

IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION
CIVIL APPEAL NO.2759 OF 2002

Karturi Prasad Rao

...Appellant(s)

Versus

Karturi Surya Kanthamma

...Respondent(s)

O R D E R

The plaintiff-appellant filed a suit for specific performance of agreement dated 29th May, 1976 whereby the defendant-respondent agreed to purchase 3 acres and 6-1/2 guntas of land for a sum of Rs.42,000/-. The appellant claimed that even though he was always ready and willing to perform his part of the contract, the respondent did not pay the balance amount and did not get the sale deed executed. By judgment dated 30th June, 1988, the trial court decreed the suit and directed the respondent to pay to the appellant Rs.45,105/- together with interest at the rate of sixteen per cent per annum from the date of suit till the date of decree and interest at the rate of six per cent per annum from the date of decree till the date of payment on the amount of Rs.31,000/-. The trial court further directed the respondent to obtain sale deed in terms of the agreement within a period of three months.

...2/-

The respondent challenged the judgment and decree of the trial court by filing an appeal. She also applied for the interim relief, but her prayer for staying the judgment and decree of the trial court was not granted. Notwithstanding this, the respondent neither paid the amount in terms of the decree of the trial court nor made any attempt to get the sale deed executed. Therefore, the appellant filed an application under Section 28 of the Specific Relief Act, 1963 [for short, "the Act"] for rescinding the contract and for issuance of a direction to the respondent to deliver possession of the suit property to him. The latter contested the application. After hearing the parties, the trial court passed order dated 3rd August, 1993, whereby it directed that the agreement dated 29th May, 1976 shall stand rescinded. The trial court also directed the respondent to restore possession of the suit property to the appellant within a period of two months from the date of the order.

The appeal filed by the respondent against the judgment and decree dated 30th June, 1988 was finally dismissed by the Ist Additional District Judge at Raichur vide judgment dated 29th September, 1997. The lower appellate court confirmed the findings recorded by the trial court on the issue of readiness and willingness of the appellant to perform his part of the contract and that the respondent neither paid the balance amount in terms of the agreement nor made any effort to obtain the sale deed. The lower appellate court also took cognizance of order dated 3rd August, 1993 passed by the trial court and the fact that the said order has not been challenged by the respondent.

Feeling aggrieved by appellate judgment, the respondent filed second appeal under Section 100 of the Code of Civil Procedure, which was registered as RSA No. 12/1998. By the impugned judgment, the High Court allowed the second appeal, set aside the decree passed by the trial court to the extent it contained a direction to the respondent to pay interest on Rs.45,105/- and substituted the same by directing the respondent to pay interest at the rate of sixteen per cent per annum from the date of suit till the date of decree. The High Court granted three months' time for making the payment and directed the appellant to hand over possession of the suit property to the respondent and execute sale deed within a month. Hence, this appeal by special leave.

We have heard learned counsel for the parties and carefully gone through the impugned judgment as also the judgments and decrees of the trial court and lower appellate court. In our opinion, the High Court committed grave error by interfering with the concurrent findings of fact recorded by the two courts, after threadbare consideration of the factual matrix of the case and evaluation of evidence produced by the parties, that even though the appellant herein was ready and willing to perform his part of the contract, the respondent herein neither paid the balance amount nor made any effort to get the sale deed executed and registered. In the impugned judgment the High Court has nowhere found that the findings recorded by the courts below were perverse. Therefore, there was no occasion for it to upset those findings.

We are further of the view that the High Court committed serious error in observing that order dated 3rd August, 1993 passed by the trial court under Section 28 of the Act, was subject to the final judgment of the appeal preferred by the respondent against the judgment and decree of the trial court. The High Court ought to have taken note of the fact that in the absence of any challenge to order dated 3rd August, 1993, the direction of the trial court that the contract shall stand rescinded became final and, in that view of the matter, no decree could have been passed in favour of the respondent enabling her to secure possession of the suit property by paying the balance consideration and that too after 26 years of execution of the agreement of sale.

Accordingly, the appeal is allowed, impugned judgment rendered by the High Court in second appeal is set aside and the judgment and decree of the trial court, which was confirmed by the lower appellate court, is restored.

No costs.



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

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

.....J.
[AFTAB ALAM]

New Delhi,
September 03, 2009.