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SATISH KUMAR

v.

KARAN SINGH AND ANOTHER

(Civil Appeal No. 7385 of 2013)

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JANUARY 21, 2016

[M.Y. EQBAL AND ARUN MISHRA, JJ.]

*Specific Relief Act, 1963 – s.20 – Specific performance of contract – Requirement of law for passing decree for specific performance – Lease-hold plot recommended by DDA to be allotted to appellant– Receipt-cum-Agreement executed whereunder appellant agreed to sell his rights in the plot to respondent for consideration – Part consideration paid by respondent – Balance amount was to be paid by respondent subsequently – Respondent filed suit for specific performance – Trial court held that the said receipt-cum-agreement was an enforceable contract and on that finding decreed the suit which was affirmed by the High Court – Held: Specific performance cannot be ordered if the contract itself suffers from some defect which makes the contract invalid or unenforceable – The plot in question was allotted by DDA on certain terms and conditions, which were embodied in the lease deed – One such condition was that property will remain non-transferable for a period of ten years – In spite of noticing the aforesaid fact, the High Court failed to hold that a decree for specific performance cannot be passed – Both trial court and the High Court completely misconstrued the facts of the case and misunderstood the law laid down by the Supreme Court in the matter of exercising discretionary power for granting a decree for specific performance – Appellant directed to refund sum paid by the respondents to the appellant alongwith interest @ 6% per annum.*

*Mayawanti v. Kaushalya Devi, (1990) 3 SCC 1 : 1990 (2) SCR 350; and Parakunnam Veetill Joseph's Son Mathew v. Nedumbara Kuruvivila's Son and others AIR 1987 SC 2328 – referred to.*

Case Law Reference

1990 (2) SCR 350	referred to	Para 9
AIR 1987 SC 2328	referred to	Para 10

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CIVIL APPELLATE JURISDICTION: Civil Appeal No. 7385 of 2013. A

From the Judgment and Order dated 24.11.2011 of the High Court of Delhi at New Delhi, in Regular First Appeal (RFA) No. 405 of 2010.

Pallav Shishodia, Sr. Adv., S. C. Sagar, Nikilesh Ramachandran, Advs. for the Appellant. B

Sunil Gupta, Sr. Adv., Sanjay Kumar Tyagi, Mohit Chaudhary, Ms. Damni Chawla, Imranj Ali, Ms. Puja Sharma, Advs. for the Respondents.

The Judgment of the Court was delivered by C

**M.Y. EQBAL, J. 1.** The question that needs consideration in the instant appeal is as to whether the so called agreement to sell dated 6.1.1995, which is extracted hereinbelow, is enforceable in law for passing a decree for specific performance of contract. The said agreement reads as under :- D

“RECEIPT + AGREEMENT DATED 6.1.1995

Received a sum of amount Rs.2,30,000/- (Two Lac Thirty Thousand) from Karan Singh S/o Sh. Basti Ram R/o Village and PO Mahipal Pur New Delhi-110 037 on sixth January, 1995 against our DDA alternative plot F.No.32(5)113/87/L&B/Alt./2511 dated 11.8.1989 in the name of Sh. Jaishi S/o Sh. Ram Saran R/o V&PO Mahipalpur New Delhi. The total area of the above said plot is 400 Sq.Yds. The total premium settled for the above said plot is Rs.4,60,000/- (Four Lacs Sixty Thousand) will be given at the time of receive the lease after execution at the Registrar Office. No payment will be given in between.” E F

Sd/-

Jaisi Ram

In the presence of  
J.N. Sehrawat  
V& PO Mahipal Pur  
New Delhi-110037.

S/o Ram Saran  
Village Mahipal Pur G

2. The trial court after recording the evidence decreed the suit of plaintiff-respondent for specific performance and the High Court by the H

A impugned judgment dismissed the appeal filed by the appellant and affirmed the decree passed by the Trial Court.

3. We have heard learned counsel appearing for the parties.

B 4. The plaintiff's case in the plaint is that a decision was taken by the Delhi Development Authority for allotment of a plot of land measuring 400 Sq.yds. in favour of the defendant-respondent. It was pleaded that in the year 1995 the defendant had desired to sell his right in the said recommendation letter which was to be allotted by the DDA in favour of the defendant. It was further pleaded that the defendant agreed to sell his right in the aforesaid recommendation letter and the plot to be allotted at a price of Rs.4,60,000/-. For better appreciation para 6 of the  
C plaint is extracted hereinbelow :-

D "6. That the negotiations in between the parties had taken place and the plaintiff had agreed to purchase the said rights of the defendant in the said recommendation letter and the plot to be allotted thereto. The dealings were finalized and a Receipt-cum-Agreement (for short Agreement) was also executed in between the parties on January 6, 1995.

E It is stated that the defendant had agreed to sell his rights in the aforementioned recommendation letter and the plot to be allotted thereunder to the plaintiff for the sale consideration of Rs.4,60,000/- (Rupees Four lakhs and Sixty thousand only). A sum of Rs.2,30,000/- (Rupees Two Lakhs and Thirty Thousand only) was also paid by the plaintiff to the defendant on January 6, 1995 itself. Vide the said agreement dated January 6, 1995, the defendant had  
F acknowledged receipt of the sum of Rs.2,30,000/- (Rupees Two Lakhs Thirty Thousand only) from the plaintiff. It was further agreed that the balance amount of Rs.2,30,000/- (Rupees Two Lakhs Thirty Thousand only) would be paid by the plaintiff to the defendant when the defendant hands  
G over the original lease deed duly executed by the Delhi Development Authority in favour of the defendant."

5. Curiously enough although the total sale consideration fixed was Rs. 4,60,000/- but the suit was valued at Rs.6,77,262.75p. on the basis of the value fixed by the DDA in respect of the plot in question.

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6. During the pendency of the suit in the trial court the original defendant who was an old person died and his legal representative was substituted. The original defendant as also the legal representative contested the suit denying and disputing the alleged receipt-cum-agreement and stated that no decree for specific performance can be passed. The trial court held that the receipt-cum-agreement is a legal and valid agreement to sell and shall be enforced by passing a decree for specific performance. The High Court on the basis of evidence adduced by the parties affirmed the finding recorded by the trial court.

7. Prima facie, we are of the view that both the trial court and the High Court have completely failed to consider the provisions of Specific Relief Act and the principles laid down by this Court in catena of decisions as to the requirement of law for passing a decree for specific performance.

8. It is well settled that the jurisdiction to order specific performance of contract is based on the existence of a valid and enforceable contract. Where a valid and enforceable contract has not been made, the Court will not make a contract for them. Specific performance will not be ordered if the contract itself suffers from some defect which makes the contract invalid or unenforceable. The discretion of the Court will not be there even though the contract is otherwise valid and enforceable.

9. This Court in **Mayawanti vs. Kaushalya Devi** (1990) 3 SCC 1 held thus:-

“8. In a case of specific performance it is settled law, and indeed it cannot be doubted, that the jurisdiction to order specific performance of a contract is based on the existence of a valid and enforceable contract. The Law of Contract is based on the ideal of freedom of contract and it provides the limiting principles within which the parties are free to make their own contracts. Where a valid and enforceable contract has not been made, the court will not make a contract for them. Specific performance will not be ordered if the contract itself suffers from some defect which makes the contract invalid or unenforceable. The discretion of the court will be there even though the contract is otherwise valid and enforceable and it can pass a decree of specific performance even before there has been any breach of the

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A contract. It is, therefore, necessary first to see whether there has been a valid and enforceable contract and then to see the nature and obligation arising out of it. The contract being the foundation of the obligation the order of specific performance is to enforce that obligation.”

B 10. Exercise of discretionary power under Section 20 of the Specific Relief Act for granting a decree, this Court in the case of **Parakunnan Veetill Joseph’s Son Mathew vs. Nedumbara Kuruivila’s Son and others**, AIR 1987 SC 2328 observed:-

C “14. Section 20 of the Specific Relief Act, 1963 preserves judicial discretion of 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 into 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 the plaintiff. The High Court has failed to consider the motive with which Varghese instituted the suit. It was instituted because Kuruivila could not get the estate and Mathew was not prepared to part with it. The sheet anchor of the suit by Varghese is the agreement for sale Exhibit A-1. Since Chettiar had waived his rights thereunder, Varghese as an assignee could not get a better right to enforce that agreement. He is, therefore, not entitled to a decree for specific performance.”

F 11. In the instant case both the Trial Court and the High Court have completely overlooked and failed to appreciate the following facts:-

G (a) The receipt + agreement dated 6.1.1995 is a document by which the defendant alleged to have received a sum of Rs.2,30,000/- against the alternative plot in question which the DDA recommended to give to the defendant. The said plot will in turn will be given by the defendant to the plaintiff after a lease was executed in favour of the defendant by the DDA;

H (b) The total premium amount settled by the said agreement in respect of the plot was Rs.4,60,000/- whereas the

defendant deposited a sum of Rs.8,13,389/- with the DDA for the allotment of the said plot;

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(c) The plaintiff pleaded in his plaint that the defendant had agreed to sell his rights in the recommendation letter and the plot to be allotted thereunder to the plaintiff for a consideration of Rs.4,60,000/-;

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(d) Although the right to get the plot was agreed to be sold to the plaintiff by the defendant for Rs.4,60,000/- but the suit was valued at Rs. 6,77,262.75p. being the rate fixed by the DDA.

12. On the basis of these admitted facts the Trial Court erroneously held that the receipt-cum-agreement is an enforceable contract and on that finding decreed the suit which was affirmed by the High Court.

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13. It is interesting to note that the High Court has noticed the fact mentioned in para 24 of trial court judgment that during the pendency of the *lis* DDA allotted the plot in question in favour of the deceased father of the defendant (original plaintiff) by executing a lease deed putting a condition that the plot in question will remain non-transferable for a period of ten years. Para 24 of the trial court judgment is quoted hereinbelow:-

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“It is stated on oath by Umed Singh (DW1) that the DDA allotted plot in dispute to his deceased father on certain terms and conditions, which were embodied in the lease deed. One of such conditions was that suit will remain non-transferable for a period of ten years.”

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14. In spite of the aforesaid fact noticed by the High Court, that the land so allotted to the defendant- is not transferable for a period of 10 years, the High Court failed to hold that a decree for specific performance cannot be passed.

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15. We are sorry to hold that both the Trial Court and the High Court have completely misconstrued the facts of the case and misunderstood the law laid down by this Court in the matter of exercising discretionary power for granting a decree for specific performance.

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16. After giving our anxious consideration to the matter, we are of the view that the impugned order passed by the trial court and affirmed by the High Court cannot be sustained in law inasmuch as no decree for

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A specific performance can be passed on the basis of the alleged receipt-cum-agreement. We therefore, allow this appeal and set aside the judgments passed by the Trial Court and the High Court.

17. Consequently, we direct the appellant to refund a sum of Rs.4,30,000/- (Rupees Four Lakhs Thirty Thousand) which was paid by the respondents to the appellant together with interest @ 6% per annum from the date of such receipt within two months from today. Any amount deposited by the respondents in the High Court shall be withdrawn by them.

C Bibhuti Bhushan Bose

Appeal allowed.