

* **HIGH COURT OF DELHI AT NEW DELHI**

+ **R.S.A. No.175/2013**

Decided on : 26.08.2013

SMT. UMA DEVI Appellant

Through: Mr.Pramod K.Sharma, Advocate.

Versus

MR.BIJENDER SINGH Respondent

CORAM:

HON'BLE MR. JUSTICE V.K. SHALI

V.K. SHALI, J. (ORAL)

1. This is a regular second appeal filed by the appellant against the judgment dated 19.02.2013 passed in RCA No.31/2011 upholding the judgment and decree passed by the Civil Judge on 27.07.2011 decreeing the suit partially so far as the refund of the consideration amount of ₹50,000/- is concerned.

2. The learned counsel for the appellant has contended that despite the fact that the two courts below have come to the conclusion that the respondent had executed an agreement to sell in favour of the appellant,

still, instead of decreeing the suit for specific performance, the courts below have chosen to grant alternative relief to the appellant which was for refund of the consideration amount of ₹50,000/-.

3. It is contended by the learned counsel for the appellant that the trial court as well as the first appellate court have fallen into an error by not granting the specific performance of the contract.

4. I have considered the submissions made by the learned counsel for the appellant and gone through the record.

5. Briefly stated, the appellant herein filed a suit for specific performance of an agreement to sell dated 21.09.2004, possession and permanent injunction. The case which was set up by the appellant in the plaint was that the respondent/defendant had agreed to sell a property bearing No.145-B (New No.241-A) measuring 50 square yards out of Khasra No.564, 565, Village Kirari Suleman, Kirari Extension, Delhi-41 to the appellant/plaintiff for a total consideration of ₹50,000/- vide an agreement to sell dated 21.09.2004 and the General Power of Attorney duly registered on 22.09.2004 before the Sub Registrar. It was stated that

despite having received the total consideration amount of ₹50,000/- the respondent/defendant had not transferred the property in the name of the appellant/plaintiff. The appellant has even claimed herself to be entitled to payment of user charges of the premises in question at the rate of ₹1,500/- per month from the date of agreement to sell dated 21.09.2004 till possession is handed over to the appellant/plaintiff. Since that has not been done, the suit for specific performance of contract, possession and permanent injunction was filed by the appellant/plaintiff.

6. The respondent/defendant took the plea that he had never sold the property in question to the appellant/plaintiff. It was contended that his signatures were obtained on the agreement to sell, GPA and other documents under threat and even the sale consideration for which the property in question is purported to have been sold to the appellant has not been paid to the respondent/defendant.

7. It was contended on behalf of the respondent/defendant before the trial court that the market value of the property in question was around ₹5 lakhs and there was hardly any occasion for the respondent/defendant to sell the same at ₹50,000/-.

8. On the completion of pleadings of the parties, the following issues were framed:

- “i) Whether the court has no pecuniary jurisdiction to try and decide the present suit? OPD
- ii) Whether the plaintiff is entitled for decree of specific performance and possession as prayed for? OPP
- iii) Whether the plaintiff is entitled for a decree of permanent injunction as prayed for? OPP
- iv) Relief”

9. Both the appellant as well as the respondent appeared in the witness box and testified in support of their case.

10. The learned trial court, after analyzing the testimony of PW-1, appellant/plaintiff, as well as the testimony of DW-1, respondent/defendant, had returned a finding that though the respondent/defendant had signed the documents like the agreement to sell, etc. in favour of the appellant/plaintiff, yet the appellant was not entitled to seek specific performance of the agreement to sell dated 21.09.2004 or for issuance of a direction to the Registrar or any other official of the High Court to complete the transaction of the appellant.

11. On the contrary, the learned trial court arrived at a finding that the grant of specific performance is a discretionary relief and for entitling the exercise of this discretion in favour of the appellant, she had to show that she had come to the court with clean hands as well as that the non grant of decree of specific performance of the agreement to sell would be unfair to her. The court also observed since the appellant had come to the court after a considerable delay, therefore, the court did not consider it appropriate to direct the respondent/defendant to take steps in accordance with the agreement to sell in favour of the appellant/plaintiff and accordingly passed a decree for refund of the consideration amount by the respondent/defendant to the appellant/plaintiff along with interest at the rate of 6% per annum from the date of the agreement to sell i.e. 21.09.2004 till realization of the decretal amount.

12. The first appellate court while considering the plea of the appellant that specific performance ought to have been ordered, has referred to the judgments of the Supreme Court in Azhar Sultana v. B.Rajamani; AIR 2009 Supreme Court 2157 and come to the conclusion since grant of specific performance is a discretionary relief, the court has to see a

number of parameters including the conduct of the parties to decide whether the discretion should be exercised in favour of the plaintiff or not.

13. The appellant who has preferred to file the present regular second appeal and is claiming specific performance of an agreement to sell dated 21.09.2004 ought to have come to the court at the earliest. Admittedly, in the instant case, the agreement to sell is purported to have been executed on 21.09.2004 while as the suit itself has been filed after the expiry of two and a half years when the entire limitation period was about to come to an end.

14. In addition to this, the court observed that a person must come to the court within a reasonable period of time and what would be a reasonable period of time would be dependent on the facts and circumstances of each case.

15. The second point on which the court has decided not to grant decree of specific performance is that the appellant/plaintiff has not revealed the true picture to the court. This is on account of the fact that

in the suit, the appellant/plaintiff had claimed possession of the suit property while as he had placed on record a document on the strength of which it was urged that the respondent had transferred the possession of the suit property to the appellant. This document of handing over possession to the appellant was considered to be a false document by the court. On this reasoning, the court has denied the specific performance and upheld that view taken by the court for refund of the consideration amount along with interest at the rate of 6% per annum from the date of the agreement to sell dated 21.09.2004 till realization of the decretal amount.

16. Before this court, the only submission which has been made by the learned counsel for the appellant which is stated to be raising a substantial question of law is as to whether a suit in which an agreement to sell is proved is to be specifically enforced or not.

17. I do not consider that there is any question of law involved in this appeal. This is on account of the fact that the specific performance of a contract to purchase an immovable property has to be specifically enforced. The only condition is that the grant of this relief is a

discretionary relief and further that, in case any specific time for execution of the specific performance is fixed, then time become the essence. Otherwise, the entire transaction must be completed within a reasonable time. In the instant case, it does not seem that there was any time limit fixed by the parties. Therefore, the only best thing was that the appellant/plaintiff and the respondent/defendant had to complete the transaction within a reasonable period of time. What would be a reasonable period of time can certainly not be laid down in a straight jacket formula but the fact of the matter remains that the agreement between the parties was entered in the year 2004 and if the respondent/defendant had become dishonest and was not perfecting the title of the appellant, then the appellant/plaintiff ought to have filed a suit for specific performance immediately in the year 2004 itself or in early 2005, but the appellant/plaintiff chose to wait for almost three years before she invoked the jurisdiction of the court. This lapse of time in availing of remedy of specific performance from a court is accordingly hit by laches as well as and makes the court to ponder over the second submission advanced on behalf of the appellant/defendant to refund the consideration amount, which has been done in the instant case.

18. The Supreme Court in *Azhar Sultana v. B.Rajamani's case (supra)* has also observed that if no time limit is fixed for completion of a transaction by the parties, the entire transaction must be completed after coming to court within the reasonable period of time.

19. The second component while exercising the discretion by the court is that the very grant of decree of specific performance is a discretionary relief with the court and the only requirement is that this discretion has to be exercised on settled legal principles and it should not be exercised an arbitrary act. The exact language of Section 20 of the Specific Relief Act, 1963 is as under:

“20. Discretion as to decreeing specific performance

(1) The jurisdiction to decree specific performance is discretionary, and the court is not bound to grant such relief merely because it is lawful to do so; but the discretion of the court is not arbitrary but sound and reasonable, guided by judicial principles and capable of correction by a court of appeal.

(2) The following are cases in which the court may properly exercise discretion not to decree specific performance:

(a) where the terms of the contract or the conduct of the parties at the time of entering into the contract or

the other circumstances under which the contract was entered into are such that the contract, though not voidable, gives the plaintiff an unfair advantage over the defendant; or

Explanation 1 : Mere inadequacy of consideration, or the mere fact that the contract is onerous to the defendant or improvident in its nature, shall not be deemed to constitute an unfair advantage within the meaning of clause (a) or hardship within the meaning of clause (b).

Explanation 2: The question whether the performance of a contract would involve hardship on the defendant within the meaning of clause (b) shall, except in cases where the hardship has resulted from any act of the plaintiff subsequent to the contract, be determined with reference to the circumstances existing at the time of the contract.

(3) The court may properly exercise discretion to decree specific performance in any case where the plaintiff has done substantial acts or suffered losses in consequence of a contract capable of specific performance.

(4) 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 party.”

20. A perusal of the aforesaid Section, would clearly show that the grant of specific performance cannot be claimed as a matter of right even though a party may be able to prove the agreement. This is what is stated

in the first sub-clause of the section. Admittedly, in the present case, time was not the essence but still a contract for specific performance of immoveable property must be wrapped up within a reasonable time rather than waiting for years together. It shows that the plaintiff had given up for specific performance. In the instant case also, I feel that the interest of justice would be met in case the entire consideration amount is refunded to the appellant. This is precisely what has been done by the courts below. Thus, there is a concurrent finding against the appellant/plaintiff.

21. I do not consider that any substantial question of law has been raised in the present regular second appeal warranting interference by this court.

22. Dismissed.

V.K. SHALI, J.

AUGUST 26, 2013
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