing his verified claims. The plaintiff was to bid in the auction in the joint names of both himself and the defendant, and the price payable for the purpose was to be adjusted from and out of the verified claims of the defendant. In the properties so purchased, from and out of the compensation paid in respect of the verified claims, both the plaintiff and the defendant were to have equal shares. Accordingly the plaintiff bid in the auction in the joint names of himself and the defendant on November 13, 1956 and purchased 4 squares of land bearing numbers 5, 6, 9 and 10, more fully described in the plaint. The highest bid so given by the plaintiff was Rs. 67,000/-. The bid having been accepted, the plaintiff made the advance deposit of 1/10th of Rs. 6,750-8-0 immediately. But, on or about 1959, it was found that the defendant's claim had been substantially disallowed, excepting for a sum of Rs. 17,000/- and odd. This amount of Rs. 17,000/- was adjusted towards the sale price and the plaintiff had to make a further deposit of Rs. 43,000/- excluding the advance deposit already referred to. According to the plaintiff, this additional amount was deposited by him on the basis of fresh oral arrangement entered into with the defendant to the effect that the

defendant will get only a half-share in the extent of properties that may be purchased from and out of the compensation amount that is utilised for the purchase and that the defendant will not make any claim in respect of the purchases that may be made by the deposits of the plaintiffs' own moneys. According to the plaintiff, as only a sum of Rs. 17,000/- of the defendant's compensation amount have been utilised, the latter will be entitled only to an extent of half-a-square of land from and out of the total 4 squares purchased in the auction on November 13, 1956. But the defendant, contrary to the agreement and claiming that he was entitled to two squares representing his half-share in the properties purchased, got mutation of names in the Revenue Register and was also attempting to transfer his half-share of 2 squares to a third party. Hence the plaintiff instituted the suit for the reliefs, mentioned above, to safeguard his rights.

3. The appellant-defendant contested the claim of the plaintiff on several grounds. While admitting the agreement of November 13, 1956, he claimed that on the basis of that agreement he was entitled to get a half-share in the property that is purchased in the auction, irrespective of the amounts that the plaintiff may have advanced and in the compensation claim that may be ultimately upheld by the authorities. According to the defendant, the plaintiff, under the terms of the agreement, was bound to provide the necessary amounts for making the advance and incur the necessary expenses to enable the defendant to substantiate his verified claims. But, just as the plaintiff and the defendant to defendant would be entitled to share equally any compensation amounts that may be adjudged to be due to the defendant by the authorities, similarly both the plaintiff and the defendant are entitled to share equally in the properties that may be purchased in the auction. This was the agreement, according to the defendant.

4. The defendant further repudiated the arrangement pleaded by the plaintiff, viz., that he had agreed to take only a half-share in the extent of property that may be purchased only with the aid of the compensation amount due to the defendant and which is adjusted towards the price of the properties bid in the auction. He further averred that on the terms of the agreement of November 13, 1956, he was perfectly entitled to have a mutation in the revenue records in respect of his half-share representing 2 squares and that he was also entitled to convey the same to whomsoever he liked. The defendant, on these averments, disputed the right of the plaintiff either to get the declaration or the injunction, as prayed for by him.

5. The Trial Court, by its decree and judgment, dated April 20, 1963, dismissed the plaintiff's action. That Court found that in the auction on November 13, 1956, an extent of property of 4 squares as mentioned in the plaint, had been purchased. It was further found that the plaintiff had deposited a sum of Rs. 49,031-6-0 in respect of this purchase. That amount was made up of the initial advance deposit of Rs. 6,750-14-0 on the date of the bid. November 13, 1956 and another sum of Rs. 42,280-8-0 paid later to make up the purchase money. This amount was deposited by the plaintiff after the adjustment of a sum of Rs. 17,054.85 from and out of the compensation amount adjudged in favour of the defendant. Therefore, in respect of the purchase of the suit items, the plaintiff has paid a sum of Rs. 49,031-6-0 and the defendant a sum of Rs. 17,054-85. Though it is found the judgment that it was argued on behalf of the plaintiff, that a particular party will be owner of the properties in proportion to the amounts actually invested by him and the plaintiff relied on the evidence of his witness, P.W. 3, Shala ram, in support of his contention that the defendant had agreed to take as his half-share of the land only from that extent that may be purchased from and out of the amounts contributed by him, the Trial Court, on a consideration of the agreement, Exhibit 1, dated November 13, 1956, held that the plaintiff and the defendant will be entitled to half-share each in the properties purchased and that the claim of the plaintiff that he is the owner of 3 1/2 Murabbas cannot be accepted. In respect of the oral agreement pleaded by the plaintiff that the defendant later agreed to

take only a half-share in the properties that may be purchased out of his contribution by way of compensation amounts received from the Government, the Court found that the said oral agreement has not been proved. In this view the Trial Court ultimately found that as both the plaintiff and the defendant are entitled to equal shares in the property purchased in the auction on November 13, 1956, the plaintiff is not entitled to any relief. The Court gave an additional reason for rejecting the plaintiff's claim, viz., that the property being evacuee property, Civil Court's jurisdiction is barred under the Displaced Persons (Compensation and Rehabilitation) Act, 1954. Ultimately, the plaintiff's suit was dismissed with costs.

6. The plaintiff carried the matter before the District Judge, Ganganagar, in Civil Appeal No. 31 of 1963. The learned District Judge, by his judgment, dated October 28, 1963, confirmed the various findings recorded by the Trial Court except regarding the jurisdiction of Civil Courts. On the question of jurisdiction, the District Judge held that Civil Court's jurisdiction is not barred and a Civil Court is competent to entertain suit in the manner framed by the plaintiff. On an interpretation of the terms and conditions in the agreement Exhibit 1, the District Court held that both the plaintiff and the defendant are to share equally the property purchased in their joint names of November 13, 1956. The fact that the plaintiff had paid a larger amount of consideration and that the defendant had, ultimately, been able to contribute only a smaller share towards the purchase price, is of no consequence as per the agreement. Under the agreement which had been entered into by both parties and which is not in any manner vitiated in law, just as both the parties would have been entitled to share equally in the compensation amounts that would have been received by the defendant if his entire claim has been accepted, similarly, both of them have equal rights in any property that is purchased and the plaintiff is not entitled to go behind the agreement. Having held that the plaintiff is entitled only to a half-share in the properties purchased, the District Court also further held that he was not entitled to either the declaration or the injunction asked for by him. Regarding the oral agreement pleaded by the plaintiff, the District Court also is of the view that the plaintiff has not established the same. The District Court has also rejected it on a slightly different ground, viz., that an oral agreement, even if true, cannot, be allowed to be relied on by the plaintiff to contradict the terms and conditions of the written agreement, Exhibit No. 1. In this view, the decree of the Trial Court dismissing the plaintiff's action, was confirmed.

7. It may be mentioned at this stage, that the plaintiff appears to have applied to the District Court for receiving as additional evidence, an order of the Additional Settlement Commissioner, dated December 20, 1962 and the Court admitted the said document as additional evidence; but nevertheless, it came to the conclusion that the decision to dismiss the plaintiff's suit is not in any way affected by this additional evidence. We are particularly referring to this piece of additional evidence because we may have to refer to the same, when dealing with the criticism levelled against the judgment of the High Court that the question of any misrepresentation by the plaintiff, regarding the amounts that may be due to him by way of compensation, does not at all arise in these proceedings and, further, such a plea should not also have been accepted, as will be evident from the order of the Assistant Additional Commissioner, dated December 20, 1962.

8. The plaintiff further challenged the decision of both the Courts before the High Court of Rajasthan at Jodhpur in Second Appeal No. 73 of 1964. The High Court by its decree and judgment, dated September 24, 1965, accepted the plaintiff's appeal subject to a direction that the repay to the defendant any amount of the latter that has been adjusted towards the purchase of the property in question and, for this purpose it remanded the matter to the Trial Court. But, subject to the payment of this amount, the High Court granted the declaration that the plaintiff is the exclusive owner of the property purchased on November 13, 1956 and it also granted an injunction restraining

the defendant from alienating or attempting to alienate the same.

9. Before the High Court it is seen that three contentions were taken by the plaintiff, viz : (i) Under the terms and conditions of the agreement, Exhibit 1, the plaintiff was to make only the initial deposit and the entire balance of consideration has to be found from the compensation amounts payable to the defendant and, in respect of such a purchase, both the parties were entitled to an equal half in the property, (ii) The defendant made a representation to the plaintiff that he had compensation claims of over ten lakh rupees and on this representation the plaintiff was persuaded to enter into the agreement Exhibit 1 and it having been eventually discovered that the compensation claim of the defendant was nowhere near Rs. 10,00,000/-, the entire contract stood vitiated in law, due to the defendant's misrepresentation and has ceased to be enforceable, (iii) In view of the subsequent oral agreement, dated January 15, 1959, the original contract, Exhibit 1, stood cancelled and the defendant in consequence will be entitled only to half-a-acre of land, being the half of one acre which extent alone could have been purchased from the compensation amount of the defendant.

10. The High Court has not expressed any opinion on the oral agreement, dated January 15, 1959. But it has gone fairly elaborately into the question of the plea of misrepresentation made by the defendant and, in consequence, the contract being vitiated and unenforceable and ultimately held that there has been a misrepresentation by the defendant, under Section 18 of the Contract Act and, in consequence, the agreement became voidable under Section 19 thereof. The High Court has further held that the very foundation for the agreement of November 13, 1956, was the representation of the defendant that he had compensation claims of over ten lakh rupees or thereabout and when that representation has been falsified, the agreement, Exhibit 1, ceases to be enforceable. So far as we could see, the High Court has not considered the terms of the agreement Exhibit 1, to find out the actual rights which the parties have under it, obviously the reason being that it has taken the view that Exhibit 1 is not enforceable in law. Though an objection was taken on behalf of the defendant that the plea regarding the misrepresentation and, in consequence, the agreement ceasing to be enforceable, have neither been pleaded by the plaintiff in the plaint, nor raised before the two Subordinate Courts, the High Court is of the view that the parties must have been aware at the time of the trial that the dispute has arisen because the amount of compensation actually received by the defendant has fallen considerably short of the original representation, and hence the question of the contract ceasing to be enforceable on the basis of the misrepresentation made by the defendant can be gone into. Even the direction for a refund of the amounts to the defendant appears to have been made on the basis of a representation, stated to have been made by the plaintiff's counsel that his client is willing to refund to the defendant any amount that may have been utilised from the compensation claim.

11. Mr. S. T. Desai, learned counsel for the appellant-defendant, raised two contentions : (1) That the High Court has committed a very serious error in law in entertaining at the second appeal stage, a plea raised by the plaintiff that there has been a misrepresentation by the defendant which entitles the plaintiff on this basis alone. (2) According to the terms of the agreements, Exhibit 1, both the plaintiff and the defendant are entitled to a half-share each in the property purchased and if so the plaintiff is not entitled to any relief.

12. Mr. A. K. Sen, learned counsel for the plaintiff-respondent, referred us to certain clauses in the agreement, Exhibit 1, which, according to him, will clearly establish that the defendant is entitled only to half-share in the actual extent of the property the purchase of which could be attributed to the compensation amount which went by way of adjustment towards the purchase price. The

counsel further pointed out that on the findings of the Courts, that the defendant's amount regarding this purchase is only a sum of Rs. 17,000/- out of which only one square of land could have been purchased, it follows that the defendant is entitled to half-a-square out of the entire extent of the properties purchased on November 13, 1956. The counsel further urged that the High Court's view could very well be sustained on the ground that the very basis of the plaintiff entering into an agreement, Exhibit 1, was the representation made by the defendant that he has claims of over ten lakh rupees and when that representation has been falsified, the contract itself falls to the ground.

13. In our opinion, both the plaintiff and the defendant have taken a rather extreme position, the plaintiff urging that the defendant is entitled to only half-a-square of land and the defendant claiming that he is entitled to an equal half-share in the property purchased, irrespective of his contribution. Both parties have omitted, in our view, to give due importance to some of the subsequent transactions to which both are parties and to which we will refer later. But, at the outset, it must be stated that Mr. Sen, found considerable difficulty in satisfying us that the plea of the agreement, Exhibit 1, becoming unenforceable in law, due to the misrepresentation, if any, of the defendant has been properly pleaded so as to justify the High Court to decide, almost exclusively on that ground in favour of the plaintiff. We will first take up this question, as to whether the High Court was right in allowing such a plea to be raised by the plaintiff before it and granting him relief exclusively on that basis. We have been taken through the pleadings by Mr. Desai, as well as the issues framed and the contentions raised before the Trial Court and on appeal before the District Court. We are not able to find any averment in the plaint to the effect that the defendant made any misrepresentation at the time of the agreement Exhibit 1. Nor do we find any pleading to the effect that the agreement ceased to be enforceable in law whatever maybe ground. No doubt some reliance has been placed on behalf of the plaintiff in the averment contained in Para 2 of the Plaint which will amount to a plea misrepresentation made by the defendant. The averments in that paragraph relate to the compensation claim of the defendant in the sum of Rs. 10,30,500/- which was later on found not acceptable by the State on the ground that claim related to a public trust and that the defendant was not entitled to receive any compensation under such a claim. The paragraph no doubt winds up with a statement that the defendant with regard to this claim had stated facts which were absolutely wrong and false. These statements, by themselves, in our opinion cannot amount to any plea of misrepresentation made by the defendant. Those averments, read in the context in which they appear, and taken along with the other averments in the plaint, are only statements of facts leading up to the final claim of the plaintiff that as only a sum of Rs. 17,000/- and odd had been contributed by the defendant from his compensation claim, the later will not be entitled to claim more than a half-share in the extent of property purchased out of that amount. There is no issue also raised, regarding any misrepresentation attributed to the defendant. No doubt Issue No. 4, which according to the High Court may cover such a plea is to the effect :

"Whether the claim of Rs. 10,30,500/- of the defendant has not been adjusted and what is the effect of it on the plaint ?"

This issue, in our opinion, will not, without any further plea and material placed before the Court, enable the Court to embark upon the question of any misrepresentation and its effect on the contract. In fact, on the other hand, the finding of the Trial Court - and accepted by the District Court - on this issue is that the plaintiff is bound by the contract and that the defendant is entitled to get an equal share in the property purchased irrespective of the amount that may have actually been contributed from the compensation claim. Even otherwise, it will be seen that in this case the plaintiff is not seeking to avoid the contract, but, on the other hand, attempting to enforce the contract by asking for a declaration in his favour and for an injunction against the defendant.

14. That there can be no question of any misrepresentation, so as to bring the case within Section 18 and 19 of the Contract Act, as erroneously assumed by the High Court, will also be clear when we refer to the order, dated December 20, 1962, passed by the Additional Settlement Commissioner which, as we have already mentioned, was admitted as additional evidence by the District Court at the request of the plaintiff. That order, which has been referred to in extenso, in the statement of the case filed on behalf of the respondent, refers to the fact that the defendant's claim under P/LH-4/2813 had been rejected on April 5, 1955, ex parte. That order proceeds to state, that on May 28, 1954, originally the claim which had been accepted and verified in two sums of Rs. 5,00,000/- each on April 28, 1952, was taken in suo motu revision by the Settlement Commissioner as per his order, dated August 30, 1954. That was taken in suo motu revision for determining whether the properties were for public trust or for private trust. The Assistant Settlement Commissioner appears to have come to the conclusion that they were for public trust and not for the personal properties of the defendant. On a representation made by the defendant, an order was passed on April 28, 1962, by the Settlement Commissioner for considering the question whether the trust is a public trust of religious or charitable nature. This reconsideration became necessary because of the defendants' request that the original order of April 5, 1955 was passed ex parte and without his knowledge. After receiving the representation on behalf of the defendant and referring to various records produced by the defendant, the Additional Settlement Commissioner held on December 20, 1962 that the trust was for public purpose of religious and charitable nature and that the defendant was not entitled to claim the compensation in respect of that item. These circumstances will clearly show that on November 13, 1956 when the agreement Exhibit 1 was entered into the defendant could not have been aware of the rejection of the claim under PLH/LH-4-2813 because that rejection on April 5, 1953 was ex parte. Further the enquiry that has been made by the Settlement Commissioner appears to have been on an suo motu basis and it is only when the matter was reopened and finally on December 20, 1962 the final order was passed that the defendant's claim could be considered to have been finally rejected in this regard. Therefore, it is clear that there could have been no question of any misrepresentation having been made on November 13, 1956. In fact, Exhibit 1 gives in great detail the particulars regarding the various claims as well as amounts that are due under those claims. In these circumstances, in our opinion, the High Court was not justified in allowing the plaintiff to raise this plea of misrepresentation as having been made by the defendant and holding that the contract has become unenforceable in law, which was nobody's case.

15. Then the question is what exactly are the rights of the plaintiff and the defendant, in respect of the purchase made on November 13, 1956 ? Mr. Desai rather vehemently urged that going by the various clauses in Exhibit 1, it is clear that irrespective of the amounts that may be advanced by the parties, both the plaintiff and the defendant are entitled to equal shares in the property that may be purchased in their joint names in the auction held by the Government. Counsel urged that just as the plaintiff would have become entitled to half the compensation amount that may have been received by the defendant if the latter's claims had been accepted in full and the plaintiff would stand to benefit considerably, it equally follows that the fact that in the end the plaintiff had contributed a large amount towards the purchase, does not tilt the balance in any manner in his favour.

16. Mr. Sen, equally strenuously pointed out, by laying particular emphasis on clauses 1 to 4 that the agreement makes it very clear that the defendant will be entitled only to a half-share in the property the purchase of which can be attributed solely and exclusively to the utilisation of the amount of compensation received by the defendant from the Government.

17. In our opinion, in view of two particular documents, to which we will refer immediately, it is not really necessary for us to consider very elaborately the various clauses of the agreement, Exhibit

1, because it is needless to state that the said agreement was entered into on the assumption that the compensation claims of the defendant referred to therein, will be fully met and on that basis both parties agreed to have equal rights, not only in the properties that may be purchased from and out of the compensation claims paid by the Government, but also in the actual compensation amounts that may be received by the defendant. Under those circumstances, emphasis had been laid in the agreement regarding the purchase being made from the amounts of the claims or a division being made in equal shares of the amount of compensation received. We have already referred to the fact that even the plaintiff attempted to establish an oral agreement to the effect that when the hope of huge compensation amount being received by the defendant was becoming remote and was not fructifying, the latter requested the plaintiff to go ahead with the purchase transaction by making further deposits towards the purchase price and agreeing to receive only a half-share in the property that may be purchased by his contribution of Rs. 17,000/- from the claim. Both the Trial Court, as well as the District Court, have not accepted this oral agreement, though the High Court has not expressed any view on this. No doubt, counsel for the appellant urged that when once this oral agreement, pleaded by the plaintiff, has not been accepted, the plaintiff's suit will have to be completely dismissed. We are not inclined to accept this contention. From the judgment of the Trial Court, it is seen that the plaintiff himself has taken up the position that a particular party will be owner of the property in proportion to the amount invested by him. If this contention had been accepted straight away as is should have been position will be as follows : The total price for the properties purchased on November 13, 1956 is Rs. 67,000/- and the extent is 4 squares. Towards this amount, the plaintiff has paid Rs. 49,031-6-0 and the defendant's compensation amount of Rs. 17,054.85 has gone by way of adjustment. Thus the plaintiff will be entitled to 3/4ths (3 squares) and the defendant to 1/4th (1 square). But, unfortunately, excepting noting the contention, the Trial Court has not pursued the same and given a finding on that basis. That the parties appear to have modified the terms of the agreement is clear from two documents, viz., an application, dated April 29, 1959 made by the plaintiff and a letter written by the plaintiff to the defendant on July 24, 1961. The application, dated April 29, 1959 was made by the plaintiff to the State competent officer for issuing a Patta. The subject of that petition related to the sale of composite property in Chak No. 9 BB, Tehsil Padampur Square Nos. 5, 6, 9 and 10. The plaintiff refers to the purchase made by himself and the defendant on November 13, 1956 of 4 squares in Chak No. 9 BB Tehsil Padampur for Rs. 67,540-8-0. He then refers to the advance paid by him of Rs. 6,750-14-0 and his having furnished 11 bonds for Rs. 42,280.50. He then refers to the fact that only a sum of Rs. 17,054.65 has been adjusted from the compensation claim of the defendant. He Finally says that he has paid a total sum of Rs. 49,031-6-0 and requests the officer to issue Pattas to himself and the defendant in proportion of their shares in the land. No doubt the actual proportion in the land has not been mentioned, but the application makes it clear that the proportion of the shares of the plaintiff and the defendant in the 4 squares purchased is to be in proportion of the amount contributed by each of them which will mean that Patta is to be granted for 3 squares in favour of the plaintiff and for 1 square in favour of the defendant. The plaintiff has not repudiated the proportionate share mentioned in this application.

18. That the plaintiff has abandoned his rights for sharing in respect of the compensation amounts that maybe still due to the defendant, is evidenced by the latter, dated July 24, 1961. That is a letter written by the plaintiff to the defendant. In that letter he refers to the agreement of November 13, 1956. No doubt the date of the agreement is given by mistake as April 14, 1957 but all parties are agreed before us that the agreement referred to herein is Exhibit 1, dated November 13, 1956, and the date April 14, 1957 is a mistake. The plaintiff further refers to the fact that two claims of the respondent have been adjusted and that the plaintiff has no concern with the remaining one claim

amount to Rs. 10,13,500. The plaintiff, further, categorically says that the defendant himself may enjoy the same. Therefore, in view of all these circumstances, it is not possible to accept the contention of the plaintiff that the defendant will be entitled only to half-a-square of land in the 4 squares purchased on November 13, 1956. On the other hand it must be held that the plaintiff will be entitled to 3/4ths shares, viz., 3 squares and the defendant will be entitled to 1/4th share viz., 1 square, in the total extent of 4 squares purchased on November 13, 1956. The plaintiff will be entitled to have a declaration and an injunction only limited to his 3/4ths share in the property purchased, viz., 3 squares. It therefore follows that the plaintiff will not be entitled to have the relief of declaration and injunction to the extent prayed for by him, but he can get the two reliefs only to the extent indicated above. Further, the direction given by the High Court for ascertainment of the amount of the defendant that has been utilised for the purchase of the property to enable the plaintiff to refund the same, is clearly erroneous. The parties are fighting this litigation to establish their respective rights in the property purchased on November 13, 1956 merely because the plaintiff counsel, during the course of arguments, expressed that his client is willing to refund to the defendant the amount of compensation that may have been utilised for the purchase of the property, that cannot be made the basis for a direction to the defendant to accept the same and that direction, in consequence, is also set aside.

19. In the result, the decree and judgment of the High Court are modified, and the appeal allowed, to the extent indicated above. Parties will bear their own costs in this appeal.

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