

IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN AT
JODHPUR

: J U D G M E N T :

S.B. Civil First Appeal No.99/1991.
(Mander Singh & Others Vs. Smt. Tej Kaur)

DATE OF JUDGMENT : June 30, 2009.

P R E S E N T

HON'BLE MR. JUSTICE GOPAL KRISHAN VYAS

Reportable

Mr. B.N. Kalla for the appellants.
Mr. H.S. Sidhu for the respondent.

BY THE COURT :

In this first appeal filed by plaintiff-appellants under Section 96 of the Code of Civil Procedure, judgment and decree dated 26.05.1991 passed by the Addl. District & Sessions Judge, Raisinghnagar in Civil Original Case No.148/88 is under challenge.

According to facts of the case, the appellants filed suit against the defendant-respondent Smt. Tej Kaur in the Court of Addl. District Judge, Raisingh Nagar for specific performance of contract on 14.04.1988. In the suit, it was stated that Smt. Tej Kaur entered into agreement to sell her agricultural land comprising of muraba No.22 (New No.12), kila No.16 to 25, total 10 bigha, situated in Chak 4

PS (Tehsil Raisingh Nagar). In the agreement, rate of land at Rs.11,200/- per bigha was agreed upon and the said agreement was executed in between the parties on 10.03.1986. As per the terms and conditions of the said agreement, Rs.50,000/- were paid by the plaintiff-appellants to defendant-respondent Tej Kaur and rest of the amount of Rs.62,000/- was to be paid by the appellants at the time of registration of the sale-deed. According to the appellants, possession of the land was given to them upon which water supply was also provided and registered sale-deed was to be made by 18.06.1986 as per the terms and conditions of the agreement.

In the plaint, it was stated by the plaintiff-appellants that they were ready and willing to perform their part of the contract and told the respondent-defendant to execute the sale-deed in their favour as per the terms and conditions of the agreement but she could not perform her part of the contract and it has resulted into compelling the appellants to file the suit before the Court, therefore, they have preferred the suit in the Court of Addl. District Judge, Raisingh Nagar. As per the appellant-plaintiffs, they have spent Rs.25,000/- on the improvement of the land in question and the defendant-respondent wants to sell the land in question to other persons on account of increase in

the price of land. As such decree for specific performance of contract may be passed against the defendant-respondent.

The suit filed by the appellant-plaintiff was contested on the ground that the appellants themselves have not fulfilled the terms and conditions and violated the terms and conditions and have failed to perform their part of the contract and, so also, it is refuted that no amount has been spent for improvement of the land because possession of the land is with the defendant-respondent. The case of the defendant is that the plaintiffs themselves have violated the terms and conditions of the agreement and they have failed to fulfill the term of obtaining the bona fide domicile certificate and are not ready and willing to pay the rest of the amount; and, somehow, they were delaying the matter but, after expiry of the date which is specifically mentioned in the agreement i.e., 18.06.1986, the defendant-respondent was not under obligation to execute the sale-deed in favour of the plaintiffs and, so also, no decree for specific performance of contract in favour of the plaintiffs can be passed. Therefore, the defendant prayed that the suit may be dismissed.

The learned trial Court after filing of the written-statement proceeded to frame the following issues for

adjudication of the controversy :

“1-आया वादीगण विवादित इकरारनामा दिनांक 10.3.86 की अनुपालना हेतु हमेशा तत्पर एवं इच्छुक रहे हैं ?

2-आया वादीगण उक्त विवादित इकरारनामा बैय की विशिष्ट अनुपालना की डिक्री प्राप्त करने के विधिक अधिकारी हैं ?

3-आया वादीगण ने इकरारनामा की शर्त के अनुसार दिनांक 18.6.86 तक मल निवास प्रमाण-पत्र व बकाया धन राशि प्रतिवादीया को नहीं दी इस प्रकार उन्होंने इकरारनामा की शर्तों की अवहेलना की है ?

4-आया प्रतिवादीया ने करनेलसिंह से एक सौदा भूमि क्रय करने बाबत किया हुआ था जो वादीगण 18.6.86 को प्रतिवादीया की पैसा अदा न करने के कारण निरस्त हआ तथा प्रतिवादीया को नुकसान हआ ?

5-आया प्रतिवादीया ने वादीगण की टालमटोल नीति के कारण दिनांक 10.3.87 को नोटिस के जरियेबयाना जब्त कर अनुबन्ध समाप्त करने का विधि अधिकार था ?

6-आया इकरारनामा की अनुपालना धन से की जा सकती है इसलिये वादीगण विवादित कृषि भूमि के विक्रय पत्र को पंजीयन की विषिष्ट अनुपालना की डिक्री प्राप्त करने के अधिकारी नहीं हैं ?

7-आया प्रतिवादीया वादीगण के विवादित कृषि भूमि से नाजायज तौर से मुफीद होने के कारण वादीगण से 10000/- सालाना बतौर हरजाना प्राप्त करने के अधिकारी हैं ?

8-अनुतोष ?”

From the side of the plaintiffs, statement of P.W.-1

Mander Singh was recorded and as many as 5 documents were exhibited including agreement in question as Ex.-1. Likewise, from the side of the respondent-defendant, statements of two witnesses D.W.-1 Mukhtiyar Singh and D.W.-2 Sarjeet Singh were recorded and documents Ex.-A/1, copy of notice, Ex.-A/2, A.D., Ex.-A/3, power of attorney and Ex.-A/4, photo copy of postal receipt were exhibited. After recording evidence and exhibiting the

documents as said above, the trial Court proceeded to decide the suit. Learned trial Court decided issues No.1 and 3 against the plaintiff-appellants and in favour of the defendant-respondent. Issues No.2 and 6 were also decided in favour of the defendant. So also, issues No.4, 5 and 7 were decided against the plaintiffs and in favour of the defendant-respondent; but, issue No.8 was decided in favour of the plaintiffs and a direction was issued to the defendant-respondent to pay Rs.50,000/- which is paid at the time of execution of the agreement to sell in favour of the plaintiff-appellants.

Learned counsel for the appellants vehemently argued that in this case from the evidence it is obvious that the appellant-plaintiffs were ready and willing to fulfill all the terms and conditions for executing the sale-deed in his favour as per the agreement; but, the respondent-defendant failed to perform her part of contract and with a view to sell the property to another person due to increase in the prices of the land, she has violated the terms and conditions of the contract, therefore, the plaintiff-appellants were entitled to decree for specific performance in their favour but the trial Court has wrongly arrived at the finding that the plaintiffs were not ready and willing to fulfill the terms and conditions of the agreement.

It is contended that by virtue of Section 20 of the Specific Relief Act, the appellants are entitled to specific performance of the contract in their favour because, according to law, there is no reason not to allow the decree in their favour when there is no fault on the part of the appellant-plaintiffs, therefore, the judgment and decree passed by the trial Court is arbitrary and illegal. Learned counsel for the appellants argued that the trial Court committed error of law in relying upon the evidence of defendant-respondent which makes it clear that the defendant-respondent failed to perform her part of the contract and despite that judgment and decree has been passed allowing only Rs.50,000/- which is not justified; more so, it is unfair and contrary to law.

As per contention of learned counsel for the appellants, most important witness Karnail Singh, with whom it was said to have entered into contract by the respondent-defendant regarding sale of 10 bigha land, was not produced by the defendant before the Court and had the amount of Rs.25,000/- would have been forfeited because the defendant did not pay the consideration. As per learned counsel for the appellants, his clients were ready and willing to perform their part of the contract but the respondent did not want to sell the land in question to

the appellant-plaintiffs and she wanted to sell the land on higher price, therefore, an application was moved before the Tehsildar on 07.12.1987 which is clear from the statement of D.W.-2 Sarjeet Singh who also deposed that he did not seek permission before 21.08.1987 and as such defendant-respondent failed to perform her part of the contract which is clear from the record; but, despite the above fact, the trial Court committed error while not passing the decree for specific performance in favour of the appellant-plaintiffs. Therefore, the judgment and decree passed by the learned trial Court deserves to be quashed and set aside and suit filed by the appellants may be allowed and decreed in their favour for specific performance of the contract.

Learned counsel for the appellants vehemently argued that in this case although the bona fide residence certificate was not obtained by the plaintiff within time; but, subsequently, the same was obtained and handed over to the respondent for execution of the sale-deed, therefore, the readiness and willingness of the appellants can be seen from the fact that they sent notice to the defendant on 06.06.1986 for execution of the sale-deed in their favour, in which, it was categorically stated that they are making all efforts to get the bona fide residence

certificate in their favour. In this view of the matter, the finding of the learned trial Court upon all the issues except issue No.8 is perverse and contrary to the material on record of the case, therefore, the appeal may be allowed and judgment and decree passed by the trial Court may be set aside and the suit filed by the appellants may be allowed and decree for specific performance of contract executed on 10.03.1986 may be passed and respondent may be directed to execute the sale-deed in favour of the plaintiffs as per the agreement arrived at in between the parties on 10.03.1986.

Per contra, learned counsel for the respondent-defendant vehemently argued that all the contentions raised by the appellant-plaintiffs are wrong because as per the terms and conditions of the contract they were to obtain the bona fide residence certificate before 18.06.1986 and the said date was fixed for executing the sale-deed. Likewise, as per the agreement, permission to sell the land in question was to be obtained by the plaintiffs themselves but they failed to obtain the permission prior to 18.06.1986, therefore, it cannot be said that they were ready and willing to perform their part of the contract as per the agreement. It is further argued that no amount was spent by the appellant-plaintiffs upon the land in

question for development. Likewise, they are not ready and willing to fulfill the terms and conditions of the contract executed on 10.03.1986 nor they made any request or efforts to get the registration of the sale-deed. Therefore, the delay is to be attributed to the plaintiff-appellants themselves and it has rightly been attributed by the learned trial Court to the appellants. It is also refuted that any amount was paid in the month of July 1987 by the plaintiff-appellants for permission to sell the property in question. The plaintiff-appellants were under obligation to fulfill all the terms and conditions of the agreement before 18.06.1986 and, admittedly, they failed to perform their part of the contract, therefore, the learned trial Court has rightly given the finding with regard to all the issues except issue No.8. Therefore, no case is made out in favour of the appellant-plaintiffs. Learned counsel for the respondent vehemently argued that the plaintiffs failed to prove their case and, so also, no cogent evidence was produced by the plaintiffs before the trial Court to prove the fact that they are ready and willing to perform their part of the contract, therefore, the finding arrived at by the trial Court is just and proper and does not require to be interfered with.

I have considered the rival submissions made by both

the learned counsel and perused the entire record of the case.

Learned trial Court has decided issues No.1 and 3 jointly. As per issue No.1, the plaintiffs were under obligation to prove their readiness and willingness for performing their part of the contract as per agreement dated 10.03.1986. Upon perusal of the record, it is revealed that to prove the case, the plaintiffs produced only one witness P.W.-1 Mandar Singh, plaintiff No.1 himself and no other witness was produced before the Court to prove their readiness and willingness. This fact itself proves that the learned trial Court has not committed any error while not accepting the testimony of P.W.-1 Mander Singh without any corroboration. Likewise, it is admitted position of the case that as per terms and conditions of agreement Ex.-1, the plaintiff-appellants were required to obtain the bona fide residence certificate of domicile in Rajasthan prior to 18.06.1986 which was admittedly not procured by them prior to that date and it was procured in the year 1987.

Similarly, a specific date was given in the agreement for execution of the sale-deed i.e., 18.06.1986. There is no evidence on record to show that any effort was made by the plaintiff-appellants to perform their part of the contract

as per the agreement. Bare perusal of the statement of P.W.-1 Mander Singh shows that he himself deposed that bona fide residence certificate was not obtained prior to 18.06.1986 whereas it was specifically stated that they will obtain the bona fide residence certificate prior to execution of the sale-deed. This fact itself shows that the learned trial Court has rightly given the finding that the plaintiff-appellants were not ready and willing to perform their part of the contract as per the agreement. The learned trial Court elaborately discussed all the facts and circumstances and grounds taken by the defendant and has rightly observed that there is no evidence to show that the appellants were ready and willing to perform their part of the contract as per the agreement. Elaborate discussion upon both the issues is based on sound reasons. The finding of the learned trial Court is that the time period is very much relevant for the purpose of execution of the sale-deed in favour of the plaintiffs and for the same terms and conditions of the agreement were to be followed by both the parties. The burden was upon the shoulders of the plaintiffs to show their readiness and willingness but they failed to show that they were ready and willing and obtained the bona fide residence certificate prior to 18.06.1986. Therefore, the finding recorded by the trial

Court on issues No.1 and 3 does not require any interference. More so, elaborate discussion has been made and it is found by the trial Court that the plaintiffs have neither spent any money for improvement of the agricultural land nor there is any evidence to show that they are ready and willing to pay the remaining amount of consideration. In this view of the matter, the finding arrived at by the learned trial Court on issues No.1 and 3 does not require any interference.

I have perused the finding given by the learned trial Court with regard to issues No.2 and 6 jointly. Upon perusal of the finding arrived at by the trial Court, it is clear that the learned trial Court was of the opinion that the plaintiff-appellants were not ready and willing to pay even the rest of the amount, so also, no evidence has been produced on record to show their readiness and willingness to pay the remaining amount and follow the terms and conditions of the contract, therefore, the finding of the trial Court does not require any interference because it is based upon the finding recorded by the trial Court on issues No.1 and 3.

Both issues No.4 and 7 with regard to compensation have been decided by the trial Court in favour of the plaintiff-appellants and, therefore, there is no challenge to

it.

With regard to issue No.5, it is abundantly clear from the facts that the sale was to be executed as per the terms and conditions of the agreement on or before 18.06.1986. Till that date, however, the plaintiffs themselves failed to obtain the bona fide residence certificate and, so also, they did not pay the remaining amount of the consideration to the respondent, therefore, she was not in a position to purchase another land at Sahuwala. In this view of the matter, the finding arrived at with regard to issue No.5 is just and proper and does not require any interference because it is based upon admitted facts of the case.

The finding of the trial Court upon issue No.8 is based upon sound reasons and, in my opinion, the trial Court has rightly passed order for re-payment of Rs.50,000/- to the plaintiffs.

In view of the aforesaid, I do not find any force in this appeal. This appeal is, therefore, accordingly dismissed.

(Gopal Krishan Vyas) J.

Ojha, a.