

Harjeet Singh & Another

v.

Amrik Singh & Another

(Supreme Court Of India)

JUSTICE RUMA PAL HON'BLE MR. JUSTICE C.K. THAKKER

C. A. No. 1189 of 2005 | 11-02-2005

1. Leave granted.

2. The only question in this appeal is whether the High Court should have entered into a finding of fact arrived at by the first appellate court under S.100 CPC.

3. The suit in question was filed by the appellants against the respondents for specific performance of an agreement to sell agricultural land at a price of Rs 4,27,635. It was the appellants' case that they had paid the earnest money amount of Rs 65,000 and the balance amount was to be paid on the date of the execution of the sale deed which was fixed for 11-6-1990. The grievance of the appellants was that despite the appellants being present for the purpose of completion of formalities of the agreement of sale, the respondent - defendants did not turn up.

4. The respondents contested the case. On the finding by the trial court that the appellant was not present at the office of the Sub Registrar on 11-6-1990 and that the appellant was not in a position to complete the sale transaction by way of payment of the balance consideration, the suit was dismissed. The appellant took up the matter in first appeal. The first appellate court gave detailed reasons for coming to the conclusion that the appellant was present in the office of Sub Registrar on 11-6-1990 and was also willing to get the sale deed executed on that date. The first appellate court accordingly directed specific performance of the agreement for an amount of Rs 4,27,635 less Rs 65,000 already paid by way of earnest money. The appellants were directed to deposit a sum of Rs 3,62,635

in the lower court on 22-7-1997. Upon the amount so deposited Respondent 1 was to execute the sale deed in favour of the appellants failing which the court would execute the sale deed on behalf of the respondents in favour of the appellants. If, on the other hand, the appellants failed to deposit the sum of Rs 3,62,635 on or before 22-7-1997, the suit would stand dismissed.

5. From this order the second appeal was preferred by the respondent. The questions which the High Court thought were substantial questions of law were:

(1) Whether the plaintiffs were always ready and willing to perform their part of the contract and are entitled to a decree for specific performance?

(2) Whether the plaintiffs are entitled to alternative relief of compensation under the Specific Relief Act (for short the Act)?

6. In our view the questions as framed, did not raise any question of law at all.

7. It was not a case of finding of perversity but a case of appreciation of the evidence by the High Court.

8. This is patent from the High Court holding that the appellants had not "fully" proved that they were not performing their part of the contract. No reason was given by the High Court for discarding the reasoning given by the first appellate court. The High Court has clearly overstepped its jurisdiction prescribed under S.100 of the Code.

9. Having held that the appellants were not ready and willing to perform the contract, there was indeed no question of the appellants being compensated. Nevertheless the High Court came to the conclusion that the appellants were required to be compensated and accordingly directed decree in favour of the plaintiffs for an amount of rupees five lakhs after depositing the amount of Rs 65,000 together with interest thereon within two months from the date of the decision of the High Court. It was further directed that if the respondent -

defendants did not pay the amount within the time specified, they would be liable to pay interest at the rate of 25% per annum on the balance of the amount of rupees five lakhs as well as the costs of the suit assessed at Rs 25,000. The respondents have deposited the amount as directed by the High Court.

10. We have already held that the High Court had no jurisdiction to interfere with the finding of fact arrived at by the first appellate court. We have, at the behest of the respondents scrutinised the order of the first appellate court. It cannot be said that there was any perversity which required correction under S.100 of the Code. Consequently, we set aside the decision of the High Court and affirm the decision of the first appellate court except that the period for the appellants to deposit the balance consideration is extended by four weeks from today. Such amount be deposited in the trial court. In default of making such payment within the aforesaid time, this appeal will stand dismissed with costs. The respondents are at liberty to withdraw the amount said to have been deposited pursuant to the order of the High Court with any interest which may have accumulated thereon. The appeal is allowed on the aforesaid terms.