

(2016) 03 PAT CK 0150
In the Patna High Court
Case No : Second Appeal No. 364 of 2013

Ashok Kumar Rai

APPELLANT

Vs

Rajendra Sah

RESPONDENT

Date of Decision : 11-03-2016

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 100
Specific Relief Act, 1963 — Section 16(c)

Citation : (2017) 169 AIC 363 : (2016) 3 PLJR 796

Hon'ble Judges : Mr. V. Nath, J.

Bench : Single Bench

Advocate : Mr. Chandra Kant, Mr. Umesh Kumar Singh, Advocate, for the Appellants; Mr. Rashami Srivastava, Advocate, for the Respondent

Final Decision : Dismissed

Judgement

Mr. V. Nath, J.(Oral)—Heard learned Counsel for the appellants.

2. The defendants in the suit for specific performance of contract are the appellants in this appeal against the judgment and decree of affirmance granting the decree to the plaintiffs as prayed.

3. The plaintiffs filed the suit for specific performance of contract on the basis of agreement for sale dated 29th Kartik, 1343 Fasali said to have been executed by defendant No. 1 (since deceased) in favour of the plaintiffs. The case of the plaintiffs, in short, was that the defendant No. 1 had earlier executed a mortgage deed on 5.6.1943 for Rs. 300/- in favour of the father of the plaintiffs for the suit land and the said mortgage money was agreed to be adjusted in the earlier mortgage for the suit land with Chander Tiwari. It is further case of the plaintiffs that the father of the plaintiffs redeemed earlier mortgage of the suit land from Chander Tiwari and came in possession of the same. The plaintiffs further averred that even thereafter there were several mortgage transaction by the defendant No. 1 for the suit land with the plaintiffs and finally the defendant No. 1 offered to sell the suit land with the plaintiffs for total consideration money of

Rs. 4000/- out of which Rs. 1000/- was to be adjusted towards the mortgage due and Rs. 1000/- was to be paid by way of advance and the remaining consideration amount of Rs. 2000/- was to be paid at the time of execution of the sale deed. It is the case of the plaintiffs that the plaintiffs agreed to purchase the suit land on above terms and the agreement for sale was, accordingly, executed by the defendant No. 1. The suit for specific performance of contract for sale was filed by the plaintiffs when the defendant No. 1 refused to abide by the terms of the agreement and execute the sale deed for the suit land.

4. The defendants appeared in the suit and contested the case of the plaintiffs. It was the primary case of the defendants that no agreement for sale had been executed as alleged by the plaintiffs and the agreement for sale which had been propounded by the plaintiffs had been fabricated by the plaintiffs on the plain stamp papers over which the LTI of defendant No. 1 had been taken by the plaintiffs' father at the various times while giving loans. It was also the further case of the defendants that valuation of the suit property as given in the agreement for sale was very low in view of the prevailing rate of the land. The defendants further pleaded that the defendant No. 1 had executed mortgage deeds for the suit land in favour of the sons of defendant Nos. 7 and 8 on 9.3.1966 wherein the earlier mortgage money of Rs. 1000/- due in favour of the plaintiffs was adjusted and to be paid to the plaintiffs by the mortgagee but on refusal by the plaintiffs, the said amount had been deposited under Section 83 of the T.P. Act by the mortgagees.

5. The trial court returned the findings on the issue in favour of the plaintiffs holding that the agreement for sale as propounded by the plaintiffs was legally valid and enforceable. It was further held that the objection by the defendants with regard to the valuation as mentioned in the agreement for sale had no substance. The trial court, accordingly, granted the decree to the plaintiffs as prayed. In appeal, by the defendants, the appellate court below on reappraisal of evidence and after considering the submissions made on behalf of the parties has affirmed the findings of the trial court and dismissed the appeal by the impugned judgment and decree.

6. Mr. Chandra Kant, learned Counsel appearing for the appellants, while challenging the impugned judgment, has submitted that no notice was given by the plaintiffs before filing the suit for specific performance of contract, but the said fact has not been considered by both the courts below. Elaborating his submissions it has been canvassed that there is no finding by the courts below regarding the readiness and willingness of the plaintiffs to perform their part of contract and even the finding recorded by the appellate court below in this regard is not sustainable in law. It has further also been submitted that the consideration money as mentioned in the agreement for sale was excessively low and reflects upon the genuineness of the agreement for sale in view of the evidence led by the defendants in this regard, but the courts below have wrongly discarded those evidence and held that the agreement for sale was genuine and

legally enforceable. The learned Counsel has placed reliance in the case of *Manohar Lal v. Maya*, AIR 2003 SC 2362, in support of his submission that in a case where the price/consideration money mentioned in the agreement for sale appears to be not proper and in accordance with the prevailing valuation the Court should not exercise its discretion in granting the decree for specific performance of contract. No other submission has been made on behalf of the appellants.

7. After perusal of the judgments of both the courts below and considering the submission, it is manifest that the suit for specific performance of contract has been filed by the plaintiffs on the basis of agreement for sale said to have been executed by defendant No. 1 Suraj Rai in favour of the plaintiffs. The fact is admitted that there had been earlier several transactions of mortgage wherein the suit property was kept in mortgage by the defendant No. 1 with the plaintiffs' father (since deceased) and further also that the suit land is in possession of the plaintiffs. The trial court in para 9 of the judgment has taken into notice the deposition of the defendant No. 1 who was examined as D.W. 8 in this regard, and has disbelieved the case of fabrication of the agreement for sale by the plaintiffs. The report (Ext. 3) by the handwriting expert has also been relied upon by the courts below to discard the case of fabrication as set up by the defendant No. 1. Further the trial court has also taken into consideration the evidence on record and after scrutiny of the same has discarded the plea of the defendant regarding the low valuation of the suit property. In appeal, the appellate court below has considered the submission on behalf of the defendant-appellants regarding the readiness and willingness of the plaintiffs to perform their part of contract and has recorded the finding in para 9 that the fact relating to the readiness and willingness of the plaintiffs to perform their part of the contract have been averred in the plaint and established by evidence. The appellate court below on reappraisal of evidence has also recorded the finding with regard to the genuineness of the agreement for sale and has disbelieved the case of the defendants that the said agreement for sale is forged and fabricated.

8. The submission on behalf of the appellant on the issue of readiness and willingness is misconceived because this issue cannot be considered in a straight jacket ignoring the entirety of the facts and circumstances. As laid down by the apex court in *N.P. Thirugnanan v. R. Jagan Mohan Rao*, AIR 1996 SC 116 that the factum of readiness and willingness is to be adjudged with reference to the conduct of the party and the attending circumstances. In the background of the admitted facts of series of mortgage transactions for the suit land between the parties culminating in the agreement of sale and also the admitted possession of the plaintiffs over the suit land, the finding on this issue by the courts below does not appear to be unreasonable. Similarly the submission relating to inadequacy of consideration money has also been rightly considered by the trial court in paragraph 12 in the backdrop of these facts and evidence and found to have no substance. The decision in *Manohar Lal* (supra), relied upon on behalf of the appellants, has clearly been rendered in a different set of facts and cannot be of

any assistance to the submission as made on behalf of the appellants.

9. It is transparent from the judgments of both the courts below that the oral and documentary evidence adduced on behalf of the parties on issues have been elaborately scrutinised before recording the findings and this Court is not persuaded to hold the conclusions by both the courts below to be unreasonable or outrageous. It is not the case of the appellants that the findings have been recorded only on surmises and conjecture ignoring material evidence. In fact the entire submissions on behalf of the appellants have centered around re-appreciation of evidence with emphasis on possibility of another view. It would be profitable here to take into notice the principles in this regard as laid down by the Apex Court in the case of Damodar Lal v. Sohan Devi, AIR 2016 SC 262 as follows:-

"13. ????. Even if the finding of fact is wrong, that by itself will not constitute a question of law. The wrong finding should stem out on a complete misreading of evidence or it should be based only on conjectures and surmises. Safest approach on perversity is the classic approach on the reasonable man's inference on the facts. To him, if the conclusion on the facts in evidence made by the court below is possible, there is no perversity. If not, the finding is perverse. Inadequacy of evidence or a different reading of evidence is not perversity."

Similar view was expressed by the Apex Court in the case of S.R. Tewari v. Union of India, (2013) 6 SCC 602, as follows:-

"30. ????. If a decision is arrived at on the basis of no evidence or thoroughly unreliable evidence and no reasonable person would act upon it, the order would be perverse. But if there is some evidence on record which is acceptable and which could be relied upon, the conclusions would not be treated as perverse and the findings would not be interfered with."

10. For the aforesaid reasons and discussions, this Court does not finding any substantial question of law arising for consideration in this appeal, which is accordingly dismissed.