

Suresh Chandra Vs. Satya Narayan

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Court : Madhya Pradesh

Decided On : Nov-19-2003

Reported in : 2004(1)MPHT238

Judge : S.P. Khare, J.

Acts : [Specific Relief Act, 1963](#) - Sections 22(2); [Code of Civil Procedure \(CPC\) , 1908](#) - Sections 96

Appeal No. : First Appeal No. 366/94

Appellant : Suresh Chandra

Respondent : Satya Narayan

Advocate for Def. : Manikant Sharma, Adv.

Advocate for Pet/Ap. : Imtiaz Husain, Adv.

Disposition : Appeal partly allowed

Judgement :

S.P. Khare, J.

1. This is plaintiffs appeal under Section 96, CPC against the judgment and decree by which his suit for specific performance of contract has been dismissed.

2. During the course of hearing of this appeal it has been expressed by the learned Counsel for the appellant that he wants refund of the amount of Rs. 51,000/- from the defendant and does not want to press his suit for specific performance of contract. Therefore, the arguments on this limited question were heard.

3. It is no longer in dispute that the agreements dated 22-10-1990 (Ex. P-1), dated 20-5-1991 (Ex. P-2) and dated 29-6-1991 (Ex. P-3) were executed by defendant Satya Narayan Soni. According to the plaintiff he paid an amount of Rs. 40,000/- in cash to the defendant on 22-10-1990 and an amount of Rs. 11,000/- on 20-5-1991. The defendant has denied the receipt of these amounts in cash. He has pleaded that he is carrying on the business of jewellers and the plaintiff was having dealings with him and after finalisation of the account an amount of Rs. 11,855/- was found due from him towards the plaintiff. According to the defendant the three agreements mentioned above were executed as a security for payment of this amount of Rs. 11,855/-.

4. The Trial Court held that the agreement to sell the land by the defendant to the plaintiff is not proved but a sum of Rs. 51,000/- is due to the plaintiff from the defendant. On these findings the suit was dismissed and it has been stated that for recovery of the amount of Rs. 51,000/- the plaintiff may file a separate suit against the defendant.

5. The point for determination is whether the defendant can be directed to pay an amount of Rs. 51,000/- to the plaintiff in this appeal.

6. The defendant is carrying on the business in jewellery. He is a man of business and, therefore, it must be held that three agreements mentioned above were executed by him and it has been rightly stated in these documents that a sum of Rs. 51,000/- is due to the plaintiff from the defendant. The defendant has produced certain accounts which do not bear signatures of the plaintiff. According to the defendant an amount of Rs. 11,855/- only is due from him. There is no document in writing to show that an amount of Rs. 11,855/- only is due. The finding of the Trial Court that a sum of Rs. 51,000/- is due to the plaintiff from the defendant is correct.

7. Section 22(1)(b) of the [Specific Relief Act, 1963](#) provides that the relief of refund of earnest money or deposit can be given if the claim for specific performance is refused. Section 22(2) further provides that no such relief 'shall be granted by the Court unless it has been specifically claimed'. In the present case in the relief clause in the plaint the plaintiff has claimed the relief of specific performance of contract and then in Para 7 (c) it has been stated : 'Any other relief which the plaintiff may be held entitled be given to him against the defendant'. It is well settled that the pleadings should not be construed very strictly. Para 7 (c) of the plaint fulfils the requirement of Section 22(2) of the [Specific Relief Act, 1963](#). Therefore, instead of driving the plaintiff to another suit he can be given the relief of payment of Rs. 51,000/-by the defendant.

8. In the result this appeal is partly allowed. The defendant is directed to pay a sum of Rs. 51,000/- to the plaintiff with cost in this appeal. Counsel's fee be levied as per schedule, if certified.

First Appeal partly allowed.

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