

Motilal Jain

Vs

Ramdasi Devi

Civil Appeal No. 4315 of 1991

(Mr. S.S. Mohammed Quadri and Mr. Shivaraj V. Patil, JJ.)

20.07.2000

JUDGMENT

Syed Shah Mohammed Quadri, J.:— This appeal, by special leave, is directed against the judgment of the Gauhati High Court (Assam) in First Appeal No.43 of 1981 passed on October 22, 1990. The plaintiff in the suit, out of which this appeal arises, is the appellant and the respondents are legal representatives of the defendant - Ambika Prasad Ram. Hereinafter the parties will be referred to as 'the plaintiff' and 'the defendant'.

The plaintiff entered into a contract with the defendant to purchase the suit property for a consideration of Rs. 25,000/- out of which a sum of Rs. 17,000/- was paid at the time of the execution of the contract on February 20, 1977 (Ext.2); the balance of the consideration, Rs. 8000/-, was stipulated to be paid within five months from the date of Ext.2, at the time of execution of registered sale deed in favour of the plaintiff. Alleging that the defendant was evading to receive the balance amount of Rs. 8000/- and execute the sale deed, the plaintiff sent notices through his advocate on March 15, 1978 (Ext. 5), and again on April 4, 1978 (Ext.3) and finally on November 26, 1978 (Ext.4). The plaintiff then filed the suit, T.S. No. 36 of 1979, against the defendant in the court of the Assistant District Judge of Goalpara at Dhubri, praying for a decree of specific performance of contract for sale of the suit property (Ext.1) and claimed in the alternative damages in the sum of Rs. 38,000/- on August 10, 1979. The defendant denied the execution of Ext.2, receipt of Rs. 17,000/- as part consideration thereunder, his signature on it and submitted that, therefore, the question of avoiding to execute the sale deed would not arise. He pleaded that the appellant was entitled to neither the specific performance of contract nor the damages, the alternative claim. On considering the evidence produced by the parties, the trial court found that the defendant executed Ext.2 and decreed the suit for specific performance of Ext. 2 on July 25, 1981. The defendant filed First Appeal No. 43 of 1981 against the judgment of the trial court in the Gauhati High Court (Assam). During the pendency of the appeal the said defendant died and the respondents were rought on record as his legal representatives. The High Court confirmed the finding of the trial court that the defendant executed Ext. 2 but noted: (i) that the suit was filed after two years of the accrual of the cause of action on July 21, 1977 and after about one year of last notice issued on November 26, 1978 (Ext.4); (ii) from the averment in the plaint the readiness and willingness could not be inferred; and (iii) even assuming that the averment made out the readiness and willingness, there was no evidence to prove the readiness and willingness of the plaintiff. In that view of the matter, by the impugned judgment, the High Court set aside the judgment of the trial court with regard to relief of specific performance of the contract (Ext.2) but granted a decree for compensation in a sum of Rs. 22,094/- (Rs. 17,000/- + 1000/- + 4,094) with costs.

Mr. Sanjay Parikh, learned counsel for the appellant/plaintiff, challenged the said findings of the

High Court. He submitted that there was no such delay as to deny the relief of specific performance of Ext.2. He brought to our notice the averments in the plaint to show readiness and willingness of the plaintiff to perform his part of the contract and argued that to comply with the requirements of Section 16(c) of the Specific Relief Act, 1963, the plaintiff need not be in Forms 47 and 48 of Appendix A to Code of Civil Procedure and relied upon the decision of this Court in Ramesh Chandra Chandiok & Anr. vs. Chuni Lal Sabharwal (dead) by his Lrs. & Ors. [AIR 1971 SC 1238] and a recent judgment of this Court of three Judges Bench in Syed Dastagir vs. T.R. Gopalakrishna Setty [1999 (6) SCC 337]. He referred to that part of the judgment of the trial court where the evidence of Motilal Jain (PW1) and Ahindra Nath Choudhury (PW2) was discussed in proof of the readiness and willingness of the appellant.

Mr. N.R. Choudhary, learned counsel for the respondent, contended that paras 6 and 11 of the plaint do not conform to Forms 47 and 48 of the First Schedule of the Code of Civil Procedure and relied upon the decisions of this Court in Ouseph Varghese vs. Joseph Aley & Ors. [1969 (2) SCC 539] and Abdul Khader Rowther Vs. P.K. Sara Bai & Ors. (AIR 1990 SC 682). He argued that the trial court ought to have framed an issue regarding readiness and willingness of the appellant but it failed to do so, therefore, the decree of the trial court was rightly set aside by the High Court. He further contended that the conduct of the appellant whose wife is the tenant in the suit property in bringing into existence Ext.2 which was denied by the defendant, did not justify granting of discretionary relief of specific performance and the High Court had rightly denied the same.

Here, the short point is whether the impugned judgment of the High Court is sustainable in law.

The first ground which the High Court took note of is the delay in filing the suit. It may be apt to bear in mind the following aspects of delay which are relevant in a case of specific performance of contract for sale of immovable property: (i) Delay running beyond the period prescribed under the Limitation Act; (ii) Delay in cases where though the suit is within the period of limitation, yet : (a) due to delay the third parties have acquired rights in the subject-matter of suit; (b) in the facts and circumstances of the case, delay may give rise to plea of waiver or otherwise it will be inequitable to grant a discretionary relief. Here none of the above mentioned aspects applies. That apart factually also, the High Court proceeded on an incorrect assumption with regard to cause of action. Ext.2 was executed on February 20, 1977 and under it the sale deed was to be executed on or before July 19, 1977. Last notice was issued on November 26, 1978 and from that date the suit was filed only after nine months and not after more than a year as noted by the High Court. Therefore on the facts of this case the ground of delay cannot be invoked to deny relief to the plaintiff.

The other contention which found favour from the High Court, is that plaint averments do not show that the plaintiff was ready and willing to perform his part of the contract and at any rate there is no evidence on record to prove it. Mr. Choudhary developed that contention placing reliance on the decision in Varghese's case (supra). In that case, the plaintiff pleaded an oral contract for sale of the suit property. The defendant denied the alleged oral agreement and pleaded a different agreement in regard to which the plaintiff neither amended his plaint nor filed subsequent pleading and it was in that context that this Court pointed out that the pleading in specific performance should conform to Forms 47 and 48 of the First Schedule of the Code of Civil Procedure. That view was followed in Abdul Khader's case (supra).

However, a different note was struck by this Court in Chandiok's case (supra). In that case 'A' agreed to purchase from 'R' a lease hold plot. 'R' was not having lease of the land in his favour from the Government nor was he in possession of the same. 'R', however, received earnest money

pursuant to the agreement for sale which provided that the balance of consideration would be paid within a month at the time of the execution of the registered sale deed. Under the agreement 'R' was under obligation to obtain permission and sanction from the Government before the transfer of lease hold plot. 'R' did not take any steps to apply for the sanction from the Government. 'A' filed the suit for specific performance of the contract for sale. One of the contentions of the 'R' was that 'A' was not ready and willing to perform his part of the contract. This Court observed that readiness and willingness could not be treated as a strait-jacket formula and that had to be determined from the entirety of facts and circumstances relevant to the intention and conduct of the party concerned. It was held that in the absence of any material to show that 'A' at any stage was not ready and willing to perform his part of contract or that he did not have the necessary funds for payment when the sale deed would be executed after the sanction was obtained, 'A' was entitled to a decree for specific performance of contract.

That decision was relied upon by a three Judges Bench of this Court in Syed Dastagir's case (supra), wherein it was held that in construing a plea in any pleading, courts must keep in mind that a plea is not an expression of art and science but an expression through words to place fact and law of one's case for a relief. It is pointed out that in India most of the pleas are drafted by counsel and hence they inevitably differ from one to the other; thus, to gather true spirit behind a plea it should be read as a whole and to test whether the plaintiff has performed his obligations, one has to see the pith and substance of the plea. It was observed, "Unless a statute specifically requires a plea to be in any particular form, it can be in any form. No specific phraseology or language is required to take such a plea. The language in Section 16(c) of the Specific Relief Act, 1963 does not require any specific phraseology but only that the plaintiff must aver that he has performed or has always been and is willing to perform his part of the contract". So the compliance of "readiness and willingness" has to be in spirit and substance and not in letter and form". It is thus clear that an averment of readiness and willingness in the plaint is not a mathematical formula which should only be in specific words. If the averments in the plaint as a whole do clearly indicate the readiness and willingness of the plaintiff to fulfil his part of the obligations under the contract which is subject-matter of the suit, the fact that they are differently worded will not militate against the readiness and willingness of the plaintiff in a suit of specific performance of contract for sale.

In the instant case a perusal of paras 6 to 11 of the plaint do clearly indicate the readiness and willingness of the plaintiff. The only obligation which he had to comply with was payment of balance of consideration. It was stated that he demanded the defendant to receive the balance of consideration of Rs. 8000/- and execute the sale deed. The defendant was in Patna (Bihar) at the time of notices and when he came back to his place the plaintiff filed the suit against him. In support of his case, he adduced the evidence of PW1 and PW2. The plaintiff had parted with two-third of the consideration at the time of execution of Ext.2. There is no reason why he would not pay the balance of one-third consideration of Rs. 8000/- to have the property conveyed in his favour.

We are not persuaded to accept the contention that the conduct of the plaintiff disentitles him to the relief of specific performance.

The last contention of Mr. Choudhary that because the plaintiff has claimed compensation in lieu of specific performance so he is disentitled to claim the specific performance of the contract, is to be noted to be rejected. The plaintiff's claim was in accord with the provisions of Section 21 of the Specific Relief Act, 1963. Merely because the plaintiff claims damages in a suit for specific claims damages in a suit for specific performance of contract as alternative relief, it cannot be said that he is not entitled to the main relief of specific performance of contract itself.

None of the reasons given by the High Court is sustainable in law to justify setting aside the judgment and decree of the trial court. Consequently, the judgment of the High Court is liable to be set aside and accordingly we do so and restore the judgment and decree of the trial court.

Inasmuch as the plaintiff had already deposited the balance of consideration pursuant to the judgment and decree of the trial court, the legal representatives of the defendant (respondents herein) are ordered to execute the sale deed in favour of the plaintiff within three months from today. The appeal is allowed. The plaintiff is entitled to receive his cost from the defendant/respondents.