



IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO. 7282 OF 2009

LEELADHAR (D) THR. LRS.

...APPELLANT(S)

VERSUS

VIJAY KUMAR (D) THR. LRS. & ORS.

...RESPONDENT(S)

J U D G M E N T

DEEPAK GUPTA, J.

One Leeladhar, the original appellant herein, entered into an agreement to sell 18 bighas of land for a sum of Rs.40,000/- with Deshraj, father of the plaintiffs-respondents herein on 15.02.1985. Admittedly, an amount of Rs.35,000/- was paid in advance. This agreement to sell was registered on 18.02.1985. On 26.03.1985 another document (Exhibit P-14) was entered into between the parties. Leeladhar was paid balance Rs.5,000/- and the subsequent agreement notes that he gave possession of the

land to Deshraj. On 20.01.1988, Deshraj issued a legal notice to Leeladhar asking him to get the sale deed executed. According to the plaintiffs, they and their father went to the office of the Sub-Registrar on 15.02.1988 for this purpose. But Leeladhar did not turn up. Deshraj expired on 16.05.1988 and, thereafter, the respondents herein filed a suit in the Court of Civil Judge, Nainital praying for specific performance of the contract and also prayed that if any part of the disputed land is not found in their possession, then possession be given to them. In the alternative, they prayed for refund of Rs.40,000/- along with interest.

2. In the written statement, Leeladhar took the plea that the agreement in question was a sham document. Deshraj was a moneylender but did not have a licence to do money lending. Therefore, he used to get such documents executed to secure the loans advanced by him. It was also pleaded that Leeladhar had returned the entire amount along with interest to Deshraj on 03.03.1987. This suit was decreed by the trial court. Leeladhar filed an appeal, which was partly allowed by the first appellate court holding that the plaintiffs were not entitled to the discretionary relief of specific performance. This judgment was

challenged before the High Court. The second appeal was allowed and the matter was remanded to the first appellate court to decide the case afresh in light of the provisions of Section 20(2) (c) of the Specific Relief Act, 1963. After remand, the Additional District Judge dismissed the appeal of Leeladhar and upheld the order of the trial court. The second appeal filed by Leeladhar before the High Court was dismissed and, hence, this appeal.

3. The main ground raised by Shri Vikas Singh, learned senior counsel appearing for the appellants is that in terms of Section 20(2)(c), the decree of specific performance could not have been granted in favour of the plaintiffs-respondents herein. It is submitted that the document was a sham document. It was further urged that possession is not with the plaintiffs and the fact that Deshraj had executed various documents but had not filed suit for specific performance with regard to those contracts indicated that this document (Exhibit P-13) was also executed only to secure the repayment of the loan. It is also prayed that in the peculiar facts and circumstances of the case, discretion should be exercised in favour of appellants. On the other hand, Shri P.K. Jain, learned counsel appearing for the respondents

submits that all the courts below have given a concurrent finding of fact that the document executed was an agreement to sell and Leeladhar had received the full amount, transferred possession and, therefore, is not entitled to urge that the decree of specific performance should not be granted.

4. We may note a few salient facts. The agreement to sell (Exhibit P-13) is registered on 18.02.1985. Rs.35,000/- out of Rs.40,000/- was paid. The balance Rs.5,000/- was paid when the document (Exhibit P-14) was executed on 26.03.1985. As far as delay is concerned, we are of the considered view that there is no delay in filing the suit. The suit is within limitation. Further, in this case, even as per the appellants, the possession of the land was with the plaintiffs-respondents. Therefore, they were in no hurry to get the sale deed executed and this does not disentitle them from getting the relief of specific performance.

5. As far as the issue of Deshraj being a moneylender and having got this document executed only to secure repayment of amount is concerned, all the courts below have found as a fact that this is not the case. The finding is that an agreement to sell was executed. Shri Singh has made reference to the order

passed by the first appellate court in the first round. That order having been set aside by the High Court, cannot help the appellants. After remand, the first appellate court clearly held that the documents in question relied upon by Leeladhar could not be used by him because they were only copies and if actually, he had repaid those loans then he would have got originals back from Deshraj. Though various judgments have been cited before us, we do not feel it necessary to refer to the same because once we come to the conclusion that the agreement was an agreement to sell and after entering into the agreement to sell, Leeladhar received the full sale consideration and handed over the possession to Deshraj, the question of exercising any discretionary favour to the appellant does not arise.

6. Section 20(2)(c) of the Specific Relief Act reads as follows:

“20. Discretion as to decreeing specific performance.

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(1) The jurisdiction to decree specific performance is discretionary, and the court is not bound to grant such relief merely because it is lawful to do so; but the discretion of the court is not arbitrary but sound and reasonable, guided by judicial principles and capable of correction by a court of appeal.

(2) The following are cases in which the court may properly exercise discretion not to decree specific performance:—

(a) xxx xxx xxx

(b) xxx xxx xxx

(c) where the defendant entered into the contract under circumstances which though not rendering the contract voidable, makes it inequitable to enforce specific performance.

Explanation 1.—Mere inadequacy of consideration, or the mere fact that the contract is onerous to the defendant or improvident in its nature, shall not be deemed to constitute an unfair advantage within the meaning of clause (a) or hardship within the meaning of clause (b).

Explanation 2.— The question whether the performance of a contract would involve hardship on the defendant within the meaning of clause (b) shall, except in cases where the hardship has resulted from any act of the plaintiff subsequent to the contract, be determined with reference to the circumstances existing at the time of the contract.”

7. To take benefit of clause (c) of sub-section (2) of Section 20 of the Specific Relief Act, the defendant in a suit for specific performance must show that he entered into the contract under the circumstances which though rendering the contract voidable, make it inequitable. In the present case, once we hold that the document entered was an agreement to sell and not a sham transaction, the appellants can take no benefit of this provision.

8. In view of the above, we find no merit in the appeal which is accordingly dismissed. Pending application(s), if any, stand(s) disposed of.

.....**J.**
(Deepak Gupta)

.....**J.**
(Aniruddha Bose)

New Delhi
September 26, 2019