
(2013) 12 CHH CK 0002
In the Chhattisgarh High Court
Case No : F.A. No. 197/2003

Madho Prasad Tiwari

APPELLANT

Vs

Kanhaiya Lal Sahu and Another

RESPONDENT

Date of Decision : 17-12-2013

Acts Referred:

Citation : (2014) 2 CGLJ 165 : (2014) 2 MPHT 33 : (2014) 1 MPJR 26

Hon'ble Judges : Sanjay K. Agrawal, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

Sanjay K. Agrawal, J.—Impugning the legality and validity of judgment and decree dated 16/07/2003 passed by the First Additional District Judge Bilaspur, in Civil Suit No. 4-A/2001, appellant/defendant No. 1 herein has filed this appeal u/s 96 of the Civil Procedure Code, 1908 (in short "C.P.C."), whereby the trial Court has partly allowed the suit of the respondent No. 1/plaintiff granting the decree for refund of earnest money along with 6% interest per annum. Brief facts in nutshell required for determination of this appeal are as under:

1.1 The respondent No. 1/plaintiff filed a suit for specific performance of contract stating inter alia that on 30/05/1998, appellant/defendant No. 1 in need of money, obtained loan of Rs. 50,000 from the plaintiff's father/attorney holder, to perform the marriage of his daughter and in lieu thereof, executed an agreement to sell the suit land bearing Khasra No. 1971; area 0.437 htrs., 861/10; area 0.809 gtrs., & 1449; area 0.425 hectares., situated at village Sothi, Bilaspur for Rs. 1,25,000; and obtained Rs. 95,000 in advance and rest amount of Rs. 30,000 was to be paid at the time of registration of the alleged sale deed. It was further averred that in spite of his request, the appellant/defendant No. 1 avoided to execute the sale deed in his favour, resulting into filing of the suit for specific performance of contract.

1.2 On being summoned, appellant/defendant No. 1 filed his written statement

before the trial Court stating inter alia that the plaintiff's father is involved in the business of money lending and appellant/defendant No. 1 has obtained only Rs. 50,000 for marriage of his daughter and for security of the loan agreement dated 30/05/1998 was executed in favour of the respondent No. 1/plaintiff. It was further pleaded that the land in question is a high valuable land and respondent No. 1/plaintiff is not entitled for specific performance of the contract and prayed for dismissal of the suit.

1.3 On close scrutiny of the evidence, the trial Court, by its impugned judgment and decree, dismissed the suit for specific performance of the contract and only granted the decree of refund of earnest money by recording following findings that:

(i) The agreement dated 30/05/1998 was executed by the respondent No. 1/plaintiff in favour of the appellant/defendant No. 1 for sale of his land for Rs. 1,25,000 and obtained Rs. 95,000 as advance.

(ii) The agreement in dispute is not enforceable.

2. The aforesaid judgment, and decree has been challenged in this appeal, filed by the appellant/defendant No. 1.

3. The respondent No. 1/plaintiff has filed an application u/s 151 C.P.C. seeking leave to amend the plaint, particularly the relief clauses by seeking to add alternative relief for refund of earnest money with interest.

4. Shri Ravish Verma, learned counsel appearing for the appellant/defendant No. 1 would submit that the trial Court has committed an illegality in granting the decree of refund of earnest money with interest, as plaintiff did not claim any relief of refund of earnest money in his suit, and by virtue of Section 22(2) of the Specific Relief Act, 1963 (hereinafter called as "the Act, 1963"), the relief for refund of earnest money cannot be granted, unless it has been specifically claimed in the suit. Mr. Verma would further submit that trial Court having held that agreement in question is not enforceable in law, could not have granted decree for refund of earnest money with interest, therefore, impugned judgment and decree deserves to be set - aside.

5. Mr. R.K. Jaiswal, learned counsel appearing for the respondent No. 1/plaintiff and Mr. Sanjeev Agrawal, P.L. for the State/respondent No. 2/defendant No. 2 would support the impugned judgment and decree. Mr. Jaiswal would submit that during the pendency of this appeal, on 22/11/2013, an application seeking leave to amend the plaint has been filed and he be permitted to amend the plaint inserting the relief of refund of earnest money with interest and would further submit that non-enforceability of the agreement would not bar the decree for refund of earnest money and thus learned trial Court is absolutely justified in granting the decree for refund of earnest money with interest.

6. Opposing the application for amendment in plaint, sought by respondent No. 1/plaintiff, Mr. Ravish Verma, learned counsel for the appellant/defendant No. 1

would submit that such application for amendment adding the relief of refund of earnest money cannot be permitted to the respondent No. 1/plaintiff at this belated stage, in view of the legislative change incorporated in Order 6 Rule 17 C.P.C. w.e.f. 01/07/2002.

7. I have heard the learned counsel for the parties and considered the rival submissions made herein and perused the record carefully.

8. In view of the factual and legal submission made by the parties, following two questions would arise for determination of this appeal:

(i) Whether the application filed for amendment seeking leave to amend the prayer clause of the plaint inserting relief of refund of earnest money with interest is liable to be granted to the respondent No. 1/plaintiff?

(ii) Whether trial Court is justified in granting decree for refund of earnest money with interest after finding that the agreement is not enforceable in law?

Answer to question No. (i):

9. In order to answer the question No. 1, it would be pertinent to notice the Section 22 of the Specific Relief Act, 1963, which is extracted below:

22. Power to grant relief for possession, partition, refund of earnest money, etc.-

(1) Notwithstanding anything to the contrary contained in the Code of Civil Procedure, 1908 (5 of 1908), any person suing for the specific performance of a contract for the transfer of immovable property may, in an appropriate case, ask for-

(a) possession, or partition and separate possession, of the property, in addition to such performance; or

(b) any other relief to which he may be entitled, including the refund of any earnest money or deposit paid or [made by] him, in case his claim for specific performance is refused.

(2) No relief under clause (a) or clause (b) of sub-section (1) shall be granted by the court unless it has been specifically claimed:

Provided that where the plaintiff has not claimed any such relief in the plaint, the court shall, at any stage of the proceeding, allow him to amend the plaint on such terms as may be just for including a claim for such relief.

(3) The power of the court to grant relief under clause (b) of sub-section (1) shall be without prejudice to its powers to award compensation u/s 21.

10. Section 22 of the Specific Relief Act starts with a non-obstinate clause and inter alia provides that any person suing for the specific performance of a contract for the transfer of immovable property may, in an appropriate case ask for among other reliefs, refund of the earnest money or deposit paid or made by him in case his claim for specific performance is refused. Sub-section (2) to

Section 22 however forbids the grant of any such relief by the Court unless it has been specifically claimed. That: does not however materially affect the right of the plaintiff to seek such a relief at the appellate stage in the light of proviso to sub-section (2) to Section 22.

11. The word "at any stage of the proceeding" employed in proviso to Section 22(2) of the Act, 1963 is extremely important. It clearly permits the plaintiff, who has not claimed the relief of refund of earnest money, any suit for specific performance of the contract, he can at any stage of the proceeding including in appeal, can amend the plaint and claim a relief of refund of earnest money, on such terms, may be just & proper. Though, the plaintiff's application filed before this Court u/s 151 C.P.C. to insert the relief of refund of earnest money but the jurisdiction of this Court to consider this application permitting to amend the plaint would be available under proviso to Section 22(2) of the Act, 1963, which is an enabling provision and therefore, the application filed seeking leave to amend the plaint inserting relief of refund of earnest money, the relevant provision applicable would be under proviso to Section 22(2) of the Act, 1963, and contention of learned counsel for the appellant/defendant No. 1 that such an application is not grantable in view of Order 6 Rule 17 C.P.C., deserves to be rejected.

12. This brings me to consider plaintiff's application for amendment on merits. The trial Court has recorded a Finding that the agreement in question is not enforceable and further recorded a finding that Rs. 95,000 has been paid by the plaintiff to the defendant No. 1 for his daughter's marriage, granted a decree for refund of earnest money. I have therefore no hesitation in allowing the application filed by the plaintiff/respondent No. 1 in view of proviso to sub-section 22 of the Act, 1963 and permitting him to amend the plaint so as to incorporate a proper for refund of the amount paid by him to the defendant No. 1/appellant along with interest. The said amendment be incorporated in the plaint as per rules. Thus, this question is answered accordingly.

Answer to question No. (ii):

13. That Trial Court has found that the agreement to sell was not enforceable. The next question then is whether a direction for refund can and ought to be made and if so the terms on which such a refund can be ordered. It was urged since in the suit filed by the respondent No. 1/plaintiff agreement to sell was found non-enforceable, the power to direct refund u/s 22 could not be invoked as it was only in cases where the agreement to sell is enforceable in law but is not enforced for some valid reason that such a refund may be ordered. Since the relief prayed for by the respondent/plaintiff was not being denied on any of the grounds stipulated in Section 20(2)(a) to (c), the power vested in the Court u/s 22 could not be exercised nor could the relief of refund be granted to the plaintiff. It was further urged that the suit in the instant case was not in the real sense a suit for specific performance of the agreement as the agreement in question did not constitute an enforceable agreement to sell. The power of

refund could not therefore be invoked in such a situation.

14. Section 22 of the Specific Relief Act, 1963 entitles any person suing for specific performance of a contract to seek further additional or alternate reliefs enumerated in clauses (a) and (b) to sub-section (1) to Section 22. One of such reliefs is by way of refund of earnest money or deposit paid or made by the plaintiff in case his claim for specific performance is refused. The provision does not however restrict the exercise of power to direct refund only to cases in which the claim for specific performance is refused on any ground enumerated in Section 20(2) of the Act. It is not therefore possible to restrict exercise of power vested in the Court to any specified class of cases only. What is important is that the suit in which the relief prayed for by the plaintiff or granted by the Court is a suit for specific performance of a contract and the Court is declining to grant such a relief for any reason permissible in law. The Court may indeed decline specific performance of the contract for a variety of reasons including the ground that the agreement sought to be specifically enforced is not so enforceable. Any such reason notwithstanding, the suit would continue to be one for specific performance of the contract making it legitimate for the Court to direct refund of the amount received for the defendants in connection with the said agreement. These requirements are in the instant case fully satisfied. The suit in question is a suit for specific performance of the agreement executed between the parties. The trial Court has declined the decree of specific performance for the reason already set out earlier. That being so, the power vested in this Court u/s 22 to direct refund of the amount received by the defendants cannot be disputed. To relegate the plaintiff to file a separate suit for refund of earnest money paid by him to the appellant/defendant No. 1 is not appealed to me. The policy of law is to avoid multiplicity of legal proceedings. An interpretation that would advance laudable object ought to be preferred over any other interpretation which may make litigation an endless agony for the litigant public. I therefore, have no hesitation in holding that the respondent/plaintiff is entitled to a direction for refund of the amount paid by him to the appellant/defendant No. 1.

15. In the facts and circumstances of the present case, the trial Court is justified in granting the decree for refund of earnest money with interest after finding that the agreement to sell was unenforceable in law. Thus, I hereby affirm the finding so recorded by the trial Court in this regard. Thus, this question is answered accordingly.

Conclusion

Resultantly, in the light of discussion made hereinabove, I do not find any merit in this appeal. The appeal, thus, fails and is accordingly dismissed.

No order as to costs.