
(2009) 05 MP CK 0005
In the Madhya Pradesh High Court
Case No : F.A. No. 84 of 1997

Hari Mohan Singhi (dead) through L.R. Vishal Maheshwari and Another APPELLANT

Vs

Ramjidas (dead) through LRs Satyanarayan and Others RESPONDENT

Date of Decision : 14-05-2009

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 96
Specific Relief Act, 1963 — Section 15, 16

Citation : (2009) 3 MPJR 249

Hon'ble Judges : S.K. Gangele, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

S.K Gangele, J.

Appellants-plaintiffs have filed this appeal u/s 96 CPC against the judgment and decree dated 28.01.1997 passed by IXth Additional District Judge, Gwalior in Original Civil Suit No. 163-A/96, thereby the trial Court has dismissed the suit filed for specific performance of contract.

Originally, plaintiffs, Hari Mohan Singhi and Smt. Shantadevi Singhi, filed a suit for specific performance of contract against defendants, Ramjidas Singhi and Brijmohan Singhi. Plaintiffs pleaded that defendant No. 1 himself and defendant No. 2 through his power of attorney holders, Smt. Taradevi and Smt. Pushpadevi, vide a contract dated 04.02.1979 agreed to sell a house (Bada) bearing Municipal No. 31/138 in a consideration of Rs. 15,000/- and a shop bearing Municipal No. 31/136 in a consideration of Rs. 20,000/-. They also received an amount of Rs. 5000/-, Rs. 2500/- for each property, as advance in accordance with the aforesaid agreement for sale. It was agreed that the defendants would obtain permission from Urban Land Ceiling Authority for the purpose of sale of properties. Consequently, defendants applied for permission for sale before the Urban Land Ceiling Authority and the Authority granted the requisite permission

for sale to the defendants vide order dated 13.04.1979. In spite of that the defendants did not execute sale-deed. Thereafter, plaintiffs served a registered notice to the defendants on 12.07.1979 and they had also gone to the office of Registrar, Registration Department on 20.07.1979 for the purpose of registration, however, the defendants did not come for the Registry. Hence, the plaintiffs filed suit for specific performance of contract.

During pendency of the suit defendants No. 1 and 2 died and their legal representatives have been brought on record. Initially, defendant No. 1 and power of attorney holders of defendant No. 2 filed their written statements separately and they admitted the fact of execution of agreement to sale of the House (Bada) and the shop. It has further been stated by them that when the defendants enquired it was found that plaintiffs have committed forgery and they submitted an application before the Urban Land Ceiling Authority for permission for sale and in the aforesaid application amount of sale has been mentioned as Rs. 9500/- and Rs. 7500/-. It is further stated that when the defendant No. 1 demanded the money plaintiffs told that 50 per cent of the money be paid at the time of registration and for rest of the money a Pro-note be executed. As such, the plaintiffs violated the terms and conditions of the agreement to sale. After death of defendant No. 2, his legal representatives filed additional written statement on 07.07.1983 denying the fact that defendants No. 1 and 2 were able to execute the agreement. They further stated that the suit property was Joint Hindu Family property and there was no partition of the suit property, hence the defendants have no right to execute the agreement to sale because it was not for the benefit of Joint Hindu family.

The trial Court framed eleven issues and found that an agreement to sale was executed between the plaintiffs and defendants No. 1 and 2, however, the plaintiffs were not ready to pay the total amount as agreed in the agreement for registration, hence the defendants refused to execute registration of the sale-deed. The plaintiffs were not ready and willing to perform their part of contract. It has further been held that the suit property was a joint Hindu family property, hence defendants No. 1 and 2 were not entitled to execute the agreement with regard to sale of the said property. On the aforesaid findings the trial Court dismissed the suit.

Learned Senior Counsel for the appellants-plaintiffs has submitted that the findings recorded by the trial Court are perverse. The appellant-plaintiffs were ready to perform their part of contract. They were present before the Registrar of Registration Department, but in spite of that the defendants No. 1 and 2 did not execute the sale-deed. Apart from this, as per the agreement, the property was not a joint Hindu family property and no such plea has been taken by the original defendants in their written statements, hence the suit is liable to be decreed. In support of his contentions learned counsel relied upon the following judgments:

(1) Zahoor Bux and another Vs. Fareed Bux and another, reported in (2005) 13 SCC 383,

(2) Faquir Chand and another Vs. Sudesh Kumari, reported in (2006) 12 SCC 146,

(3) Surinder Singh Vs. Kapoor Singh (Dead) th. Lrs. and Others, ,

(4) P.S. Ranakrishna Reddy Vs. M.K. Bhagyalakshmi and another, reported in (2007) 10 SCC 237,

(5) Banshilal Soni (Dead) through L.Rs. Vs. Kastoor Chand Begani (Dead) by L.Rs. and Others, .

(6) Pratap Lakshman Muchandi & others Vs. Shamlal Uddavadas Wadhwa and others, reported in AIR 2008 SC 1378.

Contrary to this, learned Senior Counsel appearing on behalf of respondents has submitted that plaintiffs were not ready and willing to pay the amount as per the agreement, hence the sale-deed was not executed. The defendants were not entitled to execute the agreement because the suit property was Joint Hindu Family property. Hence, the trial Court has rightly dismissed the suit of the plaintiffs. In support of his contentions learned counsel relied upon following judgments:

(1) A. Viswanatha Pillai and others Vs. Special Tahsildar for Land Acquisition No. IV and others, ,

(2) Nand Kumar Kushwaha Vs. Board of Revenue and others, reported in 1997(2) MPU 68,

(3) Dharendra Nath Verma Vs. Yashwant Rao, reported in 1996 (I) MPJR 150,

(4) Smt. Rani and Another Vs. Smt. Santa Bala Debnath and Others, ,

(5) N.P. Thirugnanam (D) by L.Rs., Vs. Dr. R. Jagan Mohan Rao and others,

(6) Gyaneshwar Vs. Smt. Moongabai @ Muneshwaribai and another, reported in 2006 (I) MPU 221.

Pleadings of both, plaintiffs and defendants, have already been stated above in the judgment. On the basis of the afore said pleadings the trial Court has framed total eleven issues. It is also a fact that during pendency of this appeal, appellant No. 1 has died and defendant No. 1 has also died. Hence, the original plaintiff No. 1 and original defendant No. 1, both have been died during pendency of the proceedings. Issue No. 1 framed by the trial Court is that "Whether there was an agreement between the parties to sell the house (Bada) and shop and whether the defendants changed the consideration of the house (Bada) and shop of Rs. 9500/- and Rs. 7500/- and submitted that for the rest of the amount they execute a pronote and on the aforesaid basis the defendants refused to execute the sale-deed". The trial Court answered both Issues No. 1 and 2 in affirmative. The trial Court with regard to Issue No. 3 that plaintiffs were ready and willing to execute the agreement, answered the issue in negative. The trial Court further held with regard to Issues No. 7 and 8 that the daughters and sons of defendant

No. 1 are co-sharer in the suit property and defendants No. 1 and 2 were not entitled to execute the agreement.

Harimohan (PW-1) in his evidence stated that Ramjidas and Brijmohan entered into an agreement with regard to sale of a Bada and a shop on 04.02.1979. He had also paid an advance of Rs. 2500/- for each property, total Rs. 5000/-, as per agreement, for both the properties. It was also agreed that after obtaining permission from the Urban Land Ceiling Authority a sale-deed would be executed. Ramjidas and power of attorney holders of Brijmohan had signed the agreement, Ex. P-1. Thereafter, the defendants submitted two applications before the Urban Land Ceiling Authority for permission to sale the properties. The permission was granted vide order dated 13.04.1979. Thereafter, he issued a notice to the defendants on 12.07.1979, Ex. P-4. As per the notice, he was present before the Registrar of Registration Department on 20.07.1979 along with money for registration of the premises, however, the defendants were not present in the office of Registrar. Thereafter, he along with other persons waited in the office up to 4.00 O'clock and then submitted an application before the Registrar, Ex. P-12. Further he stated that he was willing to perform his part of the contract.

Another witness, Hazarimal Jain (PW-2) in his evidence stated that on 20.07.1979 he was present in the office of Registrar along with plaintiffs and waited for defendants up to 4.00 O'clock, however, the defendants did not come to the office of Registrar and at that time plaintiffs had a cash of near about Rs. 34,000/-. Shanta Singhi (PW-3) in her evidence stated that an agreement was executed with regard to sale of a Bada and a shop. The defendants have taken an advance of Rs. 2500/- for each properties and signed the agreement, Ex. P-1. The defendants also got permission to sell the properties on 13.04.1979 and thereafter as per notice she along with her father-in-law had gone to the office of Registrar on 20.07.1979 for registration along with money, however, the defendants did not come in the office of Registrar. Smt. Pushpadevi Singhi in her evidence stated that the suit property is the ancestral property. Originally Narayandas, was the owner of the property. He died 50-55 years ago. He had two sons, Brijmohan Singhi and Ramjidas Singhi. Brijmohan Singhi is her father-in-law and he became an ascetic. Brijmohan has five sons and four daughters. There was no partition in the family. She further stated that all the family members have shares in the property and they have not authorized to enter into agreement to Mr. Brijmohan for sale of the property. There was no need for money to the family in the year 1979. She denied that there was any agreement from the defendants to sell the suit property. Satyanarayan Singhi (DW-1) in his evidence deposed that he filed a suit with regard to suit properties, which was registered as Civil Suit No. 102-A/84. He had no knowledge about the agreement, Ex. P-1. He denied his signature over Ex. P-10. He further stated that he come to know about the agreement in the year 1984 when he came to Gwalior and thereafter he filed a civil suit. Chandra Mohan Singhi (DW-2) in his statement deposed that the suit property is of the joint ownership of the family.

His ancestors were Narayandas and Jagannath Singhi. Narayandas had two sons, Brijmohan and Ramjidas. The disputed properties have been registered in the municipal record in the names of Narayandas and Jagannath Singhi. After death of Narayandas they were registered in the name of Ramjidas in the municipal record. His father, Brij Mohan became ascetic and the tax in the Municipal Council has been paid in the names of Narayandas and Ramjidas, the receipts are Exs. D-4 and D-5. There was no partition in the family. He further stated that he has been doing business of fridge repairing in the shop. The agreement was executed in the year 1979. At the time of agreement Brij Mohan had six sons. Ramratan Maheshwari (DW-3) in his evidence stated that he typed the agreement, Ex. P-3. He further stated that Harimohan Singhi came to him for typing the agreement and the agreement, Ex. P-1 has been typed on his machine and he also written from his hand writing at "F to F" in agreement, Ex. P-1. Laxman Kumar Maheshari (DW-4) in his evidence stated that Chandra Mohan Singhi has been doing the work of Cooler and Fridge repairing in the shop. The defendants also examined Ramjidas Singhi (DW-5). He stated that Ex. P-1, agreement has been executed by him under threat. He further admitted his signature over Ex. P-1 and further stated that on Ex. D-7 amount of Rs. 7500/- has been mentioned and defendants told him that it was mentioned for the purpose of evading stamp duty. He admitted his signature over Ex. D-7 and Ex. D-9. Another witness Shriksihandas (DW-7) has also been examined on behalf of defendants. He stated that he knows the family for the last many years. Narayandas had two sons, Brijmohan and Ramjidas. The house is the joint family property and there was no partition in the family,

From the oral evidence on record it is clear that the defendants executed an agreement on 04.02.1979 and as per the aforesaid agreement it was agreed to sale the house (Bada) and a shop in a consideration of Rs. 15,000/- and Rs. 20,000/- respectively. The defendants also received an advance of Rs. 2500/- each for both the properties. Thereafter, they filed applications before the Urban Land Ceiling Authority for permission for sale the property. That permission was granted and as per the plaintiffs they had gone to the office of Registrar along with money for registration of the properties, however, the defendants did not come to the office of Registrar and thereafter they submitted an application before the Registrar with regard to their presence. Copy of the application has been filed as Ex. P-12. The defendants filed the receipts to house-tax of Municipal Board, Lashkar, Gwalior, which is dated 02.04.1937, Ex. D-1 with regard to the suit property. In the aforesaid receipts name of owner has been mentioned as Seth Narayandas. Another document has been filed as Itallanam House, Exs. D-2, D-3, D-4 and D-5. In the aforesaid documents name of the owner of the suit property has been mentioned as Narayandas. Further copy of house-tax register has also been filed with regard to the suit property as Exs. 21-C and Ex. 22 and in the aforesaid copy of house-tax register name of owner of the house has been mentioned as Ramjidas and Narayandas. It is also a fact that defendants filed an application before the Urban Land Ceiling Authority and in the

aforesaid application they have mentioned the value of the property as Rs. 95007- and Rs. 7500/-. It is also a fact that before the Additional Collector, Competent Authority under Urban Land Ceiling, Gwalior a draft sale-deed has been filed. In the aforesaid draft sale-deed the cost of the property has been mentioned as Rs. 95007-. Similarly, in another case, in the draft sale-deed the cost of the property has been mentioned as Rs. 7500/-. Along with this application Ramjidas submitted an affidavit and he stated that he was competent to sell the property. Harimohan Singhi has also filed an affidavit. Similarly defendants have also been filed draft sale-deed in another case No. 607-78-79/B-121 Aa. Le. Cei. In this also value of the registry has been mentioned as Rs. 7500/- copy of the application has also been filed as Ex. D-7.

From the record of the case it is clear that in the draft sale-deeds which have been filed before the Urban Land Ceiling Authority the value of the properties have been reduced to half and no sufficient evidence has been led by the plaintiffs to explain as to why value of the property has been reduced. As per the defendants the plaintiffs advised that the value of the sale-deeds could be reduced to save stamp duty. However, looking to the aforesaid facts of the case, it is clear that the plaintiffs were not willing to pay the total amount of consideration.

Hon"ble the Supreme Court in the Case of Manjunath Anandappa Urf. Shivappa Hanasi Vs. Tammanasa and Others, , has held, as under, with regard to readiness and willingness of plaintiff to perform his part of contract:

The decisions of the Supreme Court leave no manner of doubt that a plaintiff in a suit for specific performance of contract not only must raise a plea that he had all along been and even on the date of filing of suit, was ready and willing to perform his part of contract, but also prove the same. Only in certain exceptional situation where although in letter and spirit, the exact words had not been used but readiness and willingness can be culled out from reading all the averments made by the plaintiff as a whole coupled with the materials brought on record at the trial of the suit, to the said effect, the statutory requirement of Section 16(c) of the Specific Relief Act may be held to have been complied with.

Hon"ble the Supreme Court in the case of Nirmala Anand Vs. Advent Corporation Pvt. Ltd. and Others, , has further held, as under:

Courts are not bound to grant specific performance merely because it is lawful to do so unmindful of equities to be balanced and despite serious inequities that may necessarily result by granting the same. Specific performance being an equitable relief, balance of equities have also to be struck taking into account all these relevant aspects of the matter, including the lapses which occurred and parties respectively responsible therefore. Before decreeing specific performance, it is obligatory for courts to consider whether by doing so any unfair advantage would result for the plaintiff over the defendant, the extent of hardship that may be caused to the defendant and if it would render such enforcement inequitable,

besides taking into consideration the totality of circumstances of each case.

From the aforesaid principle of law laid down by Hon"ble the Supreme Court and the facts of the present case, it is clear that the plaintiffs have failed to prove that they were ready and willing to perform their part of contract. Apart from this, as is clear from the documents, i.e., copy of property tax register of the Municipal Council and initial document of house-tax receipts, Exs. D-1 to D-5 that the property was registered in the name of Narayandas and as per evidence on record it is clear that Narayandas had two sons, Brijmohan and Ramjidas, the original defendants and subsequently, the property was registered in the names of Brijmohan and Ramjidas. It is also a fact that there was no partition in the family and the property was of Joint Hindu Family and the defendants had no right and power to execute the agreement with regard to sale of the property as held by the Division Bench of this Court. The Division Bench of this Court in the case of Dhirendra Nath Verma Vs. Yashwant Rao, reported in 1996 (I) MPJR 150, has held as under:

5. We do not think that the aforesaid observation are of much assistance to the respondent since we are not dealing with a suit for injunction. We are dealing with a suit for specific performance where the relief claimed is essentially an equitable one which is to be granted in the discretion of the Court on consideration of the totality of the facts and circumstances brought in a given case. We may, in this connection refer to decision of a Division Bench in Shamlal Yadarao Bhau Vs. Yesaram Lodku Powar AIR 1954 Nag. 334 where it has been held that if the agreement was not for the purpose binding on the coparcenery, then the alienating coparcener when he purports to alienate the whole of the property must be held to be a person unable to perform the whole of his part of the contract within the meaning of section 15 of the Specific Relief Act. The chance of his getting the properties allotted to himself on partition is not in such cases equivalent to his soility to perform the contract. The Court cannot act on the chance of the alienating coparcener or his alienee getting the property allotted in a suit for partition.

We may also refer to a decision of the Supreme Court in Balmukand Vs. Kamla Wati and Others, where the facts are exactly similar to the facts of the case in hand. It was held that the transaction was not for the benefit or necessity of the family. On a defence raised by non-alienating coparceners, the Supreme Court held that in such circumstances, the Court below were right in dismissing the suit for specific performance. The Court observed that granting specific performance is always in the discretion of the Court and in such cases the Court would be exercising its discretion rightly by refusing specific performance.

Hence, in my opinion, the trial Court has rightly held and answered the issues in favour of the defendants that original defendants, Ramjidas and Brijmohan had no power and authority to sell the property.

Consequently, on the basis of aforesaid discussion, in my opinion, the trial Court

has rightly refused to grant a decree for specific performance of contract. There is no error of law and facts committed by the trial Court.

Consequently, I do not find any merit in this appeal. It is hereby dismissed. No order as to cost.