

CASE NO.:
Appeal (civil) 1431 of 2001

PETITIONER:
N.A. MAYANNA (D) BY LRS

RESPONDENT:
SRI M. VELU & ORS

DATE OF JUDGMENT: 12/03/2008

BENCH:
A.K. MATHUR & LOKESHWAR SINGH PANTA

JUDGMENT:
JUDGMENT

O R D E R

CIVIL APPEAL NO. 1431 OF 2001

We have heard learned counsel for the parties.

This appeal is directed against the judgment and order passed by the learned Single Judge whereby the learned Single Judge has set aside the judgment and decree passed by the 3rd Additional Civil Judge in O.S. No. 8492 of 1980. The Trial Court by its order dated 30th June, 1992 dismissed the suit for specific performance.

Aggrieved against this order the plaintiff filed an appeal before the High Court and the appeal was decreed by the High Court setting aside the judgment of the Trial Court. Aggrieved against this order, the present appeal was filed by the legal representatives of the deceased of the defendant.

The brief facts which are necessary for the disposal of this appeal are that the plaintiff entered into an agreement of sale on 8.8.1979 with the defendant. In pursuance of the agreement, a plot measuring 40' x 180' was agreed to be sold from the larger extent of plot measuring 100' x 180' and further 20' x 180' road was also assured to be provided. The consideration was Rs. 22/- per sq. ft. and an advance of Rs. 10,000/- was paid and that within three months, the contract was to be completed.

The defendant vendor was obliged to obtain necessary sanction from the competent authority for executing the sale deed and also to undertake that the total extent of land held by the vendor is in excess of the limit permitted under the Urban Land Ceiling Act and if at all surrender of the land to be made to the authority excluding the agreed vacant land, the other land would be surrendered to the competent authority.

The plot in question is admittedly an ancestral property of the vendor. It is alleged that he was always ready and willing to perform his part of the contract, however, the defendant vendor was not prepared to execute the sale deed and when he was making attempts to alienate the property, a suit was filed for injunction and subsequently, the present suit was filed for specific performance. The suit was contested by defendant by filing a statement and it was contended that defendant suffered a paralytic stroke, as such, he could not execute the agreement and besides, other members were not willing to sell the ancestral property. Therefore, he cancelled the agreement. It is alleged that under the agreement, the time was

essence of the contract and as per the terms, the earnest money of Rs. 10,000/- was forfeited. The defendant died during the pendency of the proceedings. Therefore, the Trial Court framed six issues and dismissed the suit.

Aggrieved against that, the first appeal was filed before the High Court and the High Court framed four issues for determination. After considering the matter, the High Court allowed the appeal and decreed the suit and answered Point Nos. 1, 3 and 4 in the negative and Point No. 2 in the affirmative.

Aggrieved against the order passed by the High Court, the present appeal was filed.

We have heard learned counsel for the parties and perused the record. We gave an opportunity to both the parties that if they can work out some solution by mutual agreement but both the learned counsels has submitted that parties are unable to arrive at any mutual agreed compromise.

It is an admitted position that the property in question is an ancestral property and, the appellant though has expired, the appeal has been prosecuted by his legal representatives.

Learned Single Judge in his judgment has clearly mentioned that "However, the extent of the property now to be sold in the event of a decree, would be limited to the extent of the property that could be allowed to the defendant's share, in the event of the plaintiff filing a follow up suit for partition. However, for the present, it is suffice to hold that the plaintiff would be entitled to a decree for specific performance to an extent of 40' x 180' as agreed in Ex. P.1."

Therefore, in view of this finding, it is clear that the plaintiff can only seek a decree of enforcement of the agreement to the extent of the original defendant's share. Therefore, we need not go into all those factual controversies that there was a family necessity or not since it is a finding of fact which has been recorded by the High Court. There is no reason to take a different view of the matter. We only modify the order of the High Court to the extent that the finding given by it as quoted above that the plaintiff will be entitled to enforcement of agreement of sale to the extent of the original defendant. If it comes to 1/11th or 1/12th share, that is a question of fact decided by the proper forum. However, the decree of enforcement of Ex. P.1 is granted to the plaintiff to the extent of the share of original defendant No. 1 in suit, i.e., father of appellants.

The appeal is accordingly, disposed of.

No order as to costs.