
(2013) 04 MP CK 0066

Madhya Pradesh High Court

Case No: First Appeal No. 579/2012

Prabhakar

APPELLANT

Vs

Tarachand and Another

RESPONDENT

Date of Decision: April 2, 2013

Citation: AIR 2013 MP 154

Hon'ble Judges: M.K. Mudgal, J; Ajit Singh, J

Bench: Division Bench

Judgement

M.K. Mudgal, J.

The appellant/defendant has filed the appeal on 6.6.2012 u/s 96 of the CPC being aggrieved with the judgment and decree dated 11.4.2012 passed by the Court of District Judge East Nimar, Khandwa decreeing the civil suit no. 5-A/2011 in favour of the plaintiff/respondent directing the appellant/defendant to execute the sale deed in his favour as per agreement dated 13.7.2010 Ex. P/5 (hereinafter the appellant is called the defendant and respondent the plaintiff). On the basis of the pleadings of both the parties, the following admitted facts have come on record:-

That the defendant being an owner of agricultural land survey no. 163 area 0.39 hectare and survey no. 164 area 3.16 hectare total area 3.55 hectares situated at village Kotwada Tahsil Khandwa District Khandwa contracted to sell the same to the plaintiff vide registered agreement for sale dated 13.7.2010 Ex. P/5. The execution of the agreement is not disputed by the defendant. In compliance of the agreement, defendant was paid Rs. 19,00,000/- through demand draft on 13.7.2010 and Rs. 2,00,000/- in cash on the same date. Later, defendant was also paid Rs. 5,00,000/- on 8.11.2010. As per the agreement for sale, the aforesaid contract was to be completed within 8 months i.e. on or before 12.3.2011.

2. Facts in brief as stated in the plaint are that the defendant had contracted to sell the disputed agricultural land vide agreement dated 13.7.2010 Ex. P/5 for total consideration of Rs. 96,61,275/- under which Rs. 20,00,000/- was paid to the defendant and the

remaining amount was to be paid at the time of the registration of the sale deed. The plaintiff was ready and willing to perform the agreement for sale for getting the sale deed executed in his favour but the defendant did not execute the sale deed. As per agreement, the document of sale was to be executed on or before 12.3.2011 but 12.3.2011 was a holiday being a second Saturday. The plaintiff, therefore, appeared on 11.3.2011 before the Office of Sub-Registrar to get the sale deed executed in his favour but the defendant did not turn up at the said office. After that, the plaintiff again appeared on 14.3.2011 at the Office of the Sub-registrar for getting the sale deed executed as per agreement Ex. P/5 but the defendant did not execute the sale deed as per terms and conditions of the contract and therefore, the suit was filed before the lower Court for the specific performance of the contract Ex. P/5.

3. The defendant has denied the allegations made in the plaint. He has also contended that actual consideration of amount of Rs. 1,75,58,775/- was settled between the parties as per oral agreement dated 1.7.2010 through a property dealer Mansharam and his representative Subhash Khandelwal. The price of the land was agreed Rs. 20,01,000/- per acre. It was also agreed between the parties that the amount of Rs. 9,00,000/- per acre would be paid separately without mentioning it in the sale deed to avoid paying income tax on that part of consideration but the plaintiff was not ready to pay the aforesaid orally agreed amount. He has further submitted that the plaintiff was not ready and willing for getting the sale deed as per oral agreement dated 1.7.2010 settled between them. In spite of that he appeared on 11.3.2011 before the Office of Sub-Registrar but the plaintiff did not turn up at the aforesaid office. On these pleadings the defendant prayed for dismissal of the suit.

4. The issues were framed by the lower Court on the basis of the pleadings of both the parties. Vide impugned judgment dated 11.4.2012, the suit has been decreed in favour of the plaintiff as stated earlier.

5. The arguments advanced by learned counsel for the defendant are based upon only two counts. He has submitted that the actual consideration of the sale deed was agreed between the parties at Rs. 20,01,000/- per acre and so the total amount of consideration to be paid comes to Rs. 1,75,58,775/- but the plaintiff was not ready to pay the aforesaid amount and he did not comply with the terms and conditions of the oral contract dated 1.7.2010 settled between them.

6. On the other hand, learned counsel for the plaintiff has submitted that as per registered agreement dated 13.7.2010 (Ex. P/5) the total amount of consideration was agreed at Rs. 96,61,275/- and the plaintiff was ready and willing to pay the aforesaid sum to the defendant, who has malafidely demanded more amount as pleaded in the written statement as also in the evidence which was not agreed between them.

7. Having considered the arguments advanced by learned counsel for both the parties and perused the record, it is evident that the execution of the agreement to sale dated

13.7.2010 is admitted by the defendant in the written statement as well as in para nos. 1 and 12 of his evidence. The findings of the lower Court in this regard has been made in para 7 of the judgment. These findings have not been challenged by the defendant during the course of the argument.

8. On perusal of Ex. P/5, it becomes clear that Rs. 96,61,275/- was agreed as the amount of consideration for sale between the parties. The defendant has also admitted this consideration in Ex. P/1 which was filed by him on 11.3.2011 before the office of Sub-registrar, Khandwa. The Ex. P/1 has been proved by PW-1 Ravishankar Hirve peon of Sub-Registrar, Khandwa on the basis of the original documents taken by him from the office. The document Ex. P/1 has not been challenged by the defendant in the statement of the aforesaid evidence. Apart from this, the defendant Prabhakar himself has stated in para nos. 4 to 6 of his evidence that the application Ex. P/1 was filed by him before the office of Sub-registrar, Khandwa. In para 2 of Ex. P/1, the total amount of consideration is mentioned as Rs. 96,61,275/-. In this document, the defendant has not averred that Rs. 1,75,58,775/- was agreed as total consideration of the sale amount.

9. On the aforesaid evidence, it is clear that till the filing of the application Ex. P/1 dated 11.3.2011 by the defendant he did not claim the amount of consideration to be Rs. 1,75,58,775/- and so it can be inferred that the pleadings regarding the aforesaid amount of consideration are afterthought. All the same, as per provision of Section 92 of the Evidence Act the defendant has no right to adduce the oral evidence against the contents of registered agreement for sale Ex. P-5. Besides this, his case does not come within the purview of exceptions of the aforesaid section. The lower court having discussed elaborately, the evidence in paras 9 to 12 of the judgment has concluded that the pleadings and evidence of the defendant regarding consideration of amount of Rs. 1,75,58,775/- are not reliable. The stand of defendant regarding the aforesaid consideration has not been found proved. The findings of lower court are based on proper reasoning and appreciation of evidence. Therefore, there is no reason to differ from the view taken by the Lower Court.

10. The learned counsel for the defendant has argued that the identity of the disputed land is not properly defined in the Ex. P/5 and so the decree for specific performance could not have been passed in favour of the plaintiff. The argument was considered but it does not have any substance or relevance because the survey no and its boundary have been properly mentioned in the Ex. P/5.

11. Learned counsel for the defendant has further submitted that the plaintiff was not ready and willing to perform the contract as per agreement Ex. P/5, hence the decree could not have been passed in favour of the latter. He has further submitted that the time fixed in the agreement was the essence of contract, therefore, the decree for specific performance of the contract deserves to be set aside.

12. Refuting the aforesaid argument, the learned counsel for the plaintiff has submitted that the contention made by the learned counsel for the defendant is not acceptable in this case as the plaintiff has always been ready and willing to perform the terms and conditions of the contract and for this on 11.03.11 (a day before the last day) he went to the Office of sub-Registrar for getting the sale deed executed but the defendant did not turn up at the office of the Sub-Registrar to perform the contract. He has further submitted that the plaintiff got recorded his presence before the office of Sub-Registrar by presenting the application Ex. P/6 and the receipt Ex. P/2 was given by the office of the Sub-Registrar. The Ex. P/6 has been proved by the plaintiff in para 13 of his evidence which has not been challenged in the cross examination. Learned counsel has further submitted that on 14.03.2011 the plaintiff again appeared before the office of Sub-Registrar for getting the sale deed executed because 12.3.2011 and 13.3.2011 were holidays due to Saturday and Sunday, but the defendant did not come to the said office. On perusal of the record, it is evident that on 14.03.2011 the plaintiff had appeared before the office of Sub-Registrar and submitted an application for recording his presence and in this regard the receipt Ex. P/4 was given by the office of Sub-registrar. The plaintiff has deposed in this regard in para 14 of his evidence.

13. On the basis of aforesaid evidence, it is established that the plaintiff did everything to get the sale deed executed in his favour as per agreement for sale Ex. P/5 but the intention of the defendant was not bonafide to perform the contract because he wanted a far greater consideration than agreed in Ex. P/5.

14. So far as the contention of the defendant that the plaintiff was not willing to perform the agreement is concerned, it cannot be accepted as a defendant himself did not stand by the terms and conditions of the contract for sale Ex. P/5 and demanded a far greater amount of money as consideration for sale than agreed in the registered contract.

15. So far as the contention regarding the essence of the time of contract is concerned, the aforesaid contention does not appear to be acceptable because when the contract was to be complied on or before 12.03.11, the last i.e. 12.3.2011 was holiday and as per provision of General Clauses Act, the act could have been performed on the next working day i.e. on 14.03.2011 (13.3.2011 was Sunday). The plaintiff went to the office of the Sub-registrar on 11.03.2011 as also on 14.3.2011 for getting the sale deed executed in his favour and therefore his intention seems to be bonafide. Moreover, the defendant did not issue any notice terminating the contract on the ground of its non-performance on the due date or before it. Normally, the time limit is not the essence of contract in a deal involving sale of immovable property unless specific mention is made to that effect in the agreement for sale. Apart from this, it is additionally necessary to terminate the contract specifically on the above ground.

16. In [Prakash Chandra Vs. Angadlal and Others](#), the Hon"ble Supreme Court in Para 9 has held:-

The ordinary rule is that specific performance should be granted. It ought to be denied only when equitable consideration point to its refusal and the circumstances show that damages would constitute an adequate relief.

17. In view of the foregoing discussions, it is concluded that the findings of the lower Court are based on appropriate reasoning and appreciation of evidence and hence, the appeal is dismissed with costs. The advocate fees be included as per schedule, if certified. A decree be drawn up accordingly.