

Pradeep Kumar Vs. Gwalior Improvement Trust

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Court : Madhya Pradesh

Decided On : Jan-23-1978

Reported in : AIR1978MP179; 1978MPLJ586

Judge : H.G. Mishra, J.

Acts : [Specific Relief Act, 1963](#) - Sections 20 and 20(4)

Appeal No. : Second Appeal No. 350 of 1976

Appellant : Pradeep Kumar

Respondent : Gwalior Improvement Trust

Advocate for Def. : J.S.L. Sinha, Adv.

Advocate for Pet/Ap. : M.L. Gupta, Adv.

Disposition : Appeal allowed

Judgement :

H.G. Mishra, J.

1. This is second appeal preferred by the plaintiff against the judgment and decree passed by the Additional District Judge, Gwalior, whereby the suit pertaining to specific performance of agreement for sale has been dismissed and the matter has been remanded for deciding other issues including the issue whether the

plaintiff can get refund of the amount of sale price deposited with the respondent Trust.

2. The facts so far as they are material for purposes of disposal of this appeal are that on 14-12-1961 the defendant-respondent Trust entered into an agreement for sale of a plot of land in favour of the plaintiff. The suit for specific performance of sale was instituted on 5-4-1971. The trial court dismissed the suit, aggrieved by which the plaintiff preferred appeal. The appellate court relying on 1968 Jab LJ 798: (AIR 1968 Madh Pra 150) (Ramchandra v. Manikchand) held that on the date of entering into agreement for sale i. e. on 14-12-1961 the plaintiff was a minor. Therefore, he had no right to enforce the agreement for sale. It was hit by the doctrine, of 'mutuality.' For want of mutuality, the plaintiff could not be allowed to enforce the agreement for sale. In this view of the matter, the learned A. D. J. dismissed the suit so far as specific performance of agreement for sale was concerned, but remanded the case so far as the consideration of plaintiff's right to other reliefs was concerned.

3. Aggrieved by this judgment and decree pertaining to dismissal of the suit for specific performance of agreement for sale, this appeal has been filed.

4. The learned counsel for the appellant contends that the learned A. D. J. has erred in over-looking the change of law brought about by the [Specific Relief Act, 1963](#) (hereinafter referred to as the Act). By enacting Sub-section (4) of Section 20 of the Act, the doctrine of 'mutuality' has been given good-bye and in view of the change of the law the principles laid down in 1968 Jab LJ 798: (AIR 1968 Madh Pra 150) (supra) have not remained good law.

5. Shri Sinha, learned counsel for the respondent has very vehemently opposed the appeal and has argued that the dictum of Ramchandra's case (AIR 1968 Madh Pra 150) holds water even after enforcement of the Act.

6. After having heard the learned counsel for both the parties, I am of the opinion, that the appeal deserves to be allowed, Sub-section (4) of Section 20 of the Act is reproduced below:--

'The court shall not refuse to any party specific performance of a contract merely on the ground that the contract is not enforceable at the instance of the other party.'

The language used in Sub-section (4) of Section 20 of the Act quoted above, does not justify the inference that the doctrine of 'mutuality' has been completely thrown out of consideration. But it is clear that the rigour of the doctrine of mutuality has been toned down by the Parliament' by introducing Sub-section (4) in the law governing the specific reliefs.

7. The use of the word 'merely' in Sub-section (4) indicates that the specific performance of a contract will not be refused on the sole ground that the contract is not enforceable at the instance of the other party. The circumstance that the contract is not enforceable at the instance of the other party can be one of the considerations for refusing the specific performance. But on that ground alone, relief of specific performance cannot be refused.

8. The effect of the change of law brought about by the aforesaid provision was considered by this Court in a Division Bench case reported in 1974 Jab LJ 296 : (AIR 1974 Madh Pra 24), (Than Singh v. Barelal). The ratio of this case fortifies my view. The principles of law governing such cases prior to the enforcement of the Act, cannot be regarded as applicable to cases originating after enforcement of the Act. Admittedly, the present suit was instituted on 5-4-1971, the Act came into force on 1-3-1964. In this view of the matter, the suit will be governed by the provisions of the Act. It is not the date of entering into an agreement for sale which is material for adjudging the applicability of the doctrine of mutuality. The relevant date is the date of the suit when the plaintiff-appellant sought enforcement of the impugned agreement for sale through court. In this view of the matter, the appeal deserves to be allowed. Accordingly, the impugned judgment and decree, so far as they pertain to dismissal of the suit regarding specific performance of agreement for sale of land in question, are set aside and the case is remanded to the trial court for trial of the whole suit according to law. Refund of the court-fee paid on this appeal is directed to be made to the appellant. Office may issue a certificate of refund of the court-fee paid on this appeal to the plaintiff appellant. In

view of the misapprehension of law under which the learned ADJ proceeded to decide the appeal, I make no order as to costs of this appeal. It is directed that the costs of the first appeal will follow the ultimate event. If the suit is ultimately decreed, the costs of the first appeal will also be provided for by the trial court in its decree.

9. The learned counsel for the appellant requests for fixing of a date for appearance of the parties in trial court, to avoid delay in fixing of the date and then intimating it to the respective parties. The prayer is reasonable. Accordingly, I direct that the parties will appear in the trial court on' 10-2-1978. This will be sufficient notice to the parties. No fresh notice need be issued for this date by the trial court. The record of the trial court be sent within three days from today.

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