

Kishor Vs. Ambadas

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Court : Mumbai Nagpur

Decided On : Feb-10-2014

Judge : A.P. Bhangale

Appeal No. : Second Appeal No. 692 of 2006

Appellant : Kishor

Respondent : Ambadas

Judgement :

Oral Judgment:

1. This second appeal was admitted on 16.4.2007 on the following substantial question of law:-

œWhether the reasons recorded by both the Courts for holding that the plaintiff was not ready and willing to perform his part of contract are perverse and unsustainable??

2. Suit for specific performance of contract was filed by appellant (original plaintiff) bearing RCS No. 139 of 2001 before the Civil Judge, JD, Amravati. According to plaintiff, he agreed to purchase open space with super structure admeasuring 213.75 square feet out of Plot No. 179, Nazul Sheet No. 92/1 situated at Takarkheda, Amravati. On 15.12.1997 token money of Rs. 501/- was paid by plaintiff to defendant and then on 24.12.1997 plaintiff paid Rs. 4400/- to the

defendant on which date agreement for sale was executed. Total consideration was fixed at Rs. 16,000/- and the sale deed was to be obtained on or before 30.6.1998. According to plaintiff, in addition to above, he had paid Rs. 2000/- to defendant from time to time. Since defendant failed to execute sale deed, plaintiff issued him notice on 22.12.2000 calling upon to remain present in the Office of Sub-Registrar concerned on 29.12.2001. Plaintiff remained present in the office of Sub-Registrar throughout office hours, but the defendant did not turn up. In order to substantiate his presence, plaintiff sworn in an affidavit on the stamp paper of Rs. 10/- on 29.12.2000.

3. Respondent (original defendant) by his Written statement dated 8.8.2001 denied suit claim. He alleged hand-loan transaction to claim that there was, therefore, no question of execution of sale deed and that his signatures were obtained on blank stamp paper. According to defendant, he tried to repay amount of Rs. 4000/- taken by way of hand-loan, but plaintiff refused to accept the amount. He prayed for dismissal of suit.

4. In the trial Court, plaintiff entered into witness box and deposed in support of suit claim. He gave evidence about agreement to sell (exhibit 22) which contained recital indicating that the total consideration was fixed at Rs. 16,000/- out of which earnest money of Rs. 4000/- was paid to defendant while plaintiff had agreed to pay remaining consideration of Rs. 12,000/- before the Sub-Registrar at the time of execution of sale deed. He deposed that on 30.6.1998 defendant did not turn up to execute sale deed and was saying that he could execute sale deed any time. He further deposed that to the legal notice (exhibit 24), defendant did not give any reply and did not appear on 29.12.2000 for the purpose of execution of sale deed. He deposed that he sworn in affidavit (exhibit 25) substantiating his presence. He lastly deposed that he was ready and willing to obtain sale deed from defendant. In cross-examination, plaintiff denied the suggestion that he had given Rs. 4000/- to defendant by way of hand-loan and that defendants signatures were obtained on blank stamp paper. He denied that there was no agreement for sale executed between the parties. Therefore, nothing damaging to the case of plaintiff could be elicited in the course of cross-examination regarding alleged unwillingness on the part of plaintiff to get the sale deed executed.

5. From the notice dated 22.12.2000 (exhibit 23) which was sent by plaintiff through his Advocate, it was evident that plaintiff was ready and willing to perform his part of contract. Non-reply to the said notice (exhibit 23) ought to have weighed with the trial Court to infer default on the part of defendant to avoid execution of sale deed, as promised. Affidavit (exhibit 25) shows that plaintiff was present in the office of Sub-Registrar concerned on 29.12.2000. It is pertinent to note that defendant did not venture to enter in the witness box to oppose the suit claim though he had sought to defend the suit on the ground that plaintiff was not ready and willing to get the sale deed executed from him and that it was a hand-loan transaction. In the absence of any evidence on the part of defendant in this regard and apathy on his part to give reply to the legal notice dated 22.12.2000, learned trial Court as also 1st appellate Court committed gross error of law to non-suit the plaintiff in his claim for specific performance of contract which was proved as per exhibit 22. In a suit for specific performance of contract which is a relief in equity, ordinary rule is that specific performance ought to be granted. Refusing such relief is an exception. In the present case, it appears from the evidence on record that that the plaintiff had led ample evidence to discharge onus upon him to prove execution of agreement to sell (Isar Chitthi) which was executed by defendant. Therefore, it was a fit case where ruling in **Prakash Chandra v. Angadlal and ors** reported in **AIR 1979 SC 1241** was attracted and relief of specific performance, considering the evidence on record led by the plaintiff, could not have been negatived on imaginary ground that the plaintiff was not ready and willing to perform his part of contract. The object of granting relief of specific performance of contract is to protect a transferee under contract from the consequences flowing from reluctance on the part of defendant to abide by his promise. Although specific relief is discretionary as observed by the Apex Court in *Prakash Chandras* case (supra), the ordinary rule is that specific performance should be granted. It ought to be denied only when equitable considerations point to its refusal and the circumstances show that damages would constitute an adequate relief.

6. In the present case, plaintiff examined himself and a person who was witness to the earnest deed. Defendant did not enter witness box and failed to lead evidence to controvert the case of plaintiff. In these circumstances, the Courts below could not have recorded a finding that plaintiff was not ready and willing to perform his

part of contract. Plaintiff had shown his readiness and willingness by insisting upon execution of sale by attending the office of Sub-Registrar on the given date i.e. 30.6.1998, but the defendant failed to attend the office of Sub-Registrar. Defendant also did not bother to give reply to the legal notice sent on behalf of plaintiff whereby plaintiff had called upon defendant to execute sale deed. Thus, there was ample evidence showing readiness and willingness on the part of plaintiff to get the sale deed executed from defendant pursuant to agreement for sale (exhibit 22). In the absence of evidence that time was made essence of contract, in the present case, findings recorded against the plaintiff by both the Courts below, to say the least, were perverse and unsustainable. Even in this Court, despite the fact that defendant/respondent is duly served, he did not bother to come forward to oppose the appeal. For all these reasons, instead of merely making an order for refund of earnest money, learned trial Judge ought to have granted relief of specific performance of contract, as prayed for by the plaintiff. Hence, second appeal must be allowed. The substantial question of law is answered in the affirmative.

7. In the result, Second Appeal is allowed. Impugned judgments and orders are quashed and set aside. Plaintiffs suit for specific performance of contract (exhibit 22) is decreed with costs with direction to the defendant to execute sale deed by accepting balance amount of Rs. 12,000/- within three months from the date of this order. If the defendant fails to execute sale deed in favour of plaintiff on receiving balance consideration within the stipulated period, plaintiff is free to obtain the sale deed on behalf of defendant through trial Court on depositing balance consideration amount there and on observing necessary formalities in that behalf. Decree be drawn up accordingly.

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