

Prakash Chandra

Vs

Angadlal and Others

Civil Appeal No. 133 of 1969

(Jaswant Singh, R. S. Pathak, A. P. Sen JJ)

24.01.1979

JUDGMENT

PATHAK, J. –

1. This appeal by special leave is directed against the judgment and decree of the High Court of Bombay in a
2. The appellant brought civil suit no. 217-A of 1938 in the court of the Civil Judge, Amravati alleging suit one Mohsinali and Qurban Hussain had entered into an agreement for sale in his favour on September 11, 1956 for the sale of a plot measuring 100 feet by 10 feet for a sum of Rs. 4000. It was asserted that he paid Rs. 1000 as earnest money and the balance was to be paid on registration of the sale deed. Of that balance, a further Rs. 2000 was paid later. Subsequently, it is pleaded, Mohsinali informed the appellant of the pendency of civil suit no. 13-A of 1956 between himself and certain others including Umarsha and Girjashankar, for declaration of title and for possession, upon which the appellant then executed a further document dated November 18, 1957 by which he agreed that in case the said civil suit no. 13-A of 1956 resulted in a settlement confirming Mohsinali's ownership and allowing him possession of the site he would pay Mohsinali's ownership and allowing him possession of the site he would pay Mohsinali the balance of Rs. 1000 as agreed earlier and would obtain a sale deed from him according to the earlier agreement for sale, but in case the settlement did not so result he would be entitled to a refund of Rs. 3000 paid by him. It appears that a compromise was entered into between Mohsinali and Qurban Hussain on the one side and Umarsha on the other in civil suit no. 13-A of 1956 under which it was agreed that if Umarsha paid Rs. 15,000 to the former within 15 days he would be entitled to the site and would continue in possession as before, but in default of such payment he would cases to have any right or interest in the site and the former would be entitled to a declaratory decree of ownership and for delivery of possession. Umarsha defaulted, and therefore in terms of the compromise the civil suit no. 13-A of 1956 was decreed in the second week of December, 1957 in favour of Mohsinali and Qurban Hussain for title and possession. Meanwhile, however, after the default by Umarsha but before the said decree could be passed, Mohsinali and Qurban Hussain executed a sale deed dated December 6, 1957 in favour of Angadlal and Vijay Kishore, the successors-in-interest of Girjashankar, and impleaded in this appeal as the first and second respondents, transferring the site to them for Rs. 15,000. Girjashankar had been in possession of the land under Umarsha, and was followed by these respondents. It was recited by Mohsinali and Qurban Hussain in the sale deed that on the basis of compromise in civil suit no. 13-A of 1956 their "ownership and possession had been established", and that now by virtue of the sale the ownership and possession belonged to the vendors. The appellant then filed the present suit for specific performance on refusal by Mohsinali and Qurban Hussain to execute a sale deed in his favour.

3. The suit was contested by Mohsinali, and he pleaded that by the document dated November 18, 1957 the appellant had waived his right under the agreement for sale dated September 11, 1956 and had opted for refund of Rs. 3000 paid by him. The suit was also resisted by the first and second respondents who rested their claim on the sale deed dated December 6, 1957 in their favour.

4. The trial Court refused the relief for specific performance but granted a decree for Rs. 1000 by way of damages and for the refund of Rs. 3000 paid towards the price of the site. A first appeal was allowed by the learned District Judge, who held that Mohsinali and Qurban Hussain had committed a breach of contract, and accordingly passed a decree for specific performance and required the appellant to pay the balance of Rs. 1000 of the price and Mohsinali and Qurban Hussain to execute a sale deed in his favour with the first and second respondents joining in the conveyance. The second appeal was allowed, the first appellate decree set aside and the trial Court decree restored. Permission to file a letters patent appeal was declined.

5. The High Court has observed that if civil suit No. 13-A of 1956 was regarded as decreed in favour of Mohsinali and Qurban Hussain for declaration of their title and for possession against Umarsha, they would succeed in obtaining possession from Girjashankar because he claimed to be in possession through Umarsha. But, the High Court further says, the appellant by executing the document dated November 18, 1957 had permitted Mohsinali and Qurban Hussain to settle the dispute in civil suit no. 13-A of 1956 by conveying ownership in the land to the first and second respondents, who had succeeded to the interest of Girjashankar. It was a mode of settling the dispute and that, it is said, fell within the terms of the document executed by the appellant. That constitutes the main basis of the decision rendered by the High Court.

6. We are unable to endorse the view taken by the High Court. By the original agreement for sale dated September 11, 1956, the appellant became entitled to a sale of the land on payment of Rs. 4000. Thereafter, he executed the document dated November 18, 1957 which provides :

Civil Suit No. 13-A of 1956 which is filed by you in the Court of the Second Additional Judge, Amravati, is being amicably settled. If according to that settlement your ownership over the suit plot is confirmed and you get possession of the site of 1000 square feet, I shall pay you the balance of Rs. 1000 as agreed and shall get a sale deed executed from you according to the agreement of sale and you will execute it. But if according to the settlement your ownership over the aforesaid plot is not confirmed and you are not able to get possession of the site then you may refund my earnest amount of Rs. 3000. I have given this letter so that you should settle the suit amicably. Dated November 18, 1957.

7. The suit was settled in terms of the decree passed in it. Under that decree Mohsinali and Qurban Hussain were held entitled to ownership and delivery of possession. The decree did not stipulate that the dispute in the suit should be settled by a sale of the land in favour of the first and second respondents. The sale deed dated December 6, 1957, executed in their favour was not contemplated at all by the decree. On the decree being passed, the terms of the document dated November 18, 1957 took effect in favour of the appellant at once, and he became entitled to the transfer of the site in his favour. The sale in favour of the first and second respondents was made even before the decree was passed, and was completely opposed to the obligations of the vendors incurred under the document dated November 18, 1957 read with the agreement for sale dated September 11, 1956. In our opinion, the High Court has erred in holding that the sale deed dated December 6, 1957 amounted to an amicable settlement of the suit, and that it was the settlement contemplated by the

appellant when executing the document date November 18, 1957. The finding of the learned District Judge that the sale effected under the deed dated December 6, 1957 amounts to a breach of contract by the vendors is plainly right.

8. The next question is whether the relief of specific performance being a discretionary relief granted in equity should be refused to the appellant.

9. The ordinary rule is that specific performance should be granted. It ought to be denied only when equitable considerations point to its refusal and the circumstances show that damages would constitute an adequate relief. In the present case, the conduct of the appellant has not been such as to disentitle him to the relief of specific performance. He has acted fairly throughout, and there is nothing to show that by any act of omission or commission he encouraged Mohsinali and Qurban Hussain to enter into the sale with the first and second respondents. There is no evidence that the appellant secured an unfair advantage over Mohsinali and Qurban Hussain when he entered into the agreement. Nor is there anything to prove that the performance of the contract would involve the respondents in some hardship which they did not foresee. In our opinion, there is no reason why the appellant should not be granted the relief of specific performance. An application has been filed before us by the first and second respondent alleging that the said respondents had raised certain constructions on the site during the pendency of the litigation and, therefore, specific relief should not be granted to the appellant. It is denied by the appellant that any permanent constructions have been erected on the land in dispute. It is said that a temporary wooden structure only has been put up on a portion of the land. The respondents have attempted to show by reference to a map and photographs that permanent constructions have been made on the site. Having regard to the materials before us, we are unable to hold that any permanent constructions have been raised on the said land. If the first and second respondents have in fact raised any constructions on the site, it will be open to them to remove the building material when possession is delivered to the appellant.

10. It is urged by learned counsel for the first and second respondents that the contract for sale contains a clause for payment of damages in case of breach of the contract and that, therefore, damages should be awarded instead of specific performance. A perusal of the terms of the contract indicates that the stipulation for damages was made only for the purpose of securing performance of the contract and not for the purpose of giving an option to Mohsinali and Qurban Hussain of paying money in lieu of specific performance. Even if a sum has been named in the contract for sale as the amount to be paid in case of a breach the appellant is entitled in law to the enforcement of the agreement.

11. It is then urged on behalf of the respondents that the land is not sufficiently defined in the plaint and cannot be identified, and, therefore, no relief can be granted to the appellant. That objection was not raised in the pleadings, and we see no reason why it should be allowed to be raised at this stage. On the contrary, it appears that the parties were never in doubt as to the identify of the land over which they were in dispute.

12. An attempt was made to contend that the present appeal is barred by limitation, but it has not been proved that that is so.

13. It may be pointed out that during the pendency of the second appeal in the High Court Mohsinali died. His legal representatives have been brought on the record and set forth collectively as respondents 3.

14. The appeal is allowed, and the judgment and decree of the High Court are set aside. The appellant is required to deposit Rs. 1000, which is the balance of the purchase price, in the trial Court for payment to respondents 3 within one month of the receipt of the record from this Court. Such deposit being made within the said period the respondents 3 will execute a sale deed in favour of the appellant in accordance with the terms of the contract dated September 11, 1956, and respondents 1 and 2 will join the conveyance. On execution of the sale deed, the appellant will be entitled to delivery of possession of land from the first and second respondents. In the event of respondents 3 failing to execute the sale deed or the first and second respondents failing to join the conveyance, the appellant shall be entitled to obtain the sale deed through the trial Court. In the circumstances of the case, there is no order as to costs of this appeal.

</html