

SUPREME COURT OF INDIA

Urmila Devi

Vs.

The Deity, Mandir Shree Chamunda Devi,

C.A.No.462 of 2018

(A.K.Sikri and Ashok Bhushan,JJ.,)

12.01.2018

JUDGMENT

Ashok Bhushan,J.,

SLP(C) No.25771 of 2013

1. Leave granted.

2. This appeal has been filed by the plaintiff through legal heirs questioning the judgment of the High Court of Himachal Pradesh in Regular Second Appeal No.117 of 2002 which appeal was filed by respondent No.1 (defendant No.6 in the suit). The High Court by the impugned judgment has modified the decree of Reason specific performance of contract granted by two courts below into a decree ordering respondent Nos.2 to 6 to pay a sum of Rs. 90,00 0/- with interest @ 9% per annum from the date of filing of the suit.

3. The brief facts of the case which are necessary to notice for deciding the appeal are: Respondent Nos.2 to 6 executed an agreement to sell dated 19.04.1989 in favour of of Krishan Lal, the predecessor-in-interest of the appellants for sale of their 5/16th share in Khasra Nos.430 and 431 equal to 0-22-57 hectares for consideration of Rs.90,000/-. Respondent Nos.2 to 6 received full consideration of Rs.90,000/- and handed over possession to the plaintiff. The plaintiff after getting possession constructed three shops in the suit land. Respondent Nos.2 to 6 executed a gift deed in favour of respondent No. 1 of the suit land on 08 . 07. 1991. When in spite of respondents having received the entire sale consideration the sale deed was not executed and with mala fide intention the gift deed was executed in favour of respondent No.1. Civil Suit No.148 of 1991 was filed by Krishan Lal. Written statements were filed by defendant Nos.1 to 5 jointly and separate written statement was filed by defendant No.6 who is respondent No. 1 in the present appeal. It was admitted to all defendants that the suit land has been gifted in favour of defendant No.6 by gift deed dated 08 . 07 . 1991 . The execution of agreement to sell was not disputed and the receipt of total sale consideration was also not denied. The trial court decreed the suit vide its judgment and order dated 31.03.1999. The trial court declared that gift deed executed by defendant Nos.1

to 5 in favour of defendant No.6 is null and void to the extent they relate to the doner's 5/16th share in the suit land that was agreed to be sold by them to the plaintiff, decree of specific performance was granted in favour of the plaintiff against defendant Nos.1 to 5. The appeal was filed by defendant No.6 only against the judgment of the trial court which was also dismissed by the First Appellate Court vide its judgment dated 17.12.2001. Defendant No.6 filed Regular Second Appeal in the High Court being RSA No.117 of 2002. During pendency of the second appeal in the High Court notification under Section 4 of the Land Acquisition Act dated 22.12.2005 was issued for acquisition of suit land. An award dated 10.06.2008 was also given for the land as well as three shops which were constructed in the suit land. The name of defendant No.6 being recorded in the Revenue records compensation was awarded in favour of defendant No.6.

4. Before the High Court a submission was raised on behalf of defendant No.6 that the land has been acquired during the pendency of Regular Second Appeal, the decree of the specific performance cannot be maintained. The High Court agreeing with the submission of defendant No.6 modified the decree by ordering respondent Nos.2 to 6 to pay a sum of Rs.90,000/- to the plaintiff with interest @ 9% per annum from the date of filing of the suit. The plaintiff through legal heirs aggrieved by the said judgment has come up in this appeal.

5. Learned counsel for the appellants in support of the appeal contends that the High Court erred in law in ordering the refund of Rs.90,000/- in favour of plaintiff whereas the plaintiff(appellants) was entitled to receive the amount of compensation of land which was received by defendant No.6 consequent to the acquisition of land. Defendant No.6 had no right in the land in dispute as the gift deed had been declared null and void. It was the plaintiff (appellants) who was entitled to receive the compensation. The High Court having not interfered with the finding of the courts below that gift deed was void as well as plaintiff was entitled for decree of specific performance of the contract, it was plaintiff (appellants) who was entitled to receive compensation consequent to the acquisition of the suit land.

6. Learned counsel appearing for respondent Nos.2 to 6 supports the judgment and decree of the High Court and he, however, does not dispute that judgment and decree of the Courts below declaring the gift deed dated 08.07.1991 as void having not been interfered with, the defendant No.6 has no right in the suit land. Learned counsel for respondent Nos.2 to 6, however, submits that compensation determined consequent to the land acquisition be appropriated equally between the plaintiff as well as defendant Nos.1 to 5.

7. No one has appeared on behalf of respondent No.1 (defendant No.6).

8. We have considered the submissions of the parties and perused the records.

9. From the facts and material on record, it is undisputed that agreement to sell was executed by defendant Nos.1 to 5 in favour of the plaintiff and entire sale consideration of Rs.90,000/- was received and possession was delivered in the year 1989 itself. Plaintiff constructed three shops on the suit land. Plaintiff's case that to defeat the rights of the plaintiff a gift deed dated 08.07.1991 was executed by defendant Nos.1 to 5 in favour of defendant No.6 has

been accepted by courts below which have declared the gift deed as null and void. The decree for specific performance was granted by the trial court, it was confirmed by the First Appellate Court. The suit land was acquired and compensation was determined in favour of defendant No.6 whose name was recorded in the Revenue records. No objection can be taken to the view of the High Court that consequent of the acquisition of suit land under the land acquisition proceedings decree of specific performance granted in favour of plaintiff could not have been maintained.

10. The limited question which needs to be answered in the present appeal is as to what relief the (plaintiff)appellants were entitled in the event the decree of specific performance was required to be modified by an alternate decree.

11. Section 21 of the Specific Relief Act empowers the Court to award compensation in certain cases. Section 21 of the Specific Relief Act is as follows:

"21. Power to award compensation in certain cases.—

(1) In a suit for specific performance of a contract, the plaintiff may also claim compensation for its breach, either in addition to, or in substitution of, such performance.

(2) If, in any such suit, the court decides that specific performance ought not to be granted, but that there is a contract between the parties which has been broken by the defendant, and that the plaintiff is entitled to compensation for that breach, it shall award him such compensation accordingly.

(3) If, in any such suit, the court decides that specific performance ought to be granted, but that it is not sufficient to satisfy the justice of the case, and that some compensation for breach of the contract should also be made to the plaintiff, it shall award him such compensation accordingly.

(4) In determining the amount of any compensation awarded under this section, the court shall be guided by the principles specified in section 73 of the Indian Contract Act, 1872 (9 of 1872).

(5) No compensation shall be awarded under this section unless the plaintiff has claimed such compensation in his plaint: Provided that where the plaintiff has not claimed any such compensation in the plaint, the court shall, at any stage of the proceeding, allow him to amend the plaint on such terms as may be just, for including a claim for such compensation.

Explanation.—The circumstances that the contract has become incapable of specific performance does not preclude the court from exercising the jurisdiction conferred by this section."

12. This Court had occasion to consider Section 21 of the Specific Relief Act in context of a case which arose almost on similar facts in *Jagdish Singh vs. Nathu Singh*². In the above case also suit was filed for specific performance on the basis of a contract to sell dated July 3, 1973, the suit was dismissed by the trial court as well as First Appellate Court. However, the High Court in second appeal reversed the finding of the courts below and held that plaintiff was ready and willing to perform the contract and was entitled for decree. In the above case also during the pendency of the second appeal before the High Court, proceedings for compulsory acquisition of the land were initiated and the land was acquired. Question arose as to whether plaintiff was entitled for the amount of compensation received in the land acquisition proceedings or was entitled only to the refund of the earnest money. The High Court in the above case has modified the decree of the specific performance of the contract with decree for a Realization of compensation payable in lieu of acquisition. In paragraph 13 of the judgment the directions of the High Court were extracted which is to the following effect:

"13. The High Court issued these consequential directions:

"If the decree for specific performance of contract in question is found incapable of being executed due to acquisition of subject land, the decree shall stand suitably substituted by a decree for realisation of compensation payable in lieu thereof as may be or have been determined under the relevant Act and the plaintiff shall have a right to recover such compensation together with solatium and interest due thereon. The plaintiff shall have a right to recover it from the defendant if the defendant has already realised these amounts and in that event the defendant shall be further liable to pay interest at the rate of 12 per cent from the date of realisation by him to the date of payment on the entire amount realised in respect of the disputed land."

13. In the above context, this Court proceeded to examine the ambit and scope of Section 21 of the Specific Relief Act. This Court came to the opinion that when the contract has become impossible with no fault of the plaintiff, Section 21 enables the Court to award compensation in lieu of the specific performance. Paragraphs 24, 29 and 30 are extracted below:

"24. When the plaintiff by his option has made specific performance impossible, Section 21 does not entitle him to seek damages. That position is common to both Section 2 of Lord Cairn's Act, 1858 and Section 21 of the Specific Relief Act, 1963. But in Indian law where the contract, for no fault of the plaintiff, becomes impossible of performance Section 21 enables award of compensation in lieu and substitution of specific performance.

29. In the present case there is no difficulty in assessing the quantum of the compensation. That is ascertainable with reference to the determination of the market value in the land acquisition proceedings. The compensation awarded may safely be taken to be the measure of damages subject, of course, to the deduction there from of money value of the services, time and energy expended by the appellant in pursuing

the claims of compensation and the expenditure incurred by him in the litigation culminating in the award.

30. We accordingly confirm the finding of the High Court that respondent was willing and ready to perform the contract and that it was the appellant who was in breach. However, in substitution of the decree for specific performance, we make a decree for compensation, equivalent to the amount of the land acquisition compensation awarded for the suit lands together with solatium and accrued interest, less a sum of Rs 1,50,000 (one lakh fifty thousand only) which, by a rough and ready estimate, we quantify as the amount to be paid to the appellant in respect of his services, time and money expended in pursuing the legal claims for compensation."

14. This Court in *Kanshi Ram vs. Om Prakash Jawal and Others'*, has again in context of suit for specific performance of the contract held that granting decree for specific performance of contract is one of the discretion to be exercised on sound principles. When the court gets into equity jurisdiction, it would be guided by justice, equity, good conscience and fairness to both the parties.

15. From materials brought on record, it does appear compensation was determined in favour of defendant No.6 to the extent of amount of Rs.10,03,743/-. It also appears that compensation towards shops was also determined. The name of defendant No.6 being recorded in the Revenue records, compensation was determined in its favour. In view of the judgment and decree of courts below whereby the gift deed dated 08.07.1991 has been declared void, defendant No.6 is left with no right in the suit land and is clearly not entitled to receive any amount consequent to the acquisition of the suit land. It has not come on the record as to whether compensation consequent to the acquisition of the suit land has been received by defendant No.6(respondent No.1 to the appeal) or not.

16. Taking into consideration overall facts of the present case, we are of the view that ends of justice be served in awarding compensation of Rs.10 lakh in favour of the plaintiff-appellants out of the compensation received consequent to the acquisition of the suit land. The rest of the compensation, if any, received towards land and shops in question has to be paid to the land owner that is defendant Nos.1 to 5 (respondent Nos.2 to 6 to this appeal) after deducting an amount of Rs.10 lakh out of the said compensation. We further direct in event compensation has not yet been disbursed, the compensation be disbursed to the appellants (legal heirs of the plaintiff) and respondent Nos .2 to 6 in the above manner and in the event the compensation has been received by defendant No.6 (respondent No.1), respondent No.1 shall return the compensation to the extent of Rs.10 lakh to the appellants and the rest of the amount to defendant Nos.1 to 5 (respondent Nos.2 to 6). The judgment and decree of the High Court dated 02.11.2012 is modified to the above extent.

17. The appeal is allowed accordingly.

Judgment Referred.

¹(1996) 4 SCC 0593
²(1992) 1 SCC 0647

Type equation here.