

Nazeeruddin Vs. Ram Devi

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Court : Andhra Pradesh

Decided On : Jan-23-1975

Reported in : AIR1976AP50

Judge : Sambasiva Rao, J.

Acts : [Code of Civil Procedure \(CPC\), 1908](#) - Sections 151 and 152; ;[Specific Relief Act, 1963](#) - Sections 20

Appeal No. : Civil Revn. Petn. No. 274 of 1973

Appellant : Nazeeruddin

Respondent : Ram Devi

Advocate for Def. : Y. Sivaramasastry, Adv.

Advocate for Pet/Ap. : H.G. Kulkarni, Adv.

Judgement :

ORDER

1. The question which arise in this Civil Revision is whether the Court can amend under Section 152 Civil P.C. the judgment and decree granting specific performance, when it had entitled to specify the time before which the specific performance should be completed.

2. The material facts are : The respondent filed the suit on the foot of an agreement of sale for specific performance. It was decreed on 12-2-1971 saying that on the payment of Rs. 15,000/- the defendant should execute the reconveyance document in favour of the plaintiff. It, however, omitted to fix the time before which such amount should be paid and the reconveyance deed should be executed. So, the defendant filed a petition, out of which the present revision arises to amend the judgment and decree under Sections 152 and 151 to rectify the defect it arose out of an accidental slip or omission.

It is well known that the time for the payment and the execution of the document are generally fixed in judgments and decrees for specific performance. The omission to do so in this case is clearly an accidental slip or omission coming within the meaning of Section 152. The lower court however, stated that the judgment and decree are in accordance with the pleadings and it was for the plaintiff to choose to execute the decree. The decree can be executed within the time stipulated for execution of the decree. In view of Section 48 of the Civil P.C. the execution can drag on for 12 years. If the view of the lower Court is right what would be the result?

Though a decree for specific performance has been passed, the petitions of the parties are left in a very vague, indefinitely and nebulous condition. The defendant is now bound to execute the reconveyance deed and will have to await the sweet will and pleasure of the plaintiff for paying the amount and calling upon him to execute the document which he may do at any time within 12 years. True, he will have to keep it alive one in three years. Such could never be the intention of the judgment and decree for specific performance. The very expression 'Specific performance' indicates that the performance of an agreement should be specific. Without the time fixed for its performance, the decree ceases to be specific. So, omission to fix the date for performance would be defeating the very decree and making it nugatory. Omission to mention the times for payment and execution is clearly an accidental slip or omission on the part of the Court.

3. In any case, in view of the grave injustice that will be caused to both parties it is a fit case where the power of the Court under Section 151 Civil P.C. can be

properly exercised. In *Sreerama Chengal Varavanaidu v. Ramaiah*, (1961) 2 Andh WR 54, Venkatarama Sastry, J, took the view that the Court has jurisdiction under Section 151, Civil P.C. to fix a date subsequently for performance of the contract by the plaintiff, though the application was filed under Section 152, Civil P.C.

4. Sri Kameswara Rao appearing for the plaintiff respondent relies on *Ram Krishna v. Mukand Shanker*, : AIR1963 All49 . That case has no application because, what the learned Judge held was that a decree cannot be said to be not executable on the ground that there was no provision as to when sale price was to be paid or whether it was to be paid prior to execution of the sale deed. At the same time the decree provided that the defendant should execute the sale deed within 30 days. The learned Judge in those circumstances held that the decree was executable. That has no application to the present case. As I have said, to hold otherwise would be defeating the very decree for specific performance and to cause grave injustice to the parties.

5. I, therefore, set aside the order of the lower Court and grant the application of the defendant-petitioner for amendment and fix the date for deposit of the amount by the plaintiff decreed against him into Court as one month from to-day. .E., 23rd of February, 1975 and also the costs for reconveyance and the time for the defendant to execute the reconveyance deed as on or before 7th March, 1975. In the result, the revision petition is allowed with costs.

6. Petition allowed.

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