
(1957) 12 MP CK 0013
In the Madhya Pradesh High Court
Case No : First Appeal No. 56 of 1952

Kishanlal Onkardas Goyanka

APPELLANT

Vs

Suryadatta Govindlal and Others

RESPONDENT

Date of Decision : 26-12-1957

Acts Referred:

Contract Act, 1872 — Section 55
Transfer of Property Act, 1882 — Section 55(6)

Citation : AIR 1958 MP 239 : (1958) JLJ 369 : (1958) 3 MPLJ 370

Hon'ble Judges : V.R. Nevaskar, J; P.V. Dixit, J

Bench : Division Bench

Advocate : C.B. Sanghi and M.L. Sheth, for the Appellant; K.A. Chitale, for Respondents 1 and 2, for the Respondent

Judgement

P.V. Dixit, J.

This is defendant's appeal from a decision of the Additional District Judge of Mandsaur decreeing the claim of the plaintiff respondents Suryadatta and Bhupatrai for the refund of a part of the consideration money paid by them in respect of a contract for the sale of a ginning factory together with the land attached to it belonging to the defendants.

The plaintiffs' case was that in December 1946, the defendants issued a notice (Ex. P/1) that their ginning factory, known as Laxmivillas Ginning Factory situated at Piplia together with lands attached to it and machinery, would be auctioned on 19-1-1946; that in response to this notice, the plaintiffs made an offer for purchasing the property for Rs. 47000/-; that the offer was accepted on 19-1-1946, and the plaintiffs paid Rs. 11000/- to the defendants as a part of the price by a draft on the Laxmi Bank Ltd., Akola.

The plaintiffs further averred that it was agreed between the parties that the sale would be completed and registered soon; that accordingly they, that is the plaintiffs, went to Piplia in the months of July and October, 1947 for the

registration of the sale deed, but on account of the negligence and laches of the defendants the deed could not be registered; that in October 1947 they learnt that as the land on which the factory stood was agricultural land, it could be sold only to a bona fide agriculturist, and that too with the previous sanction of the competent revenue authority; that the defendants did not disclose this fact to the plaintiffs who were not agriculturists; and that while the notice (Ex. P/1) gave the area of the land to be sold as fourteen acres, the land which was actually being sold to the plaintiffs was only six acres.

It was further stated that when the registration of the deed was held up for want of sanction, the defendants assured the plaintiffs that they would obtain the necessary sanction, but despite this assurance the defendants did not take early and vigorously such steps as were necessary to obtain the sanction for the sale of the land; and that ultimately an application which the defendants had filed before the Suba for sanction was dismissed on 28-11-1949, due to their negligence and default of appearance.

The plaintiffs proceeded to say that time was of the essence of the contract and as the defendants have failed to complete the sale within a reasonable time, they were compelled to cancel it; and that the contract was in any case void for want of sanction of the competent authority for the sale of the land. On these allegations, the plaintiffs claimed that the defendants had committed a breach of the contract and were under an obligation to return with interest the amount of Rs. 11000/- paid to them as part of the purchase money.

The plaintiffs claimed Rs. 2970/- as interest on Rs. 11000/- from 30-12-1946, till the date of the institution of the suit at the rate of nine per cent per annum. A claim for interest from the date of the suit was also made.

The defendants admitted the contract for the sale of the ginning factory and the land attached to it. They, however, resisted the suit on the grounds that the notice (Ex. P/1) was not the basis of the contract; that the terms of the contract were oral and not reduced to writing that there was no agreement that land of particular acreage would be sold to the plaintiffs; that it was not necessary for the defendants to inform the plaintiffs that the sale of the land required the previous sanction of the revenue authorities and that this was a matter of public record and it was for the plaintiff's to get themselves informed of it.

In the written statement, which the defendants filed to the amended plaint, they denied that the land was agricultural land or that the sanction of the Suba was required for its sale or that the plaintiffs were non-agriculturists. The defendants also denied that the contract was void. The defendants pleaded that they did all they could do in the matter of obtaining sanction; that their application for sanction, which was dismissed for default of appearance on 28-11-1948, was restored again, but in the proceedings after the restoration the plaintiffs themselves created obstacles in obtaining the sanction and ultimately declared that they did not want to take part in those proceedings or purchase the land;

and that it was on account of this attitude of the plaintiffs that the revenue authorities refused to sanction the transaction and the sale could not be completed.

The defendants further suggested that the amount of Rs. 11000/- was paid to them not as a deposit or a part of the purchase money, but as earnest money. According to the defendants, the contract between the parties still subsisted and the sale could be completed after obtaining the sanction of the revenue authorities to the sale of the land and that in these circumstances the plaintiffs were not entitled to the refund of the amount paid by them.

On these pleadings, the learned Additional District Judge framed various issues. His main findings are that the auction notice) (Ex. P/1) was the basis of the contract between the parties; that the area of the land which was agreed to be sold was fourteen acres but that later on the plaintiffs themselves agreed to purchase whatever land was included in the factory area; that it was essential for the defendants to disclose to the plaintiffs that the land being agricultural land could not be sold without the previous sanction of the competent revenue authority; that they made no such disclosure; that they failed to obtain the requisite sanction; that time was of the essence of the contract; that the plaintiffs waited for three years for the defendants to obtain the sanction to complete the sale and ultimately cancelled the contract when the defendants failed to obtain the sanction of the revenue authorities to the sale of the land; that the defendants had thus sufficient time to complete the transaction; and that the defendants were thus responsible for the breach of the contract and liable to refund the amount received by them.

The learned trial Judge did not think it necessary to determine whether the amount of Rs. 11000/- was paid as part of the purchase money or as earnest money as the defendants being responsible for the failure of the contract were liable to return the amount whether it was paid as earnest money or as part of the purchase money. The learned trial Judge awarded to the plaintiffs Rs 1980/- as interest on Rs. 11000/- at the rate of six per cent per annum from 30-12-1946, till the date of the suit. The plaintiffs were also allowed interest on Rs. 11000/-, from the date of the suit till the date of realisation at six per cent per annum.

Mr. Sanghi, learned counsel appearing for the appellant, put forward before us three contentions. First it was said that on the evidence on record the lower Court should have held that the plaintiffs themselves had committed a breach of the agreement; Secondly it was urged that the lower Court should have determined the question whether the amount of Rs. 11000/- was paid by the plaintiffs to the defendants as earnest money or as part of the purchase money and should have held that it was paid as earnest money; thirdly it was contended that the plaintiffs were not entitled to any interest on the amount of Rs. 11000/-.

There is no substance in the contention of the appellant that the plaintiffs had

committed a breach of the contract. It was never the plea of the defendants that the plaintiffs were in default. On the other hand, the defendants specifically pleaded that the contract was still subsisting and could be performed after obtaining the sanction of the revenue authorities for the sale of the land on which the ginning factory stood. This apart, the material on record unmistakably points to the conclusion that the defendants themselves committed a breach of their obligations under the contract.

It is in evidence that the contract was concluded on 19-1-1946. Thereafter on 24-12-1948 the defendants sent a telegram (Ex. P/16) calling upon the plaintiffs to send a draft for the amount of the deposit agreed to be paid by the plaintiffs to the defendants. The amount of Rs. 11000/- was accordingly remitted by the plaintiffs to the defendants. On 1-1-1947, the plaintiffs published a notice (Ex. P/2) in the Holkar Government Gazette of the fact that they had contracted with the defendants to purchase the ginning factory and intimating that any person who had any objections to the sale should lodge them with the plaintiff within fifteen days of the date of the publication of the notice.

On 22-1-1947 and 14-8-1947, the plaintiffs addressed two letters to the defendants complaining about the delay that was being caused to them in the construction of certain erections on the land due to lack of facilities by the defendants' employees in charge of the ginning factory and about the difference in the acreage of the land actually existing and that entered in the notice (Ex. P/1) on the basis of which the contract between the parties was concluded.

The plaintiffs did not, however, press their objection as regards this difference in the area of the land and agreed to purchase whatever land was attached to the factory. Thereafter when the plaintiffs went to Piplia in October, 1947, for the registration of the sale deed, they discovered that land could not be sold without the previous sanction of the competent revenue authority and that the defendants had not till then obtained the requisite sanction.

It was after this discovery by the plaintiffs that the defendants made an application On 1-11-1947, (Ex. P/17) before the Amin of Manasa for permission to sell the land to the plaintiffs. They also applied for permission to sell the land for non-agricultural purposes. In these proceedings the plaintiffs helped the defendants by giving their own statement as to their intention to purchase the ginning factory and the land and to use it for non-agricultural purposes.

The Amin made a recommendation for the grant of permission. But when the matter came up before the Suba, the defendants were called upon on 24-9-1949, to state on the next day of hearing as to how the desired permission could be granted when the purchasers were not agriculturists and when the land which was being used for agricultural purposes could be sold for non-agricultural purposes. Thereupon on 28-11-1949, the Suba made an order rejecting the application for permission for default of appearance of the defendants and stating that the defendants had failed to appear even after obtaining time and satisfy

him that the permission wanted by them could be granted.

It was after the rejection of this application for grant of permission that the plaintiffs filed their suit on 26-12-1949, for the return of the amount of deposit paid by them. The suit was filed nearly three years after the conclusion of the agreement between the parties. It appears that in the meantime the defendants' application for grant of permission was restored by the Suba. The record does not show the precise date on which the application was restored.

After the restoration of the application, the Suba made an order on 23-7-1951 holding that he had no power to grant permission for the sale of the land for non-agricultural purposes and that a recommendation for the grant of a special lease for that purpose could be made only if the seller could establish that he had obtained the land from the competent authority specifically for non-agricultural purposes, and further that the defendants had failed to establish this fact though several opportunities were afforded to them for that purpose.

This order was again affirmed by Suba on 39-7-1952, while rejecting the contentions advanced on behalf of the defendants for the grant of permission. Mr. Sanghi learned counsel for the appellant, pressed into service the observation of the Suba in this order that it was not necessary to consider the question of the grant of permission as the plaintiffs were not now willing to purchase the property. It was argued that this indicated that the plaintiffs themselves did not perform their part of the obligation.

A perusal of the order dated 19-7-1952, of the Suba is sufficient to show that the defendants' application for the grant of permission was rejected on merits and on their failure to convince the Suba that the permission could be granted and not because of the unwillingness of the plaintiffs to purchase the property. It is not as if the revenue authorities were willing to permit the sale of the land to the plaintiffs but that the plaintiffs themselves did not wish to purchase the land. The plaintiffs were all along willing to purchase the property and waited for nearly three years for the defendants to perform their obligations under the contract.

It was only when the sellers did not diligently take and pursue steps for obtaining the sanction for the sale of the land and when then application for sanction was rejected by the Suba for the default or their appearance that the plaintiffs cancelled the contract and sued for the recovery of the amount they had paid to the defendants. The sellers did not disclose to the plaintiffs that the land on which the factory stood was such which could not be transferred without the sanction of the revenue authorities.

That the land could not be transferred without the sanction of the revenue authorities was not a mere matter of law but a question of fact as to the nature of the land which was within the knowledge of the sellers. The sellers were thus under an obligation to disclose this fact to the plaintiffs and to do all things necessary to obtain the sanction of the revenue authorities to the transfer and to do all that was necessary to effect such transfer.

In this connection, a reference to the decision of the Privy Council in *Motilal v. Nanhelal* AIR 1930 P. C. 237 (A) would be sufficient. That was a case where a person had agreed to transfer his share in a village along with cultivating rights in "sir" land which could not be transferred without the sanction of the Deputy Commissioner. It was argued before the Privy Council that a decree for specific performance of the agreement to sell a share in the village as well as the cultivating rights in the "sir" land could not be passed because that would necessitate an application by the seller to the revenue officer for sanction to transfer the cultivating rights in the "sir" land, and the court had no jurisdiction to require the seller to make such an application.

The Privy Council repelled this argument by observing that when the seller agreed to transfer the cultivating rights in the "sir" land, there was an implied covenant on his part to do all things necessary to effect such transfer which would include an application to the revenue officer to sanction the transfer.

The principle underlying this decision would apply to the present, case and it must be held that when the defendants agreed to sell the land which could not be transferred without the sanction of the revenue authorities, they must be deemed to have agreed to obtain the requisite permission for the proposed transfer and it was their responsibility to move the revenue authorities to sanction the transfer and obtain the permission. When, therefore, the vendors did not take diligently steps for obtaining the sanction and failed to obtain it, it must be held that they committed a breach of their obligations under the contract. The plea advanced on behalf of the appellant that the plaintiffs were in default is thus of no validity and must be rejected.

As the contract fell through on account of the laches of the vendors and their failing to obtain the requisite sanction they are bound to return the sum paid to them by the plaintiff irrespective of the fact whether the amount was paid as earnest money or as a part payment of the consideration amount.

It really becomes unnecessary to consider the question whether the amount was paid as earnest money or as part payment of the purchase money, it may, however, be stated that the defendants no doubt suggested in their written statement that the amount was paid as earnest money. But no issue was framed on this point and the defendants did not at any time object to this omission. The question whether a sum of money paid under a contract for the sale of some property by the purchaser to the vendor was paid as earnest money or as part payment towards the discharge of the contract depends upon the intention of the parties and the circumstances surrounding the payment.

In the instant case, there is no evidence throwing light on any of these matters. The defendants' mere statement that the amount was paid as earnest money is not conclusive to show that it was so paid. It is noteworthy that the defendants did not tender in evidence any letter of the plaintiffs which they must have addressed to the defendants when they sent a draft for the amount of Rs.

11000/- . The property was agreed to be sold for Rs. 47000/- .

The amount that was paid by the plaintiffs to the defendants was Rs. 11000/- . It is so great in comparison with the amount of the consideration for the contract that it is difficult to hold that the plaintiffs paid this amount as earnest money as a guarantee for the performance of the contract. In our judgment, the defendants are under an obligation to return this amount to the plaintiffs on account of a breach of their obligations under the contract.

As to the interest payable on this amount, Mr. Chitale, learned counsel for the plaintiff respondents rightly conceded that on the authority of *Thakurain Harnath Kuar v. Thakur Indar Bahadur Singh* AIR 1922 P. C. 403 (B) which was followed in the *District Board Ferozepore v. Balwant Rai*. AIR 1939 Lah 564 (C), the plaintiffs can claim interest on Rs. 11000/- from the date of the institution of the suit and not from the date when the money was paid. The trial Judge's direction awarding Rs. 1980/- as interest on Rs 11000/- from 30-12-1946, till the date of the suit must, therefore, be set aside.

In the result, the decree of the lower Court is modified by disallowing to the plaintiffs Rs. 1980/- as interest from 30-12-1946, till the date of the suit. The decree is affirmed in other respects. To this extent the appeal is allowed. The parties will get proportionate costs of the appeal.

V.R. Nevaskar, J.

I agree.