

Tejram

Vs

Patirambhau

Civil Appeal No. 2834 of 1986

(K. Ramaswamy, D. P. Wadhwa JJ)

03.04.1997

ORDER

1. This appeal by special leave arises from the judgment of the Division Branch of the Bombay High Court, made on 30-7-1985 in First Appeal No. 46 of 1979,
2. The admitted facts are that the appellant had 22.38 acres of land in Village Gondia. A document purporting to be an agreement of sale was executed on 20-4-1972 for the sale of 11.76 acres out of the said land for a consideration of Rs. 50,000. The recital therein and an endorsement on the foot of it is to the effect that a sum of Rs. 48,000 was received as consideration for sale of the said lands and balance of Rs. 2000 was required to be paid within one year and a sale deed was required to be executed thereon. Since the sale deed was not executed within one month prior to the date of the expiry of 3 years' period from the date of agreement on 13-3-1975, the respondent got issued the suit notice calling upon the appellant to execute the sale deed. On failure thereof, he filed the suit on the last day of the limitation. The trial court dismissed the suit. But on appeal, the High Court, while rejecting the relief of specific performance, directed payment of a sum of Rs. 62,280 inclusive of the principal sum of Rs. 48,000, interest accrued thereon and cost plus 6% future interest on the principal amount of Rs. 48,000. Thus, this appeal by special leave.
3. The contention raised by Shri Deshpande, learned counsel for the appellant, is that the High Court and the trial court concurrently disbelieved the agreement purporting to be for alienation of the land but was, in fact, in truth and in reality a money transaction. Having come to that conclusion, the High Court would have agreed that the amount payable was towards interest on the unpaid loan taken by the appellant from the respondent. On the admitted finding that the respondent was a moneylender, it would be : unlikely that he had paid Rs. 48,000 as cash consideration for that agreement; and would not have kept quiet without asking for the delivery of the possession and then without paying Rs. 2000 for 3 years and filing the suit on the last date. Under these circumstances, the necessary conclusion would be that the purported endorsement was not, in fact, receipt of the amount but dues owed to him. Shri Uday Umesh Lalit, learned counsel for the respondent, on the other hand, contends that in view of the fact that the respondent executed an endorsement as consideration of Rs. 48,000 for sale transaction and the capacity to pay the amount having not been put in issue, the conclusion reached by the High Court that the amount of Rs. 48,000 was paid as a fact is a finding of fact. Therefore, it needs no interference.
4. Having regard to the respective contentions, the question that arises for consideration is whether the respondent has paid Rs. 48,000 as cash consideration towards sale transaction. It is seen that the document purporting to be an agreement of sale was not, in fact, in truth and in reality, an agreement of sale. Witness 2, the scribe of the agreement admitted in the examination-in-chief that

he had executed several similar documents. All those documents, i.e., 8 out of 10, relate to specific performance; all of them are of those who took loan from the respondents. It is an admitted position that the respondent is a moneylender. Under these circumstances, the document purporting to be an agreement for sale is in fact not an agreement for sale; it is towards the unpaid interest on the loan taken by the respondent. It is seen that the High Court also accepted that the appellant had taken a loan in 1965 for a sum of Rs. 1500 and repaid Rs. 3500. Shri Deshpande says that the sum of Rs. 15,000 is not factually correct; it is actually only Rs. 1500. If it is a true sale transaction and the respondent being a businessman and having purported to have paid Rs. 48,000, one would expect that he would seek possession or he would pay the balance consideration and request for execution of the sale deed. Instead, he kept quiet for full 3 years. Be that as it may, it would appear that there was money transaction between the appellant and the respondent and the respondent, being a moneylender, was taking documents, purporting to be an agreement of sale, from the loanees. In the event of the loanees' failure to pay the loan amount along with interest stipulated by him, the documents would, obviously, be executed, with a view to enforce the repayment of loan and interest accrued thereon. It is unlikely that being a moneylender and having parted with Rs. 48,000 as cash, he would have kept quiet either for seeking possession of the property or payment of Rs. 2000 immediately and then sought specific performance; it would be unlikely in the normal circumstances that he would have waited for 3 years for issuing notice and then filing suit on the last date. Under these circumstances, the court below rightly came to the conclusion that it is not an agreement for sale or purports to be a sale in truth and in reality, but in view of the admission made by the respondent by way of endorsement that he had received Rs. 48,000 and in the absence of any specific circumstances and in view of the doubtful conduct of both the parties, it is not possible for us to reach any satisfactory conclusion on the basis of evidence as to what was the amount actually due and paid by the appellant to the respondent and what amount is still payable. Under these circumstances, we are of the considered view that the ends of justice would be met if the conclusion reached by the High Court that a sum of Rs. 48,000 was paid by the respondent to the appellant, is confirmed. However, the respondent is not entitled to payment of any interest or cost, as ordered by the High Court. Under these circumstances, the order of the Division Bench of the High Court for payment of Rs. 65,280 is set aside. Instead, there will be a decree for a sum of Rs. 48,000 in lump sum without any interest.

5. The appeal is, accordingly, allowed with the above modification. No costs.