
(2003) 08 MP CK 0026

Madhya Pradesh High Court

Case No: Civil Revision No. 1573 of 2000

Sunderlal

APPELLANT

Vs

Daliram and Others

RESPONDENT

Date of Decision: Aug. 19, 2003

Acts Referred:

- Specific Relief Act, 1963 - Section 28, 28(1)

Citation: (2003) 4 MPHT 403

Hon'ble Judges: S.K. Pande, J

Bench: Single Bench

Advocate: A.D. Deoras, for the Appellant; Ravish Agrawal, for the Respondent

Final Decision: Allowed

Judgement

@JUDGMENTTAG-ORDER

S.K. Pande, J.

Being aggrieved by the order dated 31-3-2000, passed by Civil Judge, Class I, Waraseoni in Execution Case No. 5-A/81, DHR/applicant has preferred this revision u/s 115, CPC.

2.HR/applicant (plaintiff) contacted Sakharam, husband of non-applicant Nos. 2, 3 brother-in-law of non-applicant No. 4 for advance of loan of Rs. 8,000/-, Sakharam had agreed to advance the loan if the applicant execute two sale deeds of the suit property in favour of the non-applicant Nos. 2 to 4. Accordingly, applicant executed two sale deeds in favour of non-applicant Nos. 2 to 4 for consideration of loan advanced to him. As agreed, Sukharam in his term has executed agreement to resale on repayment of loan amount Rs. 8,000/-. When applicant tendered the amount, Sukharam and non-applicants refused to execute the reconveyance deed. Therefore, applicant instituted C.S. No. 5-A/81 to enforce the agreement of reconveyance. The suit was decreed by the Civil Judge vide judgment-decree dated 20-4-84. The non-applicants preferred first appeal and thereafter second appeal in the High Court. During the period of these appeals, the execution of

decree was stayed under orders of Court. After the dismissal of Second Appeal No. 237/96, the execution proceedings already executed on 6-5-96, non-applicants filed application u/s 28(1) of the Specific Relief Act, stating inter alia that within one month's time, the amount Rs. 8,000/- has not been paid to him, therefore, the decree of specific performance he rescinded. The application was resisted by the applicant. However, vide impugned order the Court below allowed it and rescinded the decree for specific performance passed in favour of the applicant in C.S. No. 5-A/81.

3. C.No. 5-A/81 was decreed vide judgment dated 20-4-84 and the decree in the suit was drawn to the effect that non-applicants to execute a reconveyance deed within a period of one month's time failing the Court shall do so in favour of the applicant. In this decree, there is no time limit prescribed for depositing Rs. 8,000/- in Court by the applicant. If the non-applicants failed to execute the reconveyance deed, the applicant was entitled to seek a reconveyance in his favour by a deed to be executed by the Court below. It would mean that at the time of execution of reconveyance deed, the applicant was supposed to make payment of Rs. 8,000/-. On perusal of the execution case, it is clear that it was filed on 6-5-96 and no objection as to non-executability of decree was raised by the non-applicants prior to 17-10-97, the date of filing of application u/s 28(1) of the Specific Relief Act. During the pendency of appeals, the execution of decree passed by the Court below was stayed. Therefore, there was no reason for the applicant to deposit Rs. 8,000/- immediately.

4. It is contended that in execution proceedings, an application u/s 28(1) of the Specific Relief Act could not have been filed and decided by the Executing Court. The application should have been filed separately to the Court which tried the suit C.S. No. 5-A/81. Section 28(1) is as under :-

Where in any suit a decree for specific performance of a contract for the sale or lease of immovable property has been made and the purchaser or lessee does not, within the period allowed by the decree or such further period as the Court may allow, pay the purchase money or other sum which the Court has ordered him to pay, the vendor or lessor may apply in the same suit in which the decree is made, to have the contract rescinded and on such application the Court may, by order, rescind the contract either so far as regards the party, in default or altogether, as the just of the case may require."

5. On such application, the Court may by order rescind the contract would mean that it is discretionary with the Court to do the needful in the circumstances of each case. The facts of the case are that a loan of Rs. 8,000/- was advanced by Sakharam to the applicant on a condition of execution a sale deed of the suit property in favour of non-applicant Nos. 2 to 4. It was agreed that on return of Rs. 8,000/- to Sukharam, non-applicant Nos. 2, 3 and 4 would execute a deed of reconveyance in favour of applicant. C.S. No. 5-A/81 was filed on the basis of the said agreement. In fact it was a loan transaction where taking advantage of the weakness of applicant, the sale of suit property was got executed in favour of non-applicants, who were bound to execute a

deed of reconveyance in favour of the applicant on receipt of Rs. 8,000/-. In terms of agreement, the amount of Rs. 8,000/- has been deposited by the applicant on 3-2-2000. The delay if any in the circumstances of the present case ought to have been condoned by the Executing Court.

6. The power u/s 28 is discretionary and the Court can not on flimsy grounds annul the decree once passed by it and a clear case of default has to be found out for rescinding a contract so as to nullify the decree of specific performance. This is not a fit case where on an application u/s 28(1) of the Specific Relief Act the decree could have been rescinded.

7. Consequently, the Court below seems to have exercised jurisdiction illegally on an application u/s 28 and acted with material irregularity in passing the impugned order. The revision succeeds. The order impugned is set aside. The non-applicants are directed to comply with the decree immediately.

8. Parties to bear their costs.