

SHRI LAKHI RAM (DEAD) THROUGH LRS.

A

v.

SHRI TRIKHA RAM AND ORS.

FEBRUARY 5, 1998

[S.B. MAJMUDAR AND M. JAGANNADHA RAO, JJ.]

B

Code of Civil Procedure, 1908: Order 6 Rule 17.

Agreement to sell—In favour of plaintiff—Specific Performance of—Suit decreed by trial court—In appeal, defendants contended that the suit was barred by S. 16(c) of the Specific Relief Act as the plaintiff did not aver in the plaint that he was ready and willing to perform his part of the contract—Plaintiff moved an application under O. 6 R.17 seeking introduction of the averment regarding his readiness and willingness to perform his part of the contract—Appellate Court allowed the application—Held: Cause of action centred round inaction on the part of the vendor in complying with the agreement to sell—Amendment does not change the cause for action—Hence, appellate court was right in allowing the application—Specific Relief Act, 1963, S. 16(c)

C

D

The respondent-defendant no. 1 agreed to sell his land to the appellant-plaintiff for a certain consideration. Accordingly, earnest money was taken by defendant no. 1 and an agreement to sell was executed in plaintiff's favour. Despite this agreement defendant no. 1 did not execute the sale deed instead sold the property to respondents-defendants nos. 2 and 3. Thereafter, the plaintiff filed a suit for specific performance under the Specific Relief Act, 1963. The trial court decreed the suit.

E

F

In appeal, the defendants contended that the suit was barred by Section 16(c) of the Act as the plaintiff did not aver in the plaint that he was ready and willing to perform his part of the contract. At this stage the plaintiff moved an application for amending the plaint under Order 6 Rule 17 of the Code of Civil Procedure, 1908 seeking introduction of the averment regarding his readiness and willingness to perform his part of the contract. The first appellate court allowed the application for amendment of the plaint. The defendants filed an appeal challenging the aforesaid decision before the High Court. The High Court allowed the appeal on the ground that the amendment would change the cause of action. Hence this appeal.

G

H

A On behalf of the appellant it was contended that in a suit for specific performance of contract, the cause of action centred round inaction on the part of the vendor in complying with the agreement to sell the property and hence the appellant could always be permitted to amend the plaint by introducing the averment as required by Section 16(c) of the Act.

B Allowing the appeal, this Court

For S.B. Majmudar, J.

C HELD : 1. The amendment inserting the relevant averments under Section 16(c) of the Specific Relief Act, 1963 does not change the cause of action and would be a legally permissible exercise since the cause of action centered round inaction on the part of the vendor in complying with the agreement to sell the property. Therefore, the decision rendered by the first appellate court allowing the amendment could not have been faulted with by the High Court. [710-B-C]

D *Gajanan Jaikishan Joshi v. Prabhaker Monhanlal Kalwar*, [1990] 1 SCC 166, relied on.

Jugraj Singh v. Labh Singh, [1996] 2 SCC 31, referred to.

E CIVIL APPELLATE JURISDICTION : Civil Appeal No. 1646 of 1981.

From the Judgment and Order dated 9.10.79 of the Allahabad High Court in F.A.F. No. 295 of 1975.

Tara Chandra Sharma, Ms. Neelam Sharma and Rupesh Kumar for the Appellants.

F Prem Malthotra and Jasbir Malik for the Respondents.

The Judgment of the Court was delivered by

G MAJMUDAR, J. The appellant is the original plaintiff who had filed a suit for specific performance of contract for sale of suit lands. The suit was filed against the original vendor i.e. respondent no. 2 and also against the subsequent purchasers, respondent nos. 1 & 3 herein. We will refer to the appellant as the plaintiff and the respondents as defendants for the sake of convenience in the latter part of this judgment. The plaintiff has felt aggrieved by the decision of the High Court passed in miscellaneous appeal whereby
H the High Court has set aside the order of amendment of plaint as granted by

the first appellate court and dismissed the plaintiff's suit.

A

A few relevant facts leading to these proceedings deserve to be noted at the outset. Plaintiff's case is that defendant no. 1 was Bhumidar of 2/3 share in 9 plots situated in village Chindori Khas, Meerut District of Uttar Pradesh. According to the plaintiff, defendant no. 1 agreed to sell his entire share on 30.6.1969 to the plaintiff for a consideration of Rs. 12,000 (Rupees twelve thousand only). Rs. 2,000 (Rupees two thousand only) was taken by him as earnest money from the plaintiff when he executed the said agreement on the same day in plaintiff's favour. According to the plaintiff, despite this agreement defendant no. 1 did not execute the sale deed and instead sold the property to defendant nos. 2 & 3. He thereafter filed the aforesaid suit for specific performance. Defence was submitted by the subsequent purchasers namely, defendant nos. 2 & 3. After hearing the contesting parties the trial court took the view that it was proved that defendant no. 1 had agreed to sell the disputed property to the plaintiff on 30.6.1969 after accepting Rs. 2,000 (Rupees two thousand only) as earnest money. It was also held that defendant nos. 2 & 3 were not bonafide purchasers for value without notice, that the suit was not barred under section 34 of the Specific Relief Act. In the Result, the suit was decreed by the trial court by order dated 18.4.1972. Defendant nos. 2 & 3 carried the matter in appeal. In appeal it was contended amongst others that the suit was barred by Section 16(c) of the Specific Relief Act, 1963 as the plaintiff did not aver in the plaint that he was ready and willing to perform his part of the contract. When such a contention was raised amongst others at the stage of argument, the plaintiff moved an application for amending the plaint under order 6 Rule 17 of the Code of Civil Procedure seeking introduction of the averment regarding his readiness and willingness to perform his part of contract. That amendment was granted by the appellate court and as a result, the decree of the trial court was set aside and the proceedings were ordered to be remanded to the trial court for framing appropriate issues in the light of the amended plaint subject to the plaintiff praying costs as indicated in the judgment of the appellate court while granting amendment. The appeal was allowed, the Judgment and decree of the trial court were set, aside, application for amendment of the plaint was allowed on payment of Rs. 3,000 (Rupees three thousand only) as costs. The aforesaid decision of the appellate court dated 15.7.1973 was brought in challenge by defendant nos. 2 and 3 before the High Court in miscellaneous appeal as the appeal was directed against the remand order. The High Court took the view that such proposed amendment could not have been granted as it would displace the defence of the defendants and consequently, the order of the

B

C

D

E

F

G

H

A order of the appellate court allowing the amendment was set aside. Learned Single Judge who decided the appeal followed an earlier Decision of the division Bench of the High Court and held that once such proposed amendment was refused, the suit would not survive and, therefore, the appeal was allowed, the order of the lower appellate court was set aside and the plaintiff's suit was dismissed. It is this order of the High Court which is the subject matter of this appeal after special leave was granted.

Learned counsel for the appellant raised two contentions in support of the case. He firstly submitted that the proposed amendment was rightly allowed by the lower appellate court, that in a suit for specific performance of contract, the cause of action centered round inaction on the part of the vendor in complying with the agreement to sell the property, that if averment under Section 16(c) of the Specific Relief Act was not originally inserted due to oversight or otherwise by the plaintiff, he can always be permitted to amend the plaint. In support of his contention, he relied on the decision of this Court in the case of *Gajanan Jaikishan Joshi v. Prabhakar Mohanlal Kalwar*, reported in [1990] 1 SCC 166. A Bench of two learned Judges of this Court speaking through Kania, J. (as he then was) made the following observations in the case :

“In the present case no fresh cause of action was sought to be introduced by the amendment applied for. All that the plaintiff appellant sought to do was to complete the cause of action for specific performance of which relief he had already prayed. It was only one averment required under Section.16(c) of the Specific Relief Act to be made in a plaint in a suit for specific performance which was not made, probably on account of some oversight or mistake of the lawyer who drafted the plaint and that error was sought to be rectified by the amendment applied for. There was no fresh cause of action sought to be introduced by the amendment and hence, no question of causing any injustice to the respondent on that account arose.”

Placing strong reliance on the aforesaid decision it was submitted that the reasonings given by the High Court in the impugned judgment cannot be sustained in view of the aforesaid authoritative pronouncement of this Court.

It was next contended that in any case such a grievance about grant of amendment could not have been made by defendant nos.2 and 3 who are subsequent purchasers and such grievance, if at all, could have been made by the original vendor who was party to the agreement, namely, defendant

no.1 and he was set exparte all throughout in those proceedings and did not think it fit to raise such contention. Even that apart, defendant nos. 2 and 3 also in their written statement did not raise such a submission and no issue was framed by the trial court. In this connection, reliance was placed on a latter decision of two learned Judges of this Court in the case of *Jugraj Singh & Anr. v. Labh Singh & Ors. reported in [1995] 2 SCC 31*, In that case, a Bench of this Court consisting of K. Ramaswamy & N. Venkatachala, JJ. observed that the plea about Section 16(c) of the Specific Relief Act, provides that the plaintiff must plead and prove that he was always ready and willing to perform his part of the essential terms of the contract. The plea is specifically available to the vendor as it is personal to him. The subsequent purchasers have got only the light to defend their purchase on the premise that they have no prior knowledge of the agreement of sale with the plaintiff. They are bonafide purchasers for valuable consideration. Though they are necessary parties to the suit since any decree obtained by the plaintiff would be binding on the subsequent purchasers, the plea the the plaintiff must always be ready and willing to perform his part of the contract must be available only to the vendor or his legal representatives but not to the subsequent purchasers. Even on that basis it was submitted that defendant nos.2 & 3 could not have such grievance before the High Court.

Learned counsel for respondents 1 and 3 i.e defendant nos. 2 & 3 on the other hand submitted that even though the power to grant amendment is to liberally exercised if the suit itself is fatally defective on account of absence of averments as per Section 16(c) of the Specific Relief Act, it would be a still born suit and, therefore, the amendment of the suit by introducing averments under Section 16(c) of the Specific Relief Act cannot be granted in such a fatally defective suit. So far as the second submission of learned counsel for the appellant is conerned, it was submitted by learned counsel for the respondents that the reasoning given in the decision of the Court in *Jugraj Singh's case (supra)* in his view required a re-look. According to him, the subsequent purchasers might have parted with full consideration in favour of the vendor and who would be in possession of the properties and whose contention could be that they were *bonafide* purchasers for value without notice and that the suit which was fatally defective and still born one should be dismissed and such a still born suit should not be permitted to be decreed. The decree in such suit would really be against them. They will be required to reconvey the property to the palintiff and even in given cases to handover possession thereof to the palintiff. Hence, they cannot be said to the ineligible to defence the suit on all legally permissible grounds. The original vendor

A might not be interested in fighting further. Consequently, no such defence could ever be said to be not permissible to such subsequent purchasers. He also submitted that the subsequent purchasers step into the shoes of the vendor and whatever pleas are legally available to the vendor for meeting the case of the plaintiff would naturally be available to the subsequent purchasers as defence.

B

Having considered these rival contentions in our view, the appeal could be disposed of on the first point canvassed by learned counsel for the appellant, namely, that amendment inserting the relevant averments under Section 16(c) of the specific Relief Act does not change the cause of action and would be a legally permissible exercise as laid down by this Court in [1990] 1 SCC 166. The ratio of the aforesaid decision squarely applies to the facts of the present case and, therefore, the decision rendered by the first appellate court allowing such amendment could not have been found fault with by the High Court in the impugned judgment. Only on this short ground the appeal will have to be allowed.

C

D

In view of our above conclusion, we do not deem it fit to examine the alternative contention of the learned counsel for the appellant about the locus standi of the subsequent purchasers to raise such contention about the proposed amendment though prima facie we find that there is some substance in what learned counsel for the respondents submitted in connection with the reasoning which appealed to the Bench of this Court which decided *Jugraj Singh's* case (supra). Consequently, in the present case we do not deem it fit to consider whether the said decision requires reconsideration by a larger Bench.

E

F

The appeal is allowed and the judgment and decree of the High Court are set aside and the order of the first appellate court remanding the proceeding to the trial court is restored. As the suit is of 1969, we direct the trial court to expeditiously dispose of the suit so that the parties may know where they stand. No costs.

V.S.S.

Appeal allowed.