

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SECOND APPEAL No 323 of 1984

For Approval and Signature:

Hon'ble MR.JUSTICE H.R.SHELAT

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO
2. To be referred to the Reporter or not? : NO
3. Whether Their Lordships wish to see the fair copy of the judgement? : NO
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO
5. Whether it is to be circulated to the Civil Judge? : NO

JAMNADAS R THAKKAR: Appellant.

Versus

GOVIND DEVSHI PATEL : Respondent.

Appearance:

MR JR NANAVATI for the appellant.

NOTICE SERVED for Respondent.

CORAM : MR.JUSTICE H.R.SHELAT

Date of decision: 31/03/2000

ORAL JUDGEMENT

Being aggrieved by the judgment and decree dated 24th July 1984 passed by the then learned Assistant Judge at Junagadh in Regular Civil Appeal No. 107 of 1983 on his file dismissing the appeal and confirming the decree dated 30th April 1982 passed by the then learned Civil Judge (J.D.), Manavadar in Regular Civil Suit No. 107 of 1982 refusing to pass the decree for specific performance but allowing the suit partly and ordering the present respondent to pay Rs. 4,200/= to the appellant together with interest thereon at the rate of 6% p.a., from the

date of the suit till realisation, the original-plaintiff has preferred this appeal.

2. The respondent was the owner of the agricultural land admeasuring 2 acres situated within the sim of Village Vada in Manavadar Taluka. He agreed to sell the said land to the present appellant on 20th April 1970. An agreement to sell was reduced into writing. The appellant as per the agreement paid the amount of Rs. 3,500/= and performed his part of contract, but thereafter the respondent who had to execute the registered sale deed avoided to execute the same and committed the breach thereof. Though requested many times he paid no heed and avoided to execute the registered sale deed. The appellant was therefore constrained to give a notice on 29th July 1972 by registered post. Even after the service of the notice the respondent paid no heed and neglected to execute the sale deed. The appellant was therefore constrained to file the suit for specific performance of the contract in the Court of the Civil Judge (J.D.) at Manavadar which was registered as Regular Civil Suit No. 1/1974. The then learned Civil Judge (JD), Manavadar on 30th April 1982 partly allowed the suit. He ordered the respondent to pay Rs. 4,200/= to the appellant together with interest at the rate of 6% p.a., from the date of the suit till realisation, but refused to grant the relief for specific performance of the contract.

3. Being aggrieved by such judgment and decree, the appellant preferred Regular Civil Appeal No. 107/82 in the District Court at Junagadh which was assigned to the then learned Assistant Judge, Junagadh for hearing and disposal in accordance with law. He hearing the parties on 24th day of July 1984 dismissed the appeal. Against that judgment and decree the present appeal is filed.

4. It is the contention of the appellant that the learned appellate Judge has not correctly appreciated the evidence and without assigning any reasons disposed of the appeal. There was therefore no application of mind and mechanically it seems the appeal has been disposed of. The lower Court has also drawn the inference without any material there being on record that the real nature of the transaction was different though the respondent had not come out with the case in that regard.

5. Perusing the judgment of the appellate Court, it appears that there is no application of mind and cursorily the appeal has been dealt with. It is incumbent upon the appellate Court being the final court

on the question of fact to scan the evidence with meticulous care and finicky details and assigning cogent reason it has to reach the logical conclusions either confirming the decree or reversing the decree, but instead of doing that exertive exercise, the learned Judge has scrawled stating something strange. According to the learned appellate Judge, the learned Civil Judge made a curious approach and very curious and strange reasons are assigned for drawing the conclusion and then immediately he finds that the conclusions drawn by the learned Civil Judge were right and proper. The approach of the ld. appellate Judge is paradoxical. It is pertinent to note that the learned appellate Judge has not given his reasons and has not elaborately discussed as to why the reasons given by the learned Judge were strange and curious and why the learned trial Judge was right in drawing the conclusions. He has also not assigned any reason as to why the learned Judge was right in refusing to pass the decree for specific performance and how he had exercised the discretion rightly. Simply to say that the learned Judge rightly passed the order is not proper on the part of the appellate Court. The learned appellate Judge also proceeds to infer the case on the basis of a particular para in the plaint mentioning clearly that the respondent had not come out with a particular case of total denial and also about the agreement being sham and colourable. Still, however, he on the basis of Para 15 on the plaint draws the inference that the transaction was some thing different than the sale of a land. The learned appellate Court Judge has overlooked the principle of law that the court has to confine to the rival cases put forth in the respective pleadings and has not to make out a new case which is not pleaded by the parties, and then decide the case. If that is done, it can be considered to be a serious error of law because that certainly leads to miscarriage of justice. In the case on hand also, the learned appellate Judge has, though neither of the parties has come forward with a particular case, and without there being any material on record, jumped to the conclusion that the transaction was some thing different than the sale of the land in question. It, therefore, follows from such discussion that the learned appellate Judge has fallen into error in not assigning the reason and cursorily drawing the conclusion in favour of the respondent without any material. Marshalling of law & facts is not done by the learned appellate Judge. The matter is, therefore, required to be remanded to the District Court, Junagadh, for a fresh consideration and just decision.

6. In view of what I have said hereinabove, the appeal is allowed. The judgment and decree passed by the

ld. Assistant Judge, Junagadh, on 24th July 1984 in Regular Civil Appeal No. 107 of 1983 are hereby quashed and set aside, and the Regular Civil Appeal No. 107/83 is remanded to the District Court, Junagadh, for hearing the parties afresh, and disposing of the appeal in accordance with law assigning the cogent reasons. No order as to costs.

rmr.