
(1975) 12 MP CK 0016
In the Madhya Pradesh High Court
Case No : First Appeal No. 195 of 1974

E. Nageshwar Rao

APPELLANT

Vs

Dinesh Chandra Verma

RESPONDENT

Date of Decision : 17-12-1975

Acts Referred:

Registration Act, 1908 — Section 21, 22
Transfer of Property Act, 1882 — Section 8

Citation : AIR 1976 MP 205 : (1978) ILR (MP) 679 : (1976) 21 MPLJ 450

Hon'ble Judges : G.P. Singh, J;A.P. Sen, J

Bench : Division Bench

Advocate : B.C. Verma, for the Appellant; P.C. Pathak, for the Respondent

Final Decision : Dismissed

Judgement

A.P. Sen, J.

These two appeals, First Appeals Nos. 195 and 238 of 1974, arise out of a suit for specific performance--Appeal No. 195 by the defendant is against the judgment of the IIIrd Addl. District Judge, Bilaspur, decreeing the plaintiff's claim for specific performance, while Appeal No. 238 is by the plaintiff against disallowing of costs.

The relevant facts, shortly stated, are as follows. The defendant, E. Nageshwar Rao, entered into a contract with the plaintiff, to sell a plot out of the compound of his bungalow at Link Road, Bilaspur, measuring 35" X 60" @ Rs. 7 per sq. ft. The terms of the contract are embodied in writing, Ex. P-2, dated 31-1-1971. The defendant received Rs. 1,000 as earnest money in pursuance of the contract. The plaintiff brought the suit on the allegation that the sale-deed was to be executed and registered and possession of the plot delivered on 1-3-1971 but in spite of his requests the defendant did not turn up for execution of the sale-deed, that, even thereafter, he approached the defendant on many occasions, who orally, as also in writing, postponed the registration of the sale-deed on

some pretext or the other, and that, finally he served a notice on the defendant to which no reply was sent, and that, the defendant continues in possession of the plot but wants to avoid the performance of contract.

To the plaintiff's claim for specific performance, the defendant pleaded, *inter alia*, that he was always willing to perform the contract and had no intention to dishonour the commitment; that it was due to certain other engagements that he had to postpone the matter; that the plot was not demarcated and the plaintiff did not give opportunity for that work; that though he wrote several letters to the plaintiff for postponement, he finally asked him to meet him on 6-2-1973, but the plaintiff did not turn up and himself did not avail of the opportunity and had instead in hot-haste and maliciously dragged him into the litigation; and, that though the expenses were to be borne by the parties equally, initially the plaintiff was to purchase the stamp-paper for the sale deed and to incur expenses of registration, later half of the amount was to be deducted from the remaining sale consideration, and this was not done. In other words, his case was that the plaintiff himself was in breach and, therefore, not entitled to the relief of specific performance. That plea of his has not prevailed and the learned Addl. District Judge has decreed the plaintiff's claim for specific performance.

The only questions of substance that were urged before us, were, first, that the writing, Ex. P-2, does not contain any description of the land sought to be conveyed and, therefore, the identity of the plot cannot be fixed; and secondly, the plaintiff himself was in breach as there was failure on his part to purchase a stamp-paper and to get the sale-deed executed and registered. There is, in our opinion, no substance in any of these contentions.

The writing Ex. P-2, which is an earnest-receipt and has been impounded as an agreement, reads:--

"Received Rs. eleven hundred only as earnest money for proposed sale vacant plot of land measuring 35" X 60" belonging to E. Nageshwar Rao at the rate of Rs. 7 per square feet. The vacant plot of land is situate behind Main Hospital and is in front of P.W.D. Office and is in corner of three blocks of houses situated there. The registration will be done by 1st March 1971 after the remaining amount is paid in full by the purchaser Shri Dinesh Chandra Verma (M. Lal).

Sd/- E. Nageshwar Rao 31-1-71."

To our mind, the document contains sufficient description of the plot so as to fix its location.

There can be no doubt that the description of the property to be sold is essential to the validity of the agreement. Ordinarily, it may be inserted in the body of the deed or in the schedule annexed to the deed. If the description is short and, therefore, may conveniently be entered in the body of the deed, there may not be any objection to such incorporation. The description of the property to be sold should, however, be sufficient for the purpose of identification of the property.

The area, situation, and holding or premises number should be given, the character of the land, the boundaries thereof, its existing or former occupancy may sometimes be necessary. The conveyancer would do well to insert such description of the property as is in conformity with the provisions of Sections 21 and 22 of the Registration Act. Lands in cities and towns are very often surveyed and measured before the sale is completed. The purchaser, who is more often a stranger is enabled thereby to know the exact parcel of land he is purchasing. The survey and measurement of land being overt acts done at the site, the neighbouring owners may dispute the boundary and other persons having claims upon the land are likely to put forward their claims and objections, if any, so that they may finally settle before the sale is completed.

In the present case, however the writing, Ex. P-2, contains sufficient description, which gives the location of the plot. The measurement of the plot is also given. The price of the land being fixed at a certain sum for a unit of measurement, such as per sq. ft., it is usual to insert a clause in the agreement that the property should be surveyed and measured by the purchaser or his surveyor in the presence of the vendor or his agent, who shall show or point out the boundaries thereof and the plan prepared on such measurement shall be accepted as final by both parties and the price thereof shall be calculated accordingly. The writing, Ex. P-2, is no doubt silent on this aspect. But looking to the location of the plot proposed to be sold and its situation, its identity cannot be anything but that given in the plaintiff's map, Ex. P-1, This would be clear on a comparison with the defendant's map, Ex. D-1. The proposed plot as shown in the plaintiff's map, Ex. P-1, is behind Main Hospital and in front of P.W.D. Office and is in corner of three blocks of houses situated there.

In dealing with the question, the learned Additional District Judge observes:--

"The defendant E. Nageshwar Rao (D.W. 1) has virtually accepted that the plot shown in map Ex. P-1 is the same which he intended to sell to the plaintiff he says:--

izn" kZ ih- 2 esa lgh fy[kk gS oknh dks og Iykv fn;k tkosxk tks rhu Cykd ds dkuZj esa gSa vkSj ih- MCyw- Mh- vkfQl ds lkeus vkSj /keZ vLirky ds ihNs i<rk gS iz- ih- ? dk uD"kk mlh tehu dk fn[kkbZ iMrk gS ns[kdj lk{kh us dgkA

The defendant has admitted that the plot sold to the plaintiff contains a temporary structure of motor garage. It is in occupation of a tenant (Shri Bhandari). The defendant has sent the letter Ex. P-18 to this tenant to vacate the garage. The defendant admits this letter and it is clearly derived from its recitals that the motor garage is included in the plot sold to the plaintiff. There then remains no difficulty in the location of plot. The corner referred to in Ex. P-2, will be the starting point for measurement. This corner clearly lies on the triangular meet of the roads towards south in the map Exs. D-1 and P-1. The plaintiff Dinesh Chandra (D.W. 1) has stated that the plot sold to him is the one shown in map Ex. P-1 and no other. He says that he had seen the spot with the defendant

a week before the finalisation of contract. From what the defendant has deposed in para 5 of his statement it is manifest that he got a description of plot from the plaintiff who had carefully seen the plot and told him that 35" X 60" area would be available. The plaintiff's version has therefore to be accepted that plot intended to be sold is as shown in Ex. P-1. It tallies with the description contained in the agreement Ex. P-2."

The learned counsel did not challenge the finding. We also see no reason to differ from the conclusion arrived at by the learned Judge. Accordingly, the first point fails.

As to the second point, the learned Addl. District Judge has held that there was no agreement as is now alleged by the defendant about stamp-paper and expenses. He observes that the agreement, Ex. P-2, could be the guide but it is silent on the point. According to him, the ordinary rule governing the law of vendor and purchaser is that the expenses of execution of conveyance have to be borne by the executant. In his view, there being no cogent proof of any special arrangement, it has to be taken that the normal practice has to be followed in this case. We are not aware of any law which casts the burden on the executant to bear the cost of stamp-paper and expenses of registration. Nor was our attention drawn to any such authority on the point. The normal practice is, as it should be, unless there is a contract to the contrary, that the purchaser should provide stamp-paper and also bear expenses of registration. We, however, express no final opinion on the question as the point was not argued.

We are inclined to accept the view expressed by the learned Addl. District Judge on this aspect. That is what the learned Judge has to say:--

"It is pertinent to note that the defendant sent so many telegrams and chits to the plaintiff asking him to come and finalise the conveyance but he did not ask any time to bring stamp papers. This shows that there was no special contract as is now alleged by the defendant about stamp paper and expenses. The allegation of the plaintiff's default or non-performance in this regard is therefore not correct"

As to this, the learned counsel for the appellant had no comments to offer. It cannot, therefore, be said that there was any failure on the part of the plaintiff to procure a stamp-paper and to incur expenses of registration, as alleged. The defendant should have, in any of his several letters, insisted upon the fulfilment of this condition, and upon failure of the plaintiff to comply, rescinded the contract. That, however, was not done. The matter must rest at that. It goes without saying that these expenses shall be borne by the plaintiff. The second point must, therefore, also fail.

As regards the plaintiff's appeal, it is devoid of substance. The usual rule is that costs should follow the event and the successful party is entitled to get his costs, but the rule may, in a proper case, be departed from, according to its circumstances. The learned Addl. District Judge has given good and sufficient

reasons to deprive the plaintiff of his costs. Here, the defendant had never resiled from the contract or dishonoured his commitment. On the contrary, he frankly offered to abide by it even in his written statement. The delay in execution of the sale-deed was due to his personal circumstances including sickness, by which he was prevented from executing the sale-deed. In fact, he kept the plaintiff informed in writing by his several letters asking for postponement. In the circumstances, the learned Judge rightly exercised his discretion in disallowing the costs to the plaintiff. Before us, the learned counsel for the defendant adhered to the same attitude, and signified the willingness of the defendant to execute the agreement in pursuance of the contract, indeed, we did not call upon the respondent to reply. That being so, the costs throughout shall be borne by the parties as incurred.

The result, therefore, is that the appeals fail and are dismissed. There shall be no order as to costs.