

CASE NO.:
Appeal (civil) 6449 of 2001

PETITIONER:
PARMANAND

Vs.

RESPONDENT:
BAJRANG & ANR.

DATE OF JUDGMENT: 18/09/2001

BENCH:
S.P.Bharucha & Y.K. Sabharwal

JUDGMENT:

Y.K.SABHARWAL, J.

Leave granted.

The appellant/plaintiff filed a suit seeking specific performance of the agreement dated 1st June, 1991 executed by respondent No.1 in his favour in respect of agricultural lands. Respondent No.2 was impleaded in the suit as a proforma defendant. The execution of the agreement was admitted by respondent No.1. The suit was, however, resisted on the plea that the said agreement was not intended to be a real agreement for sale as it was executed only as a security for the loan advanced by the appellant to respondent No.1. On the pleadings of the parties the trial court framed the following issues:

1. Whether defendant no.1 was in need of Rs.20,000/- and in this concern, on the demand of money from the plaintiff he had asked to execute an agreement and sale deed by way of security to the loan and the intention of both, the parties was not regarding the re-sale?
2. Whether defendant no.1 had received only Rs.20,000/- in relation to the disputed agreement deed dated 1.6.1991?
3. Whether according to the agreement deed dated 1.6.1991 the plaintiff was always willing to execute the registered sale deed? If so its effect?
4. Whether the plaintiff had given notices to defendant no.1 on 9.3.92, 25.5.92, 1.6.92 and 22.1.1994?
5. Whether the agreement under dispute was made with a minor. If so, its effect?
- 6(a) Whether the plaintiff has filed this suit against defendant no.1 frivolously?
- (b) If so whether defendant no.1 is entitled to get compensatory costs from the plaintiff under section 34A CPC of amount of Rs.20,000/-?

7. Relief and Costs.

Defendant no.1 did not produce any evidence before the trial court. His prayer for grant of adjournment to adduce evidence was declined by the trial court and the case was closed after recording the statement of the plaintiff and his witnesses. The trial court on appreciati

on of evidence decreed the suit.

In the first appeal before the High Court it was contended that the trial court had committed serious illegality in declining the prayer for adjournment made by defendant no.1 to adduce evidence and depriving him an opportunity in that behalf. It was, therefore, submitted that the judgment and decree of the trial court be set aside and the case may be remanded to the trial court with direction to afford opportunity to defendant no.1 to lead evidence.

The grant of such an opportunity was opposed on behalf of the plaintiff who was a respondent in the appeal before the High Court. The High Court in judgment under appeal held that the 'defendant might have been pressurized to execute the sale agreement only as a security for recovery of the loan' and also came to the conclusion that 'there existed loan transaction between the parties' and on the basis of these findings, the judgment and decree passed by the trial court was set aside and suit dismissed. Thus, the plaintiff is in appeal before us.

We have heard learned counsel and perused the record. It was for defendant no.1 to prove that the sale agreement, execution whereof was admitted by him, in fact, was not intended to be a real sale agreement and it was only a security for the loan advanced to him by the plaintiff. Defendant no.1 could not lead any evidence as adjournment to produce the evidence was denied to him. Whether there was any pressure on defendant no.1 and/or the sale agreement was executed only as a security for loan, it was for him to prove. We do not wish to say anything more lest it may prejudice the case of any of the parties. As earlier noticed, defendant no.1 in his appeal before the High Court sought remand of the suit to the trial court for an opportunity to lead evidence. On the facts and circumstances of the case, the relief that could be given to defendant no.1 was to grant an opportunity to him to lead evidence before the trial court instead of recording a finding as above without any evidence and on that basis dismissing the suit. Counsel for the appellant has no objection if an opportunity is granted to defendant no.1/respondent to adduce evidence in the suit.

Under the aforesaid circumstances, we set aside the impugned judgment of the High Court and direct the trial court to afford opportunity to defendant no.1 to adduce evidence in the suit and decide the matter afresh without being influenced by observations made in this order or in the impugned judgment of the High Court.

The appeal is allowed accordingly leaving the parties to bear their own costs.

.....J.

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(S.P.Bharucha)

.....J.

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(Y.K.Sabharwal)

September 18, 2001.