

REPORTABLE

IN THE SUPREME COURT OF INDIA CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO. 2373 OF 2015
(Arising out of SLP (Civil) No. 4930/2014)

NANJAPPAN ... Appellant

Versus

RAMASAMY & ANR. ... Respondents

J U D G M E N T

R. BANUMATHI, J.

Delay condoned. Leave granted.

2. This appeal arises out of the judgment dated 17.11.2011 in S.A. No.332 of 2005, whereby the High Court of Madras dismissed the second appeal affirming the judgment passed by the first appellate court which reversed the judgment of the trial Court allowing the respondents' plea of specific performance of agreement of sale.

3. Brief facts, giving rise to the present appeal, are as follows :- Respondents have pleaded that on 30.09.1987, the appellant agreed to sell the suit property to the respondents for a sum of Rs.45,000/- and an agreement of sale was entered into

and the appellant received a sum of Rs.25,000/- as advance on the same day and it was agreed that the balance amount shall be paid within a period of 2½ years and the sale be executed and to that effect a Sale Agreement (Ex. P1) was executed. As the appellant was unable to vacate the house on 21.03.1990, the time stipulated for performance was extended and Second Agreement (Ex. P-2) was executed, on which day, the respondents paid a further advance of Rs.15,000/- and the period was extended to another three years. According to the respondents, within the stipulated period, the appellant did not shift to another house and on 09.03.1993, the respondents paid a further sum of Rs. 2,500/- to the appellant and third Sale Agreement (Ex. P-3) was executed and the period was extended by another two years. Case of the respondents is that they were ready and willing to perform their part of contract in getting the sale executed by paying the balance amount to the appellant but the appellant did not come forward to execute the sale deed. There was exchange of legal notice between the parties, and thereafter, respondents filed a suit for specific performance stating that they were always ready and willing to perform their part of the contract.

4. Appellant filed written statement controverting the averments made in the plaint and *interalia* contended that the appellant and the respondents were friends working under the same management and taking advantage of this, respondents tried to grab the property worth Rs.10 lakhs by paying a meagre consideration of Rs.45,000/-. In the written statement, the appellant further pleaded that in the year 1987 itself, entire area including construction would have fetched more than Rs. 3 lakhs. Since the appellant was in need of money, he decided to sell the property and sale price was fixed at a sum of Rs. 3 lakhs and in order to reduce the registration charges and stamp duty, the respondents requested the appellant not to mention the actual sale consideration but to mention only Rs.45,000/- in the sale agreement to which he agreed. According to the appellant, the respondents could not pay the balance sale consideration and the appellant received Rs.2,500/- under the third agreement and executed the same only under compulsion of the respondents and that is the reason why he did not turn to the Registrar's office to register the same. The appellant also pleaded that the suit property is their only shelter and the

decree for specific performance after long period would cause serious hardship to him and his family members.

5. Upon consideration of entire facts and evidence, trial court, vide its judgment dated 21.12.2001, declined the relief of specific performance by observing that the respondents did not prove that they were ready and willing to make the balance sale consideration. The trial court did not accept the defence plea that the original sale consideration was agreed at Rs.3 lakhs and in order to reduce the registration charges and stamp duty, in the agreement, the sale consideration was mentioned as Rs.45,000/-. Being aggrieved by the dismissal of the suit, the respondents filed first appeal which was allowed, vide judgment dated 30.12.2003. While allowing the appeal, the first appellate court held that having paid substantial sale consideration of Rs.42,500/- and left with only Rs. 2,500/- to be paid, it cannot be said that the respondents were not ready and willing to take the sale. The first appellate court, *inter alia*, held that the appellant did not discharge the onus to prove that the value of the property was mentioned as Rs.45,000/- as against the actual market value of Rs.3 lakhs and that no knowledgeable person will agree to sell the property for

Rs.45,000/- when the true value of the property is more than rupees three lakhs. Being aggrieved by the decree for specific performance, the appellant approached the High Court by filing second appeal, wherein the High Court affirmed the view taken by the first appellate Court and dismissed the second appeal.

6. In this appeal, arising out of special leave petition, the appellant seeks to assail the dismissal of the second appeal contending that after a lapse of long period, it would be inequitable to grant discretionary relief of specific performance and that delay caused serious hardship to him. Learned counsel for the appellant contended that the first appellate court and the High Court ought to have considered that the actual value fixed for the suit property was Rs.3 lakhs but on the request of the respondents, the value of the property was shown as Rs.45,000/- in the agreement to avoid excess stamp duty and registration charges payable at the time of registration of the conveyance deed. It was submitted that a long period of eight years was given to the respondents to get the sale deed executed and even after a lapse of eight years of extension from 1987, the respondents could not pay the actual sale consideration of rupees three lakhs and therefore, there is

no equity in favour of the respondents. It was submitted that after obtaining permission from the concerned authorities, the appellant has constructed a house to an extent of 1165 sq. ft. in the suit property and that is the only shelter for the appellant and the decree for specific performance after a lapse of long period of time, would cause serious hardship to him and his family members.

7. Per contra, learned counsel for the respondents submitted that in the light of the definite recitals in the agreement of sale, the courts below rightly rejected the defence plea that as against the value of Rs.3 lakhs, lesser amount of Rs.45,000/- was entered in the agreement of sale. It was further submitted that having signed in three agreements, it is not open to the appellant to resile from the contract. It was contended that upon appreciation of evidence, the first appellate court, as affirmed by the High Court, rightly granted the decree for specific performance which cannot be said to be perverse warranting interference.

8. On consideration of the submissions, the point falling

for our consideration is whether the courts below were justified in decreeing the suit for specific performance.

9. The appellant pleaded that as per the agreement between the parties, sale price was agreed to be Rs.3 lakhs and only to reduce registration charges and stamp duty, in the agreement sale price was written as Rs.45,000/-. All three courts below disbelieved the said version of the appellant that the sale price was fixed at rupees three lakhs and that only for the purpose of registration charges and stamp duty, in the agreement the sale price was written as Rs.45,000/-.

10. As per Section 92 of the Indian Evidence Act, when the terms of any such contract have been reduced to the form of a document , no evidence of any oral agreement or statement shall be admitted as between the parties to any such instrument for the purpose of contradicting, varying, adding to or subtracting from terms. Courts have recorded concurrent findings rejecting the stand of the appellant that the actual sale price was rupees three lakhs and for the purpose of stamp duty and registration charges, lesser amount was written and this is well in accordance with Section 92 of the Evidence Act and we do not find any reason warranting interference in the said

concurrent findings of the courts below.

11. In a suit for specific performance, the plaintiff has to aver and prove with satisfactory evidence that he was always ready and willing to perform his part of contract at all material time as mandatorily required under Section 16(c) of the Specific Relief Act, 1963. First appellate court and the High Court recorded findings that the plaintiff was always ready and willing to perform his part of the contract. By a careful reading of the recitals in the agreement, the concurrent findings so recorded do not seem to reflect the conduct of the parties. As per recitals in (Ex.P-1 agreement dated 30.9.1987), an amount of Rs.25,000/- was paid by the respondents-plaintiffs to the appellant-defendant. Balance amount of Rs. 20,000/- was to be paid within 2^{1/2} years thereafter and get the sale executed. In the second agreement of sale (Ex.P-2 dated 21.3.1990) it is stated that the plaintiffs were unable to pay the balance amount within the stipulated period and get the sale deed executed and therefore the second sale agreement was executed extending the period for execution of sale deed for a further period of three years. As could be seen from the recitals from Ex.P-2, respondents were unable to pay the balance sale

consideration and get the sale deed executed. It is pertinent to note that the time for performance of contract was extended again and again totaling period of eight years. Even though first appellate court and High Court recorded findings that respondents-plaintiffs were ready and willing to perform their part of contract, the fact that time was extended for eight years is to be kept in view while considering the question whether discretion is to be exercised in favour of the respondents-plaintiffs.

12. Under Section 20 of the Specific Relief Act, grant of specific performance of contract is discretionary. Though the decree for specific performance is discretionary, yet the court is not bound to grant such a relief merely because it is lawful to do so. But the discretion of the court is not arbitrary, but sound and reasonable, guided by judicial principles of law and capable of correction by a court of appeal and should be properly exercised keeping in view the settled principles of law as envisaged in Section 20 of the Act. The jurisdiction of decreeing specific performance is a discretion of the court and it depends upon facts and circumstances of each case. The court would take into consideration circumstances of each case,

conduct of the parties, recitals in the sale agreement and the circumstances outside the contract have to be seen.

13. In *Sardar Singh vs. Smt. Krishna Devi & Anr.*, (1994) 4 SCC 18, this Court observed that as the court has to see the totality of the circumstances, conduct of the parties and respective interests under the contract while granting/refusing such relief.

14. First sale agreement was executed on 30.9.1987 about twenty seven years ago. The property is situated in Coimbatore City and over these years, value of property in Coimbatore City would have considerably increased. In *Saradamani Kandaplan vs. Rajalakshmi & Ors.*, (2011) 12 SCC 18, this Court has held that the value of the property escalate in the urban areas very fast and it would not be equitable to grant specific performance after a lapse of long period of time. In the instant case, first agreement was executed on 30.9.1987 i.e. twenty seven years ago. In view of passage of time and escalation of value of the property, grant of specific relief of performance would give an unfair advantage to the respondents-plaintiffs whereas the performance of the contract would involve great hardship to the appellant-defendant and his

family members.

15. Considering the totality and the facts and circumstances, in our view, it is not appropriate to grant discretionary relief of specific performance to the respondents-plaintiffs for more than one reason. Admittedly, suit property is the only property of the appellant-defendant and the appellant is said to have constructed a house and where he is currently residing with the family. As compared to respondents, the appellant will suffer significant hardship if a decree for specific performance is granted against the appellant. Considering the circumstances, such as the construction of the residential house over the suit property, sale consideration, passage of time and hardship caused to the appellant, makes it inequitable to exercise the discretionary relief of specific performance and the concurrent finding of first appellate court and the High Court decreeing the suit for specific performance is to be set aside.

16. The next point falling for determination is the relief to be granted to the respondents-plaintiffs. Admittedly, respondents have paid advance amount of Rs.42,500/-, even though, the respondents are not entitled to the relief of specific

performance, in our view, the advance amount of Rs.42,500/- paid by the respondents is to be refunded to the respondents with interest at the rate of 9% per annum. In addition, the appellant is directed to pay compensation of Rs.2,00,000/- to the respondents.

17. In the result, the impugned judgment dated 17.11.2011 passed by the High Court in Second Appeal No.332/2005 is set aside and this appeal is allowed. The appellant shall refund Rs.42,500/- with 9% interest per annum from the date of third agreement of sale dated March 9, 1993. Both parties shall bear their respective costs.



JUDGMENT

.....J.
(V. Gopala
Gowda)

.....J.
(R. Banumathi)

New Delhi;
February 24, 2015