

IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION
CIVIL APPEAL NO.6056 OF 2009
(Arising out of S.L.P. (C) No.9791 of 2007)

Radhakrishna Dharmartha Pvt. Trust & Ors. ...Appellant(s)

Versus

Parmanand Soni (Dead) By L.Rs. ...Respondent(s)

O R D E R

Leave granted.

The appellant-Trust through its Managing Trustee, Shri R.P. Sinha entered into an agreement with respondent Parmanand Soni, who is now represented by his legal representatives for sale of 1200 Sq. ft. of land and house constructed over it. In terms of the agreement, the respondent-purchaser deposited Rs.20,000/- as earnest money and promised to deposit the balance within 6 months from the date of agreement and get the sale deed registered at his cost with a stipulation that in case he fails to do so, the earnest money shall stand forfeited and the vendor will have all rights to sell the property to any party without any further notice to the purchaser and the purchaser shall have no right or claim whatsoever in his behalf.

...2/-

After two years and four months, the respondent filed suit for specific performance of agreement dated 12th November, 1990. The respondent pleaded that even though he was always ready and willing to perform his part of the contract, the defendants No.1 to 3 avoided receipt of the balance amount and execution of the sale deed and they sold the property to defendant Nos.4 and 5. The trial Court dismissed the suit vide judgment dated 3.12.1997. It held that the plaintiff has not been able to prove the payment of balance price within the period of 6 months. The trial Court did not accept the plaintiff's version that he had paid the balance amount of Rs.30,000/- to Deohar Ram Manohar Sinha, who was a trustee but the same was returned without any tangible reason. On appeal, the High Court reversed the judgment and decree of the trial Court and decreed the suit. Hence, this appeal by special leave.

We have heard learned counsel for the parties and perused the record. Paragraph (1) of the agreement dated 12th November, 1990 entered into by the parties, which was sought to be enforced by Parmanand Soni by filing suit reads thus:

"This agreement is made between Shri Radha Krishna Dharmarth Private Trust, Shatia Kua, Jabalpur through Managing Trustee Beohar R.P. sinha of the one part hereinafter called the Vendor and Shri Parmanad soni son of Shri Jankiprasad Soni, resident of house No.891, Sathia Kua, Jabalpur hereinafter called as Purchaser of the other part; whereas the Purchaser has agreed to purchase all that property including house No.891 which is occupied by him as a tenant of the Vendor at Rs.110/- (Rupees One Hundred Ten only) monthly rent, and the open house No.905 occupied by Shri Nerkar as tenant at Rs.45/- per month measuring ...3/-

approximately 1200 sq.ft., less the area of drain two ft. wide and running through the sold property North to South, the actual measurement whereof will be ascertained at the time of preparing the Map of the house; at the rate of Rs.50/- (Rupees Fifty only) per sq. ft. out of which the purchaser has deposited today Rs.20,000/- (Rupees Twenty Thousand Only) as earnest money and had promised to deposit the balance within six months from today and get the sale deed registered at his costs failing which the earnest money of Rs.20,000/- (Rupees Twenty Thousand Only) shall stand forfeited and the vendor will have all rights to sell this property to any party without any further notice to the purchaser and the purchaser shall have no right or claim whatsoever in this behalf."

From a bare perusal of the aforesaid agreement, it is clear that the appellant through its Managing Trustee, Shri R.P. Sinha agreed to sell the suit land at the rate of Rs.50/- per sq. ft. to Parmanand Soni, who deposited Rs.20,000/- by way of earnest money. The balance amount was to be deposited by the purchaser within 6 months from the date of agreement and he was to get the sale deed registered at his own cost with the rider that if he fails to do so, the earnest money shall stand forfeited and the vendor will have all rights to sell the property to any party without any further notice to the purchaser.

Undisputedly, the period of 6 months specified in agreement dated 12th November, 1990 for payment of the balance amount ended on 11.5.1991 and the said amount was not paid by that date. It is also not in dispute that after expiry of the period of 6 months, the purchaser is said to have given the balance amount to Deohar Ram Manohar Sinha, who, as mentioned above, was a trustee of the appellant-Trust. He returned the amount to the purchaser because the Managing

Trustee did not agree to accept the same. It is neither the pleaded case of the respondent nor any evidence was produced before the trial Court to show that Shri Deohar Ram Manohar Sinha was empowered or authorised to accept the balance amount offered by the respondent and that too after the expiry of the period specified in the agreement. Therefore, the trial Court was fully justified in holding that the plaintiff is not entitled to specific performance of the agreement and the High Court committed serious error in reversing the judgment and decree of the trial Court by presuming that Deohar Ram Manohar Sinha was entitled to receive the balance amount or any portion thereof on behalf of the appellant-Trust and that too after 11.5.1991.

Accordingly, the appeal is allowed, impugned order passed by the High Court is set aside and the judgment and decree of the trial Court are restored. As a sequel to this, the suit filed by the purchaser shall stand dismissed.

.....J.
[B.N. AGRAWAL]

JUDGMENT

.....J.
[G.S. SINGHVI]

New Delhi,
September 04, 2009.