

PETITIONER:
PIRTHI @ SANSI ETC.

Vs.

RESPONDENT:
JATI RAM & ORS. ETC.

DATE OF JUDGMENT: 30/07/1996

BENCH:
RAMASWAMY, K.
BENCH:
RAMASWAMY, K.
G.B. PATTANAIK (J)

CITATION:
1996 SCALE (5)804

ACT:

HEADNOTE:

JUDGMENT:

AND

SPECIAL LEAVE PETITION (CIVIL) NO. 14275 OF 1996

O R D E R

The petitioner, Pirthi @ Sansi admittedly had entered into an agreement on May 6, 1988 to sell 16 kanal 16 marlas of agricultural land for a consideration of Rs.50,000/- per killa and received a sum of Rs.24,000/- as earnest money. The respondent filed a suit for specific performance in April 1993 against the petitioner. It was his plea and accepted by all courts that he was always ready and willing to perform his part of the contract and was willing and ready to pay the balance consideration of Rs. 81,000/-. Accepting the case of the respondent, the trial Court decreed the suit. On appeal, the Additional District Judge by his judgment dated November 15, 1994 reversed the decree holding that Ramesh and others had come into possession of the land. They were in possession of the land and the agreement came to be executed in their favour on December 5, 1994 after the judgment of the appellate Court. Therefore, the decree for specific performance was not proper and instead the alternative relief of recovery and compensation was held appropriate remedy. In second appeal, the High Court reversed the decree by the impugned judgment dated May 15, 1996 in R.S.A. NO.425/95 and restored the judgment of the trial Court.

Shri Mahabir Singh, learned counsel for the petitioner, contended that consideration of granting for specific performance is a discretion of the court and the courts granting the decree for specific performance should exercise the discretion on sound principles of law. The Court should grant alternative relief instead of granting decree for specific performance. In view of the facts that the petitioner had already inducted third party in possession and they remained in possession and also taking possession involves further litigation, the first appellate court rightly refused to grant specific performance. The High

Court committed an error of law in reversing the decree of the first appellate Court. We find no force in the contention. It is an admitted fact that Ramesh and Shashi Kapoor, respondent Nos.2 and 3 had come into possession after the suit was instituted and agreement to sell was entered into. Therefore, the High Court rightly allowed the appeal holding them to be not bona fide purchasers and directed decree for specific performance in pursuance of agreement to sell dated 6.5.1988. If the contention of the respondents is given acceptance, no contract can be enforced and the party will seek to avoid contract by inducing third party into possession. Therefore the view taken by the first appellate Court in that behalf is clearly illegal. Having regard to the fact that respondent Nos.2 and 3 are not bona fide purchaser and admittedly came into possession after the suit was instituted and the agreement was entered into the High Court has rightly rejected their contention. The contention since have come into possession the suit for specific performance will be an impediment in that behalf, bears no force

The special leave petitions are accordingly dismissed.