Jhanjan Lal (D.) through L.Rs. Vs Keshri Chand (D.) through L.Rs. and Another

Second Appeal No. 651 of 1975

Court: Allahabad High Court

Date of Decision: Aug. 25, 2004

Acts Referred:
Specific Relief Act, 1963 â€" Section 16, 20

Citation: (2005) 1 AWC 556

Hon'ble Judges: Anjani Kumar, J

Bench: Single Bench

Advocate: B.D. Mandhyan, S.C. Mandhyan, Khursheed Alam, Sushil Jaiswal and Mr. Kumar, for the Appellant; V.D. Ojha and Pranav Ojha, for the Respondent

Final Decision: Dismissed

Judgement

Anjani Kumar, J.
Heard learned counsel appearing on behalf of the parties.

2. The plaintiff-respondent Keshri Chand filed a suit being Original Suit No. 65 of 1973, impleading Dal Chand and Jhanjhan, the present

appellant, as defendants. The relief claimed by the plaintiff in the aforesaid suit was that so far as the defendant No. 1 is concerned, the suit may be

decreed for specific performance of contract between defendant No. 1 and the plaintiff to execute sale deed in favour of the plaintiff in respect of

the land in suit and for cancellation of the sale deed executed by the defendant No. 1 in favour of the defendant No. 2 on 29th January, 1973. The

plaintiff also prayed in alternative for the payment of the consideration of money amounting to Rs. 5,500, which he had paid to defendant No. 1.

3. The aforesaid suit was contested by both the defendants. The trial court after considering the pleadings of the parties and evidence on record

have arrived at the conclusion that the plaintiffs suit for specific performance of the alleged contract for the sale of land in suit by defendant No. 1

deserved to be dismissed and is dismissed and also dismissed the suit so far as the cancellation of the sale deed executed in favour of defendant

No. 1 by defendant No. 1, who had decreed the suit and directed recovery of Rs. 1,000 in favour of the plaintiff from defendant No. 1.

4. Aggrieved thereby, the plaintiff preferred an appeal being Appeal No. 223 of 1974. The lower appellate court allowed the appeal and the

judgment of the trial court was set aside, the suit is decreed for the specific performance of the agreement to sell in favour of the plaintiff by

defendant No. 1 with a direction to defendant No. 1 to execute the sale deed of the land in dispute and covered by the sale deed dated 29th

January, 1973. The suit was also decreed so far as the cancellation of the sale deed dated 29th January., 1973, is concerned. Aggrieved by the

decree modified by the lower appellate court, defendant Jhanjhan Lal approached this Court by means of this second appeal. During the pendency

of this second appeal, which was filed in the year 1975, appellant Jhanjhan Lal as well as both the defendants-respondents have died and have

been substituted by their heirs.

5. Sri B. D. Mandhyan, learned counsel appearing on behalf of the appellant before this Court submitted that the finding arrived at by the lower

appellate court, whereby the finding of the trial court has been set aside, deserves to be set aside, as the same is perverse and is not supported by

any material on record. Similarly, he assailed the finding on issue Nos. 2, 3 and 4 and in support of his submission Sri Mandhyan has relied upon a

decision in Govind Ram v. Gian Chand 2000 (41) ALR 601, wherein the Apex Court has ruled that ""it is settled position of law that grant of a

decree for specific performance of contract is not automatic and is one of discretion of the Court and guided by principle of justice, equity and

good consensus."" Sri Mandhyan further relied upon a decision in Ram Awadh (Dead) by Lrs. and Others Vs. Achhaibar Dubey and Another, ,

wherein the Apex Court has held in para 6, which is reproduced as under:

6. The obligation imposed by Section 16 is upon the Court not to grant specific performance to a plaintiff who has not met the requirements of

Clauses (a), (b) and (c) thereof. A Court may not, therefore, grant to a plaintiff who has failed to aver and to prove that he has performed or has

always been ready and willing to perform his part of the agreement the specific performance whereof he seeks. There is, therefore, no question of

the plea being available to one defendant and not to another. It is open to any defendant to contend and establish that the mandatory requirement

of Section 16 (c) has not been complied with and it is for the Court to determine whether it has or has not been complied with and depending upon

its conclusion, decree or decline to decree the suit. We are of the view that the decision in Jug raj Singh"s 1995 AIR SCW 901 : AIR 1995 SC

945, is erroneous.

6. Another decision relied upon by learned counsel for the appellant is in K. Narendra Vs. Riviera Apartments (P) Ltd., , wherein the Apex Court

relying upon a Constitution Bench decision in Smt. Chand Rani (dead) by LRs. Vs. Smt. Kamal Rani (dead) by LRs., , has held that ""Severe

hardship may be a ground for refusing specific performance even though it results from circumstances which arise after the conclusion of the

contract, which affect the person of the defendant rather than the subject-matter of the contract, and for which the plaintiff is in no way

responsible."" The Apex Court has further observed relying upon the observation made by the Constitution Bench in Chand Rani (supra) that ""Even

where time is not of the essence of the contract, the plaintiff must perform his part of the contract within a reasonable time and reasonable time

should be determined by looking at all the surrounding circumstances including the express terms of the contract and the nature of the property.

7. In this view of the matter, learned counsel appearing on behalf of the appellant has not been able to demonstrate that the findings arrived at by

the lower appellate court is either suffering from any perversity or any illegality, therefore, in my opinion the impugned order does not warrant any,

interference by this Court in exercise of power u/s 100 of the Code of Civil Procedure. This appeal, therefore, has no force and is accordingly

dismissed. The interim order, if any, stands, vacated. However, the parties shall bear their costs.