
(1990) 01 AHC CK 0006
In the Allahabad High Court
Case No : Second Appeal No. 614 of 1978

Pratap Bahadur Singh

APPELLANT

Vs

Bhagwandin Singh and Others

RESPONDENT

Date of Decision : 19-01-1990

Acts Referred:

Specific Relief Act, 1963 — Section 16

Citation : (1990) 1 AWC 435 : (1991) RD 139

Hon'ble Judges : R.R. Misra, J

Bench : Single Bench

Advocate : Mohammad Arif Khan, for the Appellant;

Final Decision : Dismissed

Judgement

R.R. Misra J.

1. This is a Plaintiff's second appeal arising out of a suit for specific performance of the contract. It is admitted case of the parties that the agreement to sell was executed on 7-4-1966 by the Defendants 1 to 3 and an earnest money of Rs. 600/- was paid by the Plaintiff. The Plaintiff, however, averred that since the Defendants did not execute the sale-deed, the suit for specific performance had to be filed. The trial court has decreed the suit of the Plaintiff. The lower appellate court by the impugned judgment has partly allowed the appeal filed by the Plaintiff and has dismissed the claim of the Plaintiff for specific performance of the contract and granted a decree of Rs. 600/- alongwith interest at the rate of Rs. 6/- per cent per year. This amount of Rs. 600/- was paid as earnest money by the Plaintiff at the time of execution of the agreement to sell.

2. I have heard Sri. Mohammad Arif Khan, learned Counsel appearing for the Appellant. He has taken me extensively through the plaint and has submitted that even if the necessary averment as contemplated by Section 16(c) of the Specific Relief Act to the effect that the Plaintiff was ever ready and willing and is still ready and willing to perform his part of contract are not there, yet if

averments in substance are there, the Plaintiff cannot be non-suited on this ground. A perusal of paragraph 3 of the plaint, however, shows that a notice dated 25-11-1966 was sent by the Defendants to the Plaintiff and in reply to the same the Plaintiff has stated that he is ready to get the sale-deed executed, provided necessary permission from the District Judge concerned is obtained. Except the averment to this effect no other averment on this aspect of the matter finds place in the plaint. Thus the alleged notice and the reply thereto were there in the year 1966, whereas the plaint was filed on 1-1-1970. Admittedly, there is no averment in the plaint to the effect that the Plaintiff has been ready and willing to perform his part of contract from 1966 to 1970, the date of filing of the plaint. This is also the finding recorded by the lower appellate court. Learned Counsel for the Appellant during the course of his submission placed strong reliance on a decision of this Court in the case of Gyan Singh v. Bichittar Singh 1980 LLJ 159 . From a perusal of the same it is clear that the principle that has been enunciated in this case is that if there is a defect in the cause of action as mentioned in the plaint, it is not fatal but if the plaint does not disclose any cause of action inasmuch as there is no averment in the plaint that on the date of filing the plaint the Plaintiff has been and is ever ready and willing to perform his part of contract, then in such a situation the plaint is liable to be rejected. As I have already indicated above the present is a case in which it was not a case of a defect in the cause of action but a case of lack of cause of action. An amendment application has also been moved on behalf of the Plaintiff seeking amendment in the plaint by incorporation the averment regarding his readiness and willingness to perform his part of contract. In the case of Mahmood Khan and Another Vs. Ayub Khan and Others, it was held that if on the date of filing of the plaint, the plaint does not contain an averment that the Plaintiff was ready and willing to perform his part of contract the suit of the party was not liable to be decreed because there was no cause of action. In the case of Mohmood Khan (supra) also an amendment application was moved at the stage of second appeal, which was disallowed by the court. I also find that in this case there is considerable delay in moving the amendment application, for which no explanation whatsoever has been tendered by the Plaintiff-Appellant. Thus the prayer for the amendment sought for is rejected. Learned Counsel for the Appellant during the course of his submission also relied upon another decision of this Court in the case of Virendra Kumar v. Daya Nand 1982 AWC 176. This case is distinguishable inasmuch as the amendment of the pleading was sought before the trial court and even at the stage of evidence of the parties. In view of the above, in my opinion, the plaint did not disclose any cause of action and in view of the provision of Section 16(c) of the Specific Relief Act it was obligatory on the part of the Plaintiff to have made the said averment regarding his readiness and willingness to perform his part of the contract. In my opinion, the lower appellate court was right in law in holding that the Plaintiff is not entitled to any relief as the plaint does not disclose any cause of action.

3. The other submission made by the learned Counsel for the Appellant is that

the finding recorded by the lower appellate court that Sri. Ram Kishore is a bonafide purchaser for value without notice and the agreement is not enforceable against him is incorrect in law. Be that as it may, but since I am of the opinion that the suit of the Plaintiff is liable to fail on the ground that it does not disclose any cause of action, I need not enter into and adjudicate on this aspect of the case.

4. Regarding the third submission of possession of the Plaintiff, it has been categorically found by the lower appellate court that in the agreement to sell (Ext. 2), there was no mention about delivery of possession to the Plaintiff and the lower appellate court has on appraisal of evidence found that the Plaintiff is not in possession on the strength of the said agreement. In this view of the matter, I find that the lower appellate court has not committed any error of law in dismissing the suit of the Plaintiff for specific performance and in decreeing the suit for only payment of earnest money alongwith interest.

5. In the result, the second appeal fails and is dismissed with costs.