
(2010) 11 GUJ CK 0086

In the Gujarat High Court

Case No : Second Appeal No. 7 of 2010 and Civil Application No. 241 of 2010

Premiben Durlabhbhai Patel

APPELLANT

Vs

Sumanbhai Premabhai Patel (Dhodia)

RESPONDENT

Date of Decision : 26-11-2010

Acts Referred:

Bombay Land Revenue Code, 1879 — Section 73A, 73AA , 73AC

Bombay Tenancy and Agricultural Lands Act, 1948 — Section 43 , 43(1A)

Civil Procedure Code, 1908 (CPC) — Order 7 Rule 11(d), 100

Citation : (2010) 11 GUJ CK 0086

Hon'ble Judges : Rajesh H. Shukla, J

Bench : Single Bench

Advocate : Divyesh Joshi, for the Appellant; N.V. Gandhi, for the Respondent

Final Decision : Dismissed

Judgement

Rajesh H. Shukla, J.—The present Second Appeal has been filed by the Appellant-original Defendant u/s 100 of CPC raising the following substantial questions of law:

1. Whether the First Appellate Authority is correct in saying that Civil Court would have jurisdiction to try the suit for specific performance of contract in spite of bar of Section 73AA of Bombay Land Revenue Code as well as Section 43 of Bombay Tenancy & Agricultural Lands Act applying with all force to the facts of the case and also keeping in mind Section 73AC of the Bombay Land Revenue Code?
2. Whether the Civil Court would have jurisdiction to pass decree of specific performance of an agreement to sale which is a void agreement in terms of Section 43 of Bombay Tenancy and Agricultural Lands Act?
3. Whether the Civil Court would have jurisdiction to entertain the suit of specific performance in anticipation of post facto permission at the end of the revenue authority, more particularly when Section 73AA of Bombay Land Revenue Code

and Section 43 of Bombay Tenancy and Agricultural Lands Act is applicable to the facts and circumstances of the case?

2. The Respondent herein, original Plaintiff, filed Civil Suit No.102/2004 before the Court of Civil Judge (J.D.), Bardoli for specific performance of the contract with regard to the suit land which has been described in detail in the suit. However, an application Exh. 14 was given under Order 7 Rule 11(D) of CPC for rejection of the plaint in view of the provisions of Section 43 of the Bombay Tenancy and Agricultural Lands Act r/w Section 73AA & 73AC of the Bombay Land Revenue Code. The Court of Civil Judge (J.D.), Bardoli allowed the application and rejected the plaint under order 7 Rule 11(D). Therefore, Regular Civil Appeal No. 1/2006 came to be filed before the District Court, Surat at Vyara and the lower appellate court allowed the appeal rejecting the order passed by the trial court below application Exh. 14. Therefore, the present appeal has been preferred by the Appellant-original Defendant raising the aforesaid substantial questions of law.

3. Heard learned advocate Mr. Divyesh Joshi for learned Counsel Mr. Pardiwala for the Appellant and learned advocate Mr. Gandhi for the Respondent.

4. The substantial questions of law which are posed in this second appeal with regard to the jurisdiction of the civil court regarding specific performance of the contract in spite of bar u/s 43 of Bombay Tenancy and Agricultural Lands Act r/w Section 73AA of the Bombay Land Revenue Code has been considered by the High Court while deciding Special Civil Application No. 17525 of 2003 referring to the provisions of both the Act and the Code.

5. Reliance has been placed on a judgment reported 1985 GLH 53 in the case of Shah Jitendra Nanalal v. Patel Lallubhai Ishverbhai wherein it has been held that a conditional decree for specific performance of the contract can be passed and as can be seen from the provisions it is subject to getting necessary permission from the competent authority, meaning thereby such an agreement or contract is not totally barred or prohibited, but what is required is a clearance or permission as required under the aforesaid statute and the Bombay Land Revenue Code.

6. Therefore, once it is provided that permission could be obtained, it implies that the permission may be granted depending upon the facts of each case. In other words, when the permission is to be granted by the competent authority, it implies that such a transaction could be valid after the permission is obtained meaning thereby it is a matter of complying with the procedural requirement of law and it is not totally barred and the agreement would not be void.

7. It is in these circumstances, while considering similar position with regard to specific performance of the contract and the bar of Urban Land Ceiling Act with regard to vacant land, the Full Bench of this Court in a judgment in the case of Shah Jitendra Nanalal Vs. Patel Lallubhai Ishverbhai, has considered the same contentions and it has been clearly observed that the court can pass a conditional decree for specific performance subject to the exemption being

obtained from the competent authority under the Ceiling Act.

8. In the same way, the provisions of Section 43 of Bombay Tenancy and Agricultural Lands Act which refers to "Restriction on transfer of land purchased or sold under this Act" clearly provide that such transaction without the previous sanction of the Collector would be invalid and Section 43(1A) refers to the fact that subject to some conditions the sanction may be given.

9. Similarly, the provisions of Section 73A and 73AA of the Bombay Land Revenue Code refers to restriction on the right of transfer of such land. The bar as stated in this refer to the decision by the tribunal established under the Act and it refers to necessary sanction subject to the compliance of the requirement of law.

10. Therefore, when there is no absolute bar and when the law as interpreted by the court including the Full Bench of this Court has made it clear that conditional decree could be passed, the impugned judgment and order by the lower appellate court cannot be said to be erroneous and the substantial questions of law proposed to be raised in the present appeal are no longer res integra and in fact have been considered and decided and therefore there is no substantial question of law which can be said to have arisen in the present Second Appeal.

11. It is well accepted that the scope of second appeal u/s 100 of CPC is very limited and as observed by the Hon''ble Apex Court in a judgment in the case of Mst. Sugani Vs. Rameshwar Das and Another, only when substantial question of law is involved it could be entertained.

12. As there is no substantial question of law which can be said to have arisen or involved, the present Second Appeal cannot be entertained and therefore the appeal deserves to be dismissed and accordingly stands dismissed. Notice is discharged.

13. In view of dismissal of the Second Appeal, the civil application does not survive and it accordingly stands disposed of.