

Kanshi Ram

Vs

Om Prakash Jawal and Others

Civil Appeal No. 7499 of 1996

(K. Ramaswamy, G.B. Pattanaik JJ)

15.04.1996

JUDGMENT

1. Leave granted.

2. This appeal by special leave arises from the judgment and order dated April 18, 1995 of the Delhi High Court made in RFA No. 217/72. The admitted position is that an agreement of sale dated April 7, 1969 was executed to convey the property on the plot of land admeasuring 100 square yards situated in Dayanand Colony, Rajpat Nagar, New Delhi for Rs.15,000/- and Rs.2,500/- was paid as earnest money. The respondent filed the suit on July 13, 1970 for the specific performance of the agreement and also claimed, alternatively damages for a sum of Rs.12,000/- with interest payable thereon. The Courts below have granted the decree for specific performance. Thus this appeal by special leave.

3. The learned counsel for the appellant has fairly contended that specific performance of the contract is within the discretion of the Court and is not a matter of course. The Courts is granting the decree for specific performance should exercise the discretion on sound principles of law. In the event of working out the equities, the Court would in an appropriate case, grant alternative relief, instead of granting the decree for specific performance. In support thereof, he sought to place reliance on the judgment of this Court in S. Rangaraju Naidu v. S. Thiruvarakkarasu, AIR 1995 SC 1769. He contended that the appellant is prepared to pay a sum of Rs.10 lakhs as alternative relief; though the respondent claimed Rs.12,000/- instead of granting specific performance at this distance of time which would be unjust, inequitable and unfair.

4. It is contended by learned counsel for the respondent that the respondents had secured balance money and he was always ready and willing to perform his part of the contract which finding was affirmed by both the Courts below; the appellant had avoided execution of the sale deed; therefore the Courts below have rightly granted the decree; and there is no justification for interference with the decree granted by the Courts below.

5. Having regards to the facts of this case and the arguments addressed by the learned counsel, the question that arises for consideration is : whether it would just, fair and equitable to grant the decree for specific performance ? It is true that the rise in prices of the property during the pendency of the suit may not be the sold consideration for refusing to decree the suit for specific performance. But it is equally settled law that granting decree for specific performance of a contract of immovable property is not automatic. It is one of discretion to be exercised on sound principles. When the Court

gets into equity jurisdiction, it would be guided by justice, equity good conscience and fairness to both the parties. Considered from this perspective, in view of the fact that the respondent himself had claimed alternative relief for damages, we think that the Courts would have been well justified in granting alternative decree for damages, instead of ordering specific performance which would be unrealistic and unfair. Under these circumstances, we hold that the decree for specific performance is inequitable and unjust to the appellant.

6. The appeal is accordingly allowed. The appellant shall not again sell the property for five years. The respondents will be paid a sum of Rs.10 lakhs within a period of three months from today. In case the respondents avoid receipt of the amount within the stipulated time, it would be open to the appellant to deposit the same to the credit of the plaintiff in the trial Court. In case of default, the decree would stand confirmed. No costs. Appeal allowed.