

DHEERAJ DEVELOPERS PRIVATE LIMITED

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v.

DR. OM PRAKASH GUPTA AND OTHERS

(Civil Appeal No.1672 of 2016 etc.)

FEBRUARY 23, 2016

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[KURIAN JOSEPH AND R. F. NARIMAN, JJ.]

Specific Performance – Suit for specific performance – Dismissed by trial court – Decreed by High Court in first appeal – On appeal, held: High Court decreed the suit only on the basis of finding on genuineness of a document, while several other aspects of the matter including the aspect of readiness and willingness also required consideration – Appeals allowed and remitted to High Court for hearing afresh.

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CIVIL APPELLATE JURISDICTION : CIVIL APPEAL No. 1672 OF 2016

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From the Judgment and Order dated 27.07.12 in FA No. 174 of 2005 dated 28.09.2012 in RP No. 305 of 2012 dated 28.09.2012 in RP No. 174 of 2005 passed by the High Court of M.P. at Gwalior

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C. A. No. 1673 of 2016

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C. A. No. 1674-1675 of 2016

A.K. Srivastava, Vivek K. Tankha, Sr. Advs., Sushil Kumar Jain, Puneet Jain, Ms. Christi Jain, Abhinav Gupta, Manu Maheshwari, Apurv Taran, Ms. Pratibha Jain, B.K. Satija, Talha Rahman, Nishit Agrawal, M. Shoeb Alam, Rameshwar Prasad Goyal, Varun Thakur, Ms. Shraddha Saran, Shankar Divate, Harsh Parashar, Vaibhav Srivastava, Sachin Pujari, S.S. Khanduja, Ms. Meenakshi Kalra, Yash Pal Dhingra, Vikrant Yadav, Ms. Sakshi Kakkar, C.D. Singh, Tapan Trivedi, Advs., for the appearing parties.

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The Judgment of the Court was delivered by

KURIAN, J. 1. We have heard learned counsel for the parties.

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- A 2. Delay condoned.
3. Leave granted.

B 4. By the impugned judgment, the High Court in First Appeal, against the judgment dated 8th April, 2005 in Civil Suit No. 93A/1996 (renumbered Civil Suit No. 20A/2001; 6A/2003) on the file of the VIII Additional District Judge, Gwalior, reversed the decree for specific performance.

5. The Trial Court had framed the following issues :-

C	S. No	ISSUE	CONCLUSION
	1.	Whether defendant No.1 executed agreement to sell of suit land in favour of plaintiffs in the year 1975?	Unproved
D	2.	Whether defendant No.1 had executed fresh agreement to sell of suit land in favour of plaintiffs on 15.1.1989 as prices of suit land had risen and a mutual compromise had arrived between plaintiffs and defendant No.1?	Unproved
E	3.	Whether plaintiffs are entitled to get the sale deed of suitland 5 Bigha having satiated the sum of Rs. Two lakh Eighteen thousand to defendant No.1 according to the agreement to sell dated 15.01.1989 and to get the vacant possession of suit land?	No
F	4.	Whether suitland is government land due to which plaintiffs have not got the right to sell/transfer the same?	Unproved
G	5.	Whether plaintiffs did not issue notice under Section CPC to defendant No.2? If yes, then its effect?	Suit was instituted having obtained permission from the Court.

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6.	Whether defendants Nos. 3 to 11 are bonafide purchasers of suitland? If yes, then its effect?	Proved. Plaintiffs are not entitled to get the relief sought.
7.	Whether plaintiffs have undervalued the suit land have satiated deficient court fee? If yes, then its effect?	No
8.	Relief and cost?	Suit dismissed.

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-Additional issue :

9.	Whether an order dated 24.01.1996 passed in the suit No. 41A/95 bears the effect of res judicata in this case? If yes, then its effect?	No
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All the issues were answered against the plaintiffs.

6. On re-appraisal of the evidence, the High Court took the view that Exhibit P-1 was genuine and therefore, decreed the suit. It will be appropriate to incorporate herein the following paragraph as also the decretal portion of the impugned judgment passed by the High Court :-

“21. Learned counsel for the respondents have pointed during argument that agreement Exhibit P-1 is a suspicious document looking to the other agreement Exhibit D-13 in which rate of suit land has been mentioned as 2.50 rupees per square ft. But this agreement has been written on plain paper that put on 15.01.1989 and not signed by consenting parties who have signed the agreement Exhibit P-1 on the same day. Therefore, in the absence of signatures of any witness or consenting party agreement Exhibit D-13 cannot be relied, even the agreement Exhibit P-1 which is signed not only by the parties but also by the witnesses and family members of defendant No.1 who have given their consent for the agreement. Learned counsel appearing for the respondents have

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A also raised certain objections for disbelieving the agreement Exhibit P-1 but considering the fact that by Exhibit D-10, defendant No.1 Harcharan Singh has admitted the execution of agreement Exhibit P-1 and even after admission and having knowledge about document Exhibit P-1 he has not taken any step against the appellants for fabrication of document Exhibit P-1. This fact along with admission of defendant No.1 shows that agreement Exhibit P-1 is a genuine document. It cannot be disbelieved on the ground that notice in the paper regarding agreement mentioning different date of agreement as the execution and contents of agreement Exhibit P-1 has been admitted by defendant No.1 in Exhibit D-10, therefore, evidence against such admission before the trial Court which contained detailed postmortem of agreement Exhibit P-1 on several grounds cannot be confirmed looking to the admission of defendant No.1 in Exhibit D-10 which has not been considered by learned trial Court while doing microscope surgery of the agreement Exhibit P-1.”

D “24. Therefore, the judgment passed by the learned trial Court is hereby set-aside and the appeal filed by the appellant is hereby allowed. The suit filed before the learned trial Court is allowed in favour of sole appellant Dr. Om Prakash Gupta as under :-

E (A) Respondent/defendant No.1 is directed to execute the sale-deed of 5 bighas of land Survey No. 792/3-4 according to agreement dated 15.01.1989 after taking consideration of Rs.2,18,000/- @ Rs.2/- per square ft. (according to agreement) and hand over the vacant possession of the above land to the plaintiff/appellant Dr. Om Prakash Gupta. If the defendant No.1 fails to execute the sale deed within 30 days after deposit of payment of consideration amount to him or to deposit in the trial Court, the trial Court shall execute the sale deed in favour of appellant/plaintiff Dr. O.P. Gupta.

G (B) Since sale deed of above mentioned suit land have been executed by defendant No.1 during pendency of the suit and purchasers are not bonafide purchasers, therefore, the sale deed by law executed by defendant No.1 in favour of respondent Nos. 2, 3 to 11 are hereby declared null and void.

H (C) The respondent No.1 shall pay the cost of appellant and the respondents shall bear their own cost.

(D) Counsel fee be calculated according to the rules if pre-certified.” A

7. We have referred to the factual matrix only to a very limited extent for the reason that the High Court apparently has gone wrong in decreeing the suit only on the basis of the finding on genuineness of Exhibit P-1 document. It should have been borne in mind that suit was for specific performance and obviously there were also several other aspects of the matter including the aspect of readiness and willingness which required consideration by the High Court. B

8. In that view of the matter, we allow these appeals, set aside the impugned judgment and remit the First Appeal No. 174 of 2005 to the High Court. C

9. Needless to say that the appeal(s) are to be heard afresh. The parties are free to urge all available contentions under law, before the High Court.

10. It is made clear that we have not expressed any opinion on the merits of the case including the validity or genuineness of documents as also on the readiness and willingness aspect and it is for the High Court to consider all those aspects. D

11. No order as to costs.

Kalpana K. Tripathy

Appeals allowed. E