

Sukhbir Singh and Others

Vs

Brij Pal Singh and Others

Spl. Leave Petn. (C) No. 11140 of 1996

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

10.05.1996

ORDER

1. This special leave petition arises from the order of the Allahabad High Court dated April 1, 1996 passed in S.A. No. 680 of 1995.

2. The first petitioner is a purchaser from the respondent of the land under registered sale deed dated March 10, 1975 with a contemporaneous agreement of reconveyance to the respondent within a period of two years from the said date. The first respondent laid suit for specific performance pleading that despite his readiness and willingness the petitioner had avoided to sell back the property. He pleaded that despite his making several requests to execute the sale deed on receiving sale consideration, the petitioner went on assuring to do the same but failed to execute the sale deed. Ultimately, when the petitioners had agreed to have the sale deed executed and get it registered in the office of the Sub-Registrar at Muzaffarnagar on March 9, 1977, the respondent kept waiting on that date for the petitioners to come and execute the sale deed but the petitioners did not turn up. On an application moved by the respondents of their presence, the Sub-Registrar had entered their attendance in his office register on March 9, 1977. Though the respondents tried to reach out the petitioners on March 10, 1977 the petitioners intentionally avoided to execute the sale deed in their favour. Consequently their efforts to have the property reconveyed failed. So, they laid the suit for specific performance of the agreement. The petitioners pleaded that though they had executed agreement of reconveyance, the same was cancelled by another agreement dated June 4, 1975, Ex. A-1. They also pleaded that they were always ready and willing to perform their part of the agreement. The respondents did not have the sufficient means to pay the sale consideration of Rs.47,600/-. The respondents filed the suit only to blackmail the petitioners. After framing appropriate issues, adduction of evidence and on consideration thereof, the trial Court dismissed the suit holding that the respondents had failed to prove that they were willing to perform their part of the contract nor have they enough funds to repurchase the lands in dispute. But on appeal, the Additional District Judge in C.A. No. 72/1992 allowed and decreed the suit on May 22, 1995 and decreed the suit and the second appeal came to be dismissed by the High Court by the impugned order.

3. Shri Manoj Swarup, learned counsel for the petitioners contended that the suit is not in a conformity with Forms 47 and 48 of Appendix AA of the Code of Civil Procedure [Code] as amended by the High Court of Allahabad. The respondents have not pleaded, as enjoined in Section 16(1)(C) of the Specific Relief Act, 1963 (for short, the "Act") that the respondents had ready money for getting the sale deed executed. The decrees of the appellant Court as well as of the High

Court are, therefore, bad in law. We find no force in the contentions.

4. In paragraph 5, 9, and 10 of the plaint the respondents have in substance pleaded that they had been and were still willing to perform their part of the agreement and the defendants did have notice in that behalf. It is seen that averments made in the above paragraphs are in substance as per Forms 47 and 48 prescribed in Appendix AA of the Code as amended by the High Court. What requires to be considered is whether the essential facts constituting the ingredients in Section 16(1)(c) of the Act were pleaded and that found mentioned in the said Forms do in substance point to those facts. The procedure is the hand-maid to the substantive rights of the parties. It would, therefore, be clear from a perusal of the pleadings and the forms that the averments are consistent with the Forms. When the respondents had pleaded and proved by the Sub-Registrar's endorsement as per paper No. 41/C that the respondents were present in the office of the Sub-Registrar for having the sale deed executed and registered by the petitioners, it would be explicit that the respondents were ready and willing to perform their part of the agreement. The facts that the petitioners did not attend the office would prove positively that the petitioners had avoided execution of the sale deed.

5. Law is not in doubt and it is not a condition that the respondents should have ready cash with them. The fact that they attended the Sub-Registrar's office to have the sale deed executed and waited for the petitioners to attend the office of the Sub-Registrar is a positive fact to prove that they had necessary funds to pass on consideration and had with them the needed money with them for payment at the time of registration. It is sufficient for the respondents to establish that they had the capacity to pay the sale consideration. It is not necessary that they should always carry the money with them from the date of the suit till date of the decree. It would, therefore, be clear that the courts below have appropriately exercised their discretion for granting the relief of specific performance to the respondents on sound principles of law.

6. The special leave petition is accordingly dismissed. Petition dismissed.