

# SUPREME COURT OF INDIA

K. Prakash

Vs.

B.R. Sampath Kumar

C.A.No.9047 of 2014

(M.Y. Eqbal and Pinaki Chandra Ghose JJ.)

22.09.2014

## JUDGMENT

**M.Y. EQBAL, J.:**

1. Leave granted.
2. This appeal by special leave is directed against the judgment and order dated 23.8.2011 passed by the High Court of Karnataka whereby Regular First Appeal No.396 of 2007 of the respondent was allowed, reversing the judgment of the trial court and dismissing the suit for specific performance of the agreement filed by the plaintiff-appellant.
3. The facts of the case lie in a narrow compass.
4. All disputes pertain to a self acquired property of the father of the respondent. The respondent<sup>TM</sup>s father had four sons and three daughters. On 31.7.1988, transfer of Khata was executed by all brothers and sisters in the name of the respondent. After the demise of their parents, partition seems to have taken place on 14.12.2000 among brothers and sisters and the property in question is said to have fallen to the share of defendant, who was required to pay a sum of Rs.1,25,000/- to each of the brothers and sisters in lieu of their shares in the suit house. The plaintiff had paid Rs.1,25,000/- to all his brothers and sisters except brother Selva Pillai.

5. The respondent herein executed an Agreement for Sale in favour of the appellant on 15.12.2003 agreeing to sell the schedule property for a total sale consideration of Rs.16,10,000/-. The schedule property is located at Bangalore, admeasuring 30 x 45 feet with built up area of 1700 sq.ft., consisting of ground floor and first floor including out house. The ground floor is occupied by the respondent and the first floor is occupied by the appellant. as a mortgagee. The out-house is occupied by the brother of the defendant-respondent namely Sheshadri (as mortgagee). It is relevant to note that an amount of Rs.3,75,000/- was paid by the appellant to the respondent as requested by the respondent and Sheshadri, who is occupying the out-house portion, has paid Rs.1,65,000/- as a mortgage consideration to the respondent while occupying the house. Agreement further reveals that the aforesaid amounts shall be treated as advance amount received by the respondent under the agreement of sale. The understanding between the parties is that the mortgage consideration need not be repaid by the respondent to the mortgagees including Sheshadri and his mortgage consideration will be repaid by the prospective vendee i.e. the appellant. However, on the date of execution of sale agreement, only a sum of Rs.5,000/- was paid by the appellant to the respondent. Thus, in all a sum of Rs.5,45,000/- is said to have been paid by the appellant. The plaintiff could raise loan of Rs.3 lakh by securing property. The remaining sale consideration of Rs.7,65,000/- was payable to the respondent within one year from the date of the agreement, and in case respondent fails to comply with any of the conditions in the agreement, he would repay double the amount i.e. Rs.10,90,000/- to the appellant.

6. Although prescribed time was one year, litigation seems to have started between the parties within three months. Repeated complaints were filed by the appellant against the respondent before the police authorities. At last, appellant-plaintiff moved a suit on 9.7.2004 praying for a decree of specific performance on the ground that the respondent-defendant has denied the execution of the sale deed. The sum and substance of the appellant- plaintiff<sup>TM</sup>s case is that the defendant-respondent has failed to perform his part of the contract though the appellant-plaintiff was ready and willing to perform his part of the contract.

7. The defendant-respondent denying Agreement Ex.P1 pleaded in his written statement that there being difference of opinion between himself and his brothers, he was in highly disturbed state of mind and when he approached the appellant for

suggestion and help, appellant took his signature on the alleged agreement of sale and he signed it since he had implicit faith in the appellant. The appellant-plaintiff had assured that B.R. Sheshadri - brother of the respondent-defendant, who was living in the out-house, would be made to vacate the premises in the guise of interest being created in favour of appellant in the property. It has also been contended that the respondent had no intention to execute the agreement of sale or to sell the property and the agreement was entered into only for the purpose of securing the loan and the property was mortgaged as a security for the loan.

8. After hearing argument on both sides, the trial court decreed the suit in favour of the plaintiff-appellant with a direction to the defendant- respondent to execute the absolute sale deed in favour of the plaintiff, free from all claims and encumbrances, by receiving the balance consideration of Rs.10,65,000/- and to hand over the vacant and peaceful possession of the suit Schedule Property to the plaintiff. Aggrieved by the decision, the defendant-respondent preferred an appeal before the High Court, which passed the impugned order setting aside the decree of the trial court and dismissing the suit for specific performance. Hence, this appeal by special leave by the plaintiff.

9. Mr. Sanjay Parikh, learned counsel appearing on behalf of the appellant contended that instead of advertng to and re-appreciating the evidence on record, the High Court erred in arriving at the findings based on conjectures and surmises. The appellant-plaintiff has complied with the provisions of Section 16(c) of the Specific Relief Act by establishing his willingness to perform his part of the contract whereas the respondent- defendant failed to do so. It is further contended that the respondent has admitted by way of affidavit dated 10.10.2006 that he executed the Agreement of sale dated 15.12.2003 and also by letter dated 21.1.2004 further admitted that he has executed aforesaid agreement and he had already received a sum of Rs.5,45,000/- as part payment of the total sale consideration. At the instance of appellant, on 16.2.2004 Syndicate Bank issued two cheques one for Rs.10,65,000/- in favour of the respondent towards balance amount of sale consideration and another for Rs.1,19,840/- in favour of Sub-Registrar, Rajajinagar, Bangalore for payment of the registration charges of the said sale deed. As contended, on failure of the respondent to reply legal notice of the appellant and execute the sale deed in favour of the appellant, the appellant had to move a suit for relief of specific performance directing the respondent to receive the balance sale consideration to execute an absolute sale deed in favour of the appellant. Learned counsel drew our attention to the exhibits and the evidence of the defendant-

respondent and submitted that the appellate court has committed serious illegality in ignoring these materials and reversed the finding of the trial court.

10. Per contra, Mr. Vishwanath Shetty, learned senior counsel appearing on behalf of respondent, submitted that taking advantage of financial crises and disturbed state of mind of the respondent, the appellant suggested him to execute an agreement of sale and without revealing its contents took his signature on the agreement, which was made only for nominal purpose and he had no intention to sell the property. It is further contended that the appellant had concocted and fabricated the agreement. It is alleged by the respondent that since appellant did not perform his part of the contract, the entire alleged agreement stood cancelled. Prevailing circumstances had forced respondent to write aforesaid letter dated 21.1.2004 calling appellant to pay the entire amount. Alleged agreement and letter were created by the appellant under suspicious circumstances and mental pressure of the defendant-respondent, and as such, they are not legally enforceable for a decree under Section 16(c) read with Section 20 of the Specific Relief Act, 1963. The High Court has held that there was payment of only Rs.5000/- to the defendant as against the claim of the plaintiff that he has paid a sum of Rs.5,45,000/- under Ex.P1 and P2. It has been further contended on behalf of the respondent that the market value of the property in the year 2003 in Bangalore was much more to the consideration amount contained in Ex. P1 and P2. The whole transaction was nothing but farce. Respondent contends that taking into consideration all aspects of the matter, the High Court is right in reversing the judgment of the trial court, which had ignored the material evidence on record with regard to the conduct of the plaintiff-appellant.

11. While deciding the issue as to whether the agreement dated 15.12.2003 was executed by the defendant in favour of the plaintiff-appellant, the trial court has gone through the pleading and evidence and discussed the matter in detail. The trial court found that after the agreement executed between the parties on 15.12.2003 the defendant-respondent issued letter dated 21.1.2004 calling upon the plaintiff to get ready with the entire balance amount on or before 15.4.2004 and also mentioned that in default, the agreement dated 15.12.2003 will stand cancelled and the advance amount shall be forfeited. The trial court further found that the plaintiff had paid an amount of Rs. 3,75,000/- to the defendant for the property in occupation of the plaintiff taken on lease and the defendant in cross examination had admitted that the plaintiff occupied the first floor as mortgagee and that the plaintiff has paid the

amount of Rs. 3,75,000/- (exhibit P-3). The trial court further found that the defendant was examined as DW-1 and he admitted the signature of himself, his wife and signature of plaintiff. He further admitted in cross examination that he had read the papers and signed the same. The defendant also handed over copies of the title deeds and the encumbrance certificate to the plaintiff on lease basis and also Exhibit P-1 and P-2, the trial court came to the conclusion that the defendant entered into an agreement of sale with the plaintiff for a consideration of Rs. 16,10,000/- and that the amount of Rs. 5,45,000/- was paid as an advance towards the sale of the said property. Further the defendant (DW-1) admitted the receipt of the legal notice dated 12.3.2004 (exhibit P-3) but he did not reply the said notice.

12. The trial court also discussed the defence taken by the defendant during cross examination that the suit property has fallen to the share of the defendant and that all his brothers and sisters are residing separately. The trial court, therefore, came to the conclusion that there is a valid agreement to sell the suit property executed by the defendant in favour of the plaintiff on receipt of the advance consideration.

13. The High Court has taken a very peculiar view that the plaintiff-appellant filed the suit which was premature. For better appreciation, the relevant portion of para 8 of the judgment passed by the High Court is extracted hereinbelow:-

14. It is not in dispute that the agreement is dated 15.12.2003. Under the agreement, both the parties have agreed that the sale deed should be executed within one year from that day, that is on or before 15.12.2004. But the suit is filed on 9.7.2004, that is within about 7 months from the date of the agreement. Absolutely, no reasons are forthcoming as to why the suit was filed prematurely. In the meanwhile, the plaintiff approached the Police for enforcement of the contract. The same is clear in the matter on record Ex.P.11 dated 08.2.2004 is the complaint lodged by the plaintiff before the Deputy Police Commissioner. In the said complaint, he has clearly stated that though the defendant agreed for selling his property on 15.12.2003, the plaintiff has not come forward to execute the sale deed and that the plaintiff has been delaying the execution of sale deed since four days prior to the filing of the complaint. The plaintiff requested the Deputy Police Commissioner to call the defendant and to take action by directing him to execute the sale deed as agreed. He also sought for protection by filing the said complaint.

15. Ex.P.12 is the complaint dated 3.3.2004 filed by the plaintiff before the Police

Commissioner, Bangalore city. In the said complaint also, the plaintiff has alleged that defendant is refusing to execute the sale deed in his favour and that therefore, the Commissioner should intervene in the manner for getting the sale deed executed in favour of the plaintiff.

16. Ex.P.13 is the complaint dated 11.4.2004 filed by the plaintiff before the Police Inspector, Subramanyanagar Police Station, Bangalore (subsequently police station). In the said complaint, he has stated that defendant and his family members have threatened to kill the plaintiff and his family members and therefore, action should be taken against the defendant. However, Inspector of Police has issued an endorsement on 11.3.2004, as per Ex.P.14 to the effect that dispute between the parties is of civil nature and the complainant was directed to get his grievances redressed before the jurisdictional Civil Court. Ex.P.15 is another complaint of similar nature. Ex.P.16 is an endorsement issued by the Police officer to the wife of the complainant intimating her that the complaint lodged by her on 12.3.2004, is received and for any grievance, she can approach the Subramanyanagar Police Station. Further, in Ex.P.17, the Inspector of Police has intimated the plaintiff that the defendant has denied the agreement of sale and that he had signed the sale agreement under mental pressure. Again by issuing such an endorsement, the Inspector has directed the plaintiff to get his grievances redressed before the Civil Court. Cr.P.C.107 proceedings were initiated before the Tehsildar, Bangalore, against the parties as is clear from Ex.P.18. based on the complaints, two charge sheets were lodged against the defendant as per Ex.P.19 and 21; the same are pending consideration before the Criminal Court. These facts clearly go to show that the plaintiff has approached the police repeatedly by making one or the other allegations that too within the span of 2 to 4 months of the agreement. He has approached the Commissioner of Police and Deputy Commissioner of police seeking their interference in the matter for getting the sale deed executed in his favour. The High Court further held that in the agreement (Exhibit P-1) the parties have agreed that if the sale deed could not be executed by the defendant, he will repay a sum of Rs., 10,90,000/-, According to the High Court, the recital in the agreement shows that it was not executed by the defendant with free mind and volition rather he was under pressure while executing those documents.

17. We have given our thoughtful consideration in the matter and perused the pleading and evidence. We are of the view that the High Court has not approached the issue in its right perspective and has committed serious error of law in holding that the

agreement was executed by the defendant without free mind and volition and under some pressure. The agreement was executed on 15.12.2003 wherein it has been mentioned that the total consideration amount was 16,10,000/- and out of that part consideration of sum of Rs. 5,45,000/- was paid. The said agreement was followed by another letter dated 21.1.2004, executed by the respondent, the contents whereof are reproduced herein-below:-

21.01.2004 That on this 22nd day of January, 2004, I have executed the agreement of sale in favour of Sri K.Prakash, in respect of the House bearing No.2558, 11th Main Road, Subramanyanagara, Bangalore-560 010, to sell the same for a total sale consideration of Rs.16,10,000/- (Rupees Sixteen Lakhs Ten thousand only). In all I have received a sum of Rs.5,45,000/- (Rupees Five Lakhs Forty Five Thousand only) from K. Prakash and the balance sale consideration to be paid on or before 15.04.2004 evening, failing to pay the balance sale consideration as per the agreement dated 15.12.2004. This Agreement stands cancel. I agree for the same.

Sd/-  
(Sampath Kumar)  
Vendor

Sd/-  
(K.Prakash)  
(Purchaser)

Sd/-  
(Kanthamani)

WITNESSES:

Sd/-  
Sd/-  
Sd/-

WITNESSES

1) Sd/-  
2) Sd/-  
3) Sd/-

18. Indisputably, remedy for specific performance is an equitable remedy. The Court while granting relief for specific performance exercise discretionary jurisdiction. Section 20 of the Act specifically provides that the court<sup>TM</sup>s jurisdiction to grant

decree of specific performance is discretionary but not arbitrary. Discretion must be exercised in accordance with the sound and reasonable judicial principles.

19. The King<sup>TM</sup>s Bench in Rookey<sup>TM</sup>s Case [77 ER 209; (1597) 5 Co.Rep.99] it is said :

20. Discretion is a science, not to act arbitrarily according to men<sup>TM</sup>s will and private affection: so the discretion which is exercised here, is to be governed by rules of law and equity, which are to oppose, but each, in its turn, to be subservient to the other. This discretion, in some cases follows the law implicitly, in others or allays the rigour of it, but in no case does it contradict or overturn the grounds or principles thereof, as has been sometimes ignorantly imputed to this Court. That is a discretionary power, which neither this nor any other Court, not even the highest, acting in a judicial capacity is by the constitution entrusted with The Court of Chancery in Attorney General vs. Wheat [(1759) 1 Eden 177; 28 ER 652] followed the Rooke<sup>TM</sup>s case and observed:

the law is clear and courts of equity ought to follow it in their judgments concerning titles to equitable estates; otherwise great uncertainty and confusion would ensue. And though proceedings in equity are said to be *secundum discretionem boni viri*, yet when it is asked, *vir bonus est quis?* The answer is, *qui consulta partum, qui leges juraq servat*. And as it is said in Rooke<sup>TM</sup>s case, 5 Rep. 99 b, that discretion is a science not to act arbitrarily according to men<sup>TM</sup>s will and private affection: so the discretion which is exercised here, is to be governed by rules of law and equity, which are to oppose, but each, in its turn, to be subservient to the other. This discretion, in some cases follows the law implicitly, in others or allays the rigour of it, but in no case does it contradict or overturn the grounds or principles thereof, as has been sometimes ignorantly imputed to this Court. That is a discretionary power, which neither this nor any other Court, not even the highest, acting in a judicial capacity is by the constitution entrusted with. This description is full and judicious, and what ought to be imprinted on the mind of every judge.

17. The principles which can be enunciated is that where the plaintiff brings a suit for specific performance of contract for sale, the law insists a condition precedent to the grant of decree for specific performance that the plaintiff must

show his continued readiness and willingness to perform his part of the contract in accordance with its terms from the date of contract to the date of hearing. Normally, when the trial court exercises its discretion in one way or other after appreciation of entire evidence and materials on record, the appellate court should not interfere unless it is established that the discretion has been exercised perversely, arbitrarily or against judicial principles. The appellate court should also not exercise its discretion against the grant of specific performance on extraneous considerations or sympathetic considerations. It is true, as contemplated under Section 20 of the Specific Relief Act, that a party is not entitled to get a decree for specific performance merely because it is lawful to do so. Nevertheless once an agreement to sell is legal and validly proved and further requirements for getting such a decree is established then the Court has to exercise its discretion in favour of granting relief for specific performance.

21. Mr. Shetty, lastly submitted that grant of decree for specific performance in favour of the appellant will cause a great hardship for the reason not only because of the lesser price shown in the agreement but also because of the rise in price which have been increased ten times the price agreed between the parties.

22. Subsequent rise in price will not be treated as a hardship entailing refusal of the decree for specific performance. Rise in price is a normal change of circumstances and, therefore, on that ground a decree for specific performance cannot be reversed.

23. However, the court may take notice of the fact that there has been an increase in the price of the property and considering the other facts and circumstances of the case, this Court while granting decree for specific performance can impose such condition which may to some extent compensate the defendant-owner of the property. This aspect of the matter is considered by a three Judge Bench of this Court in *Nirmala Anand vs. Advent Corporation (P) Ltd. and Others*, (2002) 8 SCC 146, where this Court held :-

6. It is true that grant of decree of specific performance lies in the discretion of the court and it is also well settled that it is not always necessary to grant specific performance simply for the reason that it is legal to do so. It is further well settled that the court in its discretion can impose any reasonable condition including payment of an additional amount by one party to the other while

granting or refusing decree of specific performance. Whether the purchaser shall be directed to pay an additional amount to the seller or converse would depend upon the facts and circumstances of a case. Ordinarily, the plaintiff is not to be denied the relief of specific performance only on account of the phenomenal increase of price during the pendency of litigation. That may be, in a given case, one of the considerations besides many others to be taken into consideration for refusing the decree of specific performance. As a general rule, it cannot be held that ordinarily the plaintiff cannot be allowed to have, for her alone, the entire benefit of phenomenal increase of the value of the property during the pendency of the litigation. While balancing the equities, one of the considerations to be kept in view is as to who is the defaulting party. It is also to be borne in mind whether a party is trying to take undue advantage over the other as also the hardship that may be caused to the defendant by directing specific performance. There may be other circumstances on which parties may not have any control. The totality of the circumstances is required to be seen. As discussed above the agreement was entered into between the parties in 2003 for sale of the property for a total consideration of Rs.16,10,000/- . Ten years have passed by and now the price of the property in that area where it situates has increased by not less than five times. Keeping in mind the factual position we are of the view that the appellant should pay a total consideration of Rs.25 lakhs, being the price for the said property.

24. We, therefore, allow this appeal and set aside the judgment and order passed by the High Court and restore the judgment and decree of the trial court with the modification that on payment of Rs.25 lakhs, less already paid by the plaintiff, the defendant-owner shall execute a registered sale deed within a period of three months from today.