

SUPREME COURT OF INDIA

Boramma

Vs.

Krishna Gowda

(S.M. Quadri and S. V. Patil JJ.)

19.04.2000

ORDER

1. This appeal from the judgment of the High Court of Karnataka decreeing the suit filed by the Respondents for specific performance of contract for sale of the suit land executed by the Appellant-Defendant in favour of the Respondents- Plaintiffs on December 10, 1970 (Exhibit P-1)

2. It appears that the agricultural land measuring 2 acres 20 guntas of Survey No. 56/7 situated at Kuruvanka village, Channarayapatna Taluk, Hasan District (referred to in this judgment as the suit property') belonged to Respondents No. 1 and 2, who were minor and under the guardianship of Respondent No. 3. On 30th November, 1970, Respondent No. 3, as guardian of Respondents 1 and 2, sold that suit property in favour of the Appellant and, in turn, the Appellant executed an agreement for sale (reconveyance deed) in favour of Respondents 1 and 2 alleging that they have been ready and willing to perform their part of the contract but the Appellant was not willing to reconvey the property in their favour, the Respondents filed the suit, O.S. No. 32 of 1973, in the court of Munsiff, Channarayapatna in 1973. The Appellant contested the suit inter alia, on the grounds : (1) that the agreement (Exh. P-1) was not executed by him and (2) that the Plaintiffs have not been ready and willing to perform their part of the contract and there is no averment to that effect in the plaint. The parties went on trial on issues framed by the trial court, of which the material issues for purposes of this appeal are as follows:

(i) Whether, the plaintiffs prove that the 1st Defendant has executed an agreement dated 10.12.1970 agreeing to recover the suit property in favour of the Plaintiffs and the 2nd Defendant.

(ii) Whether the Plaintiffs prove that they were ready and willing to perform their part of the contract as per the agreement dated 10.12.1970.

(iii) Whether the Plaintiffs prove that they are entitled for specific performance of the agreement dated 10.12.1970.

3. After the parties led their evidence, the trial court held issues (i) and (ii) in favour of the Appellants but it held issue No. (iii) against them and dismissed the suit on March 29, 1975. The Appellants went on appeal before the District Judge Hassan in Regular Appeal No. 27 of 1978. The learned District Judge confirmed the findings of the trial court on the said three issues. Indeed, the learned District Judge added that the averments in the plaint do not conform to Section 16(c) of the Specific Relief Act and thus dismissed the appeal. In the second appeal filed by the Respondents

before the High Court the following substantial question of law was framed:-

Whether on the facts and circumstances of the case, the courts below were justified in denying the relief of specific performance inspite of the averments in the plaint that the Plaintiff has been ready and willing to perform his part of the contract.

4. Having noticed the findings recorded by the trial court as well as the first appellate court, the suit notice and having extracted the relevant paragraph in the plaint, the High Court concluded that the Respondents complied with the requirement of Section 16(c) of the Specific Relief Act and allowed the second appeal, setting aside the judgment of the learned District Judge confirming the judgment of the trial court and decreed the suit of the Respondents on October 29, 1990. It is that judgment that is appealed against in this appeal by special leave.

5. Ms. Meera Agarwal, learned Counsel for the Appellant, has strenuously contended that the consideration of the case by the High Court has been perfunctory, the trial court as well as the appellate court found on consideration of the evidence of PW-2 that the Respondents have not been ready and willing to perform their part of the contract. It is further submitted that the findings recorded by the trial court on Issues 1 and 2 and confirmed by the first appellate court, pertained to the period before the filing of the suit but thereafter, they were not ready and willing to perform, as is evident from the statement of PW-2 as such the High Court ought not to have interfered in the second appeal.

6. Shri Sanjay R. Hegde, learned Counsel appearing for the Respondents, invited our attention to the findings recorded by the trial court as well as the first appellate court on Issue No. (ii) and submitted that once it was found that the Respondents had been ready and willing to perform their part of the contract, the only question which the High Court was called upon to consider was whether the averments in the plaint conformed to the requirements of Section 16(c) of the Specific Relief Act and in the light of that submission that the High Court had recorded its findings and reversed the judgment of the trial court.

7. The short question that arises for consideration is whether interference by the High Court in second appeal was unwarranted.

8. From a perusal of the question framed by the High Court in second appeal, quoted above, it is plain that the only point before the High Court was whether the trial court and the first appellate court were right in deciding Issue No. (v), namely, whether the Plaintiffs have proved that they are entitled for specific performance of the agreement dated 10.12.1970. On Issue No. (ii), the trial court as well as the first appellate court held that the Respondents were ready and willing to perform their part of the contract. In view of this finding, the contention that they were ready on the date of filing of the suit but not thereafter, without any material to dislodge that finding, cannot be accepted.

9. As the contention of the Appellant in the second appeal was that the averments in the plaint do not satisfy the requirements of Section 16(c), of the Specific Relief Act, the High Court had to consider that aspect only. Clause (c) of Section 16 provides that specific performance of a contract cannot be enforced in favour of a person who fails to aver and prove that he has performed or has always been ready and willing to perform the essential terms of the contract which are to be performed by him other than the terms of the performance of which has been prevented or waived by the Defendant. A perusal of the extract of the plaint found in the judgment of the High Court

clearly indicates readiness and willingness of the Respondents to perform their part of the contract. No exception can be taken to the findings recorded by the High Court that there has been compliance of Section 16(c) of the Specific Relief Act.

10. Ms. Agarwal has read to us the statement of PW-2. In the cross-examination, PW-2 stated that he had not offered at any time to Boramma the amount and that he had not deposited any amount in court. Explanation to Clause (c) of Section 16 makes it clear that where a contract involves the payment of money, it is not essential for the Plaintiff to actually tender to the Defendant or to deposit in court any money, except when so directed by the court. So the said portion of the statement of PW-2 is inconsequential and does not in any way show that the Plaintiffs have not been ready and willing to perform their part of the contract. There is yet another sentence to which great importance is attached by the learned Counsel to contend that the Respondents have not been ready after the filing of the suit and it reads. "I am unable to deposit the amount". In our view it will not be a sound rule of appreciation of evidence to pick up an answer from the cross-examination of a witness and draw inference taking it in isolation. The Court must see as to how consistent the testimony of the witness is and as to how that answer fits in with the rest of the evidence and probabilities of the case. From the sentence stated in the cross-examination where the question is also not recorded, we are unable to infer inability of the Respondents in performing their part of the contract after filing of the suit nor can we say that the findings recorded by the trial court, first appellate court and the High Court that the Plaintiffs have been ready and willing to perform their part of the contract have been erroneously arrived at.

11. In the result, we find no illegality in the judgment under appeal. The Civil Appeal is, therefore dismissed but in the circumstances of the case, without costs.