
(2013) 02 MP CK 0072

In the Madhya Pradesh High Court

Case No : First Appeal No. 165 of 1996

Mandsaur Nagar Sudhar Nyas

APPELLANT

Vs

Bharat Construction Company

RESPONDENT

Date of Decision : 14-02-2013

Acts Referred:

Citation : (2013) 02 MP CK 0072

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

Bench : Single Bench

Judgement

S.K. Seth, J.—This is defendant's first appeal against the judgment and decree passed by the IInd Additional District Judge Mandsaur in Civil Suit No. 29-B/94. Facts which are relevant and necessary for deciding this appeal may be stated as under. Plaintiff is a partnership firm. It owned agriculture land bearing survey No. 248 in village Bhooniyakhedi, Tehsil and District Mandsaur. Plaintiff sought and was granted permission to divert the land in order to develop a colony; plaintiff also obtained Colonizer's Licence and layout of plots was sanctioned under M.P. Nagar Tatha Gram Nivesh Adhiniyam, 1973. Appellant demanded vide Notice dated 26.10.1987 development, supervision and other charges. The total amount demanded was Rs. 1,326,520/-. Under a bonafide belief that the village Bhooniyakhedi was within the limits of appellant therefore plaintiff paid Rs. 72,920/- and entered into an agreement to pay the balance amount in instalments. Subsequently, it was discovered that village Bhooniyakhedi was outside the limits of the appellant, therefore it was unjustified in demanding and accepting Rs. 72,920/-; plaintiff, therefore asked for the refund of Rs. 72,920/- paid under mistaken belief. When appellant failed to return the said amount, plaintiff filed the suit for recovery of said amount and declaration that the agreement to pay the balance amount was void and under the said agreement plaintiff was not liable to any amount.

2. In the written statement, appellant denied all the material allegation of facts. It was denied that village Bhooniyakhedi was outside the limit and beyond the

jurisdictional area of Mandsaur Town Improvement Trust. It was denied that payment of Rs. 72,920 was made under a mistake or that the agreement to pay the balance amount was void. It was stated that officers of the appellant visited the site from time to time to oversee and inspect development of colony as per sanctioned layout and as such plaintiff was liable to pay the various charges demanded by the appellant. It was claimed that the suit was barred by time and the plaintiff was not entitled to any relief and the suit was liable to be dismissed with costs.

3. On the material placed on record, learned trial Court found in favour of plaintiff on all issues including on the issue that village in question was outside the Municipal limits; payment of Rs. 72,920/- was paid under a bonafide mistake and as such appellant was liable to refund the amount of Rs. 72,920/- paid to it and also declared that the agreement dated 19.11.1987 was void. With these findings Court decreed the suit with costs.

4. Aggrieved by the judgment and decree, the defendant has come up in this appeal, as stated above.

5. The point for our consideration is whether plaintiff is entitled to restitution of Rs. 72,920/- and that the agreement dated 19.11.1987 is void?

6. We have heard learned counsel at length. They have very assiduously taken us through the entire pleadings as well as evidence adduced by the parties at the trial.

7. Learned counsel for appellant submitted that before payment was made and plaintiff entered into agreement, it was duty of the plaintiff to ascertain all facts and without doing so plaintiff could not be permitted to fall back upon Section 65 of the Indian Contract Act. In this connection, he placed reliance on the decision of the Supreme Court in the case of Kuju Collieries Ltd. Vs. Jharkhand Mines Ltd. and Others, .

8. Section 65 of the Contract Act reads as follows:-

When an agreement is discovered to be void, or when a contract becomes void, any person who has received any advantage under such agreement or contract is bound to restore it, or to make compensation for it, to the person from whom he received it.

9. Before we advert to this section, it is useful to remember that the scheme of the Indian Contract Act is that it enacts in Section 1 to 75 provisions applicable in general to all contracts and then deals separately with particular kinds of contract. The scheme further necessarily posits that all these transactions are based on agreement. Broadly speaking an agreement duly backed by lawful consideration is enforceable as a contract and ordinarily a party is not permitted to repudiate the agreement after having received any advantage under such agreement or contract. Section 65 carves out an exception to the general rule and contains the principle of restitution after the benefit has been received and

the agreement is later discovered to be void. Restitutionary relief arises where the original contract is put an end to or contract becomes ineffective due to mistake of or impossibility or lack of writing or capacity.

10. In the case in hand, plaintiff came out with specific case that village in question was outside the Municipal limits and beyond the jurisdictional area of the Town Improvement Trust, as such, appellant could not demand and insist for payment of various charges. Whole case hinges on documentary evidence and unfortunately appellant failed to lead any satisfactory evidence to show that at the relevant time village in question was within the Municipal Limits of the Mandsaur Improvement Trust. Reliance placed on Ex. D.-2 is of no avail to appellant in the facts and circumstances of the case. Similarly, the decision of the Supreme Court in the matter of Kaju Collieries supra does not advance the case of appellant. That was a case where plaintiff had filed a suit for possession of mining lease and in the alternative for refund of Rs. 80,000/- paid to respondent No. 1 as lease money for the said mining lease. According to plaintiff it could not obtain the mining area because of the resistance exerted by previous mine owners (respondent No. 2 and 3 therein). It was held that plaintiff was not entitled to claim relief u/s 65 of the Contract Act. It, therefore, dismissed the suit. Said dismissal was affirmed by the High Court, hence matter was carried to Supreme Court by Special Leave.

11. In the Supreme Court, points were reiterated and their Lordships after examining the whole conspectus of law on the subject repelled the contentions that the payment of money was not made lawfully nor was it done under a mistake or coercion therefore that was not a case to which Section 65 of the Contract Act applied. That is not the case here. In our considered opinion this decision does not come to the rescue of appellant in any manner to upset the findings in this appeal and overturn the judgment and decree passed by the trial Court.

12. In view of foregoing discussion, it seems to us that this appeal has no merit therefore it, deserves to be and is hereby dismissed. The judgment and decree passed by the trial Court is hereby affirmed. Appellant shall bear and pay the costs of respondent. Counsel's fee Rs. 1,500/- if certified. Ordered accordingly.