

CASE NO.:
Appeal (civil) 73-74 of 1999

PETITIONER:
Akbar Ali

RESPONDENT:
Vinod Khanna & Anr.

DATE OF JUDGMENT: 30/07/2004

BENCH:
Ashok Bhan & S.H. Kapadia

JUDGMENT:
J U D G M E N T

BHAN, J.

Plaintiff/appellant (hereinafter referred to as "the Appellant") entered into a registered agreement to sell the land measuring 3.40 acres on 8.4.1986 with the defendant/respondents (hereinafter referred to as "respondents"). Two suits were filed in the Trial Court. Suit No. 139 of 1987 was filed by the appellant for cancellation of the written agreement dated 8.4.1986 with the averment that the appellant was Bhumidhar in possession of the disputed plots mentioned in the plaint, defendant Nos. 1 and 2 were money lenders and defendant No. 3 was their servant (who has not been impleaded as party in the civil appeal). Appellant needed Rs. 1000/-. Defendant No. 3 took the appellant to Respondent Nos. 1 and 2 who declined to advance the loan of Rs. 1000/- on a promissory note and insisted to advance the loan through a registered document. Appellant agreed to execute the registered agreement to secure the loan and went to the office of the Sub-Registrar along with the defendants on 8.4.1986. Agreement was prepared and typed on the stamp paper and signatures of the appellant were obtained and he was advanced a sum of Rs. 1000/- as loan. The agreement was registered on the same day. The appellant wanted to repay the loan but when the respondents did not accept the same he got suspicious about their intention. He made enquiries and came to know that a fraud was practised on him by respondents who fraudulently got executed the agreement to sell instead of the document to secure the loan of Rs. 1000/-. Suit was filed for the cancellation of the agreement to sell. Suit No. 425 of 1987 was filed by the respondents for specific performance of agreement to sell with the averment that the appellant had agreed to transfer the suit land for Rs. one lakh out of which Rs. 30,000/- was paid to him as earnest money. According to the terms of the agreement the appellant was to execute the sale deed within 11 months after obtaining permission from the Consolidation Officer. As appellant refused to execute the sale deed the suit was filed for specific performance of the agreement. Both the suits were contested.

The Trial Court dismissed the suit filed by the appellant for cancellation of the agreement and decreed the suit filed by the respondents for specific performance. Appellant filed an appeal against the order passed in suit No. 425 of 1987 which was dismissed by the first Appellate Court. Aggrieved against which the appellant filed second appeal which has been dismissed by the impugned order.

The High Court on re-appreciation of the entire evidence came to the same conclusion as that of the courts below. Counsel for the appellant failed to point out any error in the findings recorded by the courts below. The only contention raised by him is that the agreement was unconscionable as the price of land at the time of the alleged agreement to sell was more than 20 lakhs and the appellant is being deprived of his valuable land for a

petty amount. On perusal of the written statement filed by the appellant in the Trial Court we find that no such plea was raised in the written statement. No issue was framed. No evidence was led by the appellant to prove that the market price of the land was Rs. 20 lakhs as argued before us. In the absence of plea having been raised or an issue framed or evidence led on the point, we are unable to hold that the agreement to sell was unconscionable.

We do not find any error in the judgments and decrees passed by the courts below, accordingly, the appeals are dismissed with no order as to costs.

JUDIS