

SUPREME COURT OF INDIA

Dheeraj Developers Private Limited

Vs.

Om Prakash Gupta & Ors.

C.A.No.1672 of 2016

(Kurian Joseph and R.F.Nariman,JJ.)

23.02.2016

JUDGMENT

Kurian Joseph,J.

(Arising out of S.L.P.(C) No.38616 of 2012)

1. We have heard learned counsel for the parties.
2. Delay condoned.
3. Leave granted.
4. By the impugned judgment, the High Court in First Appeal, against the judgment dated 8th April, 2005 in Civil Suit No. 93A/1996 (renumbered Civil Suit No. 20A/2001; 6A/2003) on the file of the VIII Additional District Judge, Gwalior, reversed the decree for specific performance.
5. The Trial Court had framed the following issues :-

S.No.	Issues	Conclusion
1.	Whether defendant No.1 executed agreement to sell of suit land in favour of plaintiffs in the year 1975?	Unproved
	Whether defendant No.1 had executed fresh agreement to sell of suit land in favour of plaintiffs on 15.1.1989 as prices of suit land had risen and a mutual compromise had arrived between plaintiffs and defendant No.1?	Unproved
	Whether plaintiffs are entitled to get the sale deed of suitland 5 Bigha having satiated the sum of Rs. Two lakh Eighteen thousand to defendant No.1 according to the agreement to sell dated 15.01.1989 and to get the vacant possession of suit	No

	land?	
4	Whether suitland is government land due to which plaintiffs have not got the right to sell/transfer the same?	Unproved
5	Whether plaintiffs did not issue notice Suit was under Section CPC to defendant No.2? If yes, then its effect?	instituted having obtained permission from the Court.
6.	Whether defendants Nos. 3 to 11 are bonafide purchasers of suitland? If yes, then its effect?	Proved. Plaintiffs are not entitled to get the relief sought.
7	Whether plaintiffs have undervalued the suit land have satiated deficient court fee? If yes, then its effect?	No
8	Relief and cost?	Suit dismissed.

Additional issue:

9	Whether an ordre dated 24.02.1996 passed No in the suit No.41A/95 bears the effect of res judicata in this case? If Yes, then its effect?	No.
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6. On re-appraisal of the evidence, the High Court took the view that Exhibit P-1 was genuine and therefore, decreed the suit. It will be appropriate to incorporate herein the following paragraph as also the decretal portion of the impugned judgment passed by the High Court :-

"21. Learned counsel for the respondents have pointed during argument that agreement Exhibit P-1 is a suspicious document looking to the other agreement Exhibit D-13 in which rate of suit land has been mentioned as 2.50 rupees per square ft. But this agreement has been written on plain paper that put on 15.01.1989 and not signed by consenting parties who have signed the agreement Exhibit P-1 on the same day. Therefore, in the absence of signatures of any witness or consenting party agreement Exhibit D-13 cannot be relied, even the agreement Exhibit P-1 which is signed not only by the parties but also by the witnesses and family members of defendant No.1 who have given their consent for the agreement. Learned counsel appearing for the respondents have also raised certain objections for disbelieving the agreement Exhibit P-1 but considering the fact that by Exhibit D-10, defendant No.1 Harcharan Singh has admitted the execution of agreement Exhibit P-1 and even after admission and having knowledge about document Exhibit P-1 he has not taken any step against the appellants for fabrication of document Exhibit P-1. This fact along with admission of defendant No.1 shows that agreement Exhibit P-1 is a genuine document. It cannot be disbelieved on the ground that notice in the paper regarding agreement men-tioning different date of agreement as the Execution and contents of

agreement Exhibit P-1 has been admitted by defendant No.1 in Exhibit D-10, therefore, evidence against such admission before the trial Court which contained detailed postmortem of agreement Exhibit P-1 on several grounds cannot be confirmed looking to the admission of defendant No.1 in Exhibit D- 10 which has not been considered by learned trial Court while doing microscope surgery of the agreement Exhibit P-1."

"24. Therefore, the judgment passed by the learned trial Court is hereby set-aside and the appeal filed by the appellant is hereby allowed. The suit filed before the learned trial Court is allowed in favour of sole appellant Dr. Om Prakash Gupta as under :-

(A) Respondent/defendant No.1 is directed to execute the sale- deed of 5 bighas of land Survey No. 792/3-4 according to agreement dated 15.01.1989 after taking consideration of Rs.2,18,000/- @ Rs.2/- per swuare ft. (according to agreement) and hand over the vacant possession of the above land to the plaintiff/appellant Dr. Om Prakash Gupta. If the defendant No.1 fails to execute the sale deed within 30 days after deposit of payment of consideration amount to him or to deposit in the trial Court, the trial Court shall execute the sale deed in favor of appellant/plaintiff Dr. O.P. Gupta.

(B) Since sale deed of above mentioned suit land have been executed by defendant No.1 during pendency of the suit and purchasers are not bonafide purchasers, therefore, the sale deed by law executed by defendant No.1 in favour of respondent Nos. 2,3 to 11 are hereby declared null and void.

(C) The respondent No.1 shall pay the cost of appellant and the respondents shall bear their own cost.

(D) Counsel fee be calculated according to the rules if pre-certified."

7. We have referred to the factual matrix only to a very limited extent for the reason that the High Court apparently has gone wrong in decreeing the suit only on the basis of the finding on genuineness of Exhibit P-1 document. It should have been borne in mind that suit was for specific performance and obviously there were also several other aspects of the matter including the aspect of readiness and willingness which required consideration by the High Court.

8. In that view of the matter, we allow these appeals, set aside the impugned judgment and remit the First Appeal No. 174 of 2005 to the High Court.

9. Needless to say that the appeal(s) are to be heard afresh. The parties are free to urge all available contentions under law, before the High Court.

10. It is made clear that we have not expressed any opinion on the merits of the case including the validity or genuineness of documents as also on the readiness and willingness aspect and it is for the High Court to consider all those aspects.

11. No order as to costs.