

(2013) 07 DEL CK 0419

Delhi High Court

Case No: CS (OS) 2007 of 2011

Narender Singh Bhullar

APPELLANT

Vs

Inder Singh

RESPONDENT

Date of Decision: July 9, 2013

Acts Referred:

- Specific Relief Act, 1963 - Section 10, 12, 14, 20, 21

Hon'ble Judges: Manmohan, J

Bench: Single Bench

Advocate: S.S. Oberoi, for the Appellant; Ranjit Singh, for the Respondent

Judgement

Manmohan, J.

Relying on the Supreme Court's judgment in Dadarao and Another Vs. Ramrao and Others, and this Court's judgment in Ashok Aggarwal Vs. Bhagwan Das Arora, referred to by the defendant's counsel, this Court on 03rd April, 2013 had framed the following issues:-

1. Whether present suit for specific performance of the Agreement to Sell dated 21st February, 2011 is maintainable in view of the specific term in the Agreement to Sell that in the event the Seller does not transfer the property in time, then the Purchaser shall have right to claim double the amount of bayana as compensation?
OPP

2. Relief.

It is pertinent to mention that neither on 03rd April, 2013 nor on 30th May, 2013, learned counsel for plaintiff had submitted that the aforesaid Supreme Court and High Court judgments were not good law.

2. However, case law research shows that the judgment of the Supreme Court in Dadarao & Anr. (supra) did not notice the earlier judgment of the Supreme Court in M.L. Devender Singh and Others Vs. Syed Khaja, in which after referring to Section

10 of the Specific Relief Act and explanation appended thereto as well as Sections 14, 20 and 23, it was held that the jurisdiction of a Court to grant specific performance cannot be curtailed or taken away by merely fixing a sum as liquidated damages. The relevant portion of the Supreme Court's judgment in M.L. Devender Singh and Others (*supra*) is reproduced hereinbelow:-

19. A reference to Section 22 of the old Act, (the corresponding provision is Section 20 of the Act of 1963), would show that the jurisdiction of the Court to decree specific relief is discretionary and must be exercised on sound and reasonable grounds "guided by judicial principles and capable of correction by a Court of appeal". This jurisdiction cannot be curtailed or taken away by merely fixing a sum even as liquidated damages. We think that this is made perfectly clear by the provisions of Section 20 of the old Act (corresponding to Section 23 of the Act of 1963) so that the Courts has to determine, on the facts and circumstances of each case before it whether specific performance of a contract to convey a property ought to be granted.

20. The fact that the parties themselves have provided a sum to be paid by the party breaking the contract does not, by itself, remove the strong presumption contemplated by the use of the words "unless and until the contrary is proved." The sufficiency or insufficiency of any evidence to remove such a presumption is a matter of evidence. The fact that the parties themselves specified a sum of money to be paid in the event of its breach is, no doubt, a piece of evidence to be considered in deciding whether the presumption has been repelled or not. But, in our opinion, it is nothing more than a piece of evidence. It is not conclusive or decisive.

21. The second assumption underlying the contentions on behalf the Defendants-Appellants is that, once the presumption contained in explanation to Section 12 of the Act, is removed, the bar contained in Section 21 of the old Act, against the specific enforcement of a contract for which compensation in money is an adequate relief, automatically operates, overlooks that the condition for the imposition of the bar is actual proof that compensation in money is adequate on the facts and circumstances of a particular case before the Court. The effect of the presumption is that the party coming to Court for the specific performance of a contract for sale of immovable property need not prove anything until the other side has removed the presumption. After evidence is led to remove the presumption, the plaintiff may still be in a position to prove, by other evidence in the case, that payment of money does not compensate him adequately.

3. In P. D'Souza Vs. Shondrilo Naidu, a Division Bench of the Supreme Court after referring to the decisions in M.L. Devender Singh and Others (*supra*) and Dadarao & Anr. (*supra*) held that the decision in Dadarao & Anr. (*supra*) was per incuriam. The relevant portion of the Supreme Court's judgment in P. D'Souza (*supra*) is reproduced hereinbelow:-

34. In Dadarao whereupon Mr. Bhat placed strong reliance, the binding decision of M.L. Devender Singh was not noticed. This Court furthermore failed to notice and consider the provisions of Section 23 of the Specific Relief Act, 1963. The said decision, thus, was rendered per incuriam.

35. Furthermore, the relevant term stipulated in Dadarao was as under:(SCC p.417, para 2)

Tukaram Devsarkar, aged about 65, agriculturist, r/o Devsar, purchaser (GHENAR)-Balwantrao Ganpatrao Pande, aged 76 years, r/o Dijadi, Post Devsar, vendor (DENAR), who hereby give in writing that a paddy field situated at Dighadi Mouja, Survey No. 7/2 admeasuring 3 acres belonging to me hereby agree to sell to you for Rs. 2000 and agree to receive Rs. 1000 from you in presence of V.D.N. Sane. A sale deed shall be made by me at my cost by 15-4-1972. In case the sale deed is not made to you or if you refuse to accept, in addition of earnest money an amount of Rs. 500 shall be given or taken and no sale deed will be executed. The possession of the property has been agreed to be delivered at the time of purchase. This agreement is binding on the legal heirs and successors and assigns.

(emphasis supplied)

Interpreting the said term, it was held: (SCC p.418, paras 6-7)

6. The relationship between the parties has to be regulated by the terms of the agreement between them. Whereas the defendants in the suit had taken up the stand that the agreement dated 24-4-1969 was really in the nature of a loan transaction, it is the plaintiff who contended that it was an agreement to sell. As we read the agreement, it contemplates that on or before 15-4-1972 the sale deed would be executed. But what is important is that the agreement itself provides as to what is to happen if either the seller refuses to sell or the purchaser refuses to buy. In that event the agreement provides that in addition to the earnest money of Rs. 1000 a sum of Rs. 500 was to be given back to Tukaram Devsarkar and that "no sale deed will be executed". The agreement is very categorical in envisaging that a sale deed is to be executed only if both the parties agree to do so and in the event of any one of them resiling from the same there was to be no question of the other party being compelled to go ahead with the execution of the sale deed. In the event of the sale deed not being executed, Rs. 500 in addition to the return of Rs. 1000, was the only sum payable. This sum of Rs. 500 perhaps represented the amount of quantified damages or, as the defendants would have it, interest payable on Rs. 1000.

7. If the agreement had not stipulated as to what is to happen in the event of the sale not going through, then perhaps the plaintiff could have asked the Court for a decree of specific performance but here the parties to the agreement had agreed that even if the seller did not want to execute the sale deed he would only be required to refund the amount of Rs. 1000 plus pay Rs. 500 in addition thereto.

There was thus no obligation on Balwantrao to complete the sale transaction.

36. Apart from the fact that agreement of sale did not contain a similar clause, Dadarao does not create a binding precedent having not noticed the statutory provisions as also an earlier binding precedent. [See Govt. of W.B. v. Tarun K. Roy (SCC para 26).]

4. In [P.S. Ranakrishna Reddy Vs. M.K. Bhagyalakshmi and Another](#), the Supreme Court following its earlier decision in P. D'Souza (supra) rejected the contention that specific performance could be refused if there was a default clause which stipulated that in the event of commission of a breach, the plaintiff was only entitled to forfeit the amount paid by way of advance.

5. Having considered the above case law, the preliminary issue with regard to maintainability of the present suit is decided against the defendant and in favour of the plaintiff. However, the order dated 03rd April, 2013 is not being vacated as it is based also on grounds other than the judgment of the Supreme Court in Dadarao & Anr. (supra) and this Court's judgment in Ashok Aggarwal (supra). List the matter for framing of issues on 28th August, 2013 before regular Roster Bench.