
(2013) 01 AHC CK 0165

In the Allahabad High Court

Case No : Civil Miscellaneous Writ Petition No. 70311 of 2006

Shanti Devi and Others

APPELLANT

Vs

Ram Niwas and Others

RESPONDENT

Date of Decision : 16-01-2013

Acts Referred:

Citation : (2013) 01 AHC CK 0165

Hon'ble Judges : Sibghat Ullah Khan, J

Final Decision : Allowed

Judgement

Sibghat Ullah Khan, J.

Heard learned counsel.

Ram Niwas Singh respondent no.1 filed Original Suit No.471 of 1979 against Vidya Sagar since deceased and survived by the petitioners and Rajesh Kumar respondent no.2 in this writ petition for specific performance of an agreement for sale executed by Vidya Sagar in favour of Ram Niwas Singh dated 14.10.1976 after receiving Rs.8,000/ as earnest money out of total sale consideration of Rs.9,000/. Defendant no.2 Rajesh Kumar was son of defendant no.1 Vidya Sagar. The suit was decreed in part on 17/9/1980 by Munsif, Etah. Suit was decreed only for return of earnest money which was also directed to be paid in eight instalments of six months each of Rs.1,000/. It was directed that in case of default in deposit of any instalment plaintiff would be entitled to get the sale deed executed by the court in pursuance of agreement for sale after depositing Rs.1,000/ as earnest money in court.

According to the petitioners the instalments were paid as per direction contained in the decree however, one receipt of payment of Rs.1,000/ dated 20.2.1982 (third instalment) had been lost by the judgment debtor. It is stated in paragraph5 of the writ petition that thereafter Vidya Sagar executed the sale deed in favour of respondents 3 to 5 on 27.1.1984. On 28.4.1984 respondent no.1 plaintiff filed Execution Case No. 79 of 1984 for execution of decree.

Petitioners filed objections to the execution application. In para4 of the petition it is stated that the receipt which the plaintiff had given to the defendant acknowledging receipt of Rs.1,000/ dated 20.2.1982 (third instalment) had been lost. All other amounts (except the fourth instalment and disputed third instalment) were paid through tender, copies of which have been annexed as Annexure3 to the writ petition. In the decree dated 17.9.1980 it was also directed that until complete payment defendant would not transfer the property in suit. The suit had been decreed on the concession made by the plaintiff himself. He agreed that in case the amount was returned to him in instalments he would not press for decree for specific performance. Plaintiff did not even press for interest. Still the defendant defaulted in payment of one instalment and put forward the case that he had paid the amount but the receipt had been lost.

The case taken up by the petitioners was that in the receipt dated 17.8.1982 the decree holder had mentioned that the amount of instalment which was payable on 17.8.1982 had been received by him which meant that earlier amount had also been paid. That receipt is on page 27 of the writ petition, part of Annexure3. The executing court did not accept the case of the petitioners and rejected petitioner's objection on 11.3.2005 holding that from the receipt it could not be inferred that decree holder admitted that earlier instalment had been paid to him. That order was passed by Civil Judge (Junior Division), Etah. Against the said order petitioners filed Civil Revision No.61 of 2005 which was dismissed by Additional District Judge, S.C./S.T., Etah on 2.9.2006 hence this writ petition.

I do not find any such error in the impugned orders regarding the finding that Vidya Sagar had not paid the instalment of Rs.1,000/ on 20.2.1982 which may warrant interference in exercise of writ jurisdiction. The findings are basically findings of fact.

However, in my opinion the courts below were not justified in directing execution of the decree for specific performance of agreement for sale. As substantial amount had been paid and only one instalment had not been paid hence petitioners should have been directed to pay a reasonable amount to compensate the decree holder.

Moreover the decree holder while giving the receipt dated 17.8.1982 did not protest about non payment of earlier instalments. This does not amount to acknowledgement of receipt of earlier instalments or its waiver but it certainly amounts to condonation of delay in making deposit. Accordingly, the amount payable as third instalment remained due but it ceased to be part of conditional decree

In this case on 21.12.2006 following stay order was passed;

"Till the next date of listing further proceedings in Execution Case No.79 of 1984 shall remain stayed provided the petitioners deposit a sum of Rs.10,000/ before the Executing Court within four weeks from today and submit proof of the decree before this court on or before the next date."

The said amount was afterwards deposited.

Accordingly, it is directed that apart from Rs.10,000/ deposited under the aforesaid interim order petitioners shall deposit a further amount of Rs.5,000/ before the executing court within two months. The total deposited amount of Rs.15,000/ shall immediately be paid to the decree holder respondent. In case the amount of Rs.5,000/ is not deposited within two months this writ petition shall be deemed to have been dismissed. However, if the aforesaid amount of Rs.5,000/ is deposited within two months then impugned orders shall stand set aside and the execution shall be struck off in full satisfaction.

Writ petition is allowed as above.