REPORTABLE

2026 INSC 339

IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO. 109 OF 2010

RUSSI FISHERIES P. LTD. & ANR. ...APPELLANT(S)

VERSUS

BHAVNA SETH & ORS. ...RESPONDENT(S)

J U D G M E N T

PANKAJ MITHAL, J.

1. This is an appeal arising from a suit for specific performance of an agreement to sell.

2. The said suit for specific performance was dismissed with the alternative relief of refund of the admitted amount paid in advance with interest. The decree passed by the court of first instance was reversed in first appeal which judgment and order has been upheld by the High Court in Second Appeal.

3. One Anil Kishore Seth (since deceased) now represented by his heirs and legal representatives[1] entered into an Agreement dated 18.07.1988 with Russi Fisheries (P) Ltd.[2] through its Managing Director Smt. Surjit Kavaljit Singh[3] to purchase agricultural land admeasuring 79 Kanals 15 Marlas for a total sale consideration of Rs. 15,41,000/-.

4. The aforesaid agreement to sell was executed by defendant No.1 through its Managing Director, defendant No.2 and was attested *inter alia* by her son Sanjit Kumar Singh[4]. The aforesaid agreement is an unregistered agreement but as the same was not denied, it was marked as an Exhibit.

5. Under the agreement, time was the essence of the contract and the sale deed was to be executed by 15.12.1988. The time for execution of the sale deed was twice extended and the last extended time was up to 30.06.1989.

6. It is alleged that on the last date of the extended time i.e. 30.06.1989, the plaintiff attended the office of the Sub-Registrar with the balance sale consideration to get the sale

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[1] Hereinafter referred to as the 'plaintiff(s)'
[2] Hereinafter referred to as 'defendant No. 1'
[3] Hereinafter referred to as 'defendant No. 2'
[4] Hereinafter referred to as 'defendant No. 3'

deed executed but no one appeared on behalf of the defendants to execute the sale deed. Accordingly, after service of notice, the plaintiff instituted Civil Suit No. 985/1989 for specific performance of the agreement to sell dated 18.07.1988 contending *inter alia* that under the agreement the total sale consideration agreed was Rs. 15,41,000/- out of which Rs. 75,000/- was paid by cheque as earnest money; 2,00,000/- by cheque on 11.11.1988 to the defendant Nos. 2 and 3; thereafter, a sum of Rs. 2,00,000/- was paid on 01.12.1988 in cash to the defendant No. 3 and again a sum of Rs. 3,00,000/- on 20.12.1988 to the defendant No. 3 when the time for execution of sale deed was first extended to 31.01.1989. In this way, the plaintiff allegedly paid Rs. 2,75,000/- by cheque and Rs. 5,00,000/- in cash, totaling Rs. 7,75,000/-, and the balance was payable at the time of execution of the sale deed. He contended that he was always ready and willing to get the sale deed executed and to perform his part of the agreement.

7. Defendant Nos.1, 2 and 3 all filed appearance but the suit was contested by Defendant Nos. 1 & 2 only by filing a joint written statement. They admitted the agreement to sell and the receipt

of Rs. 2,75,000/- through cheque as part of the sale consideration but denied receiving the cash payment and that the plaintiffs were never ready and willing to fulfill their part of the agreement. They further stated that Defendant No. 3 was not authorized to receive any payment on behalf of the defendant No. 1 as he was merely an attesting witness to the agreement.

8. The court of first instance dismissed the suit for specific performance on 10.12.1999 by holding that the plaintiff failed to prove his continuous readiness and willingness to perform his part of the contract, but decreed it for the refund of sale consideration of Rs. 2,75,000/-, admitted to have been paid in cheques with interest @ 12% per annum.

9. Aggrieved by the aforesaid judgment and order, the heirs of the plaintiff preferred an appeal which was allowed on 23.04.2003 holding that the plaintiff had paid Rs. 7,75,000/- and since he attended the office of the Sub-Registrar on 30.06.1989, he was ready and willing to perform his part of the agreement and as such is entitled to a decree of specific performance.

10. On Second Appeal being preferred on behalf of the defendants, the judgment passed by the first appellate court was upheld. Thus, the decree of the specific performance as passed in first appeal was maintained.

11. The decree of specific performance passed by the first appellate court and as upheld by the High Court in Second Appeal was challenged by the defendants by filing a Special Leave Petition on 20.08.2009 before this Court which was duly entertained by granting leave on 08.01.2010 with an interim order, as prayed for. Therefore, this appeal is before us.

12. Despite the fact that the leave was granted in the SLP and an interim order was also passed, the heirs of plaintiff through the process of the Court on the same very day i.e., 08.01.2010 got the sale deed executed in their favour on the strength of the decree of specific performance passed by the first appellate court as affirmed in second appeal.

13. It is also pertinent to mention that the defendants sold 60 percent of the suit land on 12.02.2009 i.e., even before the SLP was filed but during the pendency of the litigation. The remaining 40 percent of the land was sold by them during the

pendency of this appeal on 27.02.2025. Therefore, though on the one hand there is a sale deed in favour of the plaintiffs of the suit land, the same also stands transferred to third parties by the defendants during the pendency of the litigation.

14. In the background of the above transfers of the suit land made by the parties, one of the points before this Court would be as to the effect and impact of the above transfers on the outcome of the suit itself.

15. We have heard Shri K. Parameshwar, learned senior counsel for the defendants and Shri Pawanjit Singh Bindra, learned senior counsel for the substituted plaintiffs.

16. Shri K. Parameshwar, learned senior counsel appearing for the defendants, at the very outset, tenders unconditional apology for not disclosing the fact of execution of the sale deeds dated 12.02.2009 and 27.02.2025, transferring the said land to third parties and submits that such an omission in the pleadings had occurred only on account of improper advice and the fact that the sale, if any, made would be subject to the doctrine of *lis pendens*. There was no oblique motive or any deliberate concealment on the part of the defendants. Further, the sale

deeds so executed are not *void ab initio* but are subject to the decision of this appeal. In this connection, he relied upon.

17. It is worth noting that the aforesaid transfers have been made during the pendency of the litigation and therefore, the same would be governed by the principle of *lis pendens* as enshrined under Section 52 of the TP Act and the said transfers have to abide by the ultimate decree to be passed in this appeal. In this connection, reliance has been placed upon ***Thomson Press (India) Ltd. vs Nanak Builders & Investors (P) Ltd***[5], wherein the Division Bench held that transfer *pendente lite* is neither illegal nor *void ab initio* but remains subservient to the rights of the parties eventually determined by court in the pending litigation. In view of the above, whatever transfers have been made pending the litigation or this appeal would follow the decision passed in this appeal. Therefore, in the facts, we ignore the omission and proceed on the merits.

18. On merits, Shri K. Parameshwar submits that the grant of relief of specific performance of an agreement to sell is an equitable and a discretionary relief. The agreement to sell is dated

[5] (2013) 5 SCC 397

18.07.1988 and the first appellate court had decreed the suit on 23.04.2003. In between, there was immense increase of price of the land and as such it became unequitable with the passage of time to grant the relief of specific performance of the agreement. In view of the above, he submits it is not justified to uphold the decree after such a long distance of time from the date of the agreement. It would be highly unequitable to the defendants.

19. He next submitted that the plaintiff had not entered into the witness box to prove the plaint allegations despite the fact that he was alive until 13.05.1996 and had the opportunity before the court of first instance to appear and testify. In the absence of any proof of pleadings contained in the plaint, the suit could not have been decreed on the basis of the testimony of other witnesses.

20. He further submitted that the plaintiff had only paid a sum of Rs.2,75,000/- through cheques and thereafter, there was no payment in favour of the defendant no.1-company. The cash payment of Rs.2,00,000/- plus Rs.3,00,000/- totaling Rs.5,00,000/- alleged to have been paid to the defendant no.3

would not enure to the benefit of defendant nos.1 i.e., the Company inasmuch as defendant no.3 who allegedly accepted the cash payment was never examined as a witness and also had no authority to receive the same on behalf of the company.

21. Shri K. Parameshwar further submitted that the plaintiff was never ready and willing to perform his part of the agreement inasmuch as under the agreement dated 18.07.1988, time was the essence of the contract and the sale deed was to be executed on or before 15.12.1988. Further, the defendants have not permitted any extension of time and even if the last extended period is treated to be up to 30.06.1989, the plaintiff had not given any notice requiring the defendants to appear before the office of Sub-Registrar for the execution of the sale deed. The defendants categorically denied receiving the notices dated 13.06.1989 and 22.06.1989 alleged to have been issued by the plaintiff in this connection.

22. In addition to the above, he submitted that there is no evidence to prove that the plaintiff attended the office of the sub-Registrar on 30.06.1989. The testimony of PW-4 in this connection, is not admissible as there is no document or

pleading to verify PW-4's involvement. Further, PW-1, the clerk of the office of the Sub-Registrar had not and could not have proved the signatures of the Sub-Registrar as he was not in the office of Sub-Registrar in 1989 and had no personal knowledge of the events. Therefore, there was no continuous readiness and willingness on part of the plaintiff to carry out his obligation under the agreement.

23. Lastly, Shri K. Parameshwar submitted that the suit for specific performance as filed by the plaintiff was dismissed by the court of first instance which decree was reversed by the first appellate court. As such, there were two contrary judgments recording conflicting findings on the facts as regards to the payment of part of the sale consideration as well as on readiness and willingness of the plaintiff. This being the position, the High Court was not justified in dismissing the second appeal only on the ground that it raises no substantial question of law by simply stating that the findings recorded by the First Appellate Court are correct in view of the testimony of PW-1 and PW-4 but without even considering the statements of the said

witnesses which do not actually prove what has been held by the first appellate court.

24. Shri Bindra, learned senior counsel on behalf of the plaintiff has strongly opposed all the arguments advanced on behalf of the defendants aforesaid. He contends that the agreement to sell is an admitted document which bears the signatures of both the parties. The cash payment receipts are duly signed by the defendant no.3 and stood proved by the handwriting expert. Moreover, the receipts clearly states that the cash payment is being received on behalf of the defendant no.1 - company. This sufficiently proves the cash transactions.

25. Secondly, he submits that even on the letters of extension of time, there are signatures of the defendant no.2 – the Managing Director of the Company which have not been denied by her rather accepted in her cross-examination and further identified and proved by the expert.

26. Shri Bindra further submits that the plaintiff had given due notice not one but two, dated 13.06.1989 and 22.06.1989 calling upon the defendants to attend the office of Sub-Registrar for the execution of the sale deed. The defendants

were actually aware of the last date fixed for the execution of the sale deed and as such they were obliged to attend the office of the Sub-Registrar which they failed to do. The plaintiff has proved his attendance on the said date before the Sub-registrar by moving an application which was duly accepted, signed and stamped by the Sub-Registrar. There is no contrary evidence to belie the said document.

27. Lastly, he submits that non-appearance of the plaintiff in the witness box is not fatal to the suit as his Manager, PW-4 has appeared as a witness and has proved the entire transactions as he was working with him since before the execution of the agreement.

28. In the end, he sums up by saying that the findings of fact recorded by the First Appellate Court are not perverse and are final. Therefore, there was no occasion for the Second Appellate Court to re-appraise the evidence to examine the correctness of the same. He further contends that once a sale deed dated 08.01.2010 had already been executed pursuant to the decree of the First Appellate Court which has been upheld in second appeal, there is no equity in favour of the defendants to get the

said sale deed reversed or set aside, rather in view of the said sale deed, the sale deeds executed by the defendants are void and *non est*.

29. In the instant case, though an issue was raised before the Court of First Instance as to the valid existence of the agreement to sell dated 18.07.1988, the said issue upon consideration of the evidence adduced by the parties was decided in favour of the plaintiffs but the suit was dismissed for the relief of specific performance. Against the said finding, the defendants have not filed any cross-objections in the appeal preferred by the plaintiff. The said finding was accepted even by the First Appellate Court and the suit for specific performance was decreed. The defendants preferred second appeal but never assailed the finding with regard to existence of the agreement. No argument in this regard was raised, thus, conceding that there exists a valid agreement to sell. In this view of the matter, the existence of the valid agreement to sell dated 18.07.1988 is no longer in dispute. Since, the said agreement is acceptable to both the parties and has been marked as an Exhibit, the question as to whether it was

unenforceable in law for want of registration loses all significance and need not be gone into by us.

30. No doubt, the relief of specific performance was not granted by the Court of First Instance and only the alternative relief to refund the cheque amount of Rs.2,75,000/- paid in advance was granted, nonetheless, the findings recorded by the First Court were reversed by the Court of First Appeal and categorical findings were recorded that the plaintiffs have proved the extension of time for the execution of the sale deed, the cash payment of Rs.5,00,000/- and that the plaintiff was always ready and willing to get the sale deed executed within time. These findings are strictly findings of facts and are not shown to be perverse in any manner. They have not been returned on the basis of any inadmissible evidence. Therefore, in such a situation it was not open for the Second Appellate Court to go into the correctness of those findings by reappreciating the evidence adduced by the parties.

31. It is settled in law that the findings of fact howsoever erroneous, cannot be reopened and disturbed in second appeal which is required to be adjudicated only upon the substantial question

of law, if any, arising therein. Thus, the argument that the High Court in second appeal ought to have examined the evidence to ensure the correctness of the findings of the First Appellate Court has no legs to stand and fails.

32. Long back in 1981, three judges of this Court in the case of ***Bholaram vs. Ameerchand***[6] had ruled that even if findings of facts by courts below are wrong or grossly inexcusable that by itself would not entitle the High Court to interfere under Section 100 CPC in the absence of clear error of law. A similar view was reiterated in ***Madhavan Nair vs. Bhaskar Pillai (Dead) by Lrs.***[7], wherein it has been laid down that even if the First Appellate Court commits an error in recording a finding of fact, that itself will not be a ground for the High Court to upset the same.

33. In ***Kashibai w/o Lachiram and Another vs. Parwatibai w/o Lachiram and others***[8], a similar proposition of law was laid down by this Court and it was held that the High Court cannot reappreciate the evidence and interfere with the findings of

[6] (1981) 2 SCC 414
[7] (2005) 10 SCC 553
[8] (1995) 6 SCC 213

facts unless a substantial question of law or a question of law duly formulated is to be decided. The second appeal does not lie on the ground of erroneous findings of facts based on appreciation of the relevant evidence.

34. Similar is the situation in the case at hand. The High Court has not found any substantial question of law or a question of law worth consideration in the second appeal and, therefore, there was no occasion for it to have reappreciated the evidence so as to come to a different conclusion.

35. Again, in ***Kulwant Kaur and Others vs. Gurdial Singh Mann (Dead) by Lrs and Others***[9], it was emphasized that the fact remains that in a second appeal, a finding of fact, even if erroneous, will not be disturbed unless it is found that it stands vitiated for want of perversity. No such case for interference has been made out in the present case.

36. Even if we examine the evidence on record for the satisfaction of the defendants, we find that the parties have mutually agreed for the grant of extension of time to execute the sale deed despite time being the essence of the agreement. The

[9] AIR (2001) SC 1273

documents showing extension of time, two of which bear the signatures of not only the defendant no.3 but also that of defendant no.2 – the Managing Director of the Company – defendant no.1. Significantly, defendant no.2, while appearing as DW-1, has admitted her signatures on the agreement as well as on other relevant documents, and has also acknowledged that the last date of execution was extended till 30.06.1989. No concrete or reliable evidence has been adduced to prove that the extension of time was granted without taking her consent. Further, the handwriting expert also corroborated the genuineness of the disputed signatures. Therefore, the finding of the First Appellate Court on the above score does not suffer from any material illegality.

37. Secondly, the cash payment was made to the defendant no.3 who is none other than the son of defendant no.2 - the Managing Director of the Company – defendant no.1. In the receipts issued by him, he has categorically stated that he is accepting payment on behalf of the company in the capacity of being its Director and was authorized to receive the same. The narration in the receipts that he is receiving payment on behalf

of the Company-defendant no.1 as the Director, has not been denied by him as he never stepped into the witness box. No evidence was brought on record to establish that he was not the Director of the Company-defendant no.1. The submission that the said receipts were in relation to some other transactions does not stand established by any evidence adduced by the defendants. Therefore, the finding of the First Appellate Court in this connection is justified.

38. Lastly, the period of execution of the sale deed as last extended was expiring on 30.06.1989. Therefore, the defendants were under an obligation to show that they were also ready and willing to execute the sale deed on or before the said date. However, there is no positive evidence from their side to prove discharge of their obligation. On the other hand, the plaintiffs have issued notices dated 13.06.1989 and 22.06.1989 to the defendants to attend the office of the Sub-Registrar on 30.06.1989 for the execution of the sale deed as that was the last day for executing the same. No doubt, the said notices were sent to the defendants under certificate of posting, which proves that the notices were dispatched. Although, that may

not be conclusive evidence regarding their service, simply denying receiving the notices would not mean that the notices were not served, as it is not the allegation of the defendants that they were not sent to the proper address. The defendants have not adduced any evidence to prove that they were not actually served with the said notices. The allegation in this regard by them is only a bald allegation.

39. The plaintiff after giving the aforesaid notice had attended the office of the of the Sub-Registrar on 30.06.1989 which stand proved by his application submitted to the Sub-Registrar on the said very date. The application clearly states that he has come prepared and ready with the balance sale consideration to get the sale deed executed. The receipt of the said application in the office of Sub-Registrar with the stamp of the office of the Sub-Registrar is duly proved by the evidence of the PW-1. The mere fact that he has not proved the signatures of the Sub-Registrar is not sufficient to belie the above document when the submission of the application and the stamp of the Sub-Registrar stand proved. Moreover, there is no denial of the fact or evidence by the defendants that the contents of the

application are incorrect and that the plaintiff had not attended the office with the necessary finances so as to get the sale deed executed. The submission that no proof of possessing such finance was produced is not material when the allegation in the application that the plaintiff has come prepared with the necessary funds is not sufficiently denied.

40. In view of the aforesaid facts and circumstances, the findings as returned by the First Appellate Court on readiness and willingness, extension of time and payment of cash money are not perverse and illegal, which may warrant any interference.

41. Now, the crucial issue which remains is about the effect of non-appearance of the plaintiff in the witness box to prove his plaint case. It is an admitted position that the plaintiff himself has not entered the witness box and has not offered himself to be cross-examined. In such a situation, a presumption can always be drawn against him that the case, as pleaded by him, is not correct. In this connection, a reference can be made to the decision of this Court in the case of ***Vidhyadhar vs Manikrao and Another***[10], which lays down that where a party does not

[10] (1999) 3 SCC 573

appear in the witness box, a presumption would arise that the case set up by him is not correct. This Court in laying down as aforesaid has referred to various decisions of the High Court. The decisions of the High Court are also to the effect that when a party fails to appear as a witness, it gives rise to an adverse inference and nothing more.

42. The adverse presumption, if any, drawn for non-appearing in the witness box by the plaintiff, is a rebuttal presumption and if the aforesaid presumption is successfully rebutted by the other cogent evidence on record, the said presumption would not be material and applicable. In the present case, PW-4, the Manager of the plaintiff, had appeared as a witness. He has stated that he had been working with the plaintiff since 1988 and had the knowledge of all the transactions in relation to the agreement to sell dated 18.07.1988. His testimony substantially corroborates the case as set up by the plaintiff in the plaint, including execution of agreement, payment of consideration and extension of time. Therefore, in the light of the evidence of the PW-4, the plaint allegations stand corroborated. The adverse inference drawn on account of non-

appearance of the plaintiff stands rebutted by his evidence and other evidence on record. In these circumstances, the non-appearance of the plaintiff in the witness box would not be fatal in this case.

43. In the recent case of ***Rajesh Kumar vs Anand Kumar and Others***[11] in which one of us (P. Mithal, J) was a party, relying upon ***Janki Vashdeo Bhojwani and Another vs Indusind Bank Ltd. and Other***[12], it was held that a power of attorney holder may depose on behalf of the principal in respect of such acts which are within his personal knowledge but he cannot certainly depose for the principal, for the acts done by the principal and not known personally by him. Applying the same analogy, the Manager, PW-4 herein had deposed about the entire transaction based upon his personal knowledge as he was attached to the plaintiff as the Manager. In such circumstances, his evidence cannot be discarded.

44. This takes us to the last limb of the argument of the parties with regard to the equitable and discretionary jurisdiction of the court to grant the relief of specific performance. No doubt,

[11] (2024) 13 SCC 80
[12] (2005) 2 SCC 217

the agreement to sell was executed on 18.07.1988 and the decree of specific performance was passed by the First Appellate Court on 23.04.2003, after a gap of 15 years, no evidence whatsoever was brought on record to establish that within this period the price of property in the area had escalated, making it inequitable to grant the decree of specific performance.

45. The sale deeds executed by the defendants during the pendency of the litigation are certainly hit by doctrine of *lis pendens* and are *non est.* At the same time, the plaintiffs have got the sale deed of the suit land executed in their favour by following the due process of law on the basis of the decree of specific performance granted in their favour by the First Appellate Court. In such circumstances when the decree has already been executed and substantive rights have accrued in favour of the heirs of the plaintiff, it would be inequitable to dislodge them from the benefit of the sale in exercise of discretionary jurisdiction.

46. Accordingly, in the facts and circumstances of the case, we find no merit in this appeal and the same is dismissed. The sale

deeds executed by the defendants on 12.02.2009 and 27.02.2025 are held to be *non est* and the decree as passed by the First Appellate Court is maintained.

..... J.
(PANKAJ MITHAL)

..... J.
(PRASANNA.B. VARALE)

NEW DELHI;
APRIL 09, 2026.