
(2009) 01 MP CK 0049
In the Madhya Pradesh High Court

P.C. Hawaladaar

APPELLANT

Vs

Jogen Das and Others

RESPONDENT

Date of Decision : 07-01-2009

Acts Referred:

Constitution of India, 1950 — Article 227
Specific Relief Act, 1963 — Section 13

Citation : AIR 2009 MP 129 : (2009) 4 MPJR 21

Hon'ble Judges : K.S. Chauhan, J;A.K.Shrivastava, J

Bench : Division Bench

Final Decision : Allowed

Judgement

A.K. Shrivastava, J.

This petition under Article 227 of the Constitution of India, has been filed by the plaintiff/petitioner assailing the order dated 7-7-2006 passed by learned trial Court dismissing his application under Order VI Rule 17, CPC.

A suit for declaration of ownership and injunction has been filed by plaintiff/petitioner against the defendants on the ground that defendant No. 1 entered into the contract with the plaintiff to sell the property in dispute. In the written statement, the defendants pleaded in para - 1 that they are not the owner of the suit property because the Patta has not been granted by the State Government to them, however, in para - 3 of the written statement, this much has been admitted by the defendant that in the year 1974 the suit property was allotted to defendant No. 1.

In between the State Government granted Patta in favour of defendant No. 1 - Jogen Das. Hence, an application to amend the plaint has been filed by the plaintiff which has been rejected by the impugned order by learned trial Court on the ground that the same has been filed after 16 years.

We have heard Shri Sameer Seth, learned Counsel for the petitioner and Shri Rajesh Nema, learned Counsel for the respondents.

Having heard learned Counsel for the parties, we are of the considered view that this petition deserves to be allowed.

On going through the proposed amendment, it is revealed that during pendency of the suit a registered Patta has been granted in favour of defendant No. 1 by the State, Government and, hence, an application to amend the plaint has been filed by the plaintiff/petitioner. He has also prayed to amend the relief clause. We think it apposite to quote the proposed amendment which reads thus:

(Vernacular matter omitted.... Ed.)

A reply of application under Order VI Rule 17, CPC has been filed by the defendants in the trial Court, but on bare reading of para-3 of the reply, the factum about the grant of Patta in favour of defendants by the State Government has been vaguely denied. On going through the averments made in the plaint as well as in the written statement, it is revealed that as per the case of plaintiff, he entered into the agreement of sale with defendant No. 1 on 14-6-1988, but, defendant No. 1 was not the title holder of the property in dispute and, therefore, no relief of specific performance of contract was prayed by the plaintiff. However, on going through the averments made in the proposed amendment, it is revealed that during pendency of the civil suit, a Patta has been granted in favour of defendant No. 1 and, therefore, as per the case of plaintiff, now defendant No. 1 has become title holder and since the agreement of sale in respect of suit property is still subsisting between plaintiff and defendant No. 1, therefore, decree of specific performance of contract has been prayed, though the factum of agreement of sale has been denied by the defendants. In the facts and circumstances, according to us, the plaintiff can ask for the grant of a decree of specific performance of contract in view of Section 13(1)(a) of Specific Relief Act, 1963 which read thus.

13. Rights of purchaser or lessee against person with no title or imperfect title.-

(1) Where a person contracts to sell or let certain immovable property having no title or only an imperfect title, the purchaser or lessee (subject to the other provisions of this Chapter), has the following rights namely:

(a) if the vendor or lessor has subsequently to the contract acquired any interest in the property, the purchaser or lessee may compel him to make good the contract out of such interest;

(b) to (e)....

(2)....

Section 13 of the Specific Relief Act is based on the doctrine "feeding the grant by estoppel". Accordingly where a person represents valid title and enters into contract to sell the property and subsequently acquires valid title cannot evade the performance of the contract but is obligated to perform the contract and cannot plead his prior defective or imperfect title to evade the contract.

On going through the proposed amendment made in the amendment application, it is revealed that during pendency of the suit defendant No. 1 has become title holder as stated by the plaintiff and, therefore, in view of Clause (a) of Sub-section (1) of Section 13 of the Specific Relief Act, the plaintiff has a right to ask for specific performance of contract. Since, during the pendency of civil suit, as alleged by plaintiff, the Patta of the suit property has been granted to defendants by the State Government, therefore, the proposed amendment is based on subsequent events, and, therefore, on the basis of subsequent events even the relief Clause of the plaint can be amended. In this context, we may profitably place reliance on the Division Bench decision of this Court Sundarlal v. Harprasad and Anr. 1980 JLJ 475.

Apart from what we have held herein above, at the time of, consideration of amendment application, the merit of the application is not required to be considered and only this much is required to be seen that the application is bona fide or not. Thus, according to us, learned trial Court has acted illegally in rejecting the application of amendment filed by plaintiff. According to us, merely on the ground of delay in the present facts and circumstances of the case, the application should not have been rejected. The impugned order is, accordingly, set aside and the application of amendment filed by the plaintiff is hereby allowed on the cost which shall be fixed by trial Court after hearing learned Counsel for the parties.

This petition succeeds and is hereby allowed with no order as to cost.