

(1989) 08 DEL CK 0068

In the Delhi High Court

Case No : First Appeal No. 32 of 1989

Ansal Properties and Industries Pvt. Ltd.

APPELLANT

Vs

Rajinder Singh and Another

RESPONDENT

Date of Decision : 04-08-1989

Acts Referred:

Citation : (1990) 41 DLT 510 : (1990) 2 ILR Delhi 105 : (1989) RLR 529

Hon'ble Judges : C.L. Choudhary, J;B.N. Kirpal, J

Bench : Division Bench

Advocate : Mukul Rohatagi, Deepak Khosla and P.C. Sharma, for the Appellant;

Judgement

B.N. Kirpal, J.

(1) ADMITTED. Since the appeal involves a short question, we propose to dispose of the appeal immediately.

(2) This is an appeal against an order of the learned single Judge of this Court, who had directed the proposed sale consideration be deposited in Court before any further orders are passed in the suit.

(3) The plaintiff had filed a suit for specific performance of an agreement dated 11th January, 1988. It was averred that the defendants along with one Laxmi Narain had agreed to sell some land in Village Biswan. New Delhi for a consideration of Rs. 3,25,000 per acre. It is further alleged that prior to the execution of the agreement to sell, Laxmi Narain had in fact died on 18th July, 1969, and this fact was not known to the plaintiff/ appellant. In view of this, the prayer in the suit was for the relief of grant of a decree for specific performance in respect of the 2/3 share of the two defendants in the land in question.

(4) When the suit came up for hearing on the first day" the learned single Judge, in the impugned order, held that the suit is for part performance of the agreement to sell and such a suit will be maintainable only after the party suing pays or has paid the consideration for the whole contract reduced by the

consideration for the part that must be left unperformed. This conclusion was arrived at by interpreting the provisions of Section 12(3)(a)(i) of the Specific Relief Act. It was also observed that the provisions of Section 16 covered not only those cases falling u/s 12, but also other cases. Time was given to the plaintiff to make the deposit of the sale consideration.

(5) It is against the aforesaid order that the present appeal has been filed. When a suit is filed for specific performance the provisions of Section 16 have to be complied with. Section 16(c) provides that specific performance will not be enforced in favor of a person, who fails to aver or prove that he has performed or has always been ready and willing to perform the essential terms of the contract. Explanation to this provision specifically provides that where a contract involves payment of money it is not essential for the plaintiff to actually tender to the defendant or to deposit in Court any money, except when so directed, by the Court.

(6) The learned single Judge was right in observing that Section 16 applies not only to those cases which are covered by Section 12, but also to those cases which are not covered by Section 12. But where the learned single Judge erred was in holding that a suit u/s 12 was not maintainable unless and until the sale consideration was paid or deposited in Court.

(7) Section 16 will apply to all suits for specific performance, including a suit falling u/s 12. It is the provisions of Section 16 which stipulate as to what has to be averred in the plaint by the plaintiff. Unless and until it is averred that the plaintiff is ready and willing to perform the contract, a suit for specific performance will not be decreed. What is important to note is that the Explanation specifically provides that it is not essential for the plaintiff to actually tender to the defendant or to deposit the money in Court, except when so directed by the Court. Normally, Therefore, no money is to be tendered and it is only in cases where the Court feels that, though an averment may have been made in the plaint as postulated by Explanation to Section 16, the plaintiff may not actually have the money to pay the consideration Therefore, in order to bind the plaintiff or to satisfy itself above the truthfulness of the averment, the Court may direct the plaintiff to deposit the money in Court. This course, in our view, should be adopted rarely, and only when the Court is of the opinion that the averment of the plaintiff being ready and willing to perform the contract may not be quite true.

(8) Section 12 which requires money to be paid to the defendant comes into play only at the time when the Court is passing the decree and is deciding the rights of the parties. Section 12 nowhere states that a suit is not maintainable unless the sale consideration is deposited. The use of the expression "pays or has paid the consideration" means payment of money, as consideration, to the seller. It is inconceivable that the said section would contemplate payment of consideration to the seller at or before the time of filing of the suit. The question of payment of consideration would arise only when the Court directs the purchaser to do so.

Such a direction will be issued only after the trial of the suit and at the time when the rights of the parties are being determined. Such a direction is issued at the time when the final decree is passed and not at an earlier point of time.

(9) We may note here that the contention of the learned counsel for the appellant is that the provisions of Section 12 do not in fact apply in this case because the appellant is not seeking part performance of the contract and nor is he the defaulting party. The submission of Mr. Rohatgi is that because Laxmi Narain had died before the agreement to sell had been entered into, the question of seeking performance of the contract in respect of Laxmi Narain's share could not arise. This being so, the plaintiff/appellant is asking for the specific performance of the entire contract which could be specifically performed. It is not necessary for us to go into this question and this may have to be tried when the suit is finally determined. We are proceeding on the assumption that Section 12 applies, as has been observed by the learned single Judge, and even on that we find that there is no requirement of law that the plaintiff must deposit the sale consideration before the suit can be entertained.

(10) For the aforesaid reasons, the appeal is allowed, the order of the learned single Judge is set aside, and the suit should be disposed of in accordance with law and the observations made in this order.

(11) Parties to appear before the learned single Judge for further proceedings on 14th August, 1989.