

SUPREME COURT OF INDIA

D. L. F. United Private Ltd.

Vs.

Prem Raj

C.A.No.214 of 1974

(V. R. Krishna Iyer, R. S. Pathak and O. Chinnappa Reddy, JJ.)

12.08.1980

JUDGEMENT

CHINNAPPA REDDY, J.:-

1. The respondent, Pt. Prem Raj who is the plaintiff in Suit No. 340 of 1968 in Delhi High Court, undaunted by four previous unsuccessful attempts to amend his plaint filed yet another application for amendment of the plaint and was finally successful. The first defendant has appealed to this Court under Art. 136 of the Constitution. It is unnecessary to state the facts of the case in any detail, as the necessary facts may be gleaned from a decision of this Court in Prem Raj v. D. L. F. Housing and Construction Pvt. Ltd., (1968) 3 SCR 648 : (AIR 1968 SC 1355), on an earlier occasion when the parties travelled up to this Court in connection with a preliminary objection raised by the first defendant to the original frame of the suit in which the plaintiff asked for two inconsistent reliefs namely a declaration that a certain contract dated June 11, 1958 was void and inoperative against him having been obtained by undue influence, and in the alternative a decree for specific performance of certain terms in the same contract. This Court held that the plaintiff could not, in the alternative, seek specific performance of a contract which he wanted to be declared void. Taking up the story from where the parties were left after the decision of this Court in (1968) 3 SCR 648, it is only necessary to mention that thereafter the plaintiff made four unsuccessful attempts and finally

the present successful attempt to amend his plaint so as to enable him to obtain the relief of allotment of 22 plots of land at the rate of Rupees nine per square yard. The contract, the specific performance of which the plaintiff had initially sought was for the conveyance of these twenty two plots. The earlier four applications were rejected on the ground that the plaintiff could not, by a mere trick of pleading, be permitted to seek the relief which this Court had already held he was not entitled to seek as he was seeking a declaration that the contract was void. In the fifth application for amendment the plaintiff, very cleverly, thanks to the ingenuity of the Counsel, adopted the stand that he was disaffirming the contract dated June 11, 1958 and was now seeking to have restored to him those advantages which had been gained by the first defendant under the contract which flowed. He was not seeking specific performance of the contract but on the other hand he was standing by his claim that the contract was void but seeking to have restored to him such benefits as he was entitled to as a result of the contract being void. The High Court noticed that the plaintiff was, in effect, seeking, by the amendment, what he had earlier sought in his previous attempts. The High Court observed : "By the proposed amendment, therefore, the plaintiff in effect has claimed the relief which would be analogous to the relief for the specific performance of the contract or to put it differently, if the relief sought by the plaintiff in the proposed amended plaint were to be allowed to the plaintiff, the effect would be as though the plaintiff had been granted a decree for specific performance of the agreement". Despite noticing so much the High Court allowed the amendment on the ground that the relief sought by the amendment could be claimed as a consequence of the contract being void. We have been taken through the several agreements between the parties, the original plaint, the earlier amendments sought and the amendment now sought. We are unable to agree with the High Court that the amended relief would flow from the contract being declared void. In the proposed new paras 10A, 10B, 10C and 10D the plaintiff has not explained how the allotment of twenty two plots of land to him would be a consequence of the contract being void. While no exception can be taken to the proposition that mutual advantages gained have to be restituted on a contract being or becoming void, we are unable to see how that proposition can be woven into the texture of the facts and allegations in the present case. We are afraid that the present attempt is no more than what all the previous attempts were - juggling with words towards the same end and must meet the same end. The appeal is, therefore, allowed and application for amendment of plaint is dismissed with costs throughout. Civil Miscellaneous Petition No. 9038 of 1980 is allowed.

Order accordingly.