

Pandurang Ganpat Tanawade

Vs

Ganpat Bhairu Kadam and Others

Civil Appeal No. 9874 of 1996

(G. T. Nanavati, S.C. Agrawal JJ)

30.07.1996

JUDGMENT

S.C. AGRAWAL, J. –

1. Special leave granted.

2. This appeal arises out of a suit filed by the appellant for specific performance under an agreement for sale of land by Smt Janabai to the appellant.

3. Respondents 1, 3 and 4 are the sons of Smt Janabai while Respondent 2 is her daughter-in-law. On 20-2-1975 Smt Janabai entered into an agreement for the sale of suit lands to the appellant under which the appellant agreed to purchase the lands for Rs 7000. A sum of Rs 2000 was paid by the appellant to Smt Janabai as earnest money. As per the agreement the balance amount was to be paid at the time of the execution of the sale deed. The case of the appellant is that on 5-5-1976 he gave notice to Smt Janabai to execute the sale deed. The appellant paid a further sum of Rs 1000 to Smt Janabai on 30-7-1976 and on 20-8-1977 a further amount of Rs 800 was paid to Maruti, the son of Smt Janabai and husband of Respondent 2. Thus the appellant paid a sum of Rs 3800 towards consideration for the sale of the land under the agreement. The case of the appellant is further that on 13-3-1978 after the death of Smt Janabai, he sent a registered notice to the respondents calling upon them to execute the sale deed in favour of the appellant and since they failed to comply with the said notice, he filed a suit for specific performance of the contract in 1978. In the said suit of the appellant the Civil Judge, Junior Division, Karmala, by his judgment dated 10-12-1982, declined to grant the relief of specific performance on the view that the transaction was only a moneylending transaction and was not an agreement for sale of the land. The trial court, however, granted a money decree of Rs 3800 in favour of the appellant. On appeal the Vth Extra Assistant Judge, Solapur, by judgment dated 24-4-1984, reversing the finding of the trial court, held that transaction between the parties was an agreement to sell. The appellate court, however, held that the appellant had not made necessary averments in the plaint as required in Form 47 of the Code of Civil Procedure as well as Section 16(c) of the Specific Relief Act, 1963 and consequently the appellant was not entitled to a decree for specific performance. The appellate court, therefore, maintained the decree of the trial court denying the relief of specific performance and affirmed the decree for Rs 3800 passed in favour of the appellant. The High Court in second appeal, has agreed with the view of the appellate court that there is non-compliance with the provisions of Section 16(c) of the Specific Relief Act inasmuch as the appellant has not made a specific averment in the plaint that he was ready and willing to perform his part of the contract.

4. Shri U.U. Lalit, the learned counsel for the appellant, has assailed the judgments of the appellate

court and the High Court and has invited our attention to paras 6 and 10 of the plaint which read as under :

"6. When the plaintiff asked the deceased Janabai to execute a sale deed, by a registered notice on the date 5-5-1976, the deceased Janabai neither gave a reply to the notice nor even executed a sale deed. Thereafter, the plaintiff sent a registered notice to Defendants 1 to 4 on the date 13-3-1978 asking them to execute a sale deed but they did not execute a sale deed. On the contrary they sent a reply of false contempts. Therefore, the plaintiff has filed this suit against the defendants to get executed a sale deed in pursuance of the deed of agreement for sale. Defendants 1 to 4 have committed breach of conditions mentioned in the deed of agreement for sale.

10. As per the conditions in the deed of agreement for sale, the plaintiff is willing to pay fees which is required for a sale deed, cost of registration and a balance amount of Rs 3200 (Rupees three thousand two hundred only)."

5. In para 6 the appellant has stated that he sent a notice dated 5-6-1976 to Smt Janabai asking her to execute the sale deed and that she neither gave a reply to the said notice nor executed the sale deed. In the said para the appellant has also stated that he sent a registered notice to the respondents on 13-3-1978 asking them to execute the sale deed but they did not execute the sale deed. In para 10 the appellant has stated that as per conditions in the deed of agreement for sale the appellant is willing to pay fees which is required for a sale deed, cost of registration and a balance of amount of Rs 3200. This shows that in para 6 of the plaint the appellant has averred that after the execution of the agreement for sale, he sent a registered notice dated 5-5-1976 to Smt Janabai to execute the sale deed and again sent a notice dated 13-3-1978 to the respondents asking them to execute the sale deed, meaning thereby that the appellant had been making efforts to have the sale deed executed by issuing notices dated 5-5-1976 and 13-3-1978. Moreover, in para 10 a specific averment has been made by the appellant that as per conditions in the deed of agreement for sale, he is willing to pay fees which is required for the sale deed, cost of registration and the balance amount of Rs 3200. The said averments clearly contain a statement about the readiness and willingness on the part of the appellant to perform his part of the contract under the agreement for sale.

6. Apart from the said averments in the plaint, we find that the appellant, in his deposition before the Court, has stated :

"I issued notice to heirs of Janabai to execute the sale deed. I was ready to pay remaining amount and act as per agreement. The defendants did not execute the sale deed as per notice. They replied to my notice (Exh. 50). As defendants are not willing to execute the sale deed I have filed this suit. I am ready to pay remaining amount immediately. I am ready to pay costs as per agreement."

7. Respondent 1, also in his deposition before the Court, has stated :

"It is true the plaintiff was ready for sale deed, but I was not ready."

8. In view of the aforesaid statements of the appellant and Respondent 1 as well as the averments contained in paras 6 and 10 of the plaint, it must be held that the appellant has not only averred, but has also proved that he was ready and willing to perform his part of the contract under the agreement for sale. The appellate court and the High Court were, therefore, in error in holding that

the appellant had failed to comply with the requirements of Section 16(c) of the Specific Relief Act and the appellant must be held entitled to a decree for specific performance of the contract in the suit filed by him. We find that the possession of the land was delivered to the appellant in 1976 at the time of execution of the agreement for sale and he is in possession of the same and has been enjoying the same since then. Having regard to the depreciation in the value of the rupee during this period, we feel that the appellant should be required to pay a sum of Rs 16,000 in lieu of the balance amount of Rs 3200 payable by him.

9. For the reasons aforementioned, the suit for specific performance filed by the appellant is decreed subject to the appellant depositing in the trial court a sum of Rs 16,000 along with the stamp duty and registration charges for the execution of the sale deed within a period of one month from the date of this judgment. The respondents shall execute the sale deed in respect of the suit lands in favour of the appellant within one month of the deposit of the said amounts. In the event of the failure on the part of the appellant to deposit the said amounts within the period of one month, the judgment under appeal shall remain undisturbed. The appeal is disposed to accordingly. No order as to costs.