

SUPREME COURT OF INDIA

Prakash Chandra

Vs.

Narayan

C.A.No.8102 of 2011

(G.S.Singhvi and Sudhansu Jyoti Mukhopadhaya JJ.)

23.04.2012

JUDGEMENT

SUDHANSU JYOTI MUKHOPADHAYA, J.

1. Leave was granted on 22.9.2011.
2. This appeal has been preferred by the appellant-plaintiff against the judgment and order dated 6th March, 2007 passed by the learned Single Judge of the High Court of Judicature of Mumbai, Nagpur Bench in Second Appeal No.198 of 2006, whereby the judgment and decree passed by the District Court, Pandharkawada (Kelapur) in Regular Civil Appeal No.129 of 2002 came to be confirmed.
3. The first appellate court by the aforesaid judgment and decree reversed the judgment and decree dated 23rd September, 1998 and 3rd October, 1998 in Special Civil Suit No.175 of 1997 which was preferred by the appellant-plaintiff for specific performance.
4. The suit in question was filed by the appellant against the respondent for specific performance of agreement for sale dated 18th April, 1996 in respect of agricultural land admeasuring 1 H. 61Are. at a price of Rs.51,000/-. It was the case of the appellant that he had paid the earnest money of Rs.39,000/- while the balance amount was to be paid on the date of execution of the sale deed which was fixed for 18th March, 2007, but despite the appellant being present for the purpose of completion of the formalities of agreement for sale, the respondent did not turn up. Consequently, the appellant purchased a stamp paper of Rs.100/- on 18th March, 1997 and issued a notice to the respondent on 2nd April, 1997 and called upon him

to execute the sale deed dated 21st April, 1997 but a false reply was given by the respondent on 15th April, 1997. As the respondent refused to perform his part of the contract, the appellant filed Special Civil Suit No.175 of 1997 for specific performance of contract, and alternatively to refund the earnest money.

5. The respondent contested the case claiming that his signatures were obtained on a blank stamp paper for the outstanding money of Rs.12,000/- for the purchase of fertilizers and clothes etc. The trial court by its judgment dated 23rd September, 1998 and decree dated 3rd October, 1998 decreed the suit for specific performance.

6. On appreciation of the material on record, the trial court held that the appellant had proved that the respondent agreed to sell the suit land for consideration of Rs.51,000/- by executing an agreement for sale on 18th April, 1996 and that he had paid earnest money of Rs.39,000/- to the respondent. The respondent failed to prove that he had signed on a blank Stamp paper in the presence of Vithal Sitaram Thaori. On the other hand there is sufficient material on record to show that the appellant was ready and willing to perform his part of the contract and, therefore, the appellant is entitled to the decree for specific performance of contract while the alternative prayer needs no consideration. The respondent is not entitled to compensatory cost.

All the six issues were decided in favour of the appellant and against the respondent with a direction to the respondent to execute the sale deed on or before 31st August, 1998 in respect of the suit land i.e. southern portion of the land admeasuring 1 H 61Are having Gat No.1/2 situated at village Khadki on payment of the balance consideration of Rs.12,000/-. The Court also directed the respondent to deliver the possession of the suit land to the appellant with the clear condition that in the event of the respondent failing to execute the sale deed on or before the fixed date, the appellant will deposit the balance amount in the Court to get the sale deed executed.

7. The respondent took up the matter vide first appeal before the District Court. The following questions were framed for determination:

- 1) Whether the defendant has agreed to sell and the plaintiff has agreed to purchase the suit property for consideration of Rs.51,000/- on 18.4.1996?
- 2) Whether the defendant has signed Ex.25 blank Stamp paper in lieu of the credit amount of the plaintiff towards the clothes and fertilizers?

- 3) Whether the plaintiff was and is ready and willing to perform his part of the contract?
- 4) Whether the defendant has failed to perform his part of the contract?
- 5) Whether it is necessary to interfere with the impugned judgment and decree?
- 6) What order and relief?

8. The first appellate court on hearing the parties and on appreciation of the material on record answered all the issues in favour of the appellant but reversed the judgment and decree thereby allowing discretion in favour of the respondent by directing him to pay the earnest money with interest.

Referring Clause (b) of sub-section (2) of Section 20 of Specific Relief Act, the First Appellate Court held as follows:

20. Having regard to the facts on the record, it is evident from the evidence of the defendant and also an admitted fact that the defendant was having the only suit land and he would be landless if the decree would be granted for specific performance.

On the other hand, the plaintiff is having landed properties and all the riches including the business of clothes and fertilizers.

Therefore these aspects are not considered by the learned lower court, while exercising the discretion, in granting the decree for specific performance. The amount of Rs.12,000/- were not paid or deposited to the defendants favour since the agreement for sale till the date of decree. Therefore having regard to all these circumstances and facts on the record, this Court is of the opinion that this Court should interfere in the discretion exercised by the learned lower court while granting the decree for specific performance. The hardship would be, in all probabilities and facts and circumstances caused to the defendant than the plaintiff. In the result, the court is of the opinion that alternative relief for refund of the earnest amount of Rs.39,000/- to the plaintiff by the defendant, would meet the ends of justice.

The same can be utilized and exercised by awarding the damages by way of an interest on the earnest amount.

9. When the matter was taken up in the second appeal, the learned Single Judge vide impugned judgment dated 6th March, 2007 dismissed the second appeal on the ground that the first appellate court has factually found that the respondent would be landless as against the appellant who is having various businesses as well.

10. According to the learned counsel for the appellant, there was no impediment in according a relief of specific performance particularly when all the issues have been decided in favour of the appellant and against the respondent. He further submitted that, in the absence of any defence taken by the respondent that he would become landless if the relief for specific performance is granted and in absence of any material on record, the finding of the first appellate court cannot be sustained.

11. Learned counsel for the appellant referring to the cross- examination of the respondent contended that the respondent would not become landless as is evident from the fact that after the agreement reached with the appellant, he sold 4 acres of land to one Dilip Karekar. Even thereafter the respondent is having 2.25 H of cultivable land apart from 0.88 H uncultivable land.

12. According to the learned counsel for the respondent, as hardship would be caused to the respondent, the appellate court rightly held that it would sub-serve the ends of justice if the entire amount of earnest money received by the respondent is directed to be paid back to appellant along with interest.

13. We have heard the learned counsel for the parties. The learned counsel appearing on either side elaborately took us through the findings of the trial court, the first appellate court as well as the High Court in second appeal. From the materials on record and the agreement dated 18th April, 1996 and from the judgment of the trial court and the first appellate court, it is evident that no issue relating to the hardship of the respondent was framed. In a case of Specific performance, hardship is a good defence provided such defence is taken by the defendant and evidence in support of such defence is brought on record, while in this case no such defence was taken by the respondent and no evidence was brought on record in its support.

14. The appellant has specifically pleaded that the respondent possessed agricultural land admeasuring 5 H. 76.R. in Gat No. ½, which has not been denied by the respondent. The appellant proved that an agreement was reached between

the parties on 18th April, 1996 to sell southern portion of land admeasuring 1.61 H. by making an east-west boundary for the consideration of Rs. 51,000/- for which appellant had paid Rs.39,000/- to the respondent as earnest money. The appellant also proved that he was always ready and willing to perform his part of the contract. These issues were decided in favour of the appellant.

During cross-examination the respondent stated that he sold only 4 acres of land during the pendency of the case, thereby remaining 2.25 H cultivable and 0.88 H uncultivable land is still available with the respondent.

15. The question as to whether the grant of relief for specific performance will cause hardship to the defendant within the meaning of Clause (b) of sub-section (2) of Section 20 of the Specific Relief Act, 1963, being a question of fact, the first appellate court without framing such an issue ought not to have reversed the finding of the trial court while concurring with it on all other issues with regard to the appellants entitlement to relief for specific performance of contract.

The High Court in the second appeal failed to notice that the respondent had not taken any defence of hardship and no such issue was framed and in absence of any such evidence on record, the first appellate court held that he would be landless should the decree for specific performance be granted.

16. For the reasons stated above, we are of the view that the appellant is entitled to the specific performance of agreement for sale, as ordered and decreed by the trial court. The appeal is accordingly allowed. The order passed by the High Court in the second appeal and the judgment and decree passed by the first appellate court are set aside. The judgment and decree passed by the Trial Court is affirmed. The appellant is allowed two months to pay the balance consideration to the respondents. If the respondent fails to execute the sale deed, such amount will be deposited in the trial court which will ensure the execution of the sale deed as per its judgment and decree.