

**SUPREME COURT OF INDIA**

Manohar Lal @ Manohar Singh

Vs.

Maya

C.A.No.2577 of 2003

(R.C. Lahoti and Arun Kumar JJ.)

31.03.2003

**JUDGMENT**

**R.C. Lahoti, J.**

1. Leave granted.

2. A suit for specific performance of an agreement to sell an immovable property, which is an agricultural land, was directed to be decreed by the Trial Court and the First Appellate Court. In Second Appeal preferred by the defendant the High Court has upheld the agreement but while dealing with discretion to decree specific performance the High Court has held that it was not a fit case where the Court could have exercised discretion in favour of decreeing the specific performance and rather it was a fit case where the Court ought to have directed only refund of consideration. For the purpose of arriving at such a finding, the High Court has noted during the course of its judgment:-

"It is, however, not in dispute that the defendant is a farmer and the plaintiff is a Commission Agent and dealing in fertilizer. It is true that agreement dated 4.7.1987 has been proved by the plaintiff but the plea of the defendant that the plaintiff had obtained her thumb impression on some plain paper cannot be outrightly rejected. Since there is no evidence in this regard, no definite opinion can be given on this aspect of the case. However, considering that "the alleged agreement to sell is of the year 1991 (sic - 1987) and only a paltry amount of Rs. 2000/- is alleged to have been paid to the defendant as earnest money for purchase of land measuring 24 kanals at the rate of Rs. 10,000/- per acre, I am of the view that it will meet the ends of justice if instead of passing decree for specific performance of agreement to sell, suit is decreed for a sum of Rs. 2000/- which reasonable interest."

3. The High Court accordingly modified the decree passed by the courts below.

4. The plaintiff has filed this appeal by special leave under Article 136 of the Constitution. On 5.4.2002 this Court directed a limited notice to be issued on the question as to why the

appeal be not remanded to the High Court for hearing after compliance of Section 100(4) of the Civil Procedure Code.

5. The defendant-respondent has appeared and shown cause. It is regrettable to note that in spite of repeated pronouncements of this Court, since the 1976 amendment (effective from 1.2.1977) in the Code of Civil Procedure, compliance with Section 100(4) is not being insisted on and such non-compliance is defeating the purpose sought to be achieved by the amendment. Ordinarily we would have set aside the judgment of the High Court and sent the matter back for re-hearing and decision afresh in the appeal after compliance with Section 100(4) of the CPC, however, in the facts and circumstances of this case and after hearing the learned counsel for the parties we are satisfied that the present one is not a fit case for showing indulgence to the plaintiff-appellant. The correctness of the factual aspect of the finding arrived at by the High Court and extracted and reproduced hereinabove has not been disputed. On such facts we cannot find fault with the view taken by the High Court that a just, legal and proper exercise of judicial discretion would be not to direct specific performance but to direct the refund of such consideration as was paid. However, the plaintiff-appellant should not be denied his costs to the extent of his success.

6. For the foregoing reasons the decree as modified by the High Court is maintained subject to the modification that the plaintiff-appellant shall also be entitled to his costs upto the High Court to the extent of his success. It was stated at the Bar that sometime in the year 1991 after the passing of the decree of the Trial Court the plaintiff-appellant deposited an amount of Rs. 28,000/- in the Court for payment to the defendant-respondent. That amount is still lying in deposit with the Court. Such amount shall be refunded to the plaintiff-appellant.

7. The appeal is disposed of by modifying the decree of the High Court in the terms stated hereinabove. No order as to the costs in this Court.

Order accordingly.