

A.C. VARULAPPAN .

v.

SMT. AHALYA NAIK

AUGUST 10, 2001

[S. RAJENDRA BABU AND K.G. BALAKRISHNAN, JJ.]

Specific Relief Act, 1963—Section 20—Agreement for sale of property between the parties—Sale deed not executed—Another agreement for sale entered into stipulating the time limit for execution—Suit for specific relief—Held, Court jurisdiction to decree specific relief is discretionary and should not be exercised in an arbitrary or unreasonable manner—On facts, respondent tried to take unfair advantage over the appellant—Not entitled to a decree of specific performance.

Appellant entered into an agreement with respondent to sell suit-property for certain consideration in May 1977. Respondent paid a sum of Rs. 42,000 as advance. No time limit was stipulated for execution of sale deed. The agreement was entered into by the appellant to pay off his debts as disclosed in the agreement. Another agreement was entered into by the appellant with the respondent stipulating the execution of sale deed by January 1978. The respondent filed a suit for specific performance before trial court alleging that the appellant failed to execute the sale deed by January 1978 as per the second agreement. The trial court dismissed the suit. The respondent filed an appeal before High Court, which was decreed.

In appeal to this Court, the appellant contended that the respondent wrote two letters for termination of the first agreement and for repayment of advance with interest; and that the second agreement entered into was brought about by coercion and threat by the respondent, through her husband.

Disposing of the appeals, the Court

HELD: 1.1. The jurisdiction to decree specific relief is discretionary and Court can consider various circumstances to decide whether such relief is to be granted. Merely because it is lawful to grant specific relief, the Court need not grant the order for specific relief; but this discretion shall not be exercised in an arbitrary or unreasonable manner. Certain circumstances have been mentioned in Section 20(2) of the Specific Relief

A Act, 1963 as to the circumstances under which court shall exercise such discretion. If under the terms of the contract the plaintiff gets an unfair advantage over the defendant, the court may not exercise its discretion in favour of the plaintiff. So also, specific relief may not be granted if the defendant would be put to undue hardship which he did not foresee at the time of agreement. If it is inequitable to grant specific relief, then also the court would desist from granting a decree to the plaintiff. [429-C, D]

C 1.2. From the terms and conditions adumbrated in the second agreement, the respondent had been trying to take an unfair advantage over the appellant and that the circumstances, in which this agreement was executed within a short period of termination of the first contract by the respondent, make it highly probable that the appellant might not have readily agreed to this contract. [431-E]

D 1.3. There are other circumstances also to hold that the respondent had not approached the court with clean hands. The respondent had been trying to get possession of the house even before execution to the sale deed, for which the respondent had apparently colluded with the tenant of the appellant. Moreover, the appellant was clearly in impecunious circumstances and loans were outstanding against him. He had executed the first agreement to raise some funds to pay off the debts. From the tenor of the first agreement, it is seen that the parties were not very serious about the sale of the house. E The fact that after few months the respondent resiled from the agreement and sought for repayment of the money also proves this fact. The appellant had voluntarily retired from service. Admittedly, he had no other house to stay after retirement. The respondent had tried to take unfair advantage over the appellant and throughout the course of the transaction the respondent F had not been fair. [431-F, H; 432-A, B]

G 1.4 Granting of specific performance is an equitable relief, though the same is governed by the statutory provisions of the Specific Relief Act, 1963. These equitable principles are nicely incorporated in Section 20 of the Act. While granting a decree for specific performance, these salutary guidelines shall be in the forefront of the mind of the court. The trial court, which had the added advantage of recording the evidence and seeing the demeanour of the witnesses considered the relevant facts and reached a conclusion. The High Court should not have reversed that decision disregarding these facts and the High Court seriously flawed in its decision. H Therefore, the respondent is not entitled to a decree of specific performance

of the contract. [432-C, D]

1.5. The respondent is entitled to refund of the amounts paid to the appellant with 14 per cent interest from the date of payment of the amount till the date of realisation. There shall be a charge for the amount on the suit-property. The respondent would be at liberty to enforce the decree against the appellant and the property, in case the appellant fails to re-pay the sum with 14 percent interest. [432-E, F]

D. Anjaneyulu and Anr. v. Damacherla Venkata Seshiah and Anr., AIR (1987) SC 1641; *Parakunnan Veetill Joseph's son Mathew v. Nedumbara Kuruvila's Son and Ors.*, AIR (1987) SC 2328; *Lourdu Mari David and Ors. v. Louis Chinnava Arogiaswamy and Ors.*, AIR (1996) SC 2814 and *Gobind Ram v. Gian Chand*, [2000] 7 SCC 548, referred to.

CIVIL APPELLATE JURISDICTION : Civil Appeal Nos. 5233-5234 of 2001.

From the Judgment and Order dated 8.8.2000 of the Karnataka High Court in RFA No. 40/98 and Cross Appeal No. 1/98.

E.C. Vidya Sagar and B.K. Choudhary for the Appellant.

Vinod A. Bobde and Padmanabh Mahale, N.L. Ganapathi and Rajesh Mahale for the Respondent.

The Judgment of the Court was delivered by

K.G. BALAKRISHNAN, J. Leave granted.

Defendant in a suit for specific performance is the appellant before us. The appellant and the respondent plaintiff entered into an agreement on 1.5.1977 whereby the appellant agreed to sell his RCC building with appurtenant land for a consideration of Rs. 85,000. The respondent paid a sum of Rs. 42,000 as advance. The plaint schedule property was outstanding on two mortgages—one in favour of the Karnataka Government and another in favour of Pragathi Co-operative Bank Ltd. The appellant was also liable to pay a sum of Rs. 8,000 to one Lakshamma. In the agreement, it was stated that the appellant intended to sell the property to clear the loans outstanding in respect thereof. No time limit was stipulated for execution of sale deed. The plaint schedule house was in occupation of a tenant. According to the respondent, the appellant again executed another agreement on 10.12.1977

A wherein some more terms and conditions were incorporated. As per that agreement, the appellant was to execute the sale deed on or before 16.1.1978. The respondent alleged that she had all along been ready and willing to perform her part of the contract but the appellant failed to execute the sale deed on 16.1.1978 though she was present in the Sub-Registrar's Office for execution of sale deed. The respondent filed a suit within a week thereafter and sought for specific performance of the contract.

B
C
D The appellant contended that the respondent was not entitled to seek specific performance. He admitted the agreement entered into by him on 1.5.1977, but alleged that the consideration agreed to by him was Rs. 98,000 and not Rs. 85,000. The appellant also alleged that the City Improvement Trust Board had not granted permission to sell the property and that he could not get the income tax clearance certificate from the competent authority for the sale of the property. He also alleged that the respondent resiled from the contract and requested for refund of the advance amount and that in that behalf she wrote two letters on 27.9.1977 and 1.11.1977. The appellant further alleged that the respondent wanted to revoke the agreement dated 1/5/1977 and for that purpose the respondent and her husband took the appellant to their tax consultant where the appellant was forced to sign certain papers. The appellant alleged that the argument dated 10.12.1977 was vitiated by coercion and threat.

E
F
G The trial court declined to grant the decree for specific performance and dismissed the suit though the court held that there was no evidence to prove that the agreement dated 10.12.1977 was vitiated by coercion. The trial court noticed that the appellant was to retire from service and that he was not having funds to purchase another house and that he had not obtained the requisite permission under the Urban Land Ceiling Act and also had not obtained the income tax clearance certificate. The trial court held that the agreement dated 1.5.1977 was executed with a view to discharge some debts of the appellant and he wanted to move to a small house elsewhere. It was also noticed that the appellant was not keeping good health and voluntarily retired from service. Considering the overall circumstances of the case, it was noted by the trial court that the appellant would be put to great hardship in case the relief of specific performance was granted to the plaintiff.

H The respondent filed an appeal before the High Court and the appellate court decreed the suit as prayed for. According to the appellate court, mere inadequacy of consideration, or the mere fact that the contract is onerous to

the defendant or improvident in its nature, would not be deemed to constitute an unfair advantage and the ingredients of clause (b) of Section 20(2) of the Specific Relief Act are not attracted. On this premise, the appeal filed by the respondent was allowed. A

We heard the learned counsel for the appellant as also learned counsel for the respondent. B

The jurisdiction to decree specific relief is discretionary and the court can consider various circumstances to decide whether such relief is to be granted. Merely because it is lawful to grant specific relief, the court need not grant the order for specific relief; but this discretion shall not be exercised in an arbitrary or unreasonable manner. Certain circumstances have been mentioned in Section 20(2) of the Specific Relief Act, 1963 as to under what circumstances the court shall exercise such discretion. If under the terms of the contract the plaintiff gets an unfair advantage over the defendant, the court may not exercise its discretion in favour of the plaintiff. So also, specific relief may not be granted if the defendant would be put to undue hardship which he did not foresee at the time of agreement. If it is inequitable to grant specific relief, then also the court would desist from granting a decree to the plaintiff. C D

In *D. Anjaneyulu and Anr. v. Damacherla Venkata Seshaiah and Anr.*, AIR (1987) SC 1641, the High Court declined to grant a decree for specific performance in favour of the plaintiff, even though the defendant was guilty of breach of agreement. That was a case where the defendant had constructed costly structures and if a decree for specific performance was granted, the defendant would have been put to special hardship. This Court directed the defendant to pay compensation to the plaintiff. E F

In *Parakunnan Veetill Joseph's Son Mathew v. Nedumbara Kuruvila's Son and Ors.*, AIR (1987) SC 2328, this Court cautioned and observed as under:

"Section 20 of the Specific Relief Act, 1963 preserves judicial discretion to Courts as to decreeing specific performance. The Court should meticulously consider all facts and circumstances of the case. The Court is not bound to grant specific performance merely because it is lawful to do so. The motive behind the litigation should also enter in the judicial verdict. The Court should take care to see that it is not used as an instrument of oppression to have an unfair advantage to H

A the plaintiff."

B In *Lourdu Mari David and Ors. v. Louis Chinnaya Arogiaswamy and Ors.*, AIR (1996) SC 2814, the plaintiff, who sought for specific performance of an agreement to purchase immovable property, filed a suit with incorrect and false facts. In the plaint, it was alleged that the plaintiff was already given possession of Door No. 2/53 as a lessee and he was given possession of Door No. 1/53 on the date of agreement itself. But he did not give any evidence that he had got possession of Door No. 1/53 on the date of the agreement. It was found that his case as regards Door No. 1/53 was false. He also alleged that he had paid Rs. 400 in addition to the sum of Rs. 4,000 paid as advance, but this was proved to be an incorrect statement. He alleged that the third defendant had inspected the house during the course of negotiations, but this also was found to be false. This Court held that it is settled law that the party who seeks to avail of the jurisdiction of a Court and specific performance being equitable relief, must come to the Court with clean hands. In other words, the party who makes false allegations does not come with clean hands and is not entitled to the equitable relief.

E In *Gobind Ram v. Gian Chand*, [2000] 7 SCC 548, it was observed in paragraph 7 of the judgment that grant of a decree for specific performance of contract is not automatic and is one of the discretions of the court and the court has to consider whether it would be fair, just and equitable. The court is guided by the principles of justice, equity and good conscience.

F In the instant case, the first agreement was on 1.5.1977. No date was stipulated in the agreement for performance of the contract. The various outstanding dues payable by the defendant to the mortgagees are stated in clause 3 of the agreement. From the tenor of the agreement, it is clear that the appellant wanted to raise money to pay off his debts. In case of breach of agreement, the appellant was to repay the advance with interest thereon and in the event of breach of agreement on the part of the plaintiff, she would not be entitled to get back the advance. After this agreement, the respondent wrote two letters to the appellant indicating that she was not willing to proceed with the contract and that she terminated the contract. By letter dated 1.11.1977, she requested the appellant to re-pay the amount of Rs. 42,000 paid by her, with 12 percent interest. She wrote another letter also stating that she wanted to settle the matter immediately and that she wanted to get interest from 1.5.1977 onwards for the amount paid by her as advance. Within a short period, the second agreement dated 10.12.1977 is alleged to have been executed

between plaintiff and defendant. The appellant alleged that this agreement was brought about by coercion and threat and that he was physically manhandled by the respondent's husband. He also alleged that he caused to send a lawyer's notice on the very next day repudiating this agreement, but he could not produce a copy of the notice and the trial court disbelieved his version. But it is important to note that the terms of the agreement dated 10.12.1977 which is sought to be enforced by the respondent are at variance with the original agreement. As per the second agreement, the sale deed was to be executed within a short period. i.e. on or before 16.1.1978. It is strange to note that under the second agreement if the appellant failed to execute the sale deed, he will have to pay double the amount of part-consideration received by him, whereas if the respondent failed to perform her part of the agreement, she need to only pay a sum of Rs. 10,000 as pecuniary damages and the balance amount was to be paid back to her by the appellant with 12 per cent interest. It is also strange to note that though the total consideration is fixed at Rs. 85,000 a sizeable sum, viz. Rs. 10,000 would be retained by the respondent as deposit towards expenses for repairs and renewals of the house.

From the terms and conditions adumbrated in the second agreement, dated 10.12.1977, it is clear that the respondent had been trying to take an unfair advantage over the appellant and that the circumstances in which this agreement was executed within a short period of termination of the first contract by the respondent, make it highly probable that the appellant might not have readily agreed to this contract.

There are other circumstances also to hold that the defendant-respondent had not approached the court with clean hands. Admittedly, the plaint schedule house was in occupation of a tenant. The appellant had agreed to evict the tenant. During the course of litigation between the appellant and the respondent, the appellant came to know that the tenant had been trying to give possession of the house to the respondent. He immediately filed a suit and obtained an injunction and recovered possession of the house from the tenant. The respondent alleged that she got possession of the house from the tenant. She also filed a suit alleging that she had been in possession of the property and she obtained possession of the house from the tenant. It is clear that she had been trying to get possession of the house even before execution of the sale deed, for which she had apparently colluded with the tenant. Moreover, the appellant in this case was clearly in impecunious circumstances and so many loans were outstanding against him. He had

- A executed the first agreement to pay off these debts and in order to raise some funds. From the tenor of the first agreement, it is clear that parties were not very serious about the sale of the house. The fact that after few months the respondent resiled from the agreement and sought for repayment of the money also proves this fact. The appellant had voluntarily retired from service.
- B Admittedly, he had no other house to stay after retirement. The respondent-plaintiff had tried to take unfair advantage over the defendant and throughout the course of the transaction she had not been fair.

- Granting of specific performance is an equitable relief, though the same is now governed by the statutory provisions of the Specific Relief Act, 1963.
- C These equitable principles are nicely incorporated in Section 20 of the Act. While granting a decree for specific performance, these salutary guidelines shall be in the forefront of the mind of the court. The trial court, which had the added advantage of recording the evidence and seeing the demeanour of the witnesses considered the relevant facts and reached a conclusion. The appellate court should not have reserved that decision disregarding these facts and, in our view, the appellate court seriously flawed in its decision. Therefore, we hold that the respondent is not entitled to a decree of specific performance of the contract.
- D

- E The respondent-plaintiff had advanced a sum of Rs. 42,000 as early as on 1.5.1977. She had also parted with Rs. 4,000 subsequently. We hold that she is entitled to refund of these amounts with reasonable interest. We direct that the respondent-plaintiff will be entitled to get the total amount of Rs. 46,000 (Rs. 42,000 + Rs. 4,000) with 14 percent interest from the date of payment of the amount till the date of realisation. There shall be a charge for this amount on the plaint schedule property. The respondent would be at
- F liberty to enforce the decree against the appellant and his property, in case the appellant fails to re-pay the said sum of Rs. 46,000 with 14 per cent interest.

- G The appeals stand disposed of with the aforesaid directions. Parties on either side to bear their respective costs.

B.S.

Appeals disposed of.