

PETITIONER:
PANDURANG GANPAT TANAWADE

Vs.

RESPONDENT:
GANPAT BHAIRU KADAM & ORS

DATE OF JUDGMENT: 30/07/1996

BENCH:
AGRAWAL, S.C. (J)
BENCH:
AGRAWAL, S.C. (J)
NANAVATI G.T. (J)

CITATION:
1996 SCALE (5)675

ACT:

HEADNOTE:

JUDGMENT:

J U D G M E N T

S.C. Agrawal, J.
Special leave granted.

This appeal arises out of a suit filed by the appellant for specific performance under an agreement for sale of land by Smt. Janabai to the appellant.

Respondents Nos. 1, 3 and 4 are the sons of Smt. Janabai while respondent No. 2 is her daughter-in-law. On February 20, 1975 Smt. Janabai entered into an agreement for the sale of suit lands to the appellant under which the appellant agreed to purchase the lands for Rs. 7000/-. A sum of Rs. 2,000/- was paid by the appellant to Smt. Janabai as earnest money. As per the agreement the balance amount was to be paid at the time of the execution of the sale deed. The case of the appellant is that on May 5, 1976 he gave notice to Smt. Janabai to execute the sale deed. The appellant paid a further sum of Rs. 1000/- to Smt. Janabai on July 30, 1976 and on August 20, 1977 further amount of Rs. 800/- was paid to Maruti, the son of Smt. Janabai and husband of respondent No. 2. Thus the appellant paid a sum of Rs. 3,800/- towards consideration for the sale of the land under the agreement. The case of the appellant is further that on March 13, 1978 after the death of Smt. Janabai, he sent a registered notice to the respondent calling upon them to execute the sale deed in favour of the appellant and since they failed to comply with the said notice, he filed a suit for specific performance of the contract in 1978. In the said suit of the appellant the Civil Judge, Junior Division, Karmala, by his Judgment dated December 10, 1982, declined to grant the relief of specific performance on the view that the transaction was only a money lending transaction and was not agreement for sale of the land. The trial court, however, granted a money decree of Rs. 3,800/- in favour of the appellant. On appeal the Vth Extra Assistant Judge, Solapur, by Judgment dated April 24, 1984, reversing the finding of the trial court, held that

transaction between the parties was an agreement to sell. The appellate court, however, held that the appellant had not made necessary averments in the plaint as required in form 47 of the Code of Civil Procedure as well as Section 16 (c) of the Specific Relief Act and consequently the appellant was not entitled to a decree for specific performance. The appellate court, therefore, maintained the decree of the trial court denying the relief of specific performance and affirmed the decree for Rs. 3,800/- passed in favour of the appellant. The High Court, in Second Appeal, has agreed with the view of the appellate court that there is non-compliance with the provisions of Section 16(c) of the Specific Relief Act inasmuch as the appellant has not made a specific averment in the plaint that he was ready and willing to perform his part of the contract.

Shri U.U. Lalit, the learned counsel for the appellant, has assailed the judgments of the appellate court and the High Court and has invited our attention to paragraphs 6 and 10 of the plaint which read as under :-

"6. When the plaintiff asked the deceased Janabai to execute a sale-deed, by a registered notice on the date 5.5.76, the deceased Janabai neither gave a reply also to the notice nor even executed a sale-deed. Thereafter, the plaintiff sent a reply of false contempts. Therefore, the plaintiff has filed this suit against the defendants to get executed a sale deed in pursuance of the Deed of Agreement for sale. The defendant Nos. 1 to 4 have committed breach of conditions mentioned in the Deed of Agreement for sale.

10. As per the conditions in the Deed of Agreement for sale, the plaintiff is willing to pay fees which is required for a sale-deed, cost of registration and a balance amount of Rs. 3,200/- (Rupees three thousand two hundred only)."

In paragraph 6 the appellant has stated that the sent a notice dated June 5, 1976 to Smt. Janabai asking her to execute the sale-deed and that she neither gave a reply to the said notice nor executed the sale-deed. In the said paragraph the appellant has also stated that he sent a registered notice to the respondents on March 13, 1978 asking them to execute the sale-deed but they did not execute the sale-deed. In paragraph 10 the appellant has stated that as per conditions in the deed of agreement for sale the appellant is willing to pay fees which is required for a sale-deed, cost of registration and a balance of amount of Rs. 3, 200/-. This shows that in paragraph 6 of the plaint the appellant has averred that after the execution of the agreement for sale, he sent a registered notice dated May 5, 1976 to Smt. Janabai to execute the sale-deed and again sent a notice dated March 13, 1978 to the respondent asking them to execute the sale-deed, meaning thereby that the appellant had been making efforts to have the sale-deed executed by issuing notices dated May 5, 1976 and March 13, 1978. Moreover, in paragraph 10 a specific averment has been made by the appellant that as per conditions in the deed of agreement for sale, he is willing to pay fees which is required for the sale-deed, cost of

registration and the balance amount of Rs. 3,200/-. The said averments clearly contain a statement about the readiness and willingness on the part of the appellant to perform his part of the contract under the agreement for sale.

Apart from the said averments in the plaint, we find that the appellant, in his deposition before the court, has stated:-

"I issued notice to heirs of Janabai to execute the sale deed. I was ready to pay remaining amount and act as per agreement. The defendants did not execute the sale deed as per notice. They replied my notice (Exh. 50). As defendants are not willing to execute the sale deed I have filed this suit. I am ready to pay remaining amount immediately. I am ready to pay costs as per agreement."

Respondent No. 1, also in his deposition before the court, has stated :-

"It is true that plaintiff was ready for sale-deed, but I was not ready."

In view of the aforesaid statements of the appellant and respondent No. 1 as well as the averments contained in paragraphs 6 to 10 of the plaint, it must be held that the appellant has not only averred, but has also proved that he was ready and willing to perform his part of the contract under the agreement for sale. The appellant court and the High Court were, therefore, in error in holding that the appellant failed to comply with the requirements of Section 16(c) of the Specific Relief Act and the appellant must be held entitled to a decree for specific performance of the contract in the suit filed by him. We find that the possession of the land was delivered to the appellant in 1976 at the time of execution of the agreement for sale and he is in possession of the same and has been enjoying the same since then. Having regard to the depreciation in the value of the rupee during this period, we feel that the appellant should be required to pay a sum of Rs. 16,000/- in lieu of the balance amount of Rs. 3,200/- payable by him.

For the reasons aforementioned, the suit for specific performance filed by the appellant is decreed subject to the appellant depositing in the trial court a sum of Rs. 16,000/- along with the stamp duty and registration charges for the execution of the sale deed within a period of one month from the date of this judgment. The respondents shall execute the sale-deed in respect of the suit lands in favour of the appellant within one month of the deposit of the said amounts. In the event of the failure on the part of the appellant to deposit the said amounts within the period of one month, the judgment under appeal shall remain undisturbed. The appeal is disposed of accordingly. No order as to costs.